Short title

TRANSNATIONAL COOPERATION IN AIR TRANSPORT

by

IMAM

TRANSNATIONAL COOPERATION IN AIR TRANSPORT:

TOWARDS THE ESTABLISHMENT

OF

INTERNATIONAL AIRLINES

by

Abbas I.I. IMAM
LL.B Khartoum (1960)
Diploma (Air and Space Law - McGill 1965)

A thesis submitted to the Faculty of Graduate Studies in partial fulfilment of the requirements for the degree of Master of Laws.

Institute of Air and Space Law,
McGill University,
Montreal.

August, 1966.

D E D I C A T I O N

To my Father

ACKNOWLEDGEMENTS

I should like to express my appreciation and deep thanks to the Institute of Air and Space Law for the opportunities that were made available to me to undertake studies in the fields of air and space law. I am deeply grateful for the patient, constructive and inspiring efforts and energy exerted by Professor Ivan A. Vlasic towards the realization of this work.

This study would not have been possible without the financial assistance of the ICAO Technical Assistance Bureau, in the form of a scholarship sponsored by the Sudanese Government. To both I express heartfelt gratitute and indebtedness. Further, I deeply appreciate the cooperation of the Directors of Civil Aviation of the United Arab Republic and of the Republic of the Sudan, as well as the General Manager of Sudan Airways for their valuable assistance in providing important material and documents. Another note of appreciation should also be made to Professor M. Bradley who supplied some valuable material on East African and Central African Airways.

I wish also to acknowledge the patient and diligent assistance of Miss Rita Douesnard of ICAO in polishing and correcting the language, as well as that of Miss Sylvia Langdon and Miss Ludmila Barladian of ICAO who typed the thesis.

A further note of acknowledgement should go to the staffs of the McGill Faculty of Law Library and the ICAO Library at Montreal for their kind assistance.

Abbas IMAM

Montreal,
August, 1966.

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INTRODUCTION

Contemporary trends in civil aviation show a noticeable tendency towards integration of national airline enterprises in many regions of the world. This attitude springs from the economic realities of air transport, the progress of which has been retarded generally by excessive competition and, in certain particular regions, also by such factors as shortages in financial resources and experienced personnel, inadequate equipment, and, at times, inherent difficulties in the operation of air services. Current technical progress in aviation suggests that these economic difficulties would be aggravated by the introduction of such new equipment as supersonic transport aircraft. However, for the achievement of such multinational cooperations other considerations -- such as mutual political relations among potential participants, common history and culture, or sometimes geographical proximity -- may stimulate the drive towards integration. All these we propose to consider in Chapter I of this study.

A brief outline of the history of the establishment of transnational arrangements, as well as the earlier discussions that preceded the Chicago Convention, 1944, will be essential to show the patterns of these schemes. This will be followed by a discussion of the problems posed by the Chicago Convention with respect to the establishment of international airlines possessed of international legal personality, and especially the questions of nationality and registration of aircraft as understood in the context of Chapters III

and XVI of that Convention. These questions are discussed in Chapter II of this work.

The existing multinational enterprises and some of the suggested collaborations will be considered in Chapter III, where their structure, organization, legal and financial aspects, and other questions will be dealt with.

In Chapter IV the legal structure of the international airline company is analysed in a comparative appraisal.

Chapter V considers the present practice of States, parties to different multinational airlines, in their bilateral air agreements and discusses the modifications that have been found necessary in the case of such transnational organizations.

CHAPTER I

FACTORS STIMULATING TRENDS TOWARDS TRANSNATIONAL ENTERPRISORY ENTITIES: AN ANALYSIS

1. Economic Factors

Ever since it became a viable industry, civil aviation has been looked upon by States not merely as a commercial activity or as a means of satisfying the public need for transportation, but also as an instrument of prestige and an auxiliary of national defence establishment. From the beginning civil aviation has enjoyed a very special treatment by governments, one of the important aspects of which has been subsidization by governments. Today, though it has developed in many respects, it is still generally considered not to be a self-supporting industry.

(A) The Goal of Self-Supporting Industry

The economic realities in many parts of the world clearly indicate the need for a comprehensive transnational cooperation in civil air transport. The industry by its nature is oligopolistic.[1] Wheatcroft has described this phenomenon as one of the most important characteristics of air transport.[2] He said: "The natural conditions of supply are inevitably oligopolistic; it is impossible to envisage air routes being served by more than a small number of airlines." This is supported by the fact that the commodity which the airlines sell is of a perishable nature.

> Air transport, like other forms of scheduled transport, is an industry which is prone to waste. It is a truism, but a fundamentally important fact of the business, that our product perishes at the moment of its production.[3]

Statistics relating to the world's scheduled airlines fully confirm this appraisal. The fact is that the average unsold capacity is close to half of the capacity provided.[4] Though there was a slight improvement in the economic performance of airlines, especially in the years 1962 and 1964,[5] the true situation is, however, screened by subsidies made to the industry by governments, "interest on loans, payments to affiliated companies and income tax".[6]

Since the introduction of the jets in 1958 the costs of operation have fallen continuously due to their greater productivity. Thus total operating expenses per tonne-kilometre available have decreased nearly 20 per cent since 1958,[7] while during the same period (1958-64) average operating revenues per tonne-kilometre performed for all services decreased by about 5 per cent.[8] When considering the international services alone (excluding domestic services), the decline in unit operating expenses was 30% in the period 1958-1963.[9] At the same time and for the same services, unit operating revenues fell by 15%.[10] Thus unit operating expenses were falling faster than unit operating revenues. The result was a decline in average load factors, and, at the same time, a lowering in the break-even load factors. The average break-even

load factor fell from 57% in 1958 to 49% in 1964.[11] However, the overall weight load factor has dropped from nearly 60 percent in 1955 to about 50 percent in 1965.[12] It thus seems as though, on the average, the airlines made a small margin of profit. This may, however, be illusory if subsidies, interest on loans and taxes are brought into the picture. At the same time about 50 per cent of the international airlines may well have suffered operating losses. This is expressed in the recent ICAO's Review of the Economic Situation of Air Transport:

> It must be noted, however, that the unit operating costs of individual airlines vary greatly from the average (from about 1.5 cents to about 5 cents per seat-kilometre or from 2.4 cents to 8 cents per seat-mile), and those higher than average operating costs are in the majority (those with lower than average operating costs include some of the very large airlines). It is estimated that, numerically, about half the international airlines at the present time have unit operating costs of over 2.5 cents per seat-kilometre or 4 cents per seat-mile (i.e., over 30 per cent higher than the world average figure of 1.9 and 3.1.) Fares on these airlines' routes also tend to be higher than the world average, but their break-even load factors probably lie mostly in the range of 60 - 80 per cent, many of them will be still showing a net operating loss or a very small margin of profit...13

It has been observed that while the airlines of ICAO States had suffered from net deficits of $195,000,000 (i.e. 3% of

operating revenues) in 1962 and $42,000,000 (0.5%) in 1963, their working accounts recorded profits of $97,000,000 (1.5%) and $326,000,000 (4.5%) respectively in those years.[14]

In the period 1954 - 1963 the combined revenues (operating and non-operating revenue, excluding public payments) of the 21 largest member airlines of IATA[15] totalled 99.8% of their expenses.[16] In the years 1960, 1961 and 1962 they constantly recorded a loss, until a slight improvement was shown in 1963.[17]

From 1960 - 1963 only BEA and Swissair, among the eleven European airlines included in the 21, showed a slight operating profit,[18] the remaining 9 recording successive losses during the same period (their revenues totalling only 94.9% of their expenses).[19]

The major cause of these unsatisfactory results would appear to be overcapacity produced by the introduction of the jets, which resulted in a remarkable decline in average load factors. It is difficult to justify this relatively poor result when one considers the technological progress represented by the introduction of the jets with the resultant decline in unit operating costs. Much of the blame must be attributed to the existence of a host of international airlines operating on the world air routes, as a consequence of which half the available capacity remains unsold. As load factors fall, subsidies draw heavily on public funds.

The situation looks even worse when certain regions of the world, exhibiting their own peculiar disadvantages, are examined.

For example, air transport within Western Europe "faces both the problems of short stage operations and short-haul traffic".[20] These problems include such factors as reduction in block speed (compared to long-haul operations); lower utilization of aircraft and crew; higher maintenance costs caused by more frequent landings and take-offs; higher consumption of fuel; higher costs of traffic handling; and more competing surface transport. In Western Europe as in certain other regions (e.g Africa), the average traffic density is generally low, which compounds the difficulties. Since most of the routes are of low traffic volume the frequencies on these routes tend to be low, with the ultimate result of producing low load factors.[21] Added to this is the high variation between traffic peaks and off-peaks, and the political divisions within the small area of Western Europe. One point of view is that the problems of intra-European airlines may have been caused by their small scale and by intense competition from non-European long-haul carriers.[22]

Compared with Europe, Africa is still a developing region. It is therefore not surprising that the air traffic generated is considerably lower than European traffic. Furthermore, Africa exhibits its own peculiarities which give rise to a more urgent demand for the creation of transnational airlines. These relate to its inadequate surface transport, the construction of which is retarded by natural and geographical barriers (for example

tropical forests, deserts or highlands). In such circumstances the immediate demands for transport in Africa can be satisfied through the establishment of efficient air transport at less capital expense than surface transport.[23]

With these characteristics air transport in Africa, if it is correctly planned and coordinated, must ultimately result in a rate of traffic growth, markedly higher than the average world annual rate of growth. At present, however, it has a

> relatively high level of operating expenses and revenues. Average figures for the seven important airlines of ECA [the Economic Commission for Africa] States show unit operating expenses as 30 per cent and revenues as 33 per cent above the world average. An examination of the elements of operating expenses shows that the reasons for the high level of costs should be sought under the headings of flight operations and maintenance and overhaul. Factors that keep these costs up include under-utilization of equipment and personnel, the use of small aircraft necessitated by small demand, and the continued operation of obsolecent aircraft. Additional factors are over-staffing and the wide-spread need to employ high-salaried non-African personnel for flight crews and maintenance supervision, and the need to have major overhauls carried out in foreign workshops.[24]

Despite these unfavorable conditions, the financial results of some of the existing African multi-national airlines show a constantly profitable trend. The East African Airways (EAA) the joint airline for Kenya, Tanzania and Uganda, recorded a net profit of £1,919,287, (representing 6.1% of its operating revenues) in the

period 1960-64.[25] EAA's highest prophit -- £510,258 -- was earned in 1964.[26] In 1965, its profit amounted to £415,258.[27] The other enterprisory cooperation known as Central African Airways (CAA), in which Rhodesia, Zambia and Malawi participate, has also been fairly successful. After having some financial difficulties in the years 1956-57, (a loss of over £400,000) CAA managed to reach a break-even point in 1959-60, and to operate at a profit thereafter.[28] In 1960-61 it earned a net profit of £277,032, while the figure for 1961-62 was £249,462.[29] The profit figure rose to almost £ 1/2 million (£485,831) in 1963-64,[30] and reached a climax in 1964-65 of £579,503.[31]

On the Western side of the African continent, Air Afrique, the multi-national airline of 12 French-speaking West African States, has in recent years shown good performance with respect to its traffic results, so that it may be assumed that it will have a promising future. Thus in 1964 its total tonne-kilometers performed increased by 18.7% over that of the previous year. In that year the passenger load factor went up from 54.6% to 55.7%, and the result was even more marked in the overall load factor: an increase from 59.4% to 65.5%.[32] The passenger load factor decreased slightly in 1965, to 54%, while the overall load factor also dropped to 63.9%.[33] Air Afrique made a profit of $989,000 in the year ending December 31, 1964.[34] In 1965 its revenues increased by 7.1% over the previous year from $42 millions to $45 millions.[35]

The operating results of some other African Airlines were less encouraging. Thus the United Arab Airlines suffered a loss of $1,561,000 (7.2% on operating revenues) in the year 1963, although there was an

increase of 19.5% in passenger traffic. Its passenger load factor dropped from 54% in 1960 to 43.5% in 1964, and the overall load factor from 65% to 46.1% during the same period.[36] This airline sustained a further loss of $525,000 (U.S.) in the year 1964.[37]

Tunis Air, another North African Airline recorded a profit of 347,290,415 Dinars (about $713,000) in the year 1964.[38] Ethiopian Airlines, after suffering a loss of 2,996,000 Ethiopian Dollars in 1963, recorded a profit of 3,074,000 Ethiopian dollars (approximately $1,230,000) in 1964.[39]

In West Africa, Air Congo (Leopoldville) was at a break-even point in 1964, since operating revenues just covered operating expenses.[40] One of the worst results was that of Ghana Airways (about which little is published) which suffered a loss of £876,000 in one year -- this figure relating only to its IL-18 aircraft. The average load factor for that airline was recorded at the low figure of 18%.[41] From this one might suspect that the airline was following a policy of rapid expansion based solely on prestige and political considerations.

It is apparent that the African economy, at its present stage of development, is not capable of providing heavy subsidies for air transport. Even the establishment of airlines is a heavy burden on the African national budgets. Bearing all this in mind, and in view of the small amount of traffic generated (about 2% of the world total,[42]) it is surprising to find that there are today about 50 international airlines competing for this low traffic volume 34 being non-African.

This may be constrasted with the 40 airlines serving the larger North American demand for inter-continental links.[43] Such excessive competition is apt to result in low load factors. The Joint ECA/ICAO Study "Air Transport in Africa" suggested, as a possible solution to these problems, subsidization planned on regional and sub-regional bases, coupled with a reduction of the number of airlines competing for traffic.[44] At present the large number of airlines operating in the African market suffer from under-utilization of equipment, caused partly by the predominantly low operating frequencies.[45] Even considerable reduction in fares and rates would be unlikely to result in a large traffic demand. This will depend on the rate of development of tourism, industrial expansion in the African States and upon their "general economic integration".[46]

Speaking generally, excessive competition would appear to be one of the principal problems in the field of air transport. Its ruinous effect is felt especially in new underdeveloped markets and in regions with peculiar problems. Competition, often cited as providing a powerful incentive to progressive development of the industry and serving the interest of the public, does not necessarily stimulate the growth of civil aviation. Rather, as shown above, by forcing subsidization it draws heavily on public funds while operating aircraft with half their capacity unsold. Perhaps international -- or at present, preferably regional -- organizations of international air transport undertakings would achieve better results, in that it would save the waste in air transport. Such organization would be in the public

interest since it could produce a marked reduction in fares and rates and thus make travel by air accessible to a large number of people, so generating new traffic.

Even if, for the sake of argument, competition is considered to be a good thing in itself, perfect competition cannot exist in scheduled air transport. Wheatcroft has explained this as follows:

> The economist's concept of perfect competition envisages a market in which there are a large number of independently acting producers and consumers. For a variety of reasons these essential requirements of a perfectly competitive market cannot exist in scheduled air transport. The conditions of operation are such that it is almost impossible to have more than a small number of airlines serving each individual market. Scheduled air transport is not a homogeneous commodity but a different commodity on each route; in other words, each route is a separate market and there is only room for a small number of airlines on each route. It is for this reason that the conditions of supply in scheduled air transport are essentially of an oligopolistic nature...[47]

Such imperfect competition has produced new practices which tend to increase costs -- for example, in-flight cinema performances.[48] It has also resulted in the airlines' tending to over schedule their flight operations in competing for a wider share of the traffic, thus producing lower load factors.[49] However, as has been pointed out above, the limited advantages of competition -- good time-keeping and regularity[50] -- can be realized by international regulation and operation. The choice to the user of transport is also limited in that he pays the same fare or rate (on the same route) and boards almost the same type of aircraft.[51] On the other hand, the drive to achieve safer air transport may be

better served if excessive competition is curtailed. This will eventually become the task of inter-governmental regulatory bodies to be established side by side with their regional enterprisory air transport organizations.

While States have long acknowledged the necessity of regulating competition on their domestic air routes, they have to date refrained from adopting a comparable system on their international air routes. The curtailment of unnecessary competition was seen by the United Kingdom's Delegation to the 4th ICAO Assembly (1950) as one of the primary objects of international ownership and operation of air transport. However, though affirming the soundness of a comprehensive global scheme, they considered regional organizations the practical course to be undertaken:

> Many countries have adopted the policy of regulating competition between domestic airlines operating on their internal routes, either through a licensing system or by creating organizations, such as State owned Corporations, enjoying a monopoly of scheduled air transport services or by a combination of both. The object of these policies is to control competition in the interests of the efficient expansion of the industry and of the need of the public for safe, economical and assured provision of air services. There is no similar control of international air transport development.... /International/ services are often duplicated on individual routes, thereby duplicating the cost of overheads and route organization and increasing unnecessarily the cost of development and operation... As a result international air transport development is relatively uncontrolled, from the competitive standpoint, and is in marked contrast with the regulated systems introduced by many countries for ensuring the efficient and progressive expansion of their internal services to meet the public need.[52]

These observations may equally apply to current conditions, since international air transport remains largely unregulated in its competitive aspects.

The argument advanced by the advocates of competition does not have full force. Their primary premise is that transnational undertakings in air transport "would curb initiative, would leave insufficient scope for creative impulses..." and would increase "the influence of political considerations in aviation."[53] However, it can be argued that intergovernmental bodies could undertake the task of promoting the public interest by functioning as regulatory bodies to the transnational undertakings concerned. At the same time, there would still remain some degree of competition on international air routes, though it would probably be of a very limited scope. On the other hand, the existence at present of excessive competition has aggravated powerful political influences, which eventually negate any progress towards liberalization in the granting of traffic rights. Hence the most feasible solution to the present difficulties, based on sound economic considerations, would seem to be the establishment of multi-national air transport enterprises.

The economic considerations of sound commercial business call for large-scale undertakings. Thus a large commercial venture would result in relatively smaller unit costs. In air transport, where the traffic supply is limited, this means serving routes of higher traffic density with the more economic, larger aircraft operating at greater frequency and achieving remarkably better load factors.[54] This will ultimately result

in lowering fares and rates and thus gain new traffic. The public need would in this way be more adequately satisfied; in addition, the need for subsidies would end.

The need to establish such enterprisory organizations in developing regions is more urgent than in developed countries. As has been pointed out, the operation of an airline draws heavily on public funds in regions such as Africa. If subsidization, both direct and indirect, is added to this in order to keep the national airlines flying, the burden upon national economies may become unbearable. Considering the higher-than-average costs of operating an airline in the developing countries and the fact that traffic is remarkably low, the joining of efforts in multi-national enterprisory organizations appears to be the only sound solution.

This idea secured general support in the African Air Transport Conference held in Addis Ababa in 1964.[55] There in a study presented by ECA, the Continent was divided into three sub-regions with the aim of amalgamating and merging the existing State-controlled national airlines into one enterprise within each region. The proposed airlines were to carry out inter-State services within Africa as well as air transportation on other international air routes.[56] Although some delegates even felt that the establishment of a single Pan-African Airline might be the optimum solution such measure was considered premature.[57] The Conference further recommended consultations between governments in each sub-region,[58] for the creation of the desired joint airlines.[59]

(B) The Effect of the Introduction of Supersonic Aircraft

It has been estimated that three versions of supersonic aircraft will be put into service during the period 1971-74. Plans for the Franco-British "Concorde" indicate that it will have a smaller capacity and shorter range than the United States supersonic version. Maximum passenger capacity of the "Concorde" is expected to be 140 passenger seats, which compares with 250 seats for the United States SST, and 121 seats for the Soviet Tupolev (TU)-144, While the cruising speed of the "Concorde" will be 1,450 m.p.h (Mach 2.2), that of the U.S. SST is expected to be 1,800 m.p.h. (Mach 2.7), and that of the Russian Tu-144 1,550 m.p.h. (Mach 2.3).[60] Total operating expense per seat-mile has been forecast at 2.8 cents for the "Concorde" and the Russian Tu-144 and 2 cents for the U.S. SST.[61] Unit sale price of the "Concorde" is estimated at approximately $16 millions,[62] and that of the U.S. SST at $28.2 millions.[63]

The new supersonic era will call for readjustments in many fields -- for example, airport traffic handling; strengthening of airport runways; extension of aircraft parking areas; improvement of refuelling facilities; expansion of air traffic control, weather forecasting and overhaul and maintenance facilities.[64] All these aspects will involve unprecedented costs. For example, the expansion in the weather reporting system would call for faster and more accurate forecasts, with a consequent need to increase the usual four-time-a-day method since no forecast could be fully relied upon if given for a period in excess of one hour. The present system of transmitting these forecasts to pilots would soon be inadequate to cope with the pressing demand of supersonic transport.[65]

Leaving aside the new ground costs, the capital expenses of the supersonic aircraft themselves will find many airlines, and even their Governments, unable to compete with other larger airlines when the race for new equipment starts.

In addition, forecasters predict that their estimated cost of operation will be constantly higher than those of the jets.[66] The most optimistic estimation is that unit costs for the operation of the supersonic jet to be introduced in 1974 will be 10 per cent above those of the sub-sonic jet in 1963. This will eventually result in a break-even load factor of 60 per cent if fares decline at the rate of one per cent annually, or 74 per cent if they decline at the rate of 3 per cent.[67] This is, in fact, the estimate for the higher version of supersonic aircraft with a capacity of 250 seats. The smaller version (Mach 2.2) reveals even higher break-even load factors, estimated between 65 per cent and 76 per cent.

It thus becomes evident, that with the present state of competition and the relatively slow rate of traffic growth (estimated at 12 per cent annually), the economic situation of scheduled air transport might worsen. This calls for abandoning wasteful competition and the organization of the industry in enterprisory undertakings in developing regions, as well as in developed areas which have peculiar difficulties.

2. Other Relevant Factors

a) History and Politics

So far, efforts to establish multi-national enterprisory organizations in air transport have been productive only in a few instances. Until recently the number of multi-national airlines was

limited to four (the Scandinavian Airlines System (SAS), East African Airways (EAA), Central African Airways (CAA) and Air Afrique). On May 15, 1966 a new multi-national airline was created when Singapore and Malaysia concluded an agreement by which Malaysian Airways became their joint airline (together with the Government of Brunei which holds 0.96% of the capital). Pursuant to the Agreement Malaysia and Singapore shall each contribute 33.74% of the capital, to a total of $26,287,400.[68] TUPAIR is another proposed joint enterprise, which has the ultimate aim of gradually integrating the three national airlines of Turkey, Iran and Pakistan. This move, which started in Pakistan in 1964, follows the recent conclusion of agreements of a commercial and political nature among the three countries.[69] In order to attain the goal of complete merger of their airlines, these Governments have set up a Regional Planning Council (RPC) for their Regional Cooperation for Development (RCD). The RPC is to consider cooperation in such matters as the rationalization of flight equipment, personnel training and standards of operation. Each national airline would preserve its identity, and merger would come gradually. As a step towards their gradual cooperation Iranair and Pakistan International are expected to start operating on their new route to Europe, through Istanbul in the summer of 1966.[70]

Although it is recognized that considerable economic benefits accrue to participants in such co-operative ventures, one of the main reasons for the frequent failure to attain such cooperation would seem to stem from the diverse political objectives of States. A major prerequisite in this respect is that potential participants be convinced

that cooperation through a joint enterprise will not be inimical to their separate national interests. When there is a history of fruitful cooperation within an area and absence of serious political contradictions, the incentives for joint economic undertakings will be strong and the prospect of agreement good. Economic necessity alone, as experience demonstrates, will not be sufficient to secure agreement.

The fact that there is a common history in a region may be one of the strong motives towards economic integration. The Arabs, for example, had centuries of continuous intercourse in the form of travel, trade, intermarriage, and the sharing of a common history. Although divided in nation-States they are basically the same people. Their present political divisions may be related to the historical process of the gradual disintegration of the Ottoman Empire.[71] There is, however, a general movement towards political integration, although it has experienced certain failures in practice -- for example, the break-up of the union between Egypt and Syria in 1961. This movement towards integration is retarded by such political factors as the opposition of royal houses to the creation of a single Arab State, as advocated by Arab Socialist leaders.[72] Specific animosities prevalent among these States may be regarded as the most important factor operating against any kind of integration, whether political or economical. It may be witnessed in the relations of Iraq and Kuwait,[73] Egypt and Saudi Arabia (concerning Yemen), Egypt and Tunisia, and in Egyptian relations with many Arab countries at different times, depending on the changing political situation in the Arab World. At

present, there is a great risk that the "armed struggle" in Yemen may be renewed, in which event President Nasser had already threatened to invade Saudi Arabia.[74]

There are also continuous political differences between Egypt and Tunisia. These may be reflected in the pro-western foreign policy of President Bourguiba, his differences with President Nasser over the problems of the Palestinian refugees, and his refusal to break diplomatic relations with West Germany.[75] During the Casablanca Arab Summit Conference (held on September 13, 1965) President Bourguiba related the worsened situation of Arab unity to the policies of Egypt.[76]

On the other hand, there is a new clear trend towards general economic cooperation and integration in commerce and industry among the four Maghreb countries (Libya, Tunisia, Algeria and Morocco) as a group distinct from other Arab countries. A permanent secretariat and an advisory committee to the four Ministers of Economics were established as a result of the 4th annual Conference of the Maghreb Ministers of Economics, held in Algiers from February 8 - 12, 1966.[77]

A Maghreb transportation conference, held from October 6 - 9, 1965, recommended inter alia, the establishment of a Maghreb multi-national airline, and the setting up of a permanent commettee for each transport sector (including air transport), together with a "Maghreb Coordinating Committee of Transportation". Other recommendations of the Conference included such measures as the pooling of the offices of the national airlines in Algiers and the coordination of time-tables and schedules.

Morocco was entrusted with undertaking the study of establishing a Maghreb Aeronautical Information Service.[78] A preference for such a Maghreb, rather than general Arab, integration in air transport was indicated by the delegates of Tunisia and Morocco during the Conference of Arab Ministers of Transport held in Beirut from November 20 - 24, 1964.[79]

Little hope exists for attaining an air transport multinational cooperation among the Arab States until political stability is secured. Because of this, cooperation was recently sought through the establishment of the Arab Air Carriers Organization (AACO) patterned after IATA.[80] The AACO objectives are not confined only to agreement on fares and rates but call for economic cooperation (through pooling arrangements) and technical cooperation (in maintenance and overhaul) among the Arab airlines. However, because of the political disagreements among these States, it is difficult to predict success for AACO.[81]

As pointed out above, the absence of serious political differences enhances the prospects of success in such co-operative endeavours. This has been witnessed in the cases of the SAS, CAA and EAA. In fact, because of the sharp political differences over Rhodesia the Central African cooperation now risks being shattered: Zambia was recently reported to be considering the possibility of joining EAA instead of CAA.[82]

Further instances of fruitful cooperation were the jointly owned and operated British Commonwealth Pacific Airways (BCPA) and the Tasman Empire Airways (TEA). The three participant countries -- Australia, New Zealand and the United Kingdom -- had close historical and political relations and were members of the British Commonwealth.

In Western Europe, despite the considerable experience of economic cooperation among the States members of the European Common Market (which has the ultimate aim of political integration), the proposed Air Union has sofar failed to materialize even after prolonged negotiations. The reasons for this failure seem to spring from differences of opinion over the economic policies to be applied and in the allocation of traffic quotas.

b) Culture

Cultural factors stimulating joint enterprisory activities are usually founded in common history and common heritage. However, they may in some instances be borne out by political relationships of long standing. The colonial regimes embraced all of these. It is evident that the French and the British left a marked impact of their culture and language which still finds a large measure of effectiveness in the newly independent States. Thus the African States of Air Afrique are all French speaking and were, prior to their independence, under the same colonial regime; hence the tie of a common hereditary culture. The same may be said of the African States cooperating in the East African Common Services Organization (EACSO).

The closest cultural relationship is perhaps among the Arab nation-States, which generally share a common language, religion and wide range of customs and traditions that have survived foreign invasions and influences for centuries. However, the sharing of such a common culture would not have been possible without the Arabic language, the medium for all forms of literary expression, including the pre-Islamic and post-

Islamic poetry and literature and the Qurán (the Moslem Holy Book), and all kinds of historical contact and intercourse between Arab countries. This language, dating back to a time between the 4th and 6th centuries A.D., is still a single language which has experienced but minor changes in the last thousand years.[83]

Added to language, the shared religion of Islam creates an emotional and spiritual bond between the adherents of this Faith who happen also to be Arabs.[84]

Arabs also share, generally speaking, a similar way of life which becomes strikingly emphasized in "the close similarity between the form, manner, tempo, and social observances of Arab society everywhere in homes, coffee-shops, offices and streets..."[85] There exists today throughout the Arab world a wide range of almost identical personal laws (relating to such matters as marriage, divorce, inheritance, Islamic trusts) administered by Sharia Courts; a common heritage derived from religion.

With such wide cultural ties the chances of integrating air transport would have been promising, had they not been retarded by current political differences. It may be hoped, however, that with future improvements in political relations, these cultural ties will enhance the cause of the projected 'Pan-Arab' airline.

c) Geography

Geographical proximity alone will not, as a rule, provide sufficient incentive for the establishment of an enterprisory organization. However, it is true that in existing multi-national entities such as the

SAS, Air Afrique, EAA, CAA and the newly established multinational airline Malaysian Airways, the participating States happen to be within the same geographical area. Even the proposed joint air transport arrangements (for example International Arab Airways Corporation(IAAC), Air Union, TUPAIR (Pakistan - Iran- Turkey), 'Flota Aerea Latino Americana' (FALA) and Air Maghreb), participants are invariably geographical neighbours. Nevertheless, if the political and cultural ties among the States concerned are sufficiently strong, enterprisory organizations may still materialize despite vast distances separating the participant States or some of them. The only precedent is that of the previously mentioned participation of the United Kingdom (through BOAC) in both BCPA and TEA in 1946.

It seems safe to assume, however, that geographical proximity accelerates the establishment of the enterprisory airline, since it contributes to the development of traffic on intra-State air routes especially in developing regions. It is an essential consideration in any all-embracing scheme of technical, economic and commercial cooperation.

NOTES TO CHAPTER 1

1) i.e. the limited traffic on any route dees not allow a large number of competing airlines to operate economically; in other words, there is a stage at which the addition of another operator on a certain route will be destructive to the economies of all the operators on that route.

2) Stephen Wheatcroft, Air Transport Policy (London, 1964), p. 55.

3) Lord Douglas of Kirtleside (Chairman of B.E.A.), "The Progress of European Air Transport", Journal of the Royal Aeronautical Society, LXVI, No. 615 (March, 1962), p. 154.

4) A Review of the Economic Situation of Air Transport (ICAO Secretariat, June-July 1965), p. 13, para. 28. (Hereinafter called A Review).

5) Id., p. 11, para. 24.

6) Id., pp. 11-12.

7) Id., p. 29, para. 49.

8) Id., p. 29, para. 50.

9) Id., p. 33, para. 51.

10) Id., p. 33, para. 52.

11) Id., p. 7, para. 16.

12) "Where The Airlines Stand", Interavia, No. 10/1965, p. 1571.

13) A Review, supra note 4, p. 41, para. 61; emphasis supplied.

14) ITA Studies, 65/8-E, (1965), p. 85.

15) During the same period these airlines performed no less than 70% of the total traffic of ICAO States: Id., p. 81; these airlines are United Airlines, PAA, American Airlines, TWA, Eastern Airlines, Air France, BOAC, Delta Airlines, Air Canada, Northwest Airlines, KLM, Alitalia, Lufthansa, SAS, BEA, National Airlines, Braniff International Airlines, Japan Airlines, Qantas Empire Airways, Swissair and Sabena: Id., p. 80.

16) Id., p. 88.

17) Id., p. 89.

18) Id., p. 90.

19) Id., p. 89.

20) S. Wheatcroft, The Economics of European Air Transport (Manchester Univ. Press, 1956), p. 25. (Hereinafter called The Economics)

21) At the Seventh British Commonwealth and Empire Lecture, by Sir Leonard Isitt, London, The Royal Aeronautical Society, (1951), it was asserted: "... If the speed of equipment is doubled it is equivalent to doubling the size of the aircraft, and unless traffic can be increased equilibrium can only be maintained between required aircraft utilization and load factor by reducing frequency, with its adverse effect on traffic.", p. 721; Lord Douglas of Kirtleside, supra note 3, p. 148, expressed the view that the faster jets with their greater productivity limit most airlines' needs only to a small fleet of aircraft "particularly because the large capacities of new aircraft make it more difficult for an individual airline to maintain adequate frequencies on many routes..."

22) The Economics, p. 59; emphasis supplied.

23) Air Transport In Africa (A Joint Study by ICAO and the Economic Commission for Africa, July 1964, ECA: Doc/CN.14/TRANS/20, ICAO: Doc. 8419-AT/718), p. 1, para. 1.

24) Id., p. 8, para. 25.

25) ITA Bulletin (No. 35/4 October, 1965), p. 1001.

26) The average load factor for that year was 56.3%; see The Aeroplane and Commercial Aviation News (September 2, 1965), p. 18.

27) East African Airways Report and Accounts (May 26, 1966).

28) John Seekings, "Airline of the Month: Central African Airways - Profitable Pace-Setter", The Aeroplane and Commercial Aviation News (March 4, 1965), p. 4.

29) The Aeroplane and Commercial Aviation News (November 22, 1962), p. 7.

30) Flight International (31 December 1964), p. 1108.

31) The Annual Report of CAA, for the year ending June 30,1965, p. 4.

32) ITA Bulletin (No. 1/3 January 1966), p. 31.

33) "Traffic of Air Afrique in 1965", ITA Bulletin (No. 15/11 April 1966), pp. 427-429, p. 428.

34) ICAO Digest of Statistics, No. 115, Financial Data 1964 (January 5, 1966), p. 43.

35) Air Transport World (May, 1966), p. 45.

36) "Activity of United Arab Airlines", ITA Bulletin(No. 17/26 April, 1965), pp. 467-470, p. 467, and IATA World Air Transport Statistics for the Year 1964, p. 33.

37) ICAO Digest of Statistics, supra note 34, p. 101.

38) "Financial Results of Tunis Air In 1964," ITA Bulletin(No. 3/17 January 1966), p. 87.

39) "Financial Results of Ethiopian Airlines, 1960-1964," ITA Bulletin (No. 1/3 January 1966), p. 29.

40) ICAO Digest of Statistics, supra note 34, p. 63.

41) "Ghana Airways Reports Heavy Losses," The Aeroplane and Commercial Aviation News (October 31, 1963), p. 11.

42) Air Transport in Africa, supra note 23, p. 7, para. 21.

43) Id., p. 7, para. 21.

44) Id., p. 10, para. 32.

45) Id., p. 24, para. 56.

46) Id., p. 26, para. 62.

47) Wheatcroft, supra. note 2, p. 55.

48) S. Wheatcroft, "International Airlines' Future," Interavia No. 3/1965, p. 359; see also: Wheatcroft, op. cit. supra note 20, p. 226; he states that this kind of competition is of a monopolistic rather than a competitive purpose.

49) Wheatcroft, supra note 48, p. 359.

50) J.W.S. Branker, "Is there Competition in Air Transport?," Interavia No. 10/1965, p. 1570.

51) Id., p. 1570.

52) ICAO Working Paper, Joint Ownership and Operation of International Air Services on Trunk Routes, A4/WP/118-EC/14 (5.6.50), pp. 2-3.

53) D. Geodhuis, "The Role of Air Transport in European Integration," 24 JALC (1957) p. 278.

54) Traffic handling, advertizing, maintenance and overhaul, and management costs can thus be fully exploited, and so produce a decline in unit costs: see Branker, supra note 50, p. 1570.

55) ICAO Doc. 8462-AT/719; ECA - Doc E/CN. 14/TRANS/26, p. 6, para. 19.

56) Ibid.

57) Id., p. 8, para. 23.

58) Air Transport in Africa, ECA-Doc. E/CN.14/TRANS/20, ICAO - Doc. 8419-AT/718 (July 1964), Appendix 2, p. 53.

59) Id., p. 9, para. 24, Recommendation a).

60) "SST Prospectus," The Aeroplane and Commercial Aviation News (March 17, 1966), pp. 4-6, p. 5.

61) Id., p. 6.

62) Aviation Week and Space Technology (April 4, 1966), p. 41; see also Time Magazine (June 3, 1966), p. 77.

63) "SST Prospectus," supra note 60, p. 6, figure 5.

64) "Transition Faces the Airlines," Interavia No. 3/1964, p. 312.

65) Roy Brunton, "Precise Data Needed - Weather and Supersonics," The Montreal Star, (June 11, 1966), p. 7.

66) Wheatcroft, op. cit. supra note 48, p. 360; it is estimated to be, in 1972, 20% above those of the long-range jets in 1963, the estimate of their break-even load factor is considered to be 65%, on the assumption that fare levels will be reduced annually by 1 per cent; if reduced 3 per cent the break-even load factor is expected to be 76 per cent: see A Review, op. cit. supra note 4, p. 50.

67) A Review, op. cit. supra note 4. p. 9.

68) The Sunday Times, Malaysian Edition, (May 15, 1966), p. 1.

69) ICAO Bulletin, Vol XX-6 (1965), p. 9.

70) The Aeroplane and Commercial Aviation News (December 9, 1965), p. 10.

71) S. H. Longrigg, The Middle East (London, 1963), p. 195.

72) L.L. Doty, "Conflicts Hamper Arab Bloc Formation," Aviation Week and Space Technology (May 2, 1966), p. 35.

73) Id., p. 197.

74) The Montreal Star (May 16, 1966), p. 1, col. 3.

75) Rashid Mestiri, "Understanding: The Pre-requisite for Maghreb-Mishrik Cooperation," Middle East Forum (Late Autumn 1965), Published by Alumni Association, American University of Beirut, pp. 51-52.

76) The Maghreb Digest (October 1965) Vol. III-10, p. 34; President Bourguiba boycotted the conference and sent these remarks in a letter addressed to King Hassan of Morocco.

77) The Maghreb Digest (March 1966), Vol. IV-3, pp. 63-64.

78) The Maghreb Digest (Published by the School of International Relations, Univ. of Southern California ,December, 1965), p. 36.

79) A reservation to this effect was included in resolution No. 4 of the Conference.

80) The Agreement was opened for signature to 13 Arab airlines on August 25, 1965: see Article 13.

81) Doty, op. cit. supra, note 72, p. 35.

82) The Aeroplane and Commercial Aviation News (September 23, 1965) p. 11; such a proposal was made to his Government by Zambia's Transport Minister.

83) Longrigg, op. cit. supra, note 71, p. 99.

84) Id., p. 101.

85) Ibid.

CHAPTER II

THE CHICAGO CONVENTION AND THE ESTABLISHMENT OF INTERNATIONAL AIRLINES

Today the great majority of the community of States are parties to the Chicago Convention, 1944 and hence members of ICAO.[1] Recently various regional groupings of these States have shown clear tendencies towards the creation of multinational airlines. At present there are high expectations that many of these attempts will result in agreement among the States concerned. In such event problems relating to the application and interpretation of the provisions of the Chicago Convention will have to be explored and determined. In particular, the questions of registration and nationality of aircraft must be resolved. Connected with these are the powers and duties of the Council of ICAO under the Convention which have to be scrutinized.

However, before embarking upon an examination of these questions, it is necessary to outline briefly the historic developments of the different cooperative organizations as well as some of the important discussions and proposals relating to internationalization of civil aviation, in order to illuminate the different patterns of cooperation, their principles and motivations. In this survey we propose to deal with: (1) joint operations during the period 1920-1958 (excluding those joint enterprises which will be discussed in Chapter III); (2) the proposals made at the disarmament conferences during the period 1931-1934; and (3) the Australia-New Zealand proposal at the Chicago Conference, 1944.

1. A Survey of Joint Operations (1920 - 1958)

The first attempts towards the creation of air transport multi-national entities culminated in the creation of the Compagnie Franco-Roumaine de Navigation Aérienne (later known as CIDNA), which was established in 1920 as a corporation of French nationality. CIDNA operated services on the route Paris/Bucharest via Prague-Vienna-Budapest and Belgrade. The countries served on this route (France Romania, Hungary, Czechoslovakia and Austria) subscribed to its capital either by holding shares in the company, by contributions in kind (such as the provision of fuel), or otherwise by granting subsidies. The crew personnel employed by CIDNA was drawn from the different nationalities of the countries it served.[2]

The birth of the German-Russian airline Deruluft in 1921[3] came in a climate of secret collaboration between the two countries.[4] From the German point of view such collaboration was a necessary military and political move, dictated by the desire to circumvent the harsh terms of the Treaty of Versailles. Contemporaneous with the creation of Deruluft was cooperation in the establishment of German industrial military air centres in Russia, the most significant of which was an aircraft plant established in Moscow in 1922, accomplished by a secret military agreement.[5]

Deruluft was established by agreement between the Soviet Council of People's Commissars and a group of German airlines that later merged under the name Lufthansa. Each of the two parties made equal contributions

to its capital.[6] The joint airline was subsidized by Aeroflot (the General Directorate of Civil Aviation in the U.S.S.R.) and the German Deutche Lufthansa.[7] Though its headquarters were in Berlin, it had two managers: one stationed in Berlin and the other in Moscow. Each country had equal representation on the board of directors and the personnel was also shared on a fifty-fifty basis.[8] Deruluft operated services on the Berlin-Moscow route during the years 1922 - 1937[9] with Danzig-Koenigsberg-Kaunas (in Lithuania) and Welikije-Luki (in the U.S.S.R.) as intermediary points. It also provided air services on the route Danzig-Koenigsberg-Riga (in Latvia)-Tallin (in Estonia)-Leningrad.[10]

Political differences and frictions between the two countries resulted in the suspension of the operations of Deruluft on March 31, 1937. However, operations were resumed upon the conclusion of a non-agression pact between the two countries in 1939, this time by Lufthansa and Aeroflot, operating under a pooling arrangement. These operations were finally terminated by the out-break of war between Germany and Russia in 1941.[11]

Two significant air transport enterprisory undertakings were established within the British Commonwealth, both the result of cooperation among the United Kingdom, Australia and New Zealand. With respect to the first of these enterprises, negotiations among the three Governments reached a stage in 1936 whereby they agreed to establish a joint corporation to operate air services between Australia and New Zealand.[12] On April 10, 1940, the three Governments drew the

Memorandum and Articles of Association of the joint airline company, by then known as Tasman Empire Airways Limited. The Memorandum included inter alia, the following object:

> b) to conclude and give effect to an agreement with the Government of the United Kingdom, the Commonwealth of Australia and the Dominion of New Zealand for the carriage of passengers, mail and freight between Australia and New Zealand;...[13]

However, it seems that the word "agreement" in object b) was loosely applied and might therefore mean the conclusion of a binding contract; a fact that becomes evident when it is realized that the company was incorporated in New Zealand, under the Companies Act of 1933.[14] The agreement anticipated in object b) of the Memorandum was concluded on December 16, 1941. According to its terms, the company was authorized to provide air services between Australia and New Zealand, subject to the stipulation that frequencies, time-tables and rates had to be approved by the three Governments.[15] The agreement provided for the settlement by arbitration of any dispute that might arise between any one and another of the parties.[16]

The Company's paid-up capital at the time of its incorporation amounted to 250,004 shares of £1 each. Through successive increases the fully paid-up capital totalled, by March 1949, £750,000.[17] Contributions to the share capital were: B.O.A.C. 38%, the Government of New Zealand 20%, Union Airways of New Zealand (later taken over by the Government of New Zealand in 1947) 19%, and Qantas Empire Airways Limited 23%. These proportions underwent changes in 1948, becoming

B.O.A.C. 20% (£150,000), The Government of New Zealand 50% (£375,000) and Qantas Empire Airways Limited 30% (£225,000).[18] In addition, the joint airline was subsidized by the three Governments, in return for which it undertook to carry out the transportation of mail free of charge.[19] However, in 1946, subsidization came to an end and the company began to receive payment for the carriage of mail.

Services were inaugurated on April 30, 1940 between Auckland (New Zealand) and Sydney (Australia), starting with a single weekly service,[20] and increasing to nine frequencies by the end of World War II.[21] In its first eleven years, Tasman Empire Airways Limited showed a gross profit of £140,990, bought new aircraft in 1949, and established a reserve fund of £175,000.[22]

According to its Articles of Association, the board of directors was to consist of not more than six and not less than three members, the quorum for its meetings being at least three.[23] Voting by poll in General Meetings was on the basis of one vote for each shareholder.[24]

All the company's aircraft were registered in New Zealand.[25]

The Agreement of 16 December 1941, between the three Governments and Tasman Empire Airways, purported to establish an inter-governmental body named the "Tasman Air Commission" to shoulder the responsibility on behalf of the three Governments with respect to the joint airline.[26] It was composed of three members, each appointed by his Government,[27] with its business premises located in New Zealand. However, not before

February 23, 1945 was the Commission empowered to carry out its assigned functions, as outlined in the "Instrument of Authorization to the Tasman Air Commission" signed by the three Governments. Those functions included, inter alia:

> 1) to supervise the execution of the Agreement between the three Governments and the operating company and for that purpose to negotiate such matters and conduct and order such periodical and special investigations into the finance, administration and operation of the service, and call for such requests from the operating company as may be required by any of the three Governments or deemed necessary by the Commission. It shall report to the three Governments; ...
>
> 3) to call for the performance by the operating company of its duties under the Agreement;
>
> 4) to agree upon alternative or additional termini, to approve frequencies, time-tables and rates;
>
> 5) to inspect the books of account and vouchers of the operating company.[28]

It is apparent that the joint airline was controlled by the three Governments through the Commission. However, in 1946, the functions, powers and duties of the Commission were transferred to a sub-committee -- called the Trans-Tasman Committee -- of the South Pacific Air Transport Council (the members of which were the United Kingdom, Australia, New Zealand, Fiji and the Western Pacific High Commission).[29] In 1948 there was established a new independent inter-governmental body known as Tasman Empire Airways Policy Committee.[30] In 1954 Australia and New Zealand held equal shares when the latter acquired B.O.A.C.'s shares.[31] In 1961 New Zealand bought Australia's share and thus acquired complete ownership of T.E.A.[32]

Another effort at Commonwealth cooperation materialized when British Commonwealth Pacific Airways was formed jointly by the United Kingdom, Australia and New Zealand in 1946.[33] Negotiations among the three Governments were held in Montreal in 1944, London in 1945, and Wellington in 1946.[34] The airline company was intended to operate between Australia and New Zealand on the one hand and the Western Coast of North America on the other, in order to complete the British global air routes.[35]

It was registered in Sydney, Australia, on June 24, 1946, with a share capital of one million Australian pounds, of which Australia's share comprised 50%, New Zealand's 30% and the United Kingdom's 20%.[36] It began operations in 1948, when it acquired its own aircraft.[37]

The now defunct West African Airways Corporation was another instance of air transport cooperation within the British Empire. Members of this joint enterprise were Nigeria, Gold Coast (now Ghana), Sierra Leone and Gambia, at the time all dependent British Territories. It was established as a public Corporation on May 15, 1946 with paid-up capital amounting to £465,000.[38] Only Nigeria and Gold Coast provided subsidies. The company was controlled by what was known as the West African Air Transport Authority, which seems to have been an intergovernmental body of these four Territories.

In 1947 West African Airways, took over from Nigerian Air Services the operation of the Lagos-Kano route,[39] thus providing domestic as well as international air services. Towards the end of 1946 other scheduled services, both intra and extra member countries, were operated to Sierra Leone and Dakar. In 1950, services were extended to Khartoum (Sudan), but were later suspended.[40]

However, unlike the cooperation in East Africa (discussed in Chapter III), West African Airways began to disintegrate in 1957 when Sierra Leone withdraw from the Corporation and formed its own national airline. In 1958, Ghana became independent and also established its own national airline, (Ghana Airways) in July of that year. The Corporation ceased to exist on September 30, 1958.[41]

In the Scandinavian countries two joint operating agencies had preceded the present SAS Consortium: Overseas Scandinavian Airlines (OSAS) and European Scandinavian Airlines (E-SAS). The first of these was a consortium very much similar in its structure to the present SAS Consortium, being a joint venture of the three Scandinavian national airlines: Swedish International Airlines (SILA), Danish Airlines (DDL) and Norwegian Airlines (DNL). Capital contributions and aircraft registrations were in the same proportion as the present SAS, in the ratios of 3/7: 2/7: 2/7.[42] However, the O-SAS Consortium seems to differ from its successor in that each parent company leased its aircraft to the Consortium for an agreed payment.[43] O-SAS operated its services to the Western Hemisphere.

In 1948 another arrangement was made in Scandinavia: E-SAS, whose sphere of activities was within Europe, the Near East and Africa,[44] and which also carried domestic traffic within the three Scandinavian countries.[45] Participants were the Swedish Aktiebolaget Aerotransport (ABA), and the two Danish and Norweigian airline companies members of O-SAS.[46] Unlike the O-SAS arrangement, each participant incurred its own expenses in operating its aircraft on an agreed quota system, but the revenues were

pooled on the basis of the tonne-kilometres performed, regardless of traffic actually carried.[47] Thus it was possible for the carrier with larger capacity to derive benefits from this pooling arrangement at the expense of the other carriers.

While O-SAS was a success, E-SAS was a failure, and sometimes a cause of friction.[48] After extensive negotiations, which also involved the three Governments, the new SAS Consortium succeeded in October 1950[49] its two predecessors to all their assets, rights and liabilities.

2. Proposals Within the Framework of Disarmament

The first occasion on which civil aviation was discussed within the disarmament context was during the Washington Disarmament Conference (1921-22).[49] Three important principles emerged from the report of the Air Commission of that Conference, viz:-

1. Limitation of civil aviation would be ineffective if military aviation was not also limited as regards "numbers and allowable features".

2. Limitation of civil aviation would "hamper progress", and would be contrary to the expectation that civil aviation would in the end foster friendly relations and peace among nations.

3. Taking 1 and 2 together, the Commission concluded that, "Except in the special case of aircraft lighter than air, it is not practicable effectively to limit in any way the number and features of aircraft, whether commercial or military." [50]

Thus it was the conviction of the Washington Disarmament Conference that commercial aviation and air power "are inseparable".[51] The Sub-Committee on Aircraft had expressed the view that limitation, though possible, was neither practicable nor desirable, since it would hinder the development of commercial aviation.[52] They even went to the extent of expressing the same view with respect to military aviation.[53] The Disarmament Sub-Committee therefore unanimously agreed that it was not then "' practicable to impose any effective limitations upon the numbers or characteristics of aircraft, either commercial or military.'"[54] The only limitation imposed was on lighter-than-air aircraft.[55] Further, the Conference considered the possibility of arriving at any agreement with respect to air disarmament as remote and impracticable.[56]

However, neither in the Washington Conference nor in the later discussions of the Preparatory Disarmament Commission in Europe was internationalization of commercial aviation suggested.[57] The first discussion of internationalization took place at the meeting of the Air Transport co-operation Committee of the League of Nations' Organization for Communications and Transit, in Geneva in 1930,[58] where members were acting as experts and did not officially represent their Governments. Internationalization of Civil aviation was suggested in the course of its discussions. Thus Chaumie of France said:

> .... no nation in the world has the right to monopolize a form of transport which performs useful services for all countries. The solution is to be found in an international company or an operation on an international scale in the interest of all the countries of Western Europe.[59]

In the opinion of Professor J.C. Cooper, the early discussions revolved around the economic aspects of civil aviation and "no security problems were considered".[60]

The idea of the internationalization of civil aviation originated with discussions on air disarmament which took place at the 1932 Geneva Conference for the Reduction and Limitation of Armaments. According to the formal French proposal, internationalization of commercial aviation was to be organized under the auspices of the League of Nations; general air disarmament and the creation of an international air police force were to be achieved as conditions precedent to the scheme.[61] It is thus apparent that internationalization was considered mainly from its disarmament aspect. The scheme tended to control civil aviation through its internationalization without hampering its development. This can be gathered from the French proposal:

> Of all the measures which have hitherto been considered, the internationalization of air transport alone seems likely to constitute a real obstacle to the utilization of such aircraft for military purposes without stopping development or technical progress.[62]

However, the French memorandum was intended to constitute a basis for discussion and not to be a complete scheme.[63] From what was disclosed in their memorandum, the French had the resolute conviction that "...(i)nternational bodies should alone be authorized to foster and develop" international air transport.[64] Their proposal suggested the de-militarization of civil aviation by de-nationalizing it, through the transfer of jurisdiction over civil aircraft capable of military use to the League of Nations.[65] Criticism came from the British delegation, since the proposal did not embrace what should be done

with regard to domestic airlines and privately owned aircraft operated for other than commercial purposes. The sponsors of the proposal therefore allowed the extension of international supervision to such matters as the financial records of operating companies, personnel employment and training, the number and types of planes employed, "the operation of aircraft factories,... airports," etc.[66] As pointed out by Professor J.C. Cooper:

> That proposal, if extended to present world conditions, would require that all internal air transport operation in such great national land masses as the Soviet Union, the United States, Brazil, Canada, Australia and India would be included in a single internationalized scheme.[67]

The French proposal sought the creation of an international air transport union or unions which would be the only bodies allowed to own civil transport aircraft in excess of certain defined specifications. These unions were to be endowed with the necessary legal personality which had to be recognized by participating States. They were intended to be capable of shouldering the responsibility for registration of such international aircraft, which had to be either owned by them or by the international operating companies.[68] Other duties and powers of the unions included, inter alia, such administrative matters as the issuing of certificates of airworthiness and of certificates and licences of crews, and also such economic matters as the grant of operating concessions on international routes "to international companies and the supervision of such operations..."[69]

It was the desire of the framers of the proposal to create a single international organization, but, for expediency, they suggested alternatively the possibility of establishing several organizations based on grounds of

common interests of the members of each. Further, they were of the opinion that:

> In order to give these organizations the necessary impartiality and independence... it was esential that each of them should comprise, at any rate, all the countries of a large portion of the globe. For example, it is evident that all the countries of Europe must belong to the same international group ...[70]

The organs of the international air transport unions were to comprise an assembly, a council and a managing committee. The assembly would have the final say in the organization, the council would be entrusted with such duties as the granting of concessions on international air routes to international operating companies, while the managing committee would undertake executive decisions and supervise the operating companies. It was further anticipated that:

> Routes, time-tables and, in general, all questions connected with international aviation will be discussed by the Council direct with the States concerned. The member States will have to give every possible facility for flying over their territory and for the determination of routes...[71]

However, lines from the metropolitan territory of a contracting State to its colonies might be established by the union on request, subject to any necessary subsidy by the applicant.[72]

The air transport unions were to be under the supervision of the League of Nations which would have the right to requisition all their aircraft. The member States were to declare that they would facilitate such requisition by the League and would refrain from exercising the same right of requisition.[73]

International operating companies were to be entrusted with the performance of air services on international routes. These were to be supervised by the air unions which were to have the authority of drawing their commercial conditions.[74]

The managing staff and the navigating personnel of the international operating companies were to be taken on an equitable basis (to be determined) from among the nationals of the participating States.[75]

The League of Nations' Air Transport Co-operation Committee was called after the Disarmament Conference in Geneva, and held its meetings between May 9 and 12, 1932. It was supposed to consider the internationalization of civil aviation from its security (disarmament) aspects, but it dealt with it on a "purely economic and technical basis".[76] The matter had been referred to the Co-operation Committee by the Bureau of the Air Commission of the Disarmament Conference, which asked for the consideration of the question in relation to the prevention of the utilization of civil aviation for military purposes.[77]

At the first meeting of the Air Transport Co-operation Committee the question of the internationalization of civil aviation was merely discussed. "The Committee then endorsed the pool system..." in a resolution recommending its extension and improvement by:

> bilateral or multilateral agreements aimed to avoid unnecessary competition, increase the economic efficiency of the international air service and develop among the different undertakings a spirit of friendliness which will prepare the ground for closer co-operation.[78]

The idea of internationalization found support among a large minority[79] of the Committee. The representative of Yugoslavia, Mr. Sondermayer, thus said:

> ... (T)he creation of international companies operating over vast regions which have common interests (Europe, Mediterranean basin, West Africa, South Africa, etc.) would seem to be a most desirable formula for the future, and a logical outcome of the evolution of international co-operation in civil aviation, which is at present characterised by the existing system of pools.[80]

At this stage the most important proposal, which endeavoured to mitigate the unfavourable political-economic climate of civil aviation, was advanced by Mr. Bouché (the representative of France) and met with more objection than support. Mr. Bouché's claim for a system of internationalization was based on the following grounds:

> (1) That technical progress alone is not likely to bring air transport soon enough into a position of financial independence;
>
> (2) That this progress is still retarded by the action of political factors which are totally foreign to the economic sphere of the question;
>
> (3) That this progress can, on the other hand, be accelerated by general measures of reorganization agreed upon between States, particularly in the sphere of European activities;
>
> (4) That failing the freedom of the air and pending its establishment, a system of international operation is highly desirable on a basis adapted to the different divisions, viz: Europe, main intercontinental communications, inter-colonial routes and services.[81]

His proposal was supported by the technical experts from Belgium, France, Poland, Spain, and Yugoslavia, and opposed by those experts from the United States, Great Britain, the Netherlands, Germany, Italy, Sweden and Switzerland.[82] The Spanish experts, while supporting the idea of internationalization under the authority of a single international body, held the view that

international aircraft should have no nationality, but could have a port of registration which had to be determined by the international organization to be established.[83]

The matter was taken up again by the Air Committee of the Disarmament Committee which met in 1933.[84] There, Lord Londonerry of the United Kingdom proposed the abolition of naval and military aircraft if a workable scheme for the internationalization of civil aviation could be devised. This proposal was supported by Mr. DeBrouchere of Belgium and Mr. Pierre Cot of France.[85] Mr. Pierre Cot remarked:

> Both in the political and technical sphere, the internationalization of civil aviation appeared to offer nothing but advantages... (T)he hinderances were created by the reverse of internationalization. Was it not realized that, in Europe as now partitioned, the fact that the great airlines were national, and strictly national, had hitherto paralysed the development of civil aviation and even technical progress in respect of aviation?....[86]

As a corollary to the scheme of internationalization, the French delegation suggested the creation of an international police air force, which was intended to be placed under the authority of the League of Nations.[87] At these meetings of the Air Committee a French draft was presented to delegates. It sought the creation of an international company, which was to have international ownership vested in it, the company being "placed under the auspices and control of the League of Nations". Its field of operation was to be on the main important international air routes. Other subsidiary international companies, which were to be established, were to operate the less important air transport lines. These would be under the control and supervision of the "general international company", which might even own shares in such

subsidiary companies. As regards the smaller national companies (which were to operate with smaller machines, presumably on domestic routes), they were to be supervised, controlled and examined by the "general international company", which had "to be acquainted with their statutes, their obligations, the amount of subsidy they receive, etc." There was proposed also control on the manufacture of aircraft.[88]

The President of the Air Committee reasoned in favour of internationalization in the following clear terms:

> ...(I)nternationalization, which demanded the greater sacrifice of State sovereignty, was of all the steps proposed the least complicated. When looked at from the stand point of their qualities and faults it would be observed that these two sets of methods were to a certain extent opposite; supervised regulation was complicated, internationalization was simple; supervised regulation was negative, internationalization was positive; supervised regulation was coercive while internationalization was a measure of liberalization; supervised regulation was proof of mutual distrust whereas internationalization was proof positive, in the realm of facts, that States had confidence in one another; supervised regulation was a measure of national rivalry... whereas internationalization created habits of co-operation.[89]

The discussions continued until the Air Committee was finally adjourned on March 17, 1933, without reaching any agreement.[90] It seems that the principal reason for the failure of the internationalization proposal, based as it was on the reduction and limitation of aerial armaments, was the widespread opposition to it on the part of non-European powers. Thus it had been rejected by such countries as Canada, New Zealand, India, Argentina, Japan and the United States. With regard to such opposition, the German delegation observed:

> ... The last war had proved that the forces outside Europe could play a decisive part.[91]

3. Australia - New Zealand Plan

The trends towards regional as well as global integration of civil aviation that took place before the end of the Second World War generally followed the lines of the French proposal at the Disarmament Conferences. Thus, the Agreement known as the "Anzac Pact" was concluded between Australia and New Zealand on 21 January, 1944, while about two months later the Labour Party's pamphlet "Wings For Peace" was released in Britain: both documents advocated the internationalization of civil aviation. This move was further followed by the Australia-New Zealand proposal at the Chicago Conference in November, 1944.

By their Treaty of January, 1944, the Australian and New Zealand Governments agreed that an international air transport authority to operate air services on international trunk routes[92] should be set up by international agreement.[93] Such organization was to be invested with the authority and power to control such routes and to own aircraft and other ancillary equipment.[94] However, domestic and other regional air services were to be excluded from the suggested international scheme, subject to certain conditions. Thus, they reserved:

> (a) the right of each country to conduct all air transport services within its national jurisdiction including its own contiguous territories, subject only to agreed international requirements regarding safety facilities, landing and transit rights for international services and exchange of mails.[95]

The two Governments stipulated that, in case their proposal failed for lack of international support, they would work together for cooperation within the British Commonwealth. The suggested Commonwealth joint enterprise was to be under the control and ownership of the Commonwealth Governments, and

would similarly operate on international trunk routes.[96]

The famous Labour Party pamphlet "Wings For Peace", released in April, 1944, advocated the international control of civil aviation as a necessary measure in any system of "general security", since it viewed civil aviation as one important aspect of "certain keys of power".[97] The reasons for the proposed scheme included, inter alia, the need to develop air transport as one key service "in the interest of the whole community" of nations,[98] and the fact that, in order to attain full development of efficient services, air transport should "be planned and controlled on at least a continental scale".[99]

The security aspect of aviation was among the main reasons for the scheme. Thus the Labour Party's pamphlet stated:

> The world must protect itself against the anti-social use of air-power; and that can only be achieved by actual transfer of power to a representative international authority.[100]

Further, the internationalization scheme was looked upon as a unifier of nations, since it would ultimately bring the peoples of the world closely together and achieve peace at the end.[101]

The Labour document argued in favour of the creation of a World Air Authority which was to own and operate "World Airways".[102] As far as Europe was concerned, they suggested the establishment of "Europa Airways", to operate international and domestic air services under licence from the World Air Authority. The Authority was to own all civil transport aircraft, whether belonging to "World Airways", "Europa Airways" or even to some other air transport enterprise.[103] It was to be subordinate only to the

"General International Organization" (to be established) and was envisaged as having such wide powers of regulation and control that States would have to waive their soverign rights:

> All the nations participating in the creation of this Authority should waive, in favour of the Authority, their sovereignty of the air over their territories; they should accord to the Authority full rights of passage and landing; they should prohibit their nationals from owning aircraft with specifications not in accord with those prescribed in the future Air Convention; and they should prohibit the operation of air transport services other than those authorized by the Authority.[104]

"World Airways" was contemplated as the sole operator for the community of nations on the main trunk routes. Its board of management would be responsible to the Authority.[105] It was to own all the airports and other ground facilities which were to be run by its own staff.[106]

Besides World Air Authority, "Wings for Peace" suggested that there should be created Regional Air Authorities under the first mentioned Authority.[107] Thus in Europe, "Europa Airways" would seem to come under the supervision and control of the contemplated Regional Air Authority. Further, it was thought that greater efficiency and economy of operation would be maintained if domestic as well as international traffic were taken as one unit, comprising the sphere of the proposed regional enterprisory activity in Europe.[108]

The World Air Authority was to be empowered to exercise control over subsidiary airlines, whether international or domestic.

> These should include the licensing of all air transport services; the States, members of the World Air Authority should be bound to co-operate in the prohibition and prevention of any air transport service not licensed by the Authority. This control of services, on a world wide plan, is of importance. No aircraft should be allowed to operate on any transport service without the Authority's licence.[109]

It was also anticipated that the Authority would be endowed with the power to issue, or authorize the issue of, certificates of airworthiness and other documents for civil aircraft. A "Security Police Force" would be supplied by the "General International Organization, for such purposes as the control of movement of aircraft on its airfields. Only civil aircraft authorized by it and the aircraft of the Police Force, would be allowed to use these airfields".[110]

Due to the opposition which the Labour Party's internationalization scheme was bound to face, they proposed an interim policy of working towards the establishment of "Regional Air Unions" coupled, however, with a "World Air Authority" as a necessary measure for the coordination of the operations and policies of the various regional unions.[111] Further, if internationalization failed completely in securing the necessary support, they advocated the establsshment of a joint airline within the British Commonwealth, to be named "British Commonwealth Airways". This proposed airline would be operated and controlled by the Governments of the Commonwealth countries.[112]

It may be safely asserted that by the time the Australia-New Zealand proposal for the internationalization of civil aviation was presented to the Chicago Conference in November, 1944, the ground was prepared in Britain, at least within the Labour Party (which was not by then in power). Both schemes are similar in concept, though differing in detail. It is therefore not surprising that at the first and second ICAO Assemblies, the British delegation gave strenuous support to the internationalization proposal. When compared with the French proposal at the Disarmament Conferences

before the Second World War, it will be found to share its main features and ideas.

The security aspects of aeronautics clearly dominated the thinking of States which advocated at Chicago the internationalization of civil aviation. In speeches of the chairmen of the New Zealand and Australia delegations, special emphasis was laid on the desire of the peoples of the world to prevent war, and the view expressed that this could be achieved by disallowing commercial aviation, through such a scheme, to "become a threat and a menace to the well-being of the world".[113] A scheme such as that contemplated by Australia and New Zealand would develop collaboration and foster friendly relations among nations, and would further achieve "economic justice in the international sphere".[114] This "economic justice" principal was seen to be of great advantage when applied to smaller nations with inadequate resources, since they would be able to achieve a measure of participation in aerial communications.[115] In the words of Mr. Sullivan, the Chairman of the Delegation of New Zealand:

> Any other system must lead to national competition... to achieve individual needs at the expense of others. It must lead to the creation and expansion of large commercial organizations whose activities must in the long run be based primarily on the profit motive.[116]

The scheme called for the establishment of a world organization to operate on "prescribed" international trunk routes, and to own its aircraft on behalf of all States. It was envisaged as an organ "of the world's security organization to be established".[117] Here, the

official Australian Government position called for the creation of an international corporation.[118] In this way national rivalries would be avoided.[119] The proposal left each participating State free to develop its domestic air services, and reserved the right to such a State "to enter into agreements to establish secondary air routes and services with contiguous countries for the purpose of the promotion of regional development..."[120] The international air authority, as envisaged by Australia and New Zealand, would also function as a controlling body for international air services and "administer any new technical air conventions..."[121]

The proposal as presented in its final form by the Chairman of the Delegation of New Zealand called for:

> ... the establishment of an international air transport authority which would be responsible for the operation of air services on prescribed international trunk routes and which would own the aircraft and ancillary equipment employed on these routes; it being understood that each nation would retain the right to conduct all air transport services within its own national jurisdiction, including its own contiguous territories, subject only to agreed international requirements regarding landing and transit rights, safety facilities, etc., to which end it is desirable that this Committee of the Conference should consider the organization and machinary necessary for the implementation of this resolution.[122]

It is therefore apparent that the details of the organizational structure were left for the decision of the Conference.

The proposal met with opposition, evidently based on the political attitudes of many great air-minded States, including the United States of America. Hence, an amendment was moved by the delegation of Brazil, the

crux of which was that:

> Brazil is not in a position to accept such a proposal, and therefore suggests that this Committee declare that there is no opportunity and necessary unanimity for the organization, at the present time, of an all embracing international company.[123]

In the view of the Chairman of the Brazilian delegation, "Our times are not yet ripe for the internationalization of aviation, and perhaps the time will never be ripe for it."[124]

The original proposal was supported by the Afghan and French delegations, and opposed by the United States delegation. In the opinion of the latter, "the world has built up its life through national efforts." The United States delegation further questioned the efficiency of such a proposed international organization, which they saw as a "more complicated task of putting the interest of many peoples in the hands of an instrument still unfashioned and whose potentialities are still unknown."[125] Finally, they discarded the scheme on the ground of the lack of necessary unanimity.[126] The original proposal was rejected when the Brazilian amendment was passed. However, the Brazilian amendment as passed did not give sufficient reasons for the alleged impossibility of application of the then acclaimed ideal proposal of Australia and New Zealand. Mr. Hymans, Chairman of the French delegation, then made his subtle remark:

> Mr. Chairman, we have just rejected two proposals made by New Zealand and Australia, which we all accepted with the feeling that it is a great sin to state that for the time being such an organization could not be organized.[127]

Apart from inconclusive discussions in the first PICAO Assembly in 1947, and a PICAO resolution[128] calling for the study of the question of

internationalization, the issue has been dormant for the past twenty years.[129] Today, the trend is towards the establishment of regional joint enterprises, since the existing divergent political and economic factors in the world would not lend themselves to an all-embracing global organization. This is evidenced by the fact that five such regional enterprises already exist, and others are in the process of formation.[130]

4. The Chicago Convention and the Problems of International Airlines

There has been a considerable controversy over the legal aspects of the establishment of international airlines under the regime of the Chicago Convention, 1944. The controversial problems are those relating to the registration and nationality of the aircraft of an international operating agency, in case a determination by the Council under Article 77 of the Convention is forthcoming. There are however, other preliminary questions with regard to the meaning of the terms used to denote international airlines in Article 77, the composition and the form of such enterprise, the legal status of a "determination", and the obligation placed upon the Council when making such a "determination".

The matter has undergone voluminous studies in ICAO. In 1956, the Air Transport Committee, pursuant to a Resolution of the Second Assembly, presented its study to the Council of ICAO.[131] Again, upon the request of the League of Arab States, in December 1959, that the Council make a determination under Article 77 for the establishment of a proposed Pan-Arab Airline, the matter was referred to a Panel of Experts which was invited to advise the Council.[132] The Panel reported to the Council in 1960, Finally,

upon two requests, made by Union Africaine et Malgache de Coopération Economique[133] and the Government of the United Arab Republic respectively,[134] the Council acted according to the recommendation of the 1962 ICAO Assembly (14th Session) and transmitted the requests to the Chairman of the Legal Committee, which was asked to appoint a sub-committee to undertake the study of the problems of nationality and registration of aircraft operated by international agencies.[135]

Article 77 of the Chicago Convention, in which the two seemingly similar terms "joint operating organizations" and "international operating agencies" are used provides:

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

It has been suggested that the two terms might have been used by the framers of the Convention interchangeably, since there would be no material difference in the functions or the form of such enterprises.[136] Since the legislative history of the Convention does not give ample information by which the two expressions may be distinguished, this may well be a valid construction; so that, in the absence of any justifiable ambiguity, the expressions and words employed may be construed according to their ordinary plain meaning. However, there is an alternative construction (based on the Canadian explanatory

note) which may provide a collateral distinction between the two expressions. This we shall consider below. The "Official Summary" attached to the Canadian revised preliminary draft[137] refers to "joint operating organizations" and fails to mention "international operating agencies."[138] It may be inferred from the following passage from the Canadian "Official Summary" that by "joint operating organizations" is meant a joint enterprise of the air services of two or more contracting States whose aircraft may not have the nationality of any of the States members of such enterprise:

> 11. Two or more member States may decide that the best way of operating all or some of their air services between them is not by rival companies each carrying a national flag but a joint organization. The member States are not prevented from establishing such joint operating organizations. The Board or Regional Council may recommend to the member States concerned that they pool the air services on certain routes or in certain regions or constitute joint operating organizations to perform certain air services.[139]

From the above passage it is submitted that the scope of the operations of air services of such "joint operating organizations"may be limited to air services between its member States. This may perhaps be the main distinction between such organizations and "international operating agencies". Since the Council is not authorised by the Convention to make any "determination" with respect to "joint operating organizations",[140] it is submitted that any two or more member States of ICAO may constitute such organizations for the operation of air services between their territories. This is based on the distinction above indicated, which limits the scope of the air services between the member States of such organization.

A "joint operating organization" would be similar to an "international operating agency" in that, since the aircraft of either of them may be registered on a "non-national" register, both must in such a case have the attributes of international legal personality, as distinct from nationally incorporated enterprises. In its report, the Panel of Experts on Article 77 reached this conclusion with respect to "international operating agencies", noting at the same time that the Convention did not define the expression "joint air transport operating organizations".[141] The Panel said:

> The body contemplated in the last sentence of Article 77 has an international character and is not constituted under the national law of any particular State: if it were, then it would be indistinguishable from any airline company constituted under such law, and its aircraft could be registered thereunder. Therefore, there would be no problem requiring a determination by the Council as to the manner in which the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by that body.142

This appears to be a logical and valid interpretation.

It seems, from the opening words of Article 77 of the Chicago Convention, that the constitution of both a "joint operating organization" and an "international operating agency" would be subject to the same conditions, if any: that is, as to whether they might be established only by contracting States, and/or the national airlines of such States (whether publicly or privately owned or of partly public and partly private ownership). In a working draft prepared for the Panel of Experts, it was assumed that an international operating agency may be constituted only by contracting States.[143] However, the Panel in its report made the more erroneous

assertion that an international operating agency "must be composed only of contracting States".[144] In the opinion of Mr. Bouché, representative of France on the ICAO Council, such assertion would be contrary to the provisions of Chapter XVI of the Convention. Accordingly, he proposed to substitute "established" for "composed", so that an international operating agency which must be "established" by contracting States need not necessarily be "composed" of only such States.[145] The Council finally approved the substitution of the word "constituted" for the word "established", since the former is used in the first sentence of Article 77 but it was understood to mean "established".[146] At that stage the Council was discussing the draft letter prepared by the Panel, which was sent, after being amended, in reply to the request of the League of Arab States.

It is submitted that a different construction might be arrived at from the opening words of Article 77, which provide:

> Nothing shall prevent two or more contracting States from constituting...

Do these words mean that only contracting States may establish or constitute joint air transport operating organizations or international operating agencies to the exclusion of all other non-contracting States? It may be argued here that, since the intent and the purpose of the above words is to negate any prevention of such joint enterprises under the Convention, it could not be assumed, in the absence of an express or a clearly implied stipulation to that effect, that either of these enterprisory activities must only and exclusively be established by contracting States. If that

were so, then Article 77 would have expressly laid it down in clear terms. In the absence of such express or implied limitation, contracting States are presumed not to have surrendered their liberty of action as sovereign States. On the other hand, if the view expressed above is accepted that the two expressions, "joint operating organizations" and "international operating agencies" were used interchangeably,[147] a State, as distinct from a contracting State, may participate in such enterprisory activity, through its government or through one of its national airlines designated by it (whether that airline is privately owned or publicly owned, or is a mixed enterprise). Thus, Article 79 of the Convention provides:

> A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be state-owned or partly state-owned or privately owned.

This provision of Article 79 relating to the participation of "a State" would, if the two expressions are used interchangeably, apply as well to "international operating agencies". It seems, however, that since "joint operating organizations" are confined, as regards their sphere of activities, to the operation of air services between their member States, as above indicated, the two expressions may not have been used interchangeably to the fullest extent. This distinction may be supported by the fact that, under the last sentence of Article 77, a "determination" is required to be made only in the case of "international operating agencies". Even in such a case, the opening words of Article 77, it seems, would not warrant the assertion that "international operating

agencies" must be constituted only by contracting States. The first sentence of Article 77 makes provision for both types of joint enterprises, so that if there is any limitation as to the manner of their constitution, such limitation would necessarily apply to both of them. This is negated by Article 79, which allows the constitution of "joint operating organizations" even if non-contracting States participate in such an enterprise.

Though the distinction between the two expressions may be upheld as a valid interpretation of the Convention, it is submitted that such distinction as brought out by the Convention would not serve any useful purpose. Both types of joint enterprise would undoubtedly face the same problems of the nationality and registration of aircraft and the discharge of the obligations of the state of registry under the Convention. The activities of both kinds of enterprise would be essentially of the same nature, viz. the performance of international air services. The only distinction that might arise relates to the scope of such operations.

During the deliberations of the Sub-Committee of the ICAO Legal Committee which was convened in July 1965, the problem of the composition of the international operating agency was discussed. The Sub-Committee did not, however, commit itself with respect to the legality of the constitution of an enterprise in which non-contracting States participate as constitutive members with other contracting States. Instead, the Sub-Committee considered as a working hypothesis the constitution of multinational airlines consisting exclusively of contracting States

of ICAO.[148] It was argued that it would be a sound policy to allow the participation of non-contracting States in such a joint enterprise with Contracting States provided they undertook to observe the provisions of the Convention relating to the nationality of aircraft as regards the operation of the enterprise in the territory of ICAO member States. This policy would allow a wider application of the provisions of the Convention.[149] The undertaking suggested would be necessary for the Council of ICAO could not otherwise make a determination under Article 77. On the other hand, the view that such agency must at the outset be constituted only by contracting States does not appear to make material difference, since non-contracting states may later become members.

A multinational airline may take one of various legal forms. It may thus be a company incorporated under the national laws of one of its member States, or a consortium of national airlines of the constituent States, or a truly international company established by treaty between its member States. Only in the last mentioned case would the problems of nationality and registration of aircraft arise under the Convention, and thus require a "determination" by the Council of ICAO. This would seem to be the correct construction of the expression "international operating agency" as used in the context of Article 77, for otherwise there would be no necessity for a "determination" by the Council if the aircraft were registered on a national register.

There remains the question of the binding authority of "a determination" made by the Council of ICAO. In this respect, the opinion has been expressed that the words "shall determine" in the last sentence of Article 77 mean "shall decide".[150] It may be added here that since

the word "shall" is imperative, the Council would be obliged to make a determination if and when it found the ways and means by which the obligations cast upon a State of registry could be discharged jointly by the States involved in the proposed enterprise. Thus, the Council might be satisfied with a certain scheme for that purpose or might suggest the amendment of such scheme when undertaking its duty of making a determination under Article 77.

In this respect, the authority of the Council would be limited to the essential requirement of finding adequate machinery to ensure both the observance of the obligations and the enjoyment of the privileges of a contracting State, as between the States members of the proposed enterprise and other ICAO contracting States. It seems to us that this is of paramount importance. If such a course is followed, then a determination made by the Council will have binding effect on all contracting States. This is so because the Convention did not require more than a simple majority of the Council when making such a "determination".[151] The Sub-Committee on Article 77 unanimously agreed that the "determination" to be made by Council shall have a binding force on all contracting States if it was made within the scope of its authority.[152] When considering the scope of such authority, the Panel of Experts expressed an opinion, from which it can be inferred that it believed there was some ambiguity in the provisions of Article 77 of the Chicago Convention. In such a case, it indicated that the relevant provisions of the Convention should be given a construction which would be the least onerous on the ICAO contracting States. However, we believe that no such ambiguity does exist, and that

the Panel failed to point it out.

This rule of restrictive interpretation, which was advocated by the majority of the Panel, is only a rule of construction which should not be taken singly without considering the other important rules of interpretation. It must be borne in mind that the purpose of interpretation is to ascertain the intention of the authors of the Convention, not to supress it by the use of such rules which are themselves designed to aid the search for that intention. In this respect, Lauterpacht rightly claims that the principle of restrictive interpretation is not a general principle of jurisprudence, nor has it received substantial support from international tribunals when interpreting treaties. This is because:

> Its application has been made dependent upon the double condition of doubt and on the complete absence of any other means of interpretation.[153]

To him it seems to hinder, rather than to aid, interpretation and should therefore be avoided.[154]

On the other hand, the principle of effectiveness is a general principle of law which has gained support in the decisions of both national and international tribunals.[155] For example, the Supreme Court of the United States applied it in the celebrated case of Nielsen V. Johnson, where it declared:

> When a treaty provision fairly admits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred.[156]

The principle of effectiveness arrives at the intention of the parties by employing a liberal interpretation in order to give effect to that intention. In this respect, the practice of international tribunals is to resort to the other principle of restrictive interpretation only when all other considerations, including the principle of effectiveness, fail completely to give a result.[157] We endorse the view that the principle of effectiveness should continue to be regarded as of a superior status since it would be contrary to reason and to good faith that a treaty provision should be construed, in the absence of sufficient reason, as a non-committal provision.[158] In the famous North Atlantic Fisheries Arbitration the tribunal expressed the opinion that:

> the words in a document ought not to be considered as being without any meaning if there is not specific evidence to that purpose.[159]

The "Harvard Research" on the law of treaties concluded that the rules of interpretation as formulated by the Permanent Court were qualified to a considerable extent, in that the Court was still at liberty to apply them or not according to the circumstances of each case.[160] In their opinion, "the tendency among modern writers ... has been... to deny them the character of international law altogether".[161] In this respect, Starke holds the view that the canons of interpretation are not absolute principles and should therefore be applied relatively according to the text and circumstances of the particular problem under consideration. They may be applied cumulatively by using several rules rather than a single one.[162] It is submitted that the primary rule of the interpretation of treaties is that of grammatical construction:

that is, according to the plain meaning of words and phrases, unless such construction will result in a clear absurdity or marked inconsistency with the other provisions of the treaty.[163]

Finally, it should be pointed out that the words used in the last sentence of Article 77 clearly impose the obligation upon the Council to make the required determination. In fact, the Panel itself agreed, as indicated above, that the Council has to decide the manner of the application of the provisions of the Convention relating to nationality of aircraft. The question may therefore be asked: how could the same Panel of Experts claim that the provisions of the last sentence of Article 77 are ambiguous? The assertion that there is no ambiguity with respect to the powers of the Council in making "a determination" is further supported by the fact that the whole of Chapter XVI of the Chicago Convention has been devoted to the establishment of multinational airlines and other transnational air transport collaborations. On the other hand, the Canadian "Official Summary" referred to earlier, which accompanied the Canadian Draft at the Chicago Conference, 1944, clearly indicates the intention of the authors of the Convention as regards the legality of the formation of transnational airlines under the Convention. It also seems that the spirit of the Conference was to satisfy the sponsors and supporters of the proposal for the internationalization of civil aviation on international trunk routes, by allowing contracting States which may wish to join their efforts, to establish multinational airlines. The crux of the matter is the manner of the application of the provisions of the Convention relating to the nationality of aircraft. It is obvious

that the Convention contemplated the application of these provisions in a different manner from that which it provided for aircraft registered on a national basis, and entrusted the Council with the obligation of determining this manner. This is because the international agency contemplated by Article 77 must be of an international character if a determination is to be made. This last opinion has been endorsed by the Panel of Experts itself. It is therefore the application of the substance of the provisions of the Convention which is to be determined, not the medium through which these provisions are observed -- whether that medium be national or international registration of aircraft.

5. Nationality and Registration of Aircraft Belonging to International Airlines

In discussing nationality of aircraft it may be pertinent to consider the basis of that concept. The nationality doctrine as applied to aircraft is as old as flying. It was first sponsored by Fauchille in 1901 who thought that the nationality of an aircraft should follow that of its owner, and that such aircraft should be entered in the register of the State of his domocile.[164] By 1909 governments had formally recognized that balloons and other aircraft had something resembling national status.[165] In 1910 the Paris Air Navigation Conference included, in Article 3 of its draft convention, a provision that nationality of aircraft be determined by the nationality of its owner.[166] Article 4 of the draft Convention provided against double nationality of aircraft. Other provisions related to registration and identification marks, as well as to nationality and registration numbers and certificates of

navigability issued by the State of nationality.[167] According to Professor Cooper, the position at the 1910 Conference was:

> The majority of States present felt that aircraft should be thus under the control of a particular State, and that the aircraft itself should be entitled to the protection of such State. It was recognized that this responsibility and right of protection constituted, between the State and the aircraft, a relationship analogous to that existing between a vessel and the State whose flag it carries, called (as stated in the report) 'the nationality of the vessel'.[168]

Thus the concept of nationality was intended to establish a means for State control and State responsibility towards its aircraft with the aim of attaining safety in the air.[169]

The language of the 1919 Paris Convention was similar to the 1910 draft with respect to nationality of aircraft. Thus its Articles 6 and 7 provided:

> 6. Aircraft possess the nationality of the State on the register of which they are entered...
>
> 7. No aircraft shall be entered on the register of one of the contracting States unless it belongs wholly to nationals of such State...

However, Article 7 was amended by the Protocol of June 15, 1929 as follows:

> The registration of aircraft referred to in the last preceding Article shall be made in accordance with the laws and special provisions of each contracting State.

When World War II broke out "(t)he nationality of aircraft was accepted into customary international law as fully as the nationality of merchant vessels."[170]

From the experience of States the principle of nationality of aircraft is essential for such matters as the operation of air services, both domestic and international, the prohibition of cabotage traffic rights, and for jurisdictional purposes.

On the other hand, the motivations behind the doctrine seem to stem from such considerations as defence (aircraft being part of the national defensive potentialities) and the tendency to regard aircraft as an instrument of prestige (by hoisting the national flag). Furthermore, in some instances States may consider the economic value of aircraft and restrict transfer of ownership to foreigners.

Aircraft, unlike motor-cars, are instruments of national policy.[171] The conferment of nationality on aircraft is a claim to control and jurisdiction wherever they may be. According to Professor J.C. Cooper, aircraft have legal quasi-personality in public law, acquired because of their possession of nationality, but unlike ships, they have no legal responsibility in private law.[172] Like ships, the relationship of aircraft to the State of nationality is so close that they may be considered to belong to that State. The State of nationality is responsible for the conduct of its aircraft, and therefore exercises control over them; the aircraft on the other hand are entitled to its protection abroad.[173]

Though ships and aircraft resemble natural persons by reason of their nationality, this would not change their legal status as moveable property. Such resemblance to natural persons, through the acquisition of a nationality, was made indispensible because of the constant movement

of ships and aircraft, which meant that they were rarely in the immediate possession of their owners.[174]

It seems that the essence of the matter lies in the reciprocal observance of the rights and privileges by sovereign States, whether emanating from customary international law, treaty provisions or State practice. Thus the representative of Senegal to the ICAO Legal Sub-Committee (in 1965) observed that, since an aircraft is an object and not a subject of law, and is without legal personality, the conferment of nationality upon it would therefore be merely a point of connection by which a State accepts and acknowledges responsibility. In such circumstances, it seems that aircraft which belong to a group of States may come under their joint responsibility and control, and may enjoy their joint protection abroad.

Since the nationality principle was introduced to serve the practical needs of aviation it seems that a group of sovereign States would be in a better position to achieve the observance of conventional and municipal rules and regulations, since they would employ the sum total of their technical and personnel experience.

The relevant provisions of Chapter III of the Chicago Convention (1944) are similar to those of the Paris Convention. Although it may be argued that Chapter III firmly established the nationality doctrine, it must, however, be read in conjunction with the provisions of Chapter XVI of the Convention and, in particular, the last sentence of its Article 77 which provides:

> The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft

operated by international operating agencies.

Thus it appears that different procedures were contemplated for the application of the rules of the Convention to aircraft of an internationl operating agency.

Article 17, which provides that "Aircraft have the nationality of the State in which they are registered", may be construed to mean that aircraft registered in a State have the nationality of that State; those not registered in a State will have no nationality. Thus Article 17 by itself would not exclude joint registration of aircraft.

Based upon the power of the ICAO Council under Article 77 to provide the manner of application of the rules of the Convention relating to nationality of aircraft, Article 18 may be applied in its generality to aircraft jointly registered, the prohibition therein applying only to registration with two or more States. Article 19, which deals with registration with a State or transfer of registration to another State, poses no problems.

The interpretation of Article 20 -- "Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks." -- may be a matter of controversy. Thus in the ICAO Legal Sub-Committee the representative of the Netherlands expressed the opinion that aircraft must have a nationality since they are required to bear nationality and registration marks, while the representatives of Mexico, Senegal and France contented that the word "appropriate" before "nationality and registration marks" would permit the construction

that the "marks" would not necessarily be confined to those of a State.[175] It is submitted that the manner of application of the nationality provisions of the Convention to jointly registered aircraft, must differ from that applied to nationally registered aircraft, since otherwise there would be no reason to oblige the Council to make a "determination".

Article 21 would appear to pose no difficulty, since the required reports of registration may be discharged jointly by the States comprising the agency.

In considering the application of Article 77 the Air Transport Committee envisaged two possibilities: first, that only the provisions of Chapter III of the Convention applied or, alternatively, that all provisions which expressly or impliedly referred to the nationality of aircraft must be taken into account. The Committee preferred the wider interpretation,[176] as did the Panel of Experts in 1960;[177] the ICAO Council, in its reply to the League of Arab States in 1961, adopted the same approach,[178] which was upheld by the Legal Sub-Committee in 1965.[179] Such attitude appears logical and legimate, since the Council under Article 77 has to provide a manner for applying the provisions of the Convention.

The relevant Articles of the Convention are those that impose obligations on a contracting State or its aircraft, or permit the enjoyment of privileges and rights by such aircraft while in the territory of another contracting State. Other articles (for example, Article 12) tend to maintain security of air navigation by providing for rules of

the air. The Council could extend the application of the provisions of such Articles to the aircraft of an agency if the necessary machinery could be devised.

Certain articles, however, appear to pose some difficulties. For the purposes of Article 5, aircraft of a contracting State may be construed as aircraft of those contracting States constituting the agency. The same interpretation could be applied to prevent the enjoyment of cabotage privileges exclusively by the agency in a third contracting State,[180] and might apply as well to Articles (such as Articles 9 and 11) providing for equality of treatment. The Air Transport Committee concluded that no practical difficulty would arise in the application of articles that grant privileges, provide for equality of treatment, or impose obligations,[181] since their provisions can be applied through joint action by the States composing the agency. They can either act jointly, through delegation to one or more of them, or can create an inter-governmental organization to carry out the obligations of a State of registry.

Under Article 12 the obligation cast upon contracting States is to ensure compliance by their aircraft wherever they may be, and the undertaking therein to ensure the punishment of offending personnel can be assumed by the agency on behalf of its States through such disciplinary action as suspension or revocation of licence, dismissal or imposition of fines.

Either a separate inter-governmental body, or joint action by the States of the agency, could adequately meet the obligations which

Articles 30 through 33 (dealing with radio equipment, certificates of airworthiness, personnel licences and recognition of certificates and licences) imposed on the State of registry. In the latter event, the States may delegate responsibility to one or more of their number for the discharge of these obligations: a course of action which was regarded by some members of the ICAO Legal Sub-Committee as tantamount to amending the Convention.[182]

The Chicago Convention came into being at a time when it was the general rule for an aircraft to have the nationality of a particular State, a fact which may explain the reference in the Convention to the aircraft of "a contracting State" or the State "in which the aircraft is registered". Article 77 contemplated a new development which dictated novel procedures, and therefore provided the exception to the general rule. The ways and means of applying the substantive provisions of the Convention to such transnational registrations were left for specific determination by the Council. It would appear that the Convention would be complied with provided appropriate machinery could be designed, and it is therefore submitted that the intent of the framers of these provisions should not be defeated by strict application of the letter of the provisions.

There remains to consider the legality and feasibility of international registration under the Convention. In certain regions, economic considerations may dictate the formation of a joint international airline with a single managing body, in preference to a number of subsidiary or constituent airlines. Restricted financial, material

and personnel resources of some participants might tend to suggest international registration as the only suitable solution. Such factors and the drive towards political unity have, for example, led the Arab States to conclude that such arrangements would be most appropriate.

As to the legality of international registration, one opinion -- expressed by the minority of the Panel of Experts, the majority of the Legal Sub-Committee and the Air Transport Committee[183] -- is that the Convention does not explicitly prohibit international registration. This must be so, since the last sentence of Article 77 would have no meaning if it did not authorize the Council to do something which was not already provided for by the Convention. According to the Air Transport Committee's interpretation, the discussion on international airlines at Chicago, and the authorization to the Council in Article 55(d) to study that question and act under Article 77, showed a clear intention to permit international registration.[184]

The majority of the Panel, on the other hand, held that the Council could not, by a determination, substitute an agency or intergovernmental organization for contracting States in the discharge of such obligations.[185] In 1961, the Council refrained from endorsing this opinion and merely "transmitted" it in its reply to the League of Arab States.[186]

There is nothing in the Convention to prevent contracting States from delegating their sovereign powers to such an intergovernmental body, since they would still be responsible to other contracting States for any breach of the provisions of the Convention. If, on the

other hand, the Panel's construction were accepted, such a sovereign State would be unable to delegate its powers. The Legal Sub-Committee, by a vote of 10 to 4 with one abstention, expressed an opinion directly opposed to the Panel's: that there was no obstacle to "joint international registration" under the existing provisions of the Convention,[187] and that Article 77 "gives the Council the duty and thus the power to interpret the provisions of the Convention so as to permit such registration to be carried out".[188] Otherwise, it contended, the last sentence of Article 77 would have no meaning. The representative of Senegal argued that an aircraft has no legal personality, and is an object and not a subject of law, and that nationality establishes merely a point of legal contact.[189] The minority thought it was necessary to amend the Convention, since it is based on the principle of national registration. The opening clause of the last sentence of Article 77 -- "The Council shall determine in what manner..." -- supports the majority of the Sub-Committee, being interpreted to mean that the Council must determine. Thus the Council has to decide how the substance of those provisions of the Convention related to nationality of aircraft should be applied to aircraft jointly registered.

The Sub-Committee deferred to a future date consideration of the manner of application of the provisions of the Convention,[190] the representatives of the Congo (Brazzaville) and Senegal having suggested either joint registration by the States involved, acting on a common account, or the creation by them of an international organization.[191]

Such organization would undertake the duties of a State of registry on behalf of its members. "Joint registration" would be on a single register (which might consist of several parts each kept and maintained by one of the States concerned), one or more of the States of the agency would undertake the functions of a State of registry on behalf of all, and all would incur joint and several responsibility as regards the provisions of the Convention.[192]

These two alternatives had been suggested in the Air Transport Committee's study in 1956.[193] The majority of the Panel, after ruling out the possibility of intergovernmental organizations being established, rejected the alternative of "joint registration" on the ground that the aircraft of the agency would have no nationality.[194] Such contention might amount to saying that the Council is absolved of its duty to make a determination.

There is an obvious contradiction here: the majority of the Panel had already assumed that the agency contemplated must be a body of an international character, indicating that its aircraft would be registered on a non-national basis.[195] Thus in one instance they say that the aircraft of the agency contemplated in Article 77 by definition must seek non-national registration to be qualified as an "international operating agency". In other words, they gave meaning to the term "international operating agency" with one hand and stripped it of that meaning with the other.

It has been submitted by Professor Mankiewicz that the determination by the Council cannot be made <u>in abstracto</u>.[196] The desired

course of action has to be proposed to the Council by the States constituting the agency, and the Council must see to it that the scheme submitted is proper for the purpose of the application of the provisions of the Convention.

When the Council undertakes to make a determination it will be essential that all ICAO States recognize the method of joint international registration so that the determination can be implemented. In such a case the application to such aircraft of the rights and privileges as are granted in the Convention to aircraft nationally registered, should also be recognized. These suggestions were included in a proposal which was adopted by the Sub-Committee by a vote of 10 to 3 with two abstentions.[197] Thus the Sub-Committee advised the Council:

> That the determination made by the Council under Article 77 has sufficient effect for the international registration in question to be recognized by the other contracting States and for the aircraft so registered to have the benefit of rights and privileges equivalent to those granted by national registration.

It being understood:

> a) That the States that have constituted the international operating agency shall be jointly and severally bound to assume the obligations which, under the Convention, attach to a State of registry;
>
> b) That the operation of the aircraft concerned shall not give rise to any discrimination against aircraft registered in other contracting States.

The adoption of the principle of joint and several responsibility would, it is submitted, defeat the contention that, since the obligations

under the Convention attach to sovereign (contracting) States, the delegation of the discharge of these obligations to an intergovernmental organization would be illegal.

There is also the possibility that international organizations such as the United Nations will take advantage of these procedures and establish their own register, instead of registering their aircraft in a State. Thus, many international organizations may be competent to own aircraft, although the only present example of such ownership is that of the United Nations. The practice of the Organization to date has been generally to operate aircraft made available by its member States, such aircraft being usually registered with a State and having its nationality markings as well as the United Nations emblem.[198] These United Nations aircraft, whether public or private, enjoy privileges and immunities so long as they are considered as United Nations property (according to the Convention on Privileges and Immunities of the United Nations).

However, there were some instances in which the United Nations owned and operated aircraft: for example, an aircraft which rendered services to its Commission in Korea in 1954. That aircraft was not registered, and operated with only the United Nations markings. Considering the emergency situation at that time, such incident was not regarded as a precedent by the Legal Office of the United Nations.[199] Similarly, in the period 1960 - 63 the United Nations purchased a number of aircraft for operation in the Congo, which carried distinctive United Nations identification marks, were not subjected to the requirement of registration

and licensing under Congolese laws,[200] and apparently were not registered in any State.[201] It is therefore highly probable that such aircraft had no nationality. As of February 1965, information from the Legal Office of the United Nations indicated that there were still two of these aircraft in the Congo.[202]

While it may be that a new United Nations practice may be developing, there are no clear indications that it will not be interupted. Nevertheless, these two incidents of operation without registration and nationality in any State may reflect the practical need of the United Nations to preserve its image of complete independence and freedom from the jurisdiction of the territorial State wherein it performs its functions. Also, the laws of many States may not permit the registration of aircraft not substantially owned by their nationals.

It may be assumed that the United Nations will not disregard the provisions of the Chicago Convention, since ICAO is one of its specialized agencies. However, there are no provisions in the Convention with respect to the operation of civil aircraft by the United Nations, and Article 77 does not place the United Nations in a situation similar to that of a State for the purpose of a determination by the Council.

It is evident that the problem of registration of aircraft owned by international organizations requires extensive study and the formulation of a complete scheme. This will probably find expression in public international law, either through the recognition by sovereign States of the new practice as adopted by the United Nations, or, preferably, through the conclusion of Conventions between such Organizations and their member States.

NOTES TO CHAPTER II

1) At the 15th General Assembly of ICAO - June-July 1965, the number of member States of ICAO was 110.

2) " Joint Ownership and Operation of International Services on Trunk Routes," ICAO Working Paper, A4-WP/8, EC/3, Appendix D (Memorandum Submitted by France, March 24, 1950), p. 17.

3) L.C. Tombs, International Organization in European Air Transport (New York, Columbia University Press, 1936), p. 34.

4) E.W. Faller, Germany and International Civil Aviation - A Policy Oriented Historical Study (McGill Thesis, 1965), p. 127.

5) Id., pp. 127-128

6) Tombs, supra, note 3, p. 34

7) Ibid.

8) Ibid.

9) R.Y. Jennings, "International Civil Aviation and the Law," 22 B.Y.I.L. (1945), p. 208, note 1.

10) Tombs, supra, note. 3, p. 34.

11) Faller, op. cit. supra, note 4, p. 158.

12) ICAO Working Paper, A4-WP/118, EC/14 (1950), Appendix II, p. 8; paper submitted by the United Kingdom Delegation to ICAO entitled International Ownership and Operation of International Air Services; a conference was held in Wellington (New Zealand) in 1936, to discuss the formation of the joint Company; see D.M. Hocking, and C.P. Haddon-Cave, Air Transport In Australia, 1st ed. (1951), p. 23.

13) Ibid.

14) ICAO Working Paper, op. cit. supra, note 12, p. 9; the company was incorporated on April 26, 1940: see Sir Leonard Isitt, "Air Transport In New Zealand and the South Pacific," Journal of the Royal Aeronautical Society (London, 1951), p. 713.

15) ICAO Working Paper, op. cit. supra, note 12, p. 9; it is stipulated that the agreement should be interpreted according to New Zealand law.

16) Ibid.

17) ICAO Working Paper, op. cit. supra, note 12, p. 10.

18) ICAO Working Paper, op. cit. supra, note 12, p. 11; by 1951 the company's capital amounted to £1,500,000 (New Zealand pounds); see Sir Leonard Isitt, op. cit. supra, note 14, p. 715.

19) ICAO Working Paper, op. cit. supra, note 12, p. 10.

20) Hocking and Haddon-Cave, op. cit. supra, note 12, p. 24.

21) Sir Leonard Isitt, op. cit. supra, note 14, p. 715.

22) Ibid.

23) ICAO Working Paper, op. cit. supra, note 12, p. 9.

24) Ibid.

25) Ibid.

26) ICAO Working Paper, op. cit. supra, note 12, p. 9.

27) Ibid.

28) ICAO Working Paper, op. cit. supra, note 12, pp. 9-10.

29) ICAO Working Paper, op. cit. supra, note 12, p. 10

30) Ibid.

31) R.E.G. Davies, A History of World's Airlines (London, Oxford Univ. Press 1954), p. 388.

32) Ibid.

33) Sir Leonard Isitt, op. cit. supra, note 14, p. 716.

34) W.H. Wager, "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Management Agreements," 18 JALC (1951), p. 304.

35) Ibid.

36) Hocking and Haddon-Cave, op. cit. supra, note 12, p. 59.

37) Sir Leonard Isitt, op. cit. supra, note 14, p. 716.

38) Roadcap and Associates, World Airline Record, 5th ed. (1955), p. 29; very little is published about West African Airways and in particular nothing is said of aircraft registration, or representation on the company's Board of Directors.

39) Ibid.

40) Ibid.

41) Davies, op. cit. supra, note 31, p. 418.

42) R.A. Nelson, "Scandinavian Airlines System Co-operation In The Air," 20 JALC (1953), p. 182.

43) Ibid.

44) ICAO Circular 30-AT/5, Report on the Scandinavian Airline System (1953), p. 5, para. 6.

45) Wager, op. cit. supra, note 34. p. 309.

46) ICAO Circular, supra, note 44, p. 5, para. 6.

47) Nelson, op. cit. supra, note 42, p. 184; see also ICAO Circular, supra, note 44, p. 5, para. 6, and Wager, op. cit. supra, note 45, p. 309.

48) Nelson, op. cit. supra, note. 42, p. 184.

49) R.E. Hastings, Some Political Aspects of International Air Transport, a Princeton University Thesis, (1945), p. 90. The United States, United Kingdom, France, Italy and Japan were represented in the Conference.

50) J.C. Cooper, Summary and Background Material on International Ownership and Operation of World Air Transport Services, Princeton University (1948), p. 38.

51) J.P. Van Zandt, Civil Aviation and Peace (Washington, D.C., 1944), p. 42.

52) Hastings, op. cit. supra, note 49, p. 92.

53) Id., p. 94.

54) K.W. Colegrove, International Control of Aviation (Boston, Massachusetts, 1930), p.127; the author cites on the same page the following quotation from the report of the American delegation to President Harding: "It was found to be impracticable to adopt rules for the limitation of aircraft in number, size or character, in view of the fact that such rules would be of little or no value unless the production of commercial aircraft were similarly restricted."

55) Hastings, op. cit. supra, note 49, p. 95, citing the Committee on the Limitation of Armaments.

56) J.C. Cooper, The Right to Fly, 1st ed., (1947), p. 115.

57) The Preparatory Disarmament Commission's Sub-Committee A (composed of military experts) and its Sub-Committee B (composed of economic experts), met in Brussels in 1926; the latter sub-Committee invited experts on civil aviation who recognized unanimously (in 1927) that in any scheme for "Limitation of air armaments it is essential to avoid hampering the development of civil aviation." See Cooper, op. cit. supra, note 50, pp.38-41.

58) Cooper, op. cit. supra, note 50, pp. 1, 2 and 3.

59) Id., p. 4.

60) Id., p. 6.

61) Id., pp. 6-7.

62) Cooper, op. cit. supra, note. 50, p. 54. (Annex II).

63) Id., p. 55.

64) Id., p. 56.

65) Van Zandt, op. cit. supra, note 51, pp. 42-43.

66) Id., pp. 43-44.

67) Cooper, op. cit. supra, note 56, pp. 119-120.

68) Cooper, op. cit. supra, note 50, p. 57, (Annex II).

69) Ibid; see also Hastings, op. cit. supra, note 49, p. 100; and also Sir Osborn Mance, International Air Transport (Oxford University Press, New York, 1944), p. 77.

70) Cooper, op. cit. supra, note 50, pp. 57-58 (Annex II).

71) Id., p. 59 (Annex II).

72) Ibid.

73) Cooper, op. cit. supra, note 50, p. 60 (Annex II).

74) Id., p. 61 (Annex II).

75) Ibid.

76) Cooper, op. cit. supra, note 50, pp. 8-9.

77) L.C. Tombs, International Organization in European Air Transport (New York, Colombia University Press, 1956), p. 186.

78) Id., p. 187; this is in line with the proposal of Fisch (German): Annex III of Cooper, op. cit. supra, note 50, p. 69.

79) Cooper, supra, p. 68 (Annex III); only 8 supported the proposal, while 10 opposed it.

80) Id., p. 68 (Annex III).

81) Id., p. 70 (Annex III), see also Tombs, op. cit. supra, note 77, p.190.

82) Tombs, op. cit. supra, note 77, p. 192.

83) Sir Osborne Mance, op. cit. supra, note 69. p. 79.

84) Cooper, op. cit. supra, note 50. p. 10.

85) Id., pp. 75-76 (Annex IV).

86) Id., p. 77 (Annex IV).

87) Id., p. 78 (Annex IV).

88) Id., pp. 79-80 (Annex IV).

89) Id., p. 83 (Annex IV).

90) Id., p. 10; see also Hastings, op. cit. supra, note 49, p. 105.

91) Van Zandt, op. cit. supra, note 51, pp. 44-45.

92) Article 18 of the Agreement: Cooper, op. cit. supra, note 50, p. 127, (Annex X)

93) Article 20.

94) Article 19 (a).

95) Article 21 (a).

96) Article 22.

97) Cooper, op. cit. supra, note 50, p. 130 (Annex XI).

98) Ibid.

99) Ibid.

100) Id., p. 141.

101) Id., p. 142.

102) Id., p. 131 (Annex XI)

103) Ibid.

104) Ibid.

105) Cooper, op. cit. supra, note 50, p. 131.

106) Id., p. 132.

107) Ibid.

108) Cooper, op. cit. supra, note 50, p. 133.

109) Ibid.

110) J. C. Cooper, Summary and Background Material on International Ownership and Operation of World Air Transport Services, Princeton University (1948), p. 134, (Annex XI), op. cit. supra, note 50.

111) Id., p. 137, (Annex XI).

112) Id., p. 138 (Annex XI).

113) Proceedings of the International Civil Aviation Conference (November 1 - December 7, 1944), Vol. I, The Department of State, November 2, 1944 (2nd Plenary Session), p. 78. (Hereinafter called Proceedings).

114) Id., p. 79.

115) Cooper, op. cit. supra, note 110, p. 154.

116) Proceedings, op. cit. supra, note 113, p. 79.

117) Id., the speech of Mr. Drakeford, Chairman of the Australian delegation, p. 83.

118) Cooper, op. cit. supra, note 110, p. 153 (Annex XIV).

119) Proceedings, op. cit. supra, note 113, p. 80; the speech of Mr. Sullivan, Chairman of the New Zealand delegation.

120) Id., p. 84.

121) Cooper, op. cit. supra, note 110, p. 154.

122) Id., p. 151 (Annex XIV).

123) Id., p. 155 (Annex XIV).

124) Id., p. 156 (Annex XIV).

125) Id., p. 157 (Annex XIV).

126) Id., p. 158 (Annex XIV).

127) Id., p. 158 (Annex XIV); emphasis supplied.

128) Resolution A1-37; see ICAO Doc. 5593/A2-EC/34(10/6/48), cited by Cooper, op. cit. supra, note 110, p. 170 (Annex XVII), and the discussions at pp. 163-169 of Annex XVI (Doc. 4521/A1-EC/73-May 1947).

129) It seems that the last studies and views submitted by the member States of ICAO took place at the Fourth ICAO Assembly in 1950: see ICAO Doc A4-WP/118-EC/14-5/6/60 and A4-WP/8-EC/3 (24 March 1950), both on "Joint Ownership and Operation of International Air Services on Trunk Routes."

130) See Chapter III.

131) Resolution A2-13, para. 3 of which said: "That the Council, in accordance with its normal procedures, promptly formulate and circulate to contracting States its views on the legal, economic and administrative problems involved in determining the manner in which the provisions of the Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies." See ICAO C-WP/2284 dated 15 November 1956, p. 3.

132) ICAO C-WP/3091 (24/2/60), p. 7, para. 8.1; Council by its resolution No. XXXIX-4(March 11,1960), decided to appoint the Panel: see C-WP/3186 (25/8/60), p. 1, para. 1.1; the Panel held its meetings in Montreal during the period 23-30 June, 1960.

133) This is an intergovernmental organization established by the Conference of the heads of the 12 African States, members of the joint airline Air Afrique: see ICAO C/WP/4115 (1/12/64), Annex 3, Corrigendum, 14/12/64, p. 1.

134) ICAO C-WP/4115, Annexes 1 and 2, pp. 3 and 5; the first requeste was dated November 11, 1964 and the second was dated November 26, 1964.

135) ICAO C-Draft Min. LIII-18 (Closed) Part II - Discussion (12/1/65), p. 4, para. 21.

136) ICAO PE-77/Working Draft No. 2 (26/5/60), pp. 1-2, para. 2; It should be noted that both are constituted to undertake the operations of air services.

137) See Proceedings, Vol. I, p. 570 sq.; this was reproduced from a Canadian Government pamphlet as PE-77/Working Draft No. 17 (27/6/60) Appendix: Chapter XVI of the Convention is based on Article X of the Canadian revised preliminary draft (Chicago Conference Doc No. 50) as latter embodied in Article IX of the Tripartite Proposal on the Convention on International Civil Aviation, Doc. No. 358, on which minor amendments were to be made before it was finally adopted by the Chicago Conference, 1944. The changes made did not touch the two expressions above alluded to.

138) PE-77/Working Draft No. 17, op. cit. supra, note 137, para 11.

139) Ibid.; emphasis supplied.

140) Article 77 of the Chicago Convention requires a "determination" by the Council only in the case of "international operating agencies.".

141) ICAO PE-77/Report (30/6/60), pp. 2 and 3, para. 7.

142) Id., p. 3, para. 7, sub-para. 2; emphasis supplied.

143) ICAO PE-77/Working Draft No. 6 (31/5/60), p. 1, para. 4.

144) ICAO PE/77/Report, supra, note 141, p. 2, para. 7, sub-para.(1); emphasis supplied.

145) ICAO Doc 8106-8-c/927-8 (16/1/61), p. 100, para. 47.

146) Id., p. 102, para. 59.

147) ICAO PE-77/Working Draft No. 2, supra, note 136, pp. 1-2.

148) ICAO LC/SC Article 77/Report (24/7/65), p. 3, para. 5.3.

149) Id., p. 3, para. 5.3; This is the opinion of Mr. Bouché: see ICAO Doc 8106-8 C/927-8 (16/1/61), p. 132, para. 47.

150) ICAO PE/Working Draft No. 2, (26/5/60), p. 4, para. 5(a). The same opinion was expressed in the Panel's report: See ICAO PE-77 (30/6/60), p. 3, para. 9.

151) Article 52 of the Convention requires a simple majority for the decisions made by the Council.

152) LC/SC Article 77/Report, op. cit. supra, note 148, p. 3, para 7; the same opinion was expressed by the Panel of experts in their report: See ICAO PE-77/Report, supra, note 141, p. 3, para. 9; the ICAO Council endorsed this view in the letter sent to the League of Arab States: see also ICAO Doc 8124 C/92-8, p. 2.

153) H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties," 26 B.Y.I.L. (1949), pp. 48-85, p. 84.

154) Ibid.

155) Lauterpacht, op. cit. supra, note 153, p. 68.

156) (1929), 279 U.S. 41, 51-2, cited by Lauterpacht, id., p. 67.

157) Ibid.

158) Lauterpacht, op. cit. supra, note 153, p. 73.

159) Hague Court Reports (1st. ser. 1916) 141, p. 186, cited by Lauterpacht "Some Observations on Preparatory Work in the Interpretation of Treaties," 48, Harvard Law Review (1935), pp. 549-591, at p. 572, note 92.

160) "The Law of Treaties," Suppl. II, Vol. 29, Am. J. Intel. Law, (1935), pp. 937-977, p. 943.

161) Id., p. 944.

162) J.G. Starke, An Introduction to International Law, 5th ed. (London, 1963), p. 359.

163) Ibid.

164) J.P. Honig, The Legal Status of Aircraft (The Hague, 1956), p. 42.

165) J.C. Cooper, "National Status of Aircraft," 17 JALC (1950), p. 298.

166) Honig, supra, note 164, pp. 43-44; see also Cooper, supra, p. 299.

167) Ibid., Cooper.

168) Id., pp. 297-298.

169) J. Nemeth, The Nationality of Aircraft, McGill Thesis (1953), p. 33.

170) Cooper, supra, note 165, p. 305.

171) R.Y. Jennings, "International Civil Aviation and the Law," 22 B.Y.I.L. (1945), p. 207.

172) Cooper, op. cit. supra, note 165, p. 297.

173) Id., pp. 299-300.

174) R.H. Mankiewicz, "Aeronefs Internationaux," Annuaire Francais de Droit International (1962), pp. 685-717, p. 688.

175) This was at the meeting held on July 19, 1965.

176) ICAO C/WP/2284 (15/11/56), pp. 4-5.

177) ICAO PE-77/Report, op. cit. supra, note 141, p. 3, para. 8.

178) ICAO Doc 8124 C/928, pp. 1-2.

179) ICAO LC/SC Article 77/Report (24/7/65), p. 3, para. 8.

180) Article 7.

181) ICAO C-WP/2284, supra, p. 7, para. 12; these are Articles 5, 7, 9, 11, 16, 24, 26, 27, 33 and 35.

182) At the Seventh Meeting held on July 20, 1965, the representative of the United States doubted the possibility of the application of the last sentence of Article 77 to such expressions in Articles 30-33 as the State "in which the aircraft is registered".

183) ICAO C-WP/2284, supra, p. 6, para. 8.

184) Ibid.

185) ICAO PE-77/Report, op. cit. supra, note 141, p. 4. para. 12.

186) The text of the letter is in ICAO Doc 8124 c/928, see pp. 2 and 3 of the letter.

187) ICAO LC/SC Article 77/Report (24/7/65), p. 4, para 12.1, supra, note 148.

188) Id., p. 4, para. 12.

189) Ibid.

190) ICAO LC/SC Article 77/Report, op. cit. supra. note 148, p. 5, para. 13; see also p. 7, para 22 (a).

191) Id., p. 5, para. 13.

192) ICAO LC/SC Article 77-Discussion Paper No. 2 (20/7/65), Annex, p. 2.

193) ICAO C-WP/2284, supra, p. 7, para. 10.

194) ICAO PE-77/Report, op. cit. supra, note 141, p. 5, para. 13.

195) Id., p. 3, para. 7, sub-para. 2.

196) R.H. Mankiewicz, "Aircraft Operated by International Operating Agencies," JALC (1965), p. 307.

197) ICAO LC/SC Article 77/Report, op. cit. supra, note 148, p. 5, para. 14.

198) Letter from the Director in Charge of the Office of the Legal Affairs of the United Nations, ICAO PE-77/Working Draft No. 3 (16/5/60), p. 1.

199) Additional Information From the Legal Division of the United Nations ICAO PE-77/WD No. 3, Addendum (30/5/60), p. 1.

200) Information from the Director of the Legal Division of the United Nations, LC/SC Article/77/WD No. 2 (24/2/65), p. 1.

201) Ibid.

202) Id., p. 2.

CHAPTER III

EXISTING AND PROPOSED TRANSNATIONAL ARRANGEMENTS

There are in air transport at present four transnational enterprisory undertakings, (SAS, EAA, CAA and Air Afrique)[1] as well as three major proposed enterprises: Air Union, in Western Europe, the International Arab Airways Corporation (IAAC) in the Middle East, and "Flota Aerea Latino-Americana" (FALA), in Latin America.[2] Apart from these undertakings many airlines participate in pooling arrangements, a form of economic and technical cooperation whose essential characteristics are the regulation of the services involved and the pooling and allocation of revenue. Thus pooling is a kind of cooperation which yields the benefit of mitigating the ills of imperfect competition now prevalent in air transport. In pools the basic elements for the allocation of revenue are the capacity offered by the aircraft on the agreed routes and the number of flights performed on those routes.[3, 4] Pooling is considered here since it stands as a cooperative measure between airlines, although of lesser scope and implications than integration.

The pool system, while mitigating the effects of competition, does not entirely eliminate it;[5] rather it serves as a regulator of frequencies through peak and off-peak hours and seasons, resulting in better distribution of the services to the public.

Both the existing and the proposed joint enterprises generally involve joint operation as regards international traffic,

and in many instances include also domestic services. The participants incur jointly the costs of operation and share the profits or losses resulting therefrom. Though the legal structures of multinational airlines may vary, usually they carry out their activities through a common management and organization. A comparative appraisal may explain the nature and functioning of their organizational arrangements and legal status.

1. The Existing Arrangements

a) The Nature of the Constitutive Agreement

The constitutive instrument may be embodied in a treaty between States, in legislation enacted by a common organization, or in a contract between private, State-owned or mixed (partly privately-owned and partly State-owned) enterprises.

The Consortium Agreement[6] establishing SAS, for example, is a contract entered into between the constituent national airlines of Denmark, Norway and Sweden, supported by joint government action in the fields of civil aviation and other matters relating thereto. It cannot be regarded as a treaty since the parties are not subjects of international law but are rather national corporate bodies. The participant airlines here are mixed enterprises, 50 per cent of the shares in each company being held by the State in which it is incorporated and the other 50 per cent privately owned. This system was developed at the time the Consortium was being formed.[7]

On the other hand, Air Afrique was established by the Treaty of Yaoundé (Cameroun) on March 28, 1961, between eleven West African

States.[8] Recently, Togo adhered to the Treaty, becoming the twelfth participant State.[9] The contracting States hold a total of 72 per cent of the shares, divided equally among them (i.e. 6 per cent for each State). The other 28 per cent are held by the French airline Union de Transport Aériens (U.T.A.) and the French investment group Caisse Dépots et Consignation.[10] The two French enterprises are not parties to the Treaty, though they are allowed by the contracting States to participate in Air Afrique.

CAA was originally established in 1946 by the Governments of Southern Rhodesia, Northern Rhodesia and Nyasaland.[11] On December 4, 1963, a new CAA Corporation was established by Agreement among the same three Governments.[12] Thus the present CAA is also established by treaty.

The only joint air transport enterprise created by enactment of a common organization of its participant States is EAA,[13] whose ownership is shared by Kenya, Tanzania and Uganda. EAA has been incorporated in Nairobi, Kenya since January 1, 1946.[14]

b) Objectives

All the existing and proposed transnational airlines doubtless share the common objective of achieving better economic results than could otherwise be attained by the participants on an individual basis. To this end, their constitutions often contain a sound business clause such as that found in the SAS Consortium Agreement, which stipulates:

> 2. The activity of the Consortium shall be governed by sound business considerations, practice and policy.[15]

Similar stipulations are found in the constitutive instruments of EAA[16]

and CAA.[17] Thus, by joining their resources, skills and experience, enterprisory organizations in air transport may satisfy the public need in a more adequate fashion than has hitherto been possible with excessive competition dominating the world air routes.

Certain enterprisory activities have objectives which are collateral to their main economic purpose -- such as, the fostering of general economic cooperation among the member States, the preservation of "friendship and understanding", and the improvement of international relations between States through better knowledge of each other.[18] In the opinion of the authors of Law and Public Order in Space, such cooperation in enterprisory activities will eventually decrease the chances of "unauthorized coercion" and tend to reduce "mutual distrust".[19]

Another important objective relates to the scope of the air services. For example, Section 7 (1) of the East African Airways Corporation Act, 1963, entrusts EAA with securing the fullest development of air transport within and between its member countries as well as conducting international services. In addition, upon request by a member government, EAA may also provide domestic air services conditional upon payment of any losses by that government.[20]

Similarly, CAA is responsible for the provision of air services between its member States,[21] with air services to certain African points being provided by BOAC.[22]

In the SAS Consortium Agreement the parties undertook not to carry out or provide on an individual basis, without unanimous consent,

any services of the type carried out by the Consortium.[23] This can, of course, only be binding upon the constituent airlines, and prohibition of other competitive activities must necessarily be secured through the action of the Scandinavian governments. On the other hand, each government may request the provision of certain domestic air services provided it pays any loss incurred by reason of such operations.[24]

The Treaty of Yaoundé[25] provides that the Parties designate Air Afrique as their chosen instrument to operate international air services.[26] It lies within the discretion of any member State to authorize Air Afrique to perform domestic services within its territory[27] or, alternatively to entrust such services to a national air carrier, provided the activities of the latter are coordinated with those of Air Afrique.[28] Even regional air services may be conducted by the national airlines of member States, if authorized after consultation with the Committee of Ministers.[29]

c) Membership

Problems of membership -- such as who may become members, and procedures relating to changes and termination of membership -- have to be settled at the outset. Members in an air transport joint enterprise may be governments, private or public territorial organizations, mixed commercial concerns of such private and public organizations, or a combination of any two or more of these.

The SAS Consortium is the only major air transport organization whose participants are all mixed commercial concerns.[30] Air Afrique is a clear example of a joint corporation, with its members being States,

the French private company UTA, and the French investment group Caisse Dépots et Consignation.[31] EAA and CAA, on the other hand, are constituted solely by their Governments.[32]

Membership in such enterprisory organizations may be either inclusive or exclusive. Thus SAS, EAA and CAA are all completely exclusive enterprises, since their constitutive instruments do not provide for the admission of new members. While Air Afrique appears to be an inclusive enterprise, with membership open to all interested States, in fact the requirement for unanimous agreement of its participant States when considering the admission of a new member tends to limit such inclusiveness.[33]

d) Legal Personality

The question whether a joint air transport enterprise possesses legal personality generally depends on its organizational form and structure. SAS is unique in that it cannot be regarded as a legal person;[34] while CAA and EAA are corporate legal persons established, respectively, by treaty and under the enactment of a common organization. Air Afrique may be characterized as a corporate legal person without any nationality and subject primarily to its domestic law embodied in the Treaty of Yaoundé, and thus stands very close to the true international company.

While the SAS Agreement makes no express provision with respect to the legal character of the Consortium, no inference could be drawn from the word "consortium". According to Bahr, the Consortium is similar to partnerships under French and German law, the criteria being the unlimited liability of the partners.[35] It is contended that, in establishing the new SAS, the parties to the 1951 Agreement had no intention of altering

the similar legal character of OSAS, as stipulated in Article 2 of the Consortium Agreement of August 1, 1946, establishing that organization:

> The Consortium - as such - is not a separate legal person, but shall externally to the public and internally to the staff appear as one unit...[36]

It should be noted that similarly ESAS had been declared not to possess corporate legal personality.[37]

In essence, SAS is an enterprise of the three parent companies carried on their joint account.[38] The Agreement stipulates that the parties shall be jointly and severally liable to third parties as regards the activities of the Consortium,[39] and further provides for a system of sharing of profits and losses by the three companies according to the ratios of their subscription to the capital of the enterprise.[40] From these characteristics, SAS may be regarded as a partnership (in the English law concept) of the three Scandinavian airline companies, though it lacks registration usually required by the laws of Sweden.[41] The ICAO Report on the Scandinavian Airlines System assimilated it to a partnership rather than to any other form of enterprisory structure.[42]

The SAS Consortium has sometimes been viewed as having a peculiar status of its own. For example, the ICAO Report states:

> On the whole ... it seems best not to attempt to identify the consortium with any of the more familiar forms of commercial undertakings, but to regard it as a creature of the particular arrangement out of which it grew. The amount of specialized government action that has been necessary to bring the Consortium into being ... is a further ground for not trying to apply any standard label ...[43]

In the opinion of one writer, however,[44] SAS possesses legal personality. He appears to rely mainly on Swedish law, perhaps on the assumption that Sweden is the domicile of SAS since its headquarters are situated in Stockholm. Even that may be contested, however, on the ground that the question of locating the Headquarters is left to the decision of the board of directors.[45]

It is evident that the Consortium cannot be regarded as a company, since it has not been incorporated in any of the three countries. Likewise it is not an international company, subject to international law, since it is the product of a contractual relationship between private corporate bodies. On the other hand, in many instances the rights and liabilities of SAS relate to the three parent companies rather than to the Consortium itself: for instance, the designation of each company by its government as its chosen instrument in bilateral air transport agreements. It is also apparent that the Consortium has no nationality -- a fact admitted by the SAS legal department,[46] which believes that the Consortium is domiciled in the three Scandinavian countries.[47]

It may therefore be concluded that SAS can be closely assimilated to partnerships as understood in English law, although the Consortium may not answer the particular legal requirements of a partnership in each Scandinavian country as regards such procedural matters as the requirement of registration of the firm.

Another transnational air transport organization worth exploring is CAA. CAA has subsidiary companies, wholly owned by it, in Rhodesia, Zambia and Malawi.[48] It was created by the 1963 Salisbury Agreement and

also, pursuant to that Agreement, by enacted law in each of its member States.[49] Like its predecessor, the present CAA appears to be incorporated in Rhodesia since Salisbury is still its headquarters, and thus may be subject to Rhodesian law as regards its legal existence. Corporate legal personality is obvious from Section 4 of Annex A to the Salisbury Agreement, which declares:

> There is hereby constituted jointly for the Territories a corporation, to be known as the Central African Airways Corporation, which shall be a body corporate with a common seal and capable of suing and being sued and, subject to the provisions of this Order and any law, of doing all such acts as a body corporate may perform.

The new EAA succeeded the former Corporation established by the East African Territories (Air Transport) Orders in Council, 1945 to 1961.[50] Recently re-established by enactment of EACSO, the Corporation has been incorporated in Nairobi, Kenya, since 1946.[51] EAA is a statutory corporation of EACSO and is subject to, and governed by, the relevant enactments of that body. According to the EACSO Constitution, such enactments shall have the force of law in each member country.[52] It is obvious from Section 3 of the East African Airways Corporation Act, 1963, that the Corporation is endowed with full legal personality:

> 3. There shall be established a corporation to be known as the East African Airways Corporation... with perpetual succession and a common seal which shall be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating property moveable and immoveable and of doing or performing all such acts and things as bodies corporate may, by law, do and perform.

The EAA Corporation Act, 1963, is an enactment of the EACSO and hence the Corporation stands very close to the true international company. However, the essential criterion which differentiates it from the true

international company is its incorporation under the municipal law of Kenya.

A unique enterprisory activity with a peculiar legal structure of its own is Air Afrique, which, to a large extent, resembles a true international body corporate. Its personal law is contained primarily in the Treaty of Yaoundé of March 28, 1961, and in the Articles of Incorporation annexed to that Treaty:

> This treaty and its annexes, including the Articles of Incorporation of the joint Corporation (Société Commune), shall determine the legal terms of existence and operation granted to the Corporation by the Contracting States by departing, if need be, from the present or future provisions of their national laws. [53]

Thus the treaty contains the supreme law governing the Corporation. It has been "endowed with full legal capacity recognized by the laws of the contracting States in the case of bodies corporate..." [54] This legal capacity seems to be only analogous in character to the corporate municipal legal capacity usually recognized by the laws of the participant States. Such provision will not subject the enterprise to the municipal laws of all or any of the contracting States as regards the grant of legal personality. The provision thus operates only to the extent of defining the corporation which is being established with the more familiar types of municipally incorporated bodies. Thus the legal personality of Air Afrique is solely granted by an international treaty concluded between subjects of international law, which have even stipulated for departures from the rules of their municipal laws.[55]

On the other hand, it appears as though Air Afrique does not have any nationality, but is only "deemed as possessing the nationality of each contracting State".[56] To a third State not party to the enterprise, such fictitious grant of multiple nationalities would seem artificial and of no help in determining which law governs the joint Corporation. Such provision may be superfluous, since the Corporation is primarily governed by the terms of the Treaty and the provisions of the Articles of Incorporation.[57]

Article 1 of the Articles of Incorporation provides:

> A joint Corporation under the name of "Air Afrique' is hereby constituted and governed by:
>
> 1) The international treaty signed on the twenty-eighth day of March 1961 and by the present articles of Incorporation attached thereto:
>
> 2) Residuarily and only in so far as they are compatible with the provisions of the treaty and the articles of Incorporation by the principles pertaining to the laws of the signatory States of this treaty.[58]

Reference to the legal systems of the contracting States in that Article relates only to the total principles of these legal systems of all the participant States, which principles may only apply to the joint Corporation in the absence of express or implied provision in the Treaty and only if they are not contradictory to its provisions.[59] The application by way of residue of the vague notion of the 'principles'of the municipal laws of its participant States, however, may not occur, or may be rarely applied. Such application of municipal law does not negate the international character of the Corporation. International corporations may have municipal laws partly applied to them, as for

example, for certain of their functions and activities. The test should be whether the corporation will remain predominantly of an international character. Air Afrique is not, however, incorporated in any of its member States, and its constitutive instrument does not purport to deem it as if incorporated in all those member States. Hence, the Anglo-Saxon Common Law -- and likewise the Soviet rule of private international law by which the place of incorporation "governs the existence of a corporation and ... determines the nature and extent of its powers..."[60] -- would not apply to the joint Corporation.

Further, Air Afrique appears to be artifically domiciled in all the signatory States of the Treaty of Yaoundé, its Articles of Incorporation providing:

> The Corporation shall have an establishment <u>having the attributes</u> of a head office in the Capital of every State signatory to this treaty...[61]

Such a provision may have been inserted with the aim of avoiding the location of its centre of activities so as to ensure that the joint Corporation is not to be governed by the municipal law of its head office. The above provision admits, by necessary implication, that the Corporation does not and cannot practically have more than one head office.[62] By such artificially supposed head offices, the Corporation would not thereby acquire twelve domiciles in the Capitals of its participant States. In the opinion of C. Wilford Jenks, in the absence of a special relationship, an international corporation would not be governed by the law of the place where it happens to have its seat.[63] It thus appears that, for legal purposes, the various head offices of Air Afrique would not affect

the issue as to whether it is an international corporation.

If the many nationalities it is deemed to possess are discarded and the Corporation is considered to have no nationality, then Air Afrique may well be a true international company.

e) Organizational Arrangements

The organizational structure of enterprisory activities in air transport may take various forms, but still many similarities will remain.

The SAS Consortium has to a large extent the characteristics of a company, as regards its management and operation.[64] Its board of directors -- which may be compared with the general meeting of the shareholders of a company,[65] and amalgamates the functions of that meeting and those of the board of directors of such company -- is the governing body. Unlike the general meeting of a company, however, the representation of the SAS partners on the board of directors is not made according to the ratios of their shareholding in the enterprise;[66] also, the identity of each participating company is preserved by the requirement that a minimum of three members of the board of each parent company constitutes a quorum.[67]

The board of directors of SAS is composed of eighteen members, six appointed by each of the three partner-companies,[68] the representation of each parent company being on a fifty-fifty basis between Governments and private shareholders.[69] The offices of the elected chairman and two vice-chairmen alternate on a yearly basis among the three companies;[70] those three officers, with three other members, each appointed by his own

company, constitute the executive committee.[71] The board must meet a minimum of four times a year, and must alternate their meeting places among the three countries.[72] Decisions are taken by majority vote.[73]

As the governing body of SAS, the board has great powers -- including inter alia, the power to make rules for the executive committee and to prescribe its authority;[74] to appoint the general manager, managers, and higher and other officials;[75] and to determine the location of the head office and of branches.[76] The establishment of the board with such wide powers resulted from a recommendation of the "Little Committee" (in August 1949), which saw in it a better organizational structure that would tend to improve the then deterioriating financial situation of SAS (caused mainly by the existence of its five organizations -- the three parent companies, ABA, DDL and DNL, and the two joint organizations, ESAS and OSAS):[77]

> The Committee believes ... that through a radical change of the joint organization considerable reduction of expenditure is possible ... The proposal put forward for consideration by the committee proposes the entire SAS consortium to be governed as one concern on joint account and risk under one board and one managing director.[78]

The day-to-day management is entrusted to a general manager, with similar powers and duties to those of the general manager of a company[79] -- although, according to Swedish law (which may apply by reason of Stockholm being the headquarters of the Consortium), he is in an even stronger position in relation to the board of directors.[80] He and any other managers are appointed by the board from among persons other than members of any board of directors of the three parent companies.[81] He is

subordinate to the board in appointing higher officials, as well as flight personnel and other officials. This task is to be undertaken with the primary aim of achieving a rational and efficient organization, but an equitable proportion among the three Scandinavian nationalities must be maintained to the extent practicable.[82]

CAA has only one governing and managing body, described in the Salisbury Agreement as "the Corporation".[83] It consists of a chairman, appointed by the ministerial body known as the "Higher Authority" (composed of one Minister from each of the three countries).[84] Rhodesia and Zambia each appoints two members, while Malawi appoints one -- all of whom are required to have business, technical and administrative qualifications; the Commonwealth Development Corporation also appoints a member, pending repayment of its loan to CAA.[85] Members of the Corporation hold office for three years, or any lesser period that may be specified in the instrument of their appointment.[86] However, during their tenure they may be removed by the Higher Authority for such reasons as, inter alia, failure to perform their functions,[87] or if their private interests conflict with those of the Corporation.[88]

In meetings of the Corporation a minimum of four members constitutes a quorum,[89] with the chairman having a casting vote.[90]

From a managerial and operational point of view the position here is the reverse of the SAS organization, since CAA has a subsidiary company wholly owned by it in each of the three member countries. Each of these companies is subject to, and governed by, the laws of the country in which it is incorporated.[91] Each owns property, including

aircraft transferred to them by the Corporation.[92]

EAA, like CAA, is controlled by an "Authority" similar to the Central African "Higher Authority": the executive body of the East African Common Services Organization, known as the East African Common Services Authority (EACSA), which has legal capacity conferred upon it, according to the laws of each member country, for carrying out its functions.[93] Enactments of the Organization are made by its Legislative Assembly.[94]

The Authority, which is the highest executive body of the Organization is composed of the President of Tanzania and the Prime Ministers of Kenya and Uganda.[95] It is entrusted with " ... the general direction and control of, the performance of the executive functions of the Organization".[96] In discharging these functions it is assisted by its Ministerial Committees.[97]

The Corporation itself may now be examined. Its creation was by enactment of the 1963 East African Airways Corporation Act by the Organization's Legislative Assembly.[98] Like the Salisbury Agreement, the Act refers to the Corporation instead of its board of directors.[99] The Corporation consists of a chairman appointed by the Authority, the financial secretary of the Organization, two members appointed by each of the three governments (a total of six), and an additional member that the Authority may see fit to appoint.[100] Each appointee holds office during the pleasure of either the government or the Authority (as the case may be) that appointed him.[101] At meetings of the Corporation,

five members constitute a quorum provided that each government is represented by at least one member.[102] The chairman of the Corporation has a casting vote in addition to his ordinary vote.[103]

In addition to its chairman the Corporation has a general manager, appointed by the Authority,[104] who, though not a member of the board of directors, attends its meetings, participates in the discussions, but has no vote.[105] He has managerial powers delegated to him by the Corporation and may in turn delegate the same to the servants of the Corporation, with the consent of the Authority.[106]

Although the Corporation has wide powers,[107] it is still controlled to a large extent and in many ways by the Authority. Thus, for example, the Authority determines the remuneration of the members of the Corporation.[108] Also, the Corporation is required to submit for the approval of the Authority an annual programme showing the services to be conducted, the equipment to be used, tariffs, revenue and expenditure estimates, and any proposed disposal of stocks, shares, bonds, debentures or securities.[109] The Authority has discretion either to approve, or suggest changes to, the programme submitted to it; in case of an estimated loss, it may direct its reduction and the Corporation has to comply with such direction.[110]

The Treaty of Air Afrique establishes among its signatores a body known as the Committee of Ministers of Transport,[111] to function as a medium for discussion of "common policy, prospects for the development of air transport and programmes and ... all questions relating to civil ... aviation".[112] It may also make recommendations for achieving uniformity of laws and regulations, and of the positions of contracting States

towards international conventions relating to civil aviation.[113] However, unlike the "Higher Authority" and the "Common Services Authority", it does not exercise any direct control on Air Afrique, which is represented in an advisory capacity.[114] The Committee's meetings are held on an annual basis.[115]

The Articles of Incorporation of Air Afrique prescribe its constitution, powers, duties, and functions. The joint Corporation has two important organs: the board of directors, and the general meeting of shareholders (or, sometimes, the extraordinary general meeting).

The board administers the company.[116] Representation on it is proportionate to the shareholdings of each participant, except for member States which have a minimum of two seats alloted to each.[117] The general meeting observes this principle when it appoints the members of the board, who may be removed at any time by the party who nominated them, or by the board for lack of efficiency.[118] The board elects from among its members a chairman who holds office for the duration of his membership, and who may thereafter be re-elected.[119] He may be removed at any time by decision of the board.[120] Decisions of the board are made by majority vote,[121] with the chairman having a casting vote only on a second equality of votes.[122] From the vast powers it enjoys[123] the board would appear as the supreme organ of the joint Corporation, were it not for the general powers and supervisory authority of the general meeting. In addition to those powers ascribed to it in the Articles of Incorporation, which are in no way exhaustive, the board is entitled to exercise any powers not assigned to any other organ of Air Afrique.[124] To mention but a few:

> 1) The Board shall represent the Corporation in its dealings with Governments, public and private organizations, trading bodies and in general all third parties;
>
> 2) The Board shall appoint and dismiss where necessary all trustees, managers, representatives, agents and employees of the Corporation, determine their duties, their conditions of service, their retirement and their salaries;...
>
> 24) The Board shall submitt to an extraordinary general meeting all amendments to these Articles of Incorporation.[125]

Management of daily affairs of the Corporation has recently been placed in the hands of the chairman of the board, who now shoulders the tasks of both chairman and general manager.[126] However, he may request the board to appoint a general manager to assist him in discharging his managerial functions.[127] Thus the board, through its chairman, may become involved in the management of the Corporation -- a situation which resembles to a large degree the organization of CAA, which has only one governing organ.

In the general meetings of Air Afrique all shareholders are entitled to vote according to the size of their holding,[128] and here, unlike in the board, there is no special voting privilege for member States.[129] General meetings are usually held on an annual basis[130] and under certain conditions proxy voting is permissible.[131] A minimum of two thirds of the shares is required to be represented before the general meeting can proceed to business, and only on a second failure to obtain that quorum will the meeting be deemed lawful.[132] The general meeting has an ex-officio president, who is the chairman of the board.[133] Decisions are by majority, with the president having a casting vote.[134]

The general meeting has the power and authority to deal with any matters relating to the Corporation -- for example:

> 1) To appoint the members of the Board of Directors...
>
> 3) To amend the Articles of Incorporation...
>
> 5) To declare the dissolution of the Corporation and appoint the liquidators.
>
> 6) To declare the extension of the period fixed for the duration of the Corporation ...[135]

An extraordinary general meeting may be called by shareholders representing a minimum of fifty per cent of the shares to deal exclusively with matters relating to checking holdings in kind, increasing the capital, or amending the objects of the Corporation.[136] Its decisions are by a two-thirds majority, except in the case of an increase in capital due to the admission of a new State, when unanimous agreement is required.[137]

f) Financing

By financing here is meant the capital stock and subscriptions thereto, and the general conduct of the financial affairs of the enterprise. Some of the air transport enterprises examined in this work appear to have a wider measure of autonomy, while others are more or less subjected to the approval or direction of a higher intergovernmental authority. The matter of financing ultimately depends on the shape and structure of the different organizational arrangements.

In the SAS Consortium, the relationship between the three parent companies as regards joint ownership of property and the sharing of profits and losses are in the ratio of 3/7 ABA (Sweden), 2/7 DDL (Denmark) and 2/7 DNL (Norway).[138] The board of directors decides upon the distribution of profits, or upon any assessment necessary for making good any losses.[139] At the time of its creation, the Consortium's capital was fixed at 157-1/2

million Swedish Kroner,[140] a major part of the initial capital representing the value of aircraft.[141] To this total (equivalent to approximately $39,350,000) ABA subscribed $13,050,000; DDL, $5,285,000; and DNL $4,200,000.[142] However, at a later stage,due to the increase of capital, ABA contributed 90 million Swedish Kroner; DDL, 60 million; and DNL, 60 million.[143] The new Consortium succeeded the former (with its two departments of OSAS and ESAS) to all assets and liabilities, aircraft and physical assets except realty, and cash required to balance the subscription to the capital by each participating company.[144] Realty, was to be leased by the Consortium from its owners, whether they be one of the participants or a third party.[145] ABA's buildings are used as the headquarters and as the maintenance base in Stockholm.[146]

In the matter of accounts and their auditing the board of directors is the sole and final arbiter. At the close of each financial year, a statement of the accounts of that year, together with the auditor's report thereon, is to be placed before the board which has to review the report and approve the accounts.[147] Finally, the board of directors enjoys a large measure of autonomy in the financial aspects of the business of the Consortium.

Unlike SAS, CAA is controlled by and subjected to the intergovernmental "Higher Authority".[148] Its capital totals £1,476,650,[149] including the loan made to the former Corporation by the Commonwealth Development Corporation (which was guaranteed by the Federal Government of Rhodesia) and other loans by the former Federal Government. Its

ownership is held in the amounts and ratio of £664,492.5 (45 per cent) for each of the Governments of Rhodesia and Zambia, and £147,665 (10 per cent) for the Government of Malawi.[150] The guarantee by the Federal Government to the Commonwealth Development Corporation of the loan made to CAA was replaced by guarantees by the governments of the three countries in the same ratio as their ownership of capital.[151] In the absence of an agreement to the contrary, subscription to any additional capital[152] and incurment of profits and losses shall be borne by the three governments on the same basis.[153] Like SAS and EAA, CAA succeeded its predecessor Corporation to all its assets, rights and liabilities and obligations.[154]

In its yearly finances the Corporation is subjected to the control and direction of the Higher Authority, although the degree of such control is of a lesser scope and extent than that exercised by the EACSA. At the beginning of each financial year the Corporation has to submit to the Higher Authority for its information a revenue and expenditure budget.[155] If such financial estimates result in the reduction of the Corporation's general reserve fund below the amount already fixed by the Higher Authority, the scheme must secure the approval of the Higher Authority.[156] If the general reserve fund of the Corporation becomes in any financial year insufficient to meet certain specified spending items,[157] the three governments shall pay the shortfall when asked by the Higher Authority to do so.[158]

The annual budget of the Corporation and its subsidiary companies must be submitted for the approval of the Higher Authority.[159] The Corporation may amend such budget approved by the Higher Authority, in the absence of any direction to the contrary, but in so doing it must not exceed the capital expenditure already approved.[160] At the close of each financial year the Corporation has to submit to the Higher Authority an annual report on its activities and those of its subsidiary companies, which shall contain, inter alia, "the revenue and expenditure account and the annual report of the auditor".[161] The appointment of auditors is subject to the approval of the Higher Authority.[162] In case of long-term plans for air transport services or aerial work, the Corporation shall, either upon its own initiative or upon directions given by the Higher Authority, prepare and submit to the Higher Authority such plan, indicating the expenses to be incurred and the need, if any, for airport or meteorological services.[163] By Section 10 of Annex B to the Salisbury Agreement the borrowing powers of the Corporation are limited to borrowing by bank overdraft for temporary purposes.

EAA is perhaps the most extensively controlled joint enterprise, being subjected to the general supervision and scrutiny of the intergovernmental body EACSA. Like CAA, EAA succeeded its former Corporation to all property, rights and obligations.[164] At the time of its initial creation, in 1946, the total capital subscribed by the then three Territories and Zanzibar was

£50,000[165]; this was increased in 1949 to £221,500[166] by issue of 3-1/2 per cent loan stock entirely subscribed by the participating governments in the ratio of 67.72 per cent (Kenya), 22.57 per cent (Uganda), 9.03 per cent (Tanganyika) and 0.68 per cent (Zanzibar).[167] The intention was that each of the three governments (now Kenya, Uganda and Tanzania) should subscribe to the loan stock in equal proportions, by advancing £150,000: a total of £450,000.[168] However, the present position of subscription of capital differs from that originally contemplated:

Kenya	£150,000
Tanganyika	20,000
Uganda	50,000
Zanzibar	1,500
	£221,500
BOAC's debenture stock	250,000
Total	£471,500[169]

In 1965 the Wheatcroft Commission recommended payment of the balance of the loan stock by Tanzania and Uganda, in order to attain the desired equal sharing by governments.[170]

EACSA, as pointed out above, enjoys wide powers of control and supervision over the Corporation. Thus the Corporation has to submit at the commencement of each financial year a detailed programme[171] of its proposed air services and other activities.[172] The Authority has the discretion either to approve or direct

changes in the programme, or, where the programme's estimates show a loss, direct the reduction of expenditure, and the Corporation must comply with such direction.[173] Likewise, the Corporation has to prepare and submit to the Authority, in the form required by that body, a statement of accounts as audited by auditors appointed by the Authority, together with their report, and the Authority has to place both statement and report before the Central Legislative Assembly.[174] Similar action must be taken at the close of each financial year, with regard to the Corporation's annual report showing its policy and proceedings.[175] As regards its borrowing powers, the Corporation must secure the consent of the Authority for both long-term loans by issue of stock, and for temporary accommodations by way of overdraft or otherwise.[176]

Because of competition with the Corporation's operations on international services and the desirability of attaining efficient management and sound running of its business, the Wheatcroft Commission recommended that:

> ... East African Airways must be allowed a larger degree of freedom in management matters to enable it to compete effectively in the international air transport market where it earns a major part of its revenue on which its overall profitability entirely depends.[177]

In their opinion a constitution exactly parellel to that of the East African Railways and Harbours would be detrimental to the Corporation's competitive ability in three particular spheres:

(a) detailed approval of estimates by the Central Legislative Assembly;

(b) auditing of accounts by the Auditor General;

(c) control of the staff appointments by a Public Service Commission.[178]

Air Afrique, as a mixed enterprise of public and private participation, has peculiar provisions dictated by the desire of the parties to maintain a balance between the shares and the rights resulting therefrom. Its capital is fixed at 500 million francs. The twelve States participants of Air Afrique hold 36,000 of the 50,000 shares, divided eually among them; the remaining 14,000 shares are held by the French airline UTA and the French financing group, Caisse Dépots et Consignation.[179] Any changes in shareholdings, whether caused by increase or reduction of capital, should not alter the equality in the participation of States, nor render the private companies' shareholdings less than that of a State.[180] Only one fourth of the capital of the Corporation is paid up, and demand for payment of the balance is at the discretion of the board of directors.[181]

Admission of a new State or States to the joint Corporation will necessarily involve changes in capital shareholdings. Thus a State may be admitted to membership through either surrender of shares by the private companies, or cession of shares of a member State or the private companies (provided the equality of States is preserved and the private shares are not thereby reduced below those of a State), or by increase of capital,

or through the distribution of the shares of a withdrawing State.[182] These are the only legitimate methods for the transfer of both States' shares and those of the private companies. In the case of transfer of shares by the private companies, the unanimous consent of the board of directors must be secured.[183] Togo was admitted to membership in 1964 on the basis of surrender of shares by the private companies.

In addition to the rights attached to shares, there are also obligations and duties cast upon shareholders, the most striking of which is:

> The ownership of a share shall establish full legal acceptance of the Articles of Incorporation and of the decisions of the general meetings of the Corporation by the shareholder.[184]

This would appear to be a legal technique employed to bind UTA and the French investment group, as parties to the Air Afrique enterprise, to the provisions of the constitutive instrument.

The board of directors is subject to the control of the general meeting of shareholders, including the powers of the meeting to scrutinize the financial aspects of the Corporation's business. Thus, at the close of each financial year the board has to make an inventory, prepare a profit and loss account and a balance sheet, and present them to the general meeting together with its report on the Corporation's business during that year.[185] The auditors have to submit their own report directly to the meeting.[186] The Articles of Incorporation provide for the creation of a reserve fund out of the profits, which fund should not exceed 10 per cent

of the authorized capital (except where the general meeting decides, upon motion by the board, to establish an extraordinary reserve fund).[187] The remainder of the profits (if any) and also any losses are to be divided among the shareholders in proportion to their shares,[188] with member States enjoying a privileged position:

> Shareholder States may agree among themselves on different distribution of profits accruing to them, or of the loss they may be called upon to make good, as the case may be. They may to this effect, call a special meeting whose powers shall be restricted to the distribution among members of the profits or losses, but which shall have no say in the management of the Corporation.[189]

(g) Registration and Nationality of Aircraft

The problems of nationality and registration of aircraft have been dealt with in Chapter II of this study. It would suffice here to mention the manner and method by which the aicraft of the existing international air transport enterprises are registered, and hence the nationality which they may acquire by reason of such registration.

Major difficulties in this respect are apparent in the interpretation of the SAS Consortium Agreement. The parties to the Agreement stipulate that aircraft, as part of the capital of the Consortium, shall be registered in each of the three Scandinavian countries in ratios proportionate to the contribution of each party to the capital.[190] By applying Article 17 of the Chicago Convention, 1944, SAS aircraft will necessarily have the nationality of the

Scandinavian country in which they are registered. The difficult question posed by the Consortium Agreement is that of aircraft ownership. The Agreement provides that all aircraft contributed (towards the capital) by the parties are caused "to be assigned and taken over by the Consortium ..."[191] However, a later provision stipulates that, notwithstanding the above, "ownership ... is retained by the party registered ... as owner ..." according to the proportions[192] indicated.[193] Nevertheless, the parties "shall internally",[194] among themselves, regard these aircraft as owned by the Consortium, which shall be entitled to exercise all powers of ownership in dealing with third parties.[195] It is further stipulated that the retention of the Consortium's aircraft by each parent company shall not have "any other effects on the rights and liabilities under this Agreement".[196] The meaning of these provisions seems to be that the Consortium owns the aircraft, but that the parent companies also have a strange and very limited ownership which is only "retained" by them for purposes not clearly specified in the Agreement. This is supported by the word "shall" in paragraph 4.3 -- used both with regard to internal relationships of ownership among the parties per se, and used again with regard to the exercise of powers of ownership in relation to third parties -- as well as the words "without having any other effects on rights and liabilities under this Agreement". These stipulations would leave such limited ownership as if devoid of any legal effect. The reasons for creating this kind of ownership, described by Bahr

as "of special and attenuated character ... (operating) only between the parties",[197] would appear to be limited to registration of aircraft,[198] as required by national laws, especially in Norway. Thus before the conclusion of the Agreement, Norway insisted on the insertion of paragraph 4.3 to satisfy its national laws (which require ownership to be vested in its nationals) and also for considerations of national defence.[199] It may therefore be argued that the parent companies retain the aircraft on behalf of the Consortium in a manner analogous to a trust relationship in English law.[200] SAS aircraft carry the registration marks of their Scandinavian State of registry as well as the SAS emblem.[201]

By the Salisbury Agreement of 1963, CAA transferred the ownership of certain of its aircraft to its subsidiary companies in each of the three countries,[202] with some of these aircraft required to be leased back to the Corporation.[203] It is deduced from the stipulations of the Agreement that the aircraft owned by each of the subsidiary companies are registered on the national register of the country in which the subsidiary company concerned is incorporated. However, the Agreement omits to mention the manner in which the Corporation's aircraft are registered and the place of their registration.

With regard to EAA, all its aircraft are registered in Kenya and carry Kenyan nationality and registration marks.[204] Recently the Governments of Kenya, Uganda and Tanzania agreed to

effect an equitable distribution on the three national registers, according to the type of aircraft.[205]

According to the Treaty of Yaoundé, all the aircraft of Air Afrique belong to the Joint Corporation and not in any manner to any one of its participants.[206] Registration of these aircraft is apportioned among the national registers of the participant States[207] on the basis of a separate agreement reached later by those States.[208] The Treaty itself, however, stipulates joint registration, if such became legally permissible and possible.[209]

(h) Modification and Termination

Some of the constitutive instruments of multinational airlines make specific provisions for the modification and termination of the enterprise, while others are silent. In the latter case -- of which CAA and EAA are examples -- modification and termination may take place by mutual consent of the parties, but the problem becomes thorny if unanimity cannot be attained.[210]

Insofar as modification is concerned, this may not generally touch upon the objectives of the enterprise. It is usually related to the increase or reduction of either the number of participants or the capital, and hence affects the activities of the enterprise. The SAS Consortium Agreement, for example, provides for the expulsion of a member who either is unable to fulfil his obligations, or whose financial situation is weakened to the extent of affecting the relations of the enterprise with third parties.[211] Similarly, a party who cannot cope with a majority decision to increase or to reduce the capital is entitled to withdraw.[212] In such cases the

enterprise becomes modified as to its assets and participants, but the remaining members may continue to carry on its activities under the same name and may resume the application of their constitutive instrument.[213]

By the Articles of Incorporation of Air Afrique, modifications in the enterprise through statutory amendment may be undertaken by the extraordinary general meeting, and can be effected by a two-thirds majority of the votes present and represented.[214] Modifications through withdrawal of members are permissible only on six months' notice,[215] while new participants may be admitted only with the unanimous consent of contracting States.[216]

As regards termination, some constitutive instruments state the duration of the life of the enterprise. Thus, according to the SAS Consortium Agreement, the enterprise is to last until 1975, subject to the negotiation of a new agreement among the parties for the extension of its life.[217] Similarly, Air Afrique is to continue for a period of 99 years, subject to renewal of the application of its Articles of Incorporation.[218] In both instances, detailed provisions are made for the anticipated liquidation of the enterprise.[219]

(i) Relationship Among the States Participating in the Enterprisory Activity

In international air transport enterprises established directly between governments there are direct legal obligations and rights by which the participants are bound. In other enterprises more efforts towards the facilitation and removal of legal and other obstacles have to be exerted by the governments concerned, since there is not the same direct legal bond. However, in all types of air transport joint enterprises certain matters have to be undertaken by the governments involved, such as standardization of their aeronautical laws and regulations, easing or adjustment of the requirements of substantial national ownership and effective control, validation of certificates and licences of crews and aircraft, the exemption from taxation, etc. It must be pointed out that, without the cooperation of governments, the enterprises cannot shoulder their responsibilities and perform their activities.

Thus the SAS collaboration came into being mainly through the efforts of the Scandinavian Governments, who urged the parent companies to achieve the desired cooperation.[220] The SAS Agreement was in fact endorsed by the responsible Ministers, and the national legislatures were also involved since moneys were to be appropriated for the participant parent companies.[221] There is no civil aviation inter-governmental body parallel to SAS, but the heads of the aeronautical departments in the three countries hold periodic meetings to discuss measures of coordination, as, for example, in relation to the inspection and control of SAS

operations and the coordination of their positions with ICAO.[222] The three Scandinavian Governments have reached agreements as to, inter alia, the validation of certificates of crew members and the exemption of SAS equipment from payment of customs duties.[223] They have also agreed to provide guarantees to their national companies up to certain fixed sums.[224]

Concurrent with both CAA and EAA there are the inter-governmental bodies known as the "Higher Authority" and the "Authority", respectively. Perhaps because the latter body enjoys wider powers, not only in the control of the joint Corporation but also with relation to the East African Directorate of Civil Aviation, we find no provisions on governmental cooperation in the Act establishing that Corporation. On the other hand, the Salisbury Agreement contains provisions exempting the Corporation and its subsidiary companies from laws and regulations on the "audit and control of public accounts",[225] and from payment of taxes "on capital, income or profits",[226] and providing for an equitable sharing among the three countries of customs duties paid by the Corporation or its subsidiaries.[227] The Agreement also provides for the validation of the certificates and licences of aeronautical engineers, crews and aircraft.[228]

In the Treaty of Yaoundé the contracting States undertake to achieve uniformity in their aeronautical laws and regulations,[229] and also to take all necessary measures to enable the joint Corporation to carry out its activities as their chosen instrument.[230]

Air Afrique is exempt, in the territories of its member States, from all taxes and fees, except those for services rendered.[231] The parties to the Treaty agreed to authorize and facilitate the transfer of funds by their joint Corporation.[232] Member Governments participate also in the Committee of Ministers of Transport.[233]

2. The Proposed Arrangements

As indicated and briefly outlined in Chapter I, proposed transnational arrangements are at present in the process of negotiation and planning in many parts of the world. An attempt will be made here to analyse only three such proposed transnational arrangements: Air Union, Flota Aérea Latino-Americana (FALA) and the International Arab Airways Corporation (IAAC).

(a) Air Union

The concept of Air Union originated in the economic realities of European air transport, which required the avoidance of unrestricted competition in order to create a more favourable economic climate for airline operations.[234] Since the project was motivated primarily by the fear of competition and the inability of airlines to finance equipment in the jet age, the creation of Air Union became less urgent when these fears were allayed.[235]

The tendency towards integration in Western Europe had been the subject of considerable discussion long before the project became known as Air Union (May 27, 1959).[236] As far back as 1951,

for example, three schemes were advanced with a view to integration and cooperation among the airlines of those countries members of the European Economic Community (EEC). The first of these, the Bonnefous Plan, aimed at the creation of a European High Authority for transport, including air transport. Because of the special circumstances of European operations and the fact that such air services constituted a segment of intercontinental air services, the idea was dropped.[237] The second, the Sforza Plan (May 3, 1951), contemplated a single European airspace with a Controlling Authority that would determine the extent of participation of each country, on the basis of population, geographical situation and area.[238] The third, the Van de Kieft Plan (November 26, 1951), called for the establishment of a European consortium of airlines.[239]

Air Union was originally envisaged as a commercial pooling, with a system of sharing of international traffic according to agreed quotas[240] and with each participant airline retaining its identity.[241] It would be open also to non-European airlines that might wish to participate.[242] Although discussions have gone through many stages, the project still seems far from realization.

In December 1958 negotiations started among five airlines -- Air France, Lufthansa, Alitalia, KLM and Sabena -- with a view to establishing "Europair" to act as their common agency and the sole carrier designated by their governments for the conduct of international services. An initial agreement, intended to last for 99 years, was achieved in that year; but the project did not materialize due to lack of French ratification, which was withheld apparently

because of the expected loss of national identity at a time when French " nationalistic tendencies" were strong.[243]

KLM withdrew from the discussions in April 1959 mainly because of disagreement over the allocation of traffic quotas.[244] By May of that year a cooperation agreement was signed by Air France, Alitalia, Lufthansa and Sabena, with the operations of Air Union scheduled to commence on April 1, 1960.[245] The governments concerned gave their approval in principle, but difficulties arose in the application of the agreement and at the end of 1960 the whole idea had to undergo cautious reconsideration. It was then suggested that cooperation be limited for the time being to the technical sphere, extending gradually to commercial cooperation with a view to better distribution of services.[246]

In October 1962 France indicated its willingness to approve the Air Union convention (of 1959), but other participants rejected the French conditions which included a proposal to create an intergovernmental authority to control Air Union and a suggestion that preference should be given to equipping the projected airline with aircraft manufactured in the Common market countries.[247]

Insurmountable differences, apparently motivated by nationalistic policies and nationalistic economic rivalries, have been responsible for the failure of the prolonged negotiations. For example, while France attached great importance to the condition that Air Union should be subjected, through a joint body, to governmental control,[248] sharp disagreement existed as regards the powers of that body. According to the French proposal, it would be

headed by a ministerial committee which would control trading and operating policies as well as the development plans of the airlines.[249] Other potential Air Union members on the other hand held the view that the airlines should be allowed wide freedom of action.[250] During the 1964 conferences in which all EEC countries participated, discussions were held on the feasibility of establishing a relationship between the projected airline and the Common Market.[251]

Another aspect of disagreement relates to the initial organizational structure of Air Union. Thus, while West Germany, the Netherlands and Italy conceive of technical cooperation as an initial step leading to the ultimate goal of wider cooperation and development of a common aviation policy, France and Belgium press for a system of completely pooled operations from the outset.[252]

A further stumbling block is the question of allocation of traffic quotas among participant airlines. Under the proposed 1959 agreement the allocation would have been: France 34 per cent, West Germany 30 per cent, Italy 26 per cent and Belgium 10 per cent.[253] Comparable percentages of total traffic performance of the four airlines at the time were Air France 50 per cent, Lufthansa and Sabena 17.5 per cent each, and Alitalia 15 per cent.[254] By the end of 1961 those figures changed to France 52 per cent, Lufthansa 19 per cent, Alitalia 18 per cent, and Sabena 11 per cent.[255] The application of the 1959 proposed quotas was conditional upon the total performance of the four airlines increasing to 2,400 million tonne-kilometres, which event is anticipated in 1972.[256]

In recent years, however, Alitalia and Lufthansa have shown a higher rate of traffic growth than have Air France and KLM, and are reported to be demanding an increase in their proposed quotas.[257] Traffic results for 1964 appear to support those demands, since in that year Lufthansa recorded the remarkable increase of 28 per cent, compared to increases of 7 per cent and 7.3 per cent for Air France and KLM respectively.[258] Alitalia has also experienced a high rate of traffic growth, and in recent years achieved load factors higher than the average for ICAO contracting States.[259] The re-admission of KLM and the participation of Luxair in 1964 compounded the difficulty of fixing quotas, and it is obvious that the 1959 quota figures require thorough revision.[260] The following table, reported in 1964, sets out recent quota proposals of participant countries:[261]

	Quota proposals by:				
	Italy	France	Germany	Nether-lands	Belgium
For:	(%)	(%)	(%)	(%)	(%)
Italy	26.33	23.00	22.75	22.00	24.00
France*	27.33	32.50	31.50	27.00	31.00
Germany	27.33	26.00	26.75	24.00	25.00
Benelux	19.01	18.00	19.00	27.00	20.00
	100.00	99.50+	100.00	100.00	100.00

* Quotas include "reserved traffic" (i.e. that in, to and from former possessions) except in the Italian proposal.
\+ 0.50 per cent is left to the collective disposition of Air Union.

According to a report in 1965, a considerable measure of agreement has been reached with respect to the upgrading of KLM's share, which would be greater than those of Lufthansa and Alitalia but still less than that of Air France.[262]

The question of the "territorial" operations of Air France to the former French colonies in Africa and of Sabena to the Congo has been a further source of disagreement.[263] Finally, the thorny question of giving preference to aeronautical equipment manufactured in the Common Market countries is still unsettled.[264]

Although the prospects for agreement on all of these issues still seem remote, at least one recent accomplishment has been reported. In March 1965 new Articles of Association (prescribing the relationship among the airlines) and a new Convention (dealing with the role and relationships of governments) were drafted. The latter is now being studied at the political level.[265]

Improvements in the performance of Common Market airlines would seem to indicate that, though discussions on Air Union may continue for a considerable time, there is still little hope that a final agreement will be concluded in the near future.[266] Perhaps only the advent of the supersonic era will force the negotiators to realize the necessity of accomplishing the long sought cooperation.

(b) Flota Aérea Latino-Americana (FALA)

Another effort towards integration was made during the Latin American discussions of 1959-1960, aimed at the creation of a joint Latin American airline. The new organization was to be composed of the national airlines of Colombia, Chile, Peru, Panama and Ecuador, as chosen by their governments.[267] The participant airlines could be publicly owned, privately owned, or of partly

public and partly private ownership,[268] and admission would be limited exclusively to the airlines of Latin American States.[269] As initially envisaged in the Panama Conference of November 16, 1959 FALA would undertake all international air services.[270] However, the Santiago Conference of May 17 - 23, 1960 reserved certain categories of international traffic to the national airlines.[271]

Proposals for the legal structure of FALA have undergone certain changes. Thus while both the 1959 Panama Conference and the 1960 Santiago Conference sought the creation of an international company, the Lima Conference of June 29 and July 2, 1960 put forward a draft agreement suggesting the additional alternative of a consortium, similar to the SAS organization.[272] Since the constituent national airlines are only municipal corporate bodies, incompetent to create an international legal person, the participant States must take a very active and effective role in order to endow the suggested enterprise with corporate international legal personality. The Santiago Conference, however, had also in view the possibility of FALA being incorporated in one of the participant States.[273] Despite this, the suggested corporation, like Air Afrique, would be deemed to have a domicile in each of its participant States.

It was agreed at the 1959 Lima Conference that FALA's aircraft would be apportioned among the national registers according to the share-capital subscription of each participant airline.[274]

Finally, there have also been changes in the proposed organizational arrangements. Thus, according to the Panama Conference of 1959, FALA would be governed by a board of directors composed of five members, each appointed by his national airline for a period of three years.[275] Decisions would require a 4/5 majority vote for approval.[276] The 1960 Lima Conference introduced the qualification that each participant airline would have proportional representation on the board of directors related to the amount of its registered stock.[277]

c) The International Arab Airways Corporation (IAAC)

Attempts by Arab countries to create a transnational airline in the Middle East have so far been unsuccessful. The tendency to such cooperation first manifested itself in the League of Arab States as early as 1957, when the Air Transport Sub-Committee of the Communications Committee of the League adopted a recommendation[278] requesting member States to convene a conference to study the matter.

At the outset, the Cairo Conference of 1959[279] saw three possible legal structures for the proposed enterprisory activity: either the creation of a joint company to be registered and incorporated in one of the participant States, or the establishment of a consortium of national airlines similar to the SAS Consortium, or an international company endowed with international legal personality.[280] The second and third alternatives were preferred, and further studies in that direction were undertaken during the Beirut Conference (held between October 3 and 16, 1959).[281] As a result of the work of the economic and legal sub-committees of that

Conference two draft agreements were prepared. The first purported to establish an "international Arab air carrier" which would be of limited liability,[282] endowed with international legal personality according to its prescribed functions and purposes, and which would have, in particular:

(a) the right to enter into contracts;

(b) the right to own moveable and immoveable property and to dispose of the same, and

(c) the right to sue and be sued and to pursue all legal proceedings.[283]

The second draft agreement contemplated the establishment of a consortium of national Arab airlines designated by their governments.[284]

Recently, the Baghdad Agreement of April 17, 1961 (signed by six Arab countries),[285] expressed a preference for a joint corporation instead of a consortium although it did not expressly state that the proposed enterprise would be an international legal person. It is submitted that, if a positive consensus exists, the omission to state expressly in the constitutive instrument that the enterprise shall be subject to the rules of international law with respect to its legal existence and functioning, would not necessarily leave the corporation to be governed only by municipal law. Unless it acquires the nationality of a State and becomes subject solely to its municipal law, the proposed IAAC may well evolve as a true international company. This conclusion follows the trends of discussions as revealed in earlier reports of the Cairo and Beirut Conferences. On both occasions there was an apparent preference for an international company rather than a consortium, and the suggestion to establish a company incorporated under municipal law was dismissed.

Membership of the IAAC would be inclusive as regards Arab States who may wish to join at a later stage, after the enterprise has been established, and exclusive with respect to non-Arab States, the signatory States to the Baghdad Agreement having undertaken to honour the right of every Arab State to be admitted to membership.[286]

The Agreement makes provision for modifications in membership of the enterprise either by expulsion, withdrawal or admission.[287] After the first five years of its life a member would be entitled to withdraw from the Corporation on a year's notice.[288] The Agreement would be valid for 50 years and would be automatically renewable thereafter for a similar term unless two thirds of the members decide otherwise.[289] The suggested cooperation will have a pronounced impact on the scope and range of air services to be operated, eventually resulting in their expansion.[290]

The Baghdad Agreement leaves the question of registration of aircraft for the determination of the board of directors of IAAC,[291] which decision has to be taken by a two-thirds majority and in conformity with the provisions of the Chicago Convention.[292] There is a similar stipulation in the Beirut international company draft agreement specifically stating that registration of aricraft would be according to the determination of the Council of ICAO.[293] In the other Beirut consortium draft agreement there are provisions similar to those of the SAS Consortium Agreement of 1951; thus registration of aircraft would be equitably divided among the national registers of member States according to the proporations of their subscription to the capital.[294]

Another provision of the Beirut draft agreement of 1959 comes very close to being identical with paragraph 4.3 of the SAS Consortium Agreement:

> b) Every national corporation participating in the Consortium is regarded as owning the aircraft registered in its country in pursuance of paragraph (a) of this article. However, all aircraft belonging to the corporations which constitute the Consortium shall be regarded as owned by the Consortium, which shall be entitled in relation to third parties to exercise all rights pertaining to ownership of aircraft including the right to supervise, control, use, lease and so forth.[295]

However, a simpler provision, if practicable, would have vested ownership of aircraft in the proposed consortium and divided their registration among the member States.

In the two Beirut draft agreements and in the Baghdad Agreement there are more or less similar, if not identical, provisions relating to the administration or management of the proposed enterprise. Like EAA and CAA, but unlike Air Afrique, the proposed organization is to have one controlling organ, its board of directors. According to the Baghdad Agreement, the board -- which would be empowered to administer and run the business of the Corporation[296] -- consists of one representative of each member country, to be appointed by his government.[297] The offices of Chairman and Vice-Chairman are to rotate on a yearly basis among its members,[298] a system which might prove ruinous to the business of the enterprise especially if the board has a large membership. Meetings of the board are to be held on a quarter-yearly basis,[299] and would be lawfully convened

upon the attendance of a simple majority of the members, provided they represent at least two thirds of the votes.[300] However, on a second failure to attain the required quorum the meeting would be deemed lawful. Each membershas 5,000 votes allotted to him, and in addition one vote for every share held.[301] Decisions are to be reached by simple majority, except with regard to certain important matters (specified in the Baghdad Agreement) where three quarters of the votes cast are required.[302].

Management would be entrusted to a general manager appointed by the board, who would conduct the daily business of the Corporation.[304] It seems that, unless his powers are defined, he might suffer from interference in his managerial functions, since the only authority he enjoys would be delegated to him by the board.

Recently the League of Arab States prepared a draft agreement which purported to establish a civil aviation council for Arab States,[305] with functions, powers and duties similar to those of the Committee of Ministers of Transport established by the Treaty of Yaoundé.[306] However, unlike Air Afrique,[307] IAAC would not participate in the council in any capacity, whether advisory or otherwise. Detailed functions of the council, as enumerated in Article 3 of the Agreement, generally relate to measures of cooperation among the member States,[308] and include, inter alia, its authority to make recommendations to member States relating to international conventions on civil aviation; to study and recommend the adoption of international practices; to undertake the task of achieving uniformity in laws, regulations and terminology of civil aviation; to adjudicate upon disputes which may arise in the field of civil aviation between member States; etc.[309]

The board of directors of IAAC is to enjoy wide powers in the allocation of shares and the financing of the Corporation. The Baghdad Agreement fixes the capital of the proposed Corporation at 17 million pounds sterling,[310] divided into 170,000 shares[311] which would be subscribed in cash, except where the board otherwise decides.[312] Although membership is limited to governments, they would be entitled to offer up to 49 per cent of their shares to their nationals -- subject, however, to the proviso that no foreign capital would be allowed to participate, directly or indirectly.[313] It is anticipated that the shares alloted to a member State shall not exceed 20 per cent of the capital.[314] According to the schedule annexed to the Agreement, Iraq and the United Arab Republic would each subscribe up to 20 per cent, while Saudi Arabia and Kuwait would each be entitled to 15 per cent. The increase or decrease of capital would take effect upon a two-thirds majority decision of the board of directors, except in the case of admission of a new member State where a simple majority would suffice.[315] Only one fourth of the capital would be paid up upon entry into force of the Agreement, the balance being paid according to the decision of the board.[316]

On the commencement of each financial year, the manager of the Corporation would be required to present to the board of directors budget estimates for the coming year, as well as the final accounts of the Corporation for the preceding year, as certified by the auditors, and including a statement of any profits or losses.[317] The board would be required to submit to member governments, at the close of each financial

year, a report on the activities of the Corporation and its financial situation, together with the final accounts and balance of profits and losses, as well as the report of the auditors.[318] Decisions on distribution of profits would have to be made by two-thirds majority of the board,[319] which would be authorized to establish a general reserve fund through deduction of 10 per cent of the net profits until the equivalent of 50 per cent of the capital is accumulated.[320]

According to the Baghdad Agreement, the IAAC would be exempted from taxes and fees on profits[321] and on capital property, whether moveable or immoveable, in the territory of each member State, as well as from excise and customs duties on aeronautical equipment.[322] Further, it would be relieved of the national restrictions on the transfer of moneys.[323]

Political as well as economic difference in the Middle East have so far retarded the creation of the IAAC. The first of these factors was considered in Chapter I of this Study. To sum up, these political differences relate to "monarchy vs. socialism, free enterprise vs. controlled economy... political fighting, government coups, border disputes and surging nationalism".[324] Thus, for instance, political conflicts exist between Jordan and Egypt, Jordan and Iraq, Syria and Lebanon (over the border question),[325] and Egypt and Saudi Arabia.

On the other hand, a country like Lebanon -- whose national carriers have succeeded in obtaining perhaps the best economic performance in the Middle East -- are reluctant to risk integration of Arab carriers, with its danger of economic failure. Thus,the Lebanese delegation presented a note to the Beirut Conference of the Arab Ministers of Communications

(November 20 - 26, 1964) criticizing the proposed creation of IAAC. They cited the fact that the Lebanese air carriers perform nearly 30 per cent of the traffic carried by all Arab air carriers,[326] and pointed to the great probability of competition between the IAAC and the national carriers, who would still be responsible for performing regional operations, especially in view of the stipulation in the project concerning most-favoured-nation treatment.[327]

It would seem that the formation in August 1965[328] of the Arab Air Carriers Organization (AACO), patterened after IATA, marks a tendency to gradual cooperation with the ultimate aim of integration. The new cooperation would cover not only agreements on fares and rates but also rationalization of such matters as schedules and the technical fields of overhaul and maintenance of aircraft,[329] with the ultimate objective of pooling equipment and sharing revenues on an equitable basis.[330] Another instance of this realistic attitude of liberalization and gradual cooperation was the conclusion on March 25, 1963 of "the Agreement Relating to the First and Second Freedoms of the Air for Arab Civil Aircraft" between thirteen Arab countries.[331] That Agreement entered into force on June 18, 1965.[332]

NOTES TO CHAPTER III

1) A new joint airline was established between Singapore and Malaysia on May 15, 1966: see Chapter I under the subtitle (a) History and Politics, and note 68.

2) "Air Maghreb" is another proposed transnational organization, with Libya, Tunisia, Algeria and Morocco as potential participants.

3) ICAO - Circular 28-AT/4, p. 88.

4) For the legal status of Pools see Lemoine in "Les Pools dans l'Aviation Commerciale", Espaces, (April, 1946), p. 15, cited in ICAO - Circular 28-AT/4, p. 78 - where it is stated:" A pool does not constitute a merger since strictly speaking it does not mean merging operations; moreover, one of its purposes is, if not to allocate profits, at least to allocate revenue. Neither is it in any way a partnership, since there is no joint contribution of capital, and each of the parties works for his own account, bearing the losses and keeping the profits severally. Thus, it is evident that a pool is a commercial agreement, without special legal status and as such it is governed by the general law of contracts."

5) Id., p. 161.

6) Signed in Oslo, Norway on 8 February 1951, by the Swedish Airline (ABA), the Danish Airline (DDL) and the Norwegian Airline (DNL).

7) ICAO - Report On the Scandinavian Airlines System, Circular 30 -AT/5, p. 10, para. 20.

8) The participant States that signed and ratified the Treaty are: Cameroun, the Central African Republic, Chad, The Republic of the Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Mauritania, Niger, Senegal, and Upper Volta.

9) ICAO - AT-WP/847 - 28/12/65, Appendix, p. 14.

10) Ward Wright, "Air Afrique Emphasizes Measured Growth," Aviation Week and Space Technology, (November 29, 1965), p. 33.

11) World Airline Record, (Pub. Roadcap and Associates, Chicago, 1955), 5th ed., p. 32; CAA was created by legislation enacted in Salisbury (Southern Rhodesia) and on February 1, 1960 its ownership was transferred to the Central African Federal Government by virtue of the Central African Airways Corporation Act, 1960: See History of World Airlines, by R.E.G. Davies (Oxf. Univ. Press, London, 1964), pp. 415-416.

12) The Agreement of Salisbury, between the Governments of Southern Rhodesia, Northern Rhodesia (Zambia) and Nyasaland (Malawi).

13) EAA was established by the East African Airways Corporation Act, (Act No. 4, 1963), enacted by the President of Tanganyika and the Governors of Kenya and Uganda "on behalf of the East African Common Services Organization with the advice and consent of the East African Central Legislative Assembly". -- The East African Common Services Organization (EACSO) was established by the Agreement signed on December 9, 1961 between the three Governments; it succeeded the East African High Commission, established by Orders in Council (1947-1961) for the control and administration of certain matters of common interest, including civil aviation; see also H.L. Adams, "Aviation in East Africa", Interavia No. 2/1964, p. 227, who mentions that the EACSO Agreement was a necessary organizational arrangement on the independence of Tanganyika in 1961.

14) V. C. Slight, Regional Cooperation in East African Civil Aviation, Institute Term Paper - McGill, 1964, p. 22; see also Air Transport in Africa, ECA: Doc. E/CN. 14/TRANS/20 -- ICAO: Doc 8419 - AT/718, Appendix 4, p. 60, note (a).

15) Para. 1, sub-para 2. R.A. Nelson, in "Scandinavian Airlines System Cooperation in the Air," 20 JALC, (1953), p. 187, says that this "indicates the desire of the framers of the agreement to minimise political - nationalistic considerations as much as possible in the operations of the consortium".

16) The East African Airways Corporation Act, (Act No. 4, 1963), Section 7(1).

17) Article 2 of the Salisbury Agreement between the Governments of Southern Rhodesia (Rhodesia), Northern Rhodesia (Zambia) and Nyasaland (Malawi), signed on December 4, 1963.

18) Preamble to the Treaty, the Treaty of Yaoundé, of March 28, 1961, which established Air Afrique.

19) McDougal, Lasswell and Vlasic, Law and Public Order in Space, New Haven and London: Yale Univ. Press, 1963, p. 880.

20) Section 17 of the East African Corporation Act, 1963.

21) Article 10 of the Salisbury Agreement, December 4, 1963.

22) Article 11 of the Salisbury Agreement.

23) Para. 1, sub-para 3.

24) Para. 1, sub-para 4 of the Consortium Agreement of February, 1951; see also Justice Henrik Bahr, in "The Scandinavian Airlines System (SAS), Its Origin, Present Organization and Legal Aspects," Arkiv For Luftrett, (1961), p. 229.

25) Op. cit. supra, n. 18.

26) Article 2.

27) Article 3.

28) Ibid.; the Contracting States had further agreed in Article 1 of the Signatory Protocol to the Treaty Relating to Air Transport in Africa to "take the necessary measures to coordinate the activities of the (national) Corporations with those of Air Afrique."

29) Article 2, para. 2 of the Signatory Protocol, Supra, n. 28. The Committee of Ministers constituted by Article 8 of the Treaty of Yaoundé, acts as an advisory body for collaboration and general coordination of civil aviation policy between the contracting States who "shall endeavour to take into the highest consideration the Committee's opinion so as to avoid concluding inter-governmental agreements which may be prejudicial to the interest of the joint Corporation.": see Article 10, para. 3; emphasis supplied.

30) Para. 1, sub-para 1 of the Consortium Agreement of February 8, 1951.

31) According to Article 5(a) of the Treaty of Yaoundé, the private corporation member of Air Afrique held 34 per cent of the shares. That corporation enjoyed a membership different from that of member States and was limited to its capacity as a shareholder. This private interest (now held by UTA and Caisse Dépots et Consignation) was reduced to 28 per cent when Togo adhered to the Treaty in 1964: see Wright, supra note 10), p. 33.

32) This is deduced from Section 5 of the East African Airways Corporation Act, 1963, which describes the organizational arrangements of the Corporation; as to CAA, see Article 1 of the Salisbury Agreement, 1963.

33) Article 13 of the Treaty of Yaoundé, 1961; it should be noted that the French Airline UTA does not have a voice here.

34) H. Bahr, does not say that the Consortium possesses legal personality, but agrees with Dutoit that it stands, as a type of international cooperation, between pools and the true international company: op. cit. supra note 24, p. 222 - According to R.A. Nelson, op. cit. supra note 15, p. 180, the Consortium is a partnership of the three parent companies.

35) Bahr, op. cit. supra, note 24, p. 220; under Norwegian law the Consortium does not possess any legal personality.

36) W.H. Wager, "International Airline Collaboration In Traffic Pools, Rate-Fixing and Joint Management Agreements," 18 JALC (1951), p. 305.

37) Id., p. 309

38) Para 1, sub-para. 1 of the Consortium Agreement of February 8, 1951.

39) Para 2, sub-para. 1.

40) Para 2, sub-para 2.

41) Bahr, Op. cit. supra, note 24, p. 218

42) ICAO - Circular 30-AT/5, 1953, p. 8, para. 12; emphasis supplied.

43) Id., p. 8, para. 13.

44) Jacob Sundberg, "Is SAS a Legal Person?", Arkiv for Luftrett (1964), pp. 165-172.

45) Para. 9.4 of the Consortium Agreement, 1951.

46) Bahr, Op. cit. supra., note 24, p. 221; this view has been expressed by Dutoit and is approved by Bahr.

47) Ibid.

48) Article 5 of the Salisbury Agreement.

49) Article 4.

50) Section 4 of the Act of 1963.

51) V.C. Slight, Regional Cooperation in East African Civil Aviation, Institute Term Paper (McGill, December 1964), p. 22.

52) Article 5(b) of the East African Common Services Organization Agreement, Signed on December 9, 1961.

53) Article 5 of the Treaty of Yaoundé, 1961; emphasis supplied.

54) Article 4 of the Treaty of Yaoundé; emphasis supplied.

55) Article 5 of the Treaty of Yaoundé.

56) Article 4 of the Treaty of Yaoundé; emphasis supplied.

57) Article 5 of the Treaty.

58) Emphasis supplied.

59) Article 1 of the Articles of Incorporation

60) C. Wilford Jenks, The Proper Law of International Organizations, (1963), p. 4.

61) Article 3; emphasis supplied.

62) Air Afrique has its head office in Dakar, Senegal.

63) Jenks, Op. cit. supra., note 60, p. 12.

64) ICAO-Report on the Scandinavian Airlines System, Circular 30-AT/5, 1953, p. 8, para 12.

65) H. Bahr, "The Scandinavian Airlines System, Its Origin, Present Organization and Legal Aspects," Arkiv For Luftrett (1961), p. 221.

66) Para 2., sub-para 2, of the Consortium Agreement: sharing of capital subscription, profits and losses are to be in the ratios ABA, 3/7; DDL, 2/7; DNL 2/7. According to para 7, sub-para. 2 each company shall be represented by not more than six voting members.

67) Para 8, sub-para 4 of the Consortium Agreement.

68) Para 7, sub-para 2, of the Consortium Agreement.

69) Bahr, op. cit. supra, note 65, p. 209.

70) Para 7, sub-para 3.

71) Para 7, sub-para 4.

72) Para 8, sub-para 1.

73) Para 9, sub-para 6.

74) Para 9, sub-para 2.

75) Para 9, sub-para 3; see also para 10, sub-para 3.

76) Para 9, sub-para 4.

77) Walter H. Wager, "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Management Agreements", 18 JALC, 1951, p. 313.

78) Id., quoted at p. 316.

79) Para 10, sub-para 1.

80) R.A. Nelson, "Scandinavian Airlines System Cooperation in the Air", 20 JALC (1953), p. 188.

81) Para 10, sub-para 2.

82) Para 10, sub-para 3.

83) Article 2.

84) Article 3; by article 3 and section 2(2) of Annex A, decisions are taken by a unanimous vote; see also Section 1 of Annex A. By section 2(3) of Annex A the Higher Authority is empowered to give directives to the Corporation and the Corporation must give effect thereto.

85) Article 2; see also Section 5 of Annex A.

86) Section 7 (1) of Annex A.

87) Section 7(2)(d) of Annex A.

88) Section 7(2)(f) of Annex A.

89) Section 9(3) of Annex A.

90) Section 9(4) of Annex A.

91) Article 5 of the Salisbury Agreement.

92) This question will be considered later in this Chapter under sub-title "(g) Registration and Nationality of Aircraft".

93) Article 5(a) of the EACSO Agreement, (1961).

94) The Assembly consists of a Speaker, fifteen Ministers representing the three States, the Secretary General and the legal secretary of the Organization, twenty-seven elected members and other temporary ministerial members that may be appointed: Article 16 of the Constitution of the EACSO; the fifteen Ministers are the members of the five Ministerial Committees: see Article 17(1).

95) Article 4 of the Constitution of EACSO.

96) Article 5(1) of the Constitution of EACSO.

97) Article 5(2) of the Constitution of EACSO; the Ministerial Committees are five, including the 'Communications Committee', and each consists of three Ministers, each of whom is designated by his Government: See Articles 8 and 9, respectively of the Constitution of EACSO.

98) Act No. 4 of 1963.

99) From the Report of the Commission on the East African Airways Corporation (dated May 11, 1965), which was headed by Wheatcroft, it is apparent that by the Corporation is meant its board of directors: See p. 9 of the Report.

100) Section 5(1) of the East African Airways Corporation Act, 1963.

101) Section 5(2) of the Act.

102) Section 5(3) of the Act.

103) Section 5(5) of the Act.

104) Section 6(1) of the Act.

105) Section 6(3) of the Act; the 'Wheatcroft Commission' op. cit. supra. note 99, recommended that the general manager should be made a full member of the Corporation and be allowed to vote: see p. 11 of the Report.

106) Section 6(2) of the Act.

107) Section 7(2) of the Act.

108) Section 5(2) of the Act.

109) Section 14(1) of the Act.

110) Section 14(2) of the Act.

111) Article 8 of the Treaty of Yaoundé, 1961.

112) Ibid.

113) Article 11 of the Treaty of Yaoundé, 1961.

114) Article 8 of the Treaty of Yaoundé, 1961.

115) Article 9 of the Treaty of Yaoundé, 1961.

116) Article 13 of the Articles of Incorporation.

117) Article 14 of the Articles of Incorporation.

118) Article 15 of the Articles of Incorporation.

119) Article 16 of the Articles of Incorporation, as amended by the extra-ordinary general meeting of shareholders of November 19, 1962.

120) Ibid.

121) Article 18 of the Articles of Incorporation.

122) Ibid.

123) See Article 19 of the Articles of Incorporation.

124) Ibid.

125) Ibid.

126) Article 21 of the Articles of Incorporation, as amended by the decision of the extraordinary general meeting of shareholders of November 19, 1962.

127) Ibid.

128) Article 27 of the Articles of Incorporation.

129) See note 117, supra.

130) Article 28 of the Articles of Incorporation.

131) Article 29 of the Articles of Incorporation.

132) Article 30 of the Articles of Incorporation.

133) Article 32 of the Articles of Incorporation.

134) Article 33 of the Articles of Incorporation.

135) Article 35 of the Articles of Incorporation.

136) Article 36 of the Articles of Incorporation.

137) Ibid.

138) Para 2, sub-para 2, of the Consortium Agreement, 1951.

139) Para 12, sub-para 1, of the Consortium Agreement.

140) Para 4, sub-para 1, of the Consortium Agreement.

141) "The New SAS 'United Nations of the Air'", Interavia, vol. 6, No. 7, (1951), p. 366.

142) Bahr, "The Scandinavian Airlines System (SAS), Its Origin, Present Organization and Legal Aspects," Arkiv for Luftrett, (1961), p. 211, note 17.

143) Id. p. 211, note 18.

144) Para 4, sub-para 1 of the Consortium Agreement.

145) Para 5, of the Consortium Agreement.

146) ICAO - Report on the Scandinavian Airlines System (SAS), Circular 30-AT/5 (1953), p. 10, para. 20.

147) Para 11, sub-para 3 of the Consortium Agreement.

148) Mention of this body was already made under sub-title '(e) Organizational Arrangements' in this Chapter.

149) Article 20 of the Agreement of Salisbury, 1963.

150) Ibid.

151) Article 21 of the Salisbury Agreement.

152) Article 23 of the Salisbury Agreement.

153) Article 22 of the Salisbury Agreement.

154) Section 10(2) of Annex A to the Salisbury Agreement, 1963.

155) Section 6 of Annex B to the Salisbury Agreement, 1963.

156) Ibid.

157) These are enumerated in Section 4(1) of Annex B, and include, inter alia, redemption of loans and payment of interest thereon, and depreciation of assets.

158) Section 7 of Annex B to the Salisbury Agreement.

159) Section 8(1) of Annex B.

160) Section 8(2) of Annex B.

161) Section 11 of Annex B.

162) Section 15 of Annex B.

163) Section 12 of Annex B.

164) Section 4 of the East African Airways Corporation Act, 1963 (Act No. 4, 1963).

165) Slight, Regional Cooperation in East African Civil Aviation, McGill - Institute Term Paper (December 1964), p. 22; see also Roadcap and Associates, The World Airline Record, 5th ed. (1955) p. 25.

166) Roadcap and Associates, supra, p. 25.

167) Slight, supra, p. 23.

168) Report of the 'Wheatcroft Commission' dated (May 11, 1965), p. 5, paras. 16 and 15.

169) Id., p. 5, para 15.

170) Id., p. 5, para. 17.

171) The details are enumerated in sub-paragraphs (a) to (f) of Section 14(1) of the East African Airways Corporation Act, 1963.

172) Section 14(1) of the East African Airways Corporation Act, 1963.

173) Section 14(2) of the East African Airways Corporation Act, 1963.

174) Section 12 of the Act.

175) Section 13, paras. (1) and (2) of the Act.

176) Section 8 of the Act.

177) Report of the 'Wheatcroft Commission', op. cit. supra, note 168, p. 2, para 3.

178) Id., p. 2, para 4.

179) Ward Wright, "Air Afrique Emphasizes Measured Growth", Aviation Week and Space Technology,(November 29, 1965), p. 33; see also Article 5(a) of the Articles of Incorporation.

180) Article 5(b) of the Articles of Incorporation.

181) Article 6 of the Articles of Incorporation.

182) Article 8 of the Articles of Incorporation, read in conjunction with Article 5(b).

183) Articles 10(a) of the Articles of Incorporation as amended by extraordinary general meeting of January 4, 1963, and para (b) of Article 10.

184) Article 12 of the Articles of Incorporation.

185) Article 38 of the Articles of Incorporation.

186) Ibid.

187) Article 39 of the Articles of Incorporation.

188) Ibid.

189) Ibid.

190) Para 6 of the Consortium Agreement, 1951.

191) Para 4, sub-para 1(b); emphasis supplied.

192) These are 3/7 for ABA's aircraft, 2/7 for DDL's aircraft, and 2/7 for DNL's aircraft.

193) The first part of para 4, sub-para 3; emphasis supplied.

194) The second part of para 4, sub-para 3; emphasis supplied.

195) Ibid.

196) Para 6.

197) H. Bahr, Op. cit. supra., note 142, p. 225.

198) ICAO Circular 30-AT/5 - AT/5, (1953), p. 7 para 11(e) states that "(l)egal title for purpose of registration is retained by the separate parties ..." - A similar view is that "(t)he aircraft are formally owned by the parties registered as their owners ...": see "The New SAS", Interavia, vol. 6, No. 7, (1951) p. 366.

199) R.A. Nelson, "Scandinavian Airlines System Cooperation in the Air", 20 JALC, (1953), p. 188.

200) It cannot be a real trust relationship since there is no clear intention to create a trust.

201) Bahr, Op. cit. supra , note 197, p. 226.

202) Articles 7 and 8 of the Agreement.

203) Article 8.

204) V.C. Slight, Op. cit. supra, note 165, p. 28; the East African Airways Corporation Act does not make any provision in this respect.

205) Ibid.

206) The first sentence of Article 7 of the Treaty.

207) Ibid.

208) The second sentence of Article 7.

209) The first sentence of Article 7.

210) M.S. McDougal, H.D. Laswell, and I.A. Vlasic, Law and Public Order In Space, New Haven and London: Yale University Press (1963), p. 967.

211) Para. 15, sub-para 1.

212) Para 15, sub-para 2.

213) Para 15, sub-para 7.

214) Article 36 of the Articles of Incorporation.

215) Article 16 of the Treaty of Yaoundé, 1961.

216) Article 13 of the Treaty of Yaoundé, 1961.

217) Para 18, sub-para 1.

218) Article 4 of the Articles of Incorporation.

219) Article 45 of the Articles of Incorporation of Air Afrique; para 16 of the SAS Consortium Agreement, 1951; and Article 44 of the Baghdad Agreement, 1961.

220) Pressures were exerted by the Ministers of Transport to achieve this goal: see W.H. Wager, "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Management Agreements", 18 JALC, (1951), p. 309.

221) R.A. Nelson, "Scandinavian Airlines System Cooperation in the Air", 20 JALC, (1953), p. 186.

222) H. Bahr, "The Scandinavian Airlines System (SAS), Its Origin, Present Organization and Legal Aspects", Arkiv For Luftrett, (1961), p. 232.

223) ICAO, Report on the Scandinavian Airlines System, Circular 30-AT/5, (1953), p. 12, para 25.

224) Id., p. 13, para 29.

225) Article 24.

226) Article 25.

227) Article 27.

228) Article 33.

229) Article 11.

230) Article 12.

231) The Annex to the Treaty of Yaoundé, 1961, "Concerning Fiscal and Financial Provisions ...", para 1.

232) Id., para 3.

233) This was considered earlier under Organizational Arrangements.

234) "Air Union or Internationalization of Losses", Interavia, (1962) vol. 7, p. 833.

235) H.A. Wassenbergh, Post-War International Civil Aviation Policy and the Law of the Air, The Hague, (1962), p. 168.

236) Prior to this date it was termed "Europair": see Bin Cheng, The Law of International Air Transport, London (1962), p. 276.

237) Wassenbergh, supra, note 235, p. 79.

238) Id., p. 80.

239) Ibid.; see also E.A.G. Veroploeg, The Road Towards A European Common Air Market, McGill, Thesis (1963), pp. 142, 145.

240) Bin Cheng, supra, note 236, p. 276; cabotage traffic would be excluded.

241) Wassenbergh, supra, note 235, p. 167.

242) Veroploeg, supra, note 239, p. 205.

243) S. F. Wheatcroft, Air Transport Policy, London, (1964), p. 109.

244) The Aeroplane and Astronautics, February 22, 1964, p. 190.

245) Wassenbergh, supra, note 235, pp. 166-167; see also The Aeroplane and Commercial Aviation News, August 2, 1962, p. 14.

246) Wassenbergh, supra, note 235, p. 167.

247) Wheatcroft, supra, note 243, p. 109.

248) Flight International, January 24, 1963, p. 133.

249) The Aeroplane and Commercial Aviation News, November 5, 1964, p. 11.

250) "The State of Air Union", Interavia No. 2/1965, p. 210.

251) Ibid.; While Western Germany favours a private association of airlines, the Netherlands prefers a mixed organization with both governmental and airline participation: see "Air Union Talks Again", Interavia No. 3/1964, p. 311..

252) The Aeroplane and Commercial Aviation News, March 25, 1965, P. 11.

253) The Aeroplane and Commercial Aviation News, August 2, 1962, p. 14.

254) Ibid.

255) Flight International, January 24, 1963, p. 134.

256) Flight International, February 13, 1964, p. 238.

257) Ibid.; see also The Aeroplane and Commercial Aviation News, January 17, 1963, p. 11; Flight International, February 13, 1964, p. 238, and Aviation Week and Space Technology, July 20, 1964, p. 29.

258) "1965: A Great Year for Air Transport", ITA Bulletin No. 12/21 March 1966, p. 329.

259) The Aeroplane and Commercial Aviation News, July 23, 1964, p. 14.

260) "Air Union Talks Again", Interavia, No. 3/1964, p. 311.

261) The Aeroplane, supra, note 259, p. 14; see also Flight International, July 9, 1964, p. 48.

262) The Aeroplane and Commercial Aviation News, April 1, 1965, p. 7.

263) "Air Union Talks Again", supra, note 260, p. 311; see also The Aeroplane and Commercial Aviation News, August 2, 1962, p. 14.

264) The Aeroplane and Commercial Aviation News, April 1, 1965, p. 7.

265) Ibid.

266) Aviation Week and Space Technology, December 14, 1964, p. 33.

267) J. Enrique Gaviria, The Flota Aerea Latino Americana (FALA) and Its Place in the Latin American Common Market, McGill - Institute Term Paper, 1965, p. 30, note 69.

268) Id., p. 32.

269) Id., pp. 29-30.

270) Id., p. 30.

271) Id., p. 31.

272) Id., pp. 29, 31 and 32.

273) Id., p. 31.

274) Id., p. 30.

275) Ibid.

276) Ibid.

277) Id., p. 32.

278) The Report of the Cairo Conference of March 5 - 17, 1959, p. 1.

279) The Conference was convened between March 5 and 17, 1959 and was attended by delegates from Saudi Arabia, the United Arab Republic and Lebanon.

280) Report of the Cairo Conference, 1959, p. 5, para. 1, subparas. 1-3.

281) See p. 3, para. 2 of The Report of the Beirut Conference; the Conference was attended by the delegations of Iraq, Saudi Arabia, the United Arab Republic, Lebanon and an observer from Morocco.

282) Articles 17 and 18 of the Beirut draft agreement for the establishment of an International Arab carrier.

283) Id., Article 16.

284) Article 1 of the Beirut draft agreement for the establishment of a consortium of Arab International air carriers.

285) The Agreement of April 17, 1961 "Establishing the International Arab Airways Corporation"; the sixth signatory State to which Syria which signed on February 27, 1964. The Agreement has not been ratified.

286) Article 4.

287) Article 39 of the Baghdad Agreement, 1961.

288) Article 38.

289) Article 49.

290) The Report of the Cairo Conference of March 5-17, 1959 mentions (in para. 2, sub-paras. 1 and 2, at p. 7) the inability of Arab national airlines to operate long range services, and that while the governments grant traffic rights to foreign carriers their airlines are handicapped by such inability from exercising the reciprocal rights granted in exchange; see also p. 2, para 1, sub-para 1 of the Beirut Conference (October 3-16, 1959), draft agreement of the international company.

291) Article 32.

292) Ibid.

293) Article 31.

294) Article 7 (a).

295) Article 7 (b).

296) Article 18 of the Baghdad Agreement; similar provisions are found in Article 19 of the international company draft agreement and in the first part of Article 9 of the consortium's draft of 1959.

297) Article 18 of the Baghdad Agreement; identical provisions are laid down in Article 19 of the draft agreement of 1959 for the establishment of an international company, and in Article 8 (a) of the 1959 alternative draft for the creation of a consortium.

298) Article 21 of the Baghdad Agreement; the international company's draft and the 1959 Consortium's draft had similar provisions in articles 22 and 8 (b) respectively.

299) Article 22 of the Baghdad Agreement; meetings may also be convened on the iniative of the chairman or upon a reasoned request submitted by the general manager and two members of the board.

300) Article 23 of the Baghdad Agreement; this is identical with Article 24 of the 1959 international company's draft; in article 8(c) of the consortium's draft of 1959, the required quorum is three-quarters of the members.

301) Article 24 of the Baghdad Agreement; there are identical provisions in articles 25 and 10 of the 1959 international company's and the consortium's drafts, respectively.

302) Article 25 of the Baghdad Agreement; a similar provision, but of limited scope in the matters specified, is Article 26 of the 1959 international company's draft; and also Article 10 of the consortium's draft.

303) Article 20 of the Baghdad Agreement; excepted are certain matters reserved for the board to deal with; article 21 of the 1959 international company's draft provides for the appointing of a committee instead of a general manager.

304) Ibid.

305) The Cairo Agreement of March 21, 1965.

306) Article 8 of the Treaty of Yaoundé, 1961.

307) Ibid.

308) Potential participants are the members of the League of Arab States and other Arab States: Article 1(b) of the Cairo Agreement, 1965.

309) Article 3 of the Cairo Agreement, 1965.

310) Article 6 of the Baghdad Agreement.

311) Article 7.

312) Article 12.

313) Article 13.

314) Article 9(1).

315) Article 8.

316) Article 10.

317) Article 35.

318) Article 36.

319) Article 37.

320) Ibid.

321) Article 28.

322) Article 29 (1).

323) Article 30.

324) L.L. Doty, "Conflicts Hamper Arab Bloc Formation," Aviation Week and Space Technology (May 2, 1966), p. 35.

325) Id., p. 37 and 38.

326) Page 9 of the note.

327) Page 10.

328) The Agreement was signed on August 25, 1965; see its Article 13. The founding member airlines are: Royal Jordanian Airlines, Sudan Airways; Iraqi Airways; Saudi Arabian Airlines; Syrian Arab Airlines; United Arab Airlines; Yemen Airlines; Kuwait Airways; Middle East Airlines; Air Liban; Lebanese International Airways; Trans-Mediterranean Airways, and the Lebanese Airlines for Emergency Transportation: see Aviation Week and Space Technology, (November 15, 1965), p. 52.

329) Doty, supra, note 324, p. 35.

330) Id., p. 36; see also Article 3 of the Constitution of the AACO.

331) See the preamble of the Agreement. These countries are: Jordan, Tunisia, Algeria, the Sudan, Iraq, Saudi Arabia, Syria, the United Arab Republic, Kuwait, Lebanon, Libya, Yemen and Morocco.

332) Address by Mr. Aárif Záhir (Assistant Secretary General (for Economic Affairs) of the League of Arab States) to the Cairo meeting of August 23, 1965 of the representatives of Arab Airlines.

CHAPTER IV

THE LEGAL STRUCTURE OF AN INTERNATIONAL AIRLINE

The establishment of an international airline as distinct from an airline incorporated under a system of municipal law poses certain legal problems. These include, most importantly, the acquisition by the airline of international legal personality and questions relating to its transnational activities.

It is apparent that such a joint enterprise must be constituted by international legal persons in order to acquire itself the attributes of an international legal person. If, however, its participants are, or include, legal entities other than States -- such as private, mixed or public corporations of municipal law -- it must be endowed by the States concerned with the necessary "functional" legal capacity on the international plane.

Such grant of international legal personality may be explicitly stated in the constitutive instrument establishing the enterprise. It is submitted that the declaration of international legal personality in the constitution of the enterprise will not be conclusive as to whether the body created does thereby possess the necessary attributes. Generally, these are to be gathered from provisions relating to its functions, rights and duties. Hence, even in the absence of a specific grant, such capacity may be inferred from the text of the constitution of the enterprise.

Examples of the grant of legal personality in the constitutive instrument may be found in the Agreements establishing international corporate bodies, such as the Articles of Agreement of the International Monetary Fund and of the International Bank for Reconstruction and Development, each of which provides that the Fund and the Bank (respectively):

> shall possess full juridical personality, and in particular, the capacity:
>
> (a) to contract;
> (b) to acquire and dispose of immoveable and moveable property;
> (c) to institute legal proceedings.[1]

Such grant of legal capacity is derived from public international law, and it cannot therefore be assumed that it emanates from the laws of the member States constituting the corporate body. In the opinion of C. Wilford Jenks:

> /I/t is as inherently fantastic as it is destructive of any international legal order to regard the existence and the extent of legal personality provided for in the constitutive instrument of an international organization as being derived from, dependent upon, and limited by, the constitution and laws of its individual member States.[2]

Some existing international organizations provide helpful guidance to those contemplating the creation of an international airline. Thus, Article 104 of the United Nations Charter provides:

> The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Such provision was found to be necessary for the purposes of some national laws, since it is the national law which determines whether a particular body, not incorporated thereunder, will have legal capacity.[3] It seems that such a provision would establish municipal juridical personality in the territory of each member State;[4] but it does not add or enlarge upon the international personality of the Organization, which may be gathered from its functions as contained in the Charter. It is therefore not surprising that the International Court of Justice, when examining the question of legal capacity of the United Nations, applied a functional approach in distinguishing international organizations possessed of legal personality from the more familiar subjects of international law, viz States. The famous pronouncement was delivered in the Case of Reparations Suffered In the Service of the United Nations,[5] where the Court considered as a premise that the subjects of law under any legal system are not necessarily identical with respect to their nature, or with respect to the extent of their rights.[6] By looking into the functions and range of the activities of the Organization, the Court arrived at the conclusion that the United Nations was possessed of international

legal personality which, in the circumstances, enabled it to bring international claims. In its opinion:

> ... the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.
>
> Accordingly, the Court has come to the conclusion that the Organization is an international person ...[7]

The above finding is based on the functions with which the Organization has been entrusted. Thus there may be different types of bodies corporate, depending on the different functions entrusted to them.

The similarity of international public organizations to international corporations lies in the fact that both may possess corporate legal personality for the purposes of the discharge of their functions or part thereof. With the varying degrees of such functions in mind, the analogous situation of the natural legal person under municipal law, as compared with the different types of municipal corporations, may be used. Therefore,

on the international plane, the sovereign State may be considered the equivalent of the natural legal person, while the international corporate bodies can be regarded as the fictitious bodies of international law, equivalent to corporations of municipal law.

One can envisage situations in which both public international organizations and other corporate bodies of international law may be involved in identical transactions with third parties. These would relate to contracts, torts, the acquisition and disposition of realty and personalty, etc. On the other hand, there may be major differences with respect to the extent of the legal personality enjoyed by each type of international body, as for example, the possession of privileges and immunities. It is submitted that a multinational airline company, constituted as an international corporation should not be accorded privileges and immunities that are enjoyed, at present, by global and some regional organizations. This is because the former is established as a commercial venture, with the object of providing public services for profit. In the event of clothing it with privileges and immunities, the users of air transport would be placed in the difficult situation of being unable to present their legal claims against the enterprise in the most convenient forums.

Since an international airline would be mainly occupied with performing international air services, its activities would no doubt give rise to legal transactions involving foreign elements, either in relation to the enterprise itself or relating

to the legal systems of the places of departure and destination. In the first-mentioned case, it may be asserted that no general principles of conflict of laws have yet crystallized, although they are in the process of being formulated.[8] Thus it has been suggested that the international body corporate may have an internal system of law comparable to that of the municipal law of a State. This will primarily emanate from international law, but may incorporate, by adoption, a selected system of municipal law or part thereof, either generally or for the purpose of a particular transaction as the law chosen by the parties to govern such a transaction. The Bank for International Settlement is but one example for it adopts the municipal law of Switzerland,[9] though its international legal personality emanates from a treaty between its member States and the State granting its Charter.[10]

It is also open to an international corporate person to adopt either the rules of general international conventions to which it is not a party; or general principles of law (including private and public international law); or its own domestic law, if sufficiently formulated; or, finally, a certain municipal legal system.[11] On many occasions, however, the adoption of a municipal legal system may be preferred[12] (especially for contracts entered into with individuals) to general principles of law, which may not yield the desired specific rights and duties to individuals.[13] There are strong indications that such a course should be applied to the international airline company, since it would primarily

transact business with individuals. In that way, the adopted national legal system or part thereof may be incorporated into the "personal law" of the international corporation. The adoption of the substantive law of a national legal system would not encroach upon the international character of the corporation if it is not coupled with submission to the jurisdiction of that legal system.[14] The adoption of either of these courses would depend on the preferred policy for each type of international body corporate. In the present development of the law, it would appear that the adoption of a definite legal system of a member State of the multinational airline, coupled with a wide measure of submission to the jurisdiction of the courts of one or more of those States, would more adequately satisfy the practical business needs of the enterprise. Before such measures are brought into being, the enterprise must of necessity have been recognized by its member States, and also by the other third States with which it may become involved in transacting business.

Recognition by the constituting States may be declared in the constitutive instrument or else may be implied from their conduct towards the enterprise. The more difficult question would be that of recognition by third States. Here, it may be said that there is no legal form required, and that third States may not consider it a duty to pronounce formally that they recognize such international body. Thus recognition may not be clearly formulated.[15] However, recognition may be implied from

tacit acquiescence of third States: for example, either by their entering into legal transactions with the international enterprise, or by allowing it to operate within their territorial domain. In the case of a multinational airline company constituted as a subject of international law, the recognition by such third States will mainly take the form of accepting it as the designated joint airline of its constituting States, permitted to perform international carriage to and from the territory of such third States. Recognition may also be implied from their permission for transactions between the international corporation in question and their commercial firms, which may involve the sale or lease of flying equipment, the performance of repairs, or other work.

It is submitted that most of the legal transactions and occurrences that may arise by reason of the activity of the international airline for purposes of international carriage by air will be governed by the rules of the Warsaw Convention, along with its subsidiary Protocol and Convention (The Hague and Guadalajara). It is submitted that the type of legal personality of the airline, whether international or municipal, will not enter the picture. The test will be, as it has always been, the places of departure and destination. By applying these rules of private air law conventions, jurisdiction of municipal courts will inevitably be accepted. This, it is contended, will not disturb the international legal personality of the enterprise, as it will provide the users of air transport with easy access

to the satisfaction of their legal claims, since the applicable rules of these conventions have so far gained universal acceptance. The submission of the enterprise to municipal law may thus enhance its commercial activities by encouraging potential users of air transport to enter into legal transactions with it.

Comparisons in this respect with the World Bank point to a similar, though lesser, degree of submission to municipal jurisdiction. Thus, the Bank is liable to suit under certain conditions in the competent courts of one of its member countries, provided that such suit is not brought by a member State or a person claiming through it. The acceptance of municipal jurisdiction in the case of the Bank was for the similar reason of encouraging, instead of discouraging, potential investors.[16] It is therefore suggested that an international body corporate may be possessed both of international corporate personality and juridical personality before municipal systems of law. However, the degree and scope of international personality will become limited the more the enterprise prefers to submit to national jurisdiction. This will become more apparent if the transnational airline does not enjoy the privileges and immunities usually accorded to global organizations, for practical reasons dictated by commercial necessity. It seems that a narrower measure of international personality will be sufficient for the fruitful performance of the commercial operations of such an international airline, since the reasons for establishing it as an international

person arise mainly from the desire to bring its equipment under united international ownership, instead of dividing it among national entities.

However, other questions -- such as disputes among the member States or their participating airlines -- may call for settlement by international arbitration, since there would be an imminent danger of denial of justice if the matter to be adjudicated upon was entrusted to the national courts of any one of the constituting States. Alternatively, the settlement of such disputes may be entrusted to an organ of the international corporation, with the right to appeal therefrom to international arbitration.

Hence, an international body corporate may be subjected to international law generally, and to municipal law in certain specified matters. This has been the practice, though with varying degrees, of the World Bank and the European Coal and Steel Community. In the case of the World Bank, it is conceded that it possesses international legal personality (though this is not specifically declared in its constitutive instrument) for it is the subject of international legal rights and duties and is entrusted with power to conclude treaties with member and non-member States.[17] On the other hand Article 6 of the treaty of the European Coal and Steel Community seems to establish both municipal and international legal personality.[18] Similarly, Euratom enjoys international legal personality, since it may enter into treaties with its member States and with third States.[19]

NOTES TO CHAPTER IV

1) See Article 9 (2) of the Fund Agreement and Article 7 (2) of the Bank Agreement cited by C.W. Jenks, "The Legal Personality of International Organizations", 22 B.Y.I.L. (1945), p. 269.

2) Jenks, supra, pp. 270-271.

3) Id., p. 270

4) Evidence of the municipal legal personality of the United Nations is further found in the incorporation of the Convention on Privileges and Immunities of the United Nations, Article 1 of which provides that the Organization possesses "juridical personality" and has the capacity to contract, institute legal proceedings and acquire and dispose of immoveable and moveable property: see J.G. Starke, An Introduction to International Law, 5th ed. (1963), p. 467.

5) I.C.J. Reports (1949), p. 174.

6) Id., p. 178.

7) Id., p. 179.

8) C.W. Jenks, The Proper Law of International Organizations (1963), p. 6.

9) D.W. Bowett, The Law of International Institutions (London 1963), p. 296.

10) Sir J.F. Williams, "The Legal Character of the Bank for International Settlements," 24 Am. J. Int'l Law (1930), pp. 670-671.

11) Bowett, supra, note 9, pp. 296-297; Jenks, supra, note 8, pp. 7 and 8.

12) Jenks, supra, note 8, p. 8.

13) Bowett, supra, note 9, pp. 298-299.

14) Jenks, supra, note 8, p. 8.

15) M.S. McDougal, H. Lasswell and I.A. Vlasic, Law and Public Order in Space, (1963), p. 897.

16) A. Broches, "International Legal Aspects of the Operations of the World Bank," Recueil des Cours /III/, (1959), p. 309.

17) Id., p. 328

18) Id., p. 324

19) H.J. Hahn, "Euratom: The Conception of an International Personality," 71 Harv. L. Rev. (1958), pp. 1014 and 1018.

CHAPTER V

THE EFFECT UPON BILATERAL AGREEMENTS OF THE ESTABLISHMENT OF AN INTERNATIONAL AIRLINE

The creation of international airline companies will no doubt call for certain modifications of existing bilateral air services agreements in which the participant States are involved with third States. The changes that may take place may not materially differ from the pattern adopted in the bilaterals concluded by the countries already operating multinational airlines. However, it is probable that such agreements may be concluded in most cases singly by one or more of the States members of the joint enterprise, or, less frequently, by a group of these States with third States. Such trend can be deduced from the current bilateral agreements of the existing groups of multinational airlines.

It may be useful to examine here the more important considerations facing States involved in joint airlines -- for example, the negotiation and conclusion of bilateral agreements, the designation of the joint airline, the freedoms exchanged, and the problem of the "substantial ownership" and "effective control" clause.

1. The Negotiation and Conclusion of Bilateral Agreements

The case for the establishment of multinational air transport enterprises is strengthened when it is realized that, through such cooperation, smaller nations will enhance their bargaining power in their quest to obtain traffic rights in the more important traffic centres of the world. This has been confirmed by the post-war experience of the Scandinavian countries[1], where the cooperation of Denmark, Norway and Sweden in the SAS Consortium makes refusal by important States to grant reciprocal traffic rights to them a more serious matter than if each operated its international air services separately.[2]

All the existing multinational arrangements provide for machinery to coordinate policy between civil aviation authorities. This may take the form of periodic meetings, or may be entrusted to a body created for the purpose, with each participating State represented therein. There is such a system of periodic meetings of the heads of civil aviation authorities of the three SAS countries,[3] a fact which doubtless influenced the conclusion of uniform bilateral agreements by each of these countries with third States.[4]

In East Africa, the East African Civil Aviation Board (in which Kenya, Tanzania and Uganda were represented[5]) was entrusted with the task of negotiating bilateral air agreements.[6] However, during the transitional period (December 9, 1961 - December 12, 1963) the negotiations were carried out by a group

consisting of representatives of the three countries.[7] The matter seems now to be entrusted to the Directorate of Civil Aviation, in which the three countries are represented and which acts as an organ of the EACSO.[8]

With respect to CAA, a Higher Authority (consisting of one minister from each of the three governments)[9] is charged with the task of negotiating and concluding bilateral air agreements with third States on behalf of the three governments.[10] The Agreement of 1963 stipulates that the Higher Authority should shoulder this duty both in the pre-independence period and also after any or all of the three countries attain independence.[11] However, in the years preceding independence, all acted through the Higher Authority, in consultation with, and under the necessary authorization of, the Government of the United Kingdom.[12] The bilateral air agreements which were concluded by the Federal Government of Rhodesia and Nyasaland were recognized by the three governments to continue as valid obligations, and it was further stipulated in the Salisbury Agreement of 1963 that they may be amended or terminated by the Higher Authority.[13]

The Treaty of Yaoundé, establishing Air Afrique, also provides for consultation among the participant States in the matter of bilateral air agreements. It is thus stipulated that contracting States undertake to coordinate their bilateral air agreements, taking into consideration the interests of their multinational airline.[14] A joint civil aviation body, the

Committee of Ministers of Transport, is entrusted with the task of coordination in all aviation matters.[15] However, it is expressly stipulated that draft air transport agreements have to be submitted by member governments to the Committee of Ministers, whose opinion is to be given the "highest consideration" by each contracting State.[16]

2. The Designation of the Chosen Airline

Here a distinction must be made between the manner of designation in the case of a consortium such as the SAS, and the case of a single joint airline constituted as a corporate body. In the first case, it has been the practice of the Scandinavian States each to designate its national airline as a participant in the SAS Consortium. However, this does not mean that the Consortium itself could not be directly designated by a member State as its chosen instrument in bilateral air agreements concluded with third States. In the case of SAS, there is a condition attached to each concession granted by each government to a parent company, entitling it to operate the agreed services only through the Consortium.[17]

In bilateral air agreements, most of which are concluded separately by each of the participant States, one national company member of the SAS Consortium is designated by its government as exercising the traffic rights granted in cooperation with the other parent companies and through the Consortium. This is usually referred to as the "SAS clause",[18] and is usually contained in

an Exchange of Notes after the Agreement is concluded. Thus the Agreement between Malaysia and Norway, which was concluded and entered into force on October 21, 1964, provides in the Exchange of Notes (made on the same date):

> 1) Det Norske Luftfartselskap (DNL), cooperating with Det Danske Luftfartskab (DDL) and AB Aerotransport (ABA) under the designation of Scandinavian Airlines System (SAS), may operate the routes for which it has been designated under the Agreement with aircraft crews and equipment of either or both of the other two airlines.
>
> 2) Insofar as Det Norske Luftfartselskap (DNL) employ aircraft, crews and equipment of the other airlines participating in the Scandinavian Airlines System (SAS) the provisions of the Agreement shall apply to such aircraft, crews and equipment as though they were the aircraft, crews and equipment of Det Norske Luftfartselskap (DNL), and the competent Norwegian authorities and Det Norske Luftfartselskap (DNL) shall accept full responsibility under the Agreement therefor.[19]

Bin Cheng points out that it was the goodwill of third States, parties to such bilateral air agreements with the Scandinavian States, that permitted the inclusion of such a clause.[20] Even where such a clause was not provided, it was given effect in practice.[21]

In the designation of the joint airlines of other multinational enterprises, the practice of the participating States has varied from expressly naming their joint corporation in the bilateral air agreement to making an indirect reference

to it. Such provision is usually contained in the agreement itself, although occasionally it may be expressed in an Exchange of Notes. Thus, the recent bilateral air Agreement between the Republic of Mali and the Republic of Niger provides in the Exchange of Notes made on the day of signature, that:

> 1) The Government of the Republic of the Niger designates Air Afrique as the Nigerian airline for the operation of the agreed services, and the Government of Mali accepts this designation.[22]

Other bilateral agreements also expressly provide for the designation of Air Afrique as the chosen instrument by employing a more or less similar formula.[23] For example, the Agreement of October 9, 1963 between the Ivory Coast and the Netherlands stipulates:

> In application of articles 77 and 79 of the Convention on International Civil Aviation concerning the establishment by two or more States of joint operating organizations or international operating agencies, the Government of the Kingdom of the Netherlands agrees that the Government of the Republic of the Ivory Coast, in conformity with Articles 2 and 4 of the Treaty on Air Transport in Africa and the annexes thereto, signed by the Ivory Coast at Yaoundé on 28 March 1961, reserves the right to designate the Air Afrique Company as the instrument chosen by the Republic of the Ivory Coast to operate the agreed services.[24]

Some bilateral agreements concluded by the Air Afrique States contain indirect reference to the joint airline. For example, the Agreement of June 16, 1961 (before the creation of

of Air Afrique) between France and the Cameroun provides:

> The Camerounian Government reserves the right to designate any airline which it may establish with the neighbouring African States, or which may be established by its nationals and nationals of the neighbouring African States.[25]

Similar indirect reference to a joint air transport operating organization is found in the Agreement of November 17, 1962 concluded between the Ivory Coast and Switzerland, where the relevant clause reads:

> Notwithstanding the provisions of Article 11 of the present Agreement, a Contracting Party may designate a joint air transport organization constituted in accordance with articles 77 and 79 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944, and this airline shall be accepted by the other Contracting Party.[26]

In bilateral agreements concluded by Central African and East African States, the designation of their airlines is brought out in connection with the "substantial ownership and effective control" clause. Thus the Agreement of August 19, 1965 between Malawi and Ghana, which designates Air Malawi (one of the subsidiaries of CAA), provides:

> (4) Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may

> deem necessary on the exercise by an airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of the Contracting Party designating the airline. Recognizing, however, that the structure of Air Malawi is such that substantial ownership and effective control of the Company is not vested in the Government of Malawi or its nationls alone, the Government of the Republic of Ghana agrees that, provided it is satisfied that any substantial ownership and the effective control of Air Malawi is and remains vested in the Governments or nationals of the countries participating in the Higher Authority for Civil Air Transport, no objection will be raised by reason of Articles 3(3) [to satisfy conditions of the national regulations of the other Contracting State] and 3(4) of the present Agreement to the designation of Air Malawi to operate the route in the Schedule included in the Annex to the present Agreement ...[27]

A peculiar feature of the Agreement of July 28, 1964, between Kenya and France[28] is that it refers, in paragraph (b) of its Article 1, to the East African Common Services Authority as the "Aeronautical authorities" under the Agreement. The significance of this is that the term "aeronautical authorities" occurs in connection with the requirement of substantial ownership and effective control in Article 4. Then Article 5 expressly states that substantial ownership, etc., must be vested in the three East African States, i.e. Kenya, Tanzania and Uganda. The formula used is:

> The provisions of the present Agreement relating to substantial ownership and effective control shall not apply to or in relation with the designated airlines of the Government of Kenya or any airline designated by that Government to enjoy the rights specified in paragraph (3) of Article 2 of the present Agreement if and so long as the airline or airlines are effectively controlled by the countries comprising East Africa.[29]

3. The Rights and Privileges Exchanged

Since the major aviation countries may not feel obliged to exchange traffic rights with the smaller and less developed nations, the establishment of multinational airlines by the latter may thus enhance their bargaining position. As has been pointed out above, refusal to grant traffic freedoms to such groups of States is more serious than refusing a single State. The territories of the countries involved in such cooperation will be looked upon as if they were a single territory for the purpose of the exchange of the freedoms of the air, resulting in a greater traffic potential since the population and traffic will be multiplied.

The experience of the SAS countries indicates that third States are more willing to grant fifth freedom rights (which are usually difficult to obtain) to them as a Consortium.[30] A similar conclusion may be gathered from the route schedules annexed to the bilateral air agreements of the East African, Central African and Air Afrique States.

The bargaining strength of cooperating States is obvious in the case of the East African countries, which tried to limit

the number of foreign carriers that may ask for concessions to operate on the same routes. Thus, there has been a tendency to divert foreign competition from Nairobi to Dar-es-Salaam and Kampala. On the other hand, EAA has succeeded in operating to such important traffic centres in Europe as London, Paris, Rome, Athens and Frankfurt.[31] The airline intends to extend its Nairobi-Aden-Bombay services to Tokyo, and ultimately to inaugerate services to North America.[32]

Statistics show that Air Afrique is doing well in carrying its share of traffic between West Africa and Europe. Thus in 1962 and 1963 the combined West African traffic of the French carriers UTA and TAI (which later merged) declined by 10 per cent and 20 per cent respectively, the reason why Air France completely abandoned its operations south of the Sahara, except for Dakar enroute to South America.[33]

In Central Africa, although CAA was a successful joint enterprise, political events in Rhodesia have created enormous difficulties especially with the East African countries. Recently (February 9, 1966) Kenya, Tanzania and Uganda banned CAA from exercising traffic rights in East Africa, the ban, however, being limited to aircraft registered in Rhodesia.[34]

4. <u>The Problem of the "Substantial Ownership and Effective Control" Clause</u>

It seems that the historical basis for this clause, usually found in bilateral air agreements, was considerations of

security. The clause is reported to have originated in the Lima Conference of 1940, and was intended to prevent German-owned companies registered in Latin America from conducting their activities near the Panama Canal Zone.[35] In the years that followed the Chicago Conference, 1944, the clause was introduced for reasons of economic protection, to prevent indirect operation by third States not parties to a bilateral agreement.[36] It also prevents airlines and investors from circumventing national laws by acquiring a substantial share in a foreign airline,[37] as well as prohibiting a single State from acquiring a far greater share of international traffic by holding substantial interests in foreign carriers.[38]

The requirement of substantial ownership and effective control is normally satisfied by a holding of 51 per cent of shares in an airline,[39] although 50 per cent may be considered satisfactory.[40] However, the question whether an airline is substantially owned by a certain State or by its nationals may depend on the powers granted to such airline under its by-laws. In the case of tight State control, even 30 per cent ownership could be regarded as substantial.[41] The requirement has been waived in a few instances in bilateral air agreements, such as with respect to the designated airlines of Peru, Cuba and Malaya which had not at the time attained substantial national ownership and control.[42]

It is certain that, in the case of multinational airlines, the clause must either be varied to require the substantial ownership and control to be vested jointly in the States involved in such cooperation or in their nationals, or, alternatively, the clause should be waived.

However, the structure of the SAS Consortium allows for the circumvention of the substantial-ownership requirement since each of the three participants designates its national airline as party to the Consortium. Thus the clause has not been waived, except in a few instances.[43] The formula used in the Scandinavian bilateral air agreements with third States is similar to the Bermuda formula. For instance, the recent Agreement of October 21, 1964 between Malaysia and Norway[44] provides:

> Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in ... the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline.[45]

In case of the air services agreements of other States participating in a joint airline, it has been the practice to require substantial national ownership and effective control, and then to waive the same requirement. This has been done in the recent bilateral Agreement of Malawi and Ghana of August 19, 1965,[46]

and also in the agreement of July 28, 1964 between Kenya and France.[47] Absence of substantial national ownership and effective control entitles the other contracting party to refuse to grant operating permission, or to revoke such permission. The waiver in the last-mentioned two agreements is of limited scope, since it is stipulated that substantial ownership and effective control must be vested in the States participating in the joint airline or their nationals.

States participants of Air Afrique have used different formulae in order to waive the requirement. Thus in two recent bilateral air agreements, the usual "substantial ownership" clause was provided, and waiver or exception was made. However, a later provision either expressly declared that the Contracting State (member of Air Afrique) "reserves the right" to designate Air Afrique, or expressly names it as its designated airline. The first type of provision is found in the Agreement concluded on October 9, 1963 between the Ivory Coast and the Netherlands,[48] while the second type occurs in the Exchange of Notes annexes to the Agreement of January 15, 1964 between Mali and Niger.[49]

Other bilateral air services agreements waive the condition of substantial ownership, etc., by using a "notwithstanding" clause and allowing the designation of a joint air transport operating organization or an international operating agency constituted in conformity with the provisions of the Chicago Convention. Thus the Agreement of December 19, 1963

between the Ivory Coast and Lebanon[50] uses the formula:

> Notwithstanding the provision of Article 12 of this Agreement, either Contracting Party may designate a joint aircraft operating agency constituted in accordance with Articles 77 and 79 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944, and such agency shall be accepted by the other Contracting Party.[51]

In no case was the substantial-ownership clause omitted from the provisions of a bilateral agreement. Thus, it may be concluded that no serious difficulties will be posed by the requirements of such a clause since its application can be suspended or waived in one way or another. This is easier in the case of bilateral agreements, which express the stipulations of only two parties, than in multilateral treaties which may require prolonged negotiations and procedures.

NOTES TO CHAPTER V

1) W.H. Wager, "International Airline Collaboration in Traffic Pools, Rate-Fixing and Joint Management Agreements," 18 JALC (1951), pp. 299-319, at pp. 316-317; R.A. Nelson, "Scandinavian Airlines System Cooperation in the Air," 20 JALC (1953), pp. 178-196 at p. 179; ICAO Circular 30-AT/5 (1953) p. 8, para. 14.

2) Nelson, supra, p. 194; he says that refusal by the three Scandinavian States to grant traffic rights to third States would be a more serious threat than a refusal by one of them only.

3) H. Bahr, "The Scandinavian Airlines System (SAS): Its Origin, Present Organization and Legal Aspects," Arkiv For Luftrett (1961) pp. 199-235, p. 232.

4) In joint negotiations by the three Scandinavian States with a third State, there is normally one joint delegation representing them including the governmental and the SAS civil aviation experts: see H. Mortensen, The Legal Status of the SAS in International Air Transportation McGill Term Paper (1964), p. 23; see also Wager, supra, note 1, pp. 314-315.

5) Each government appointed two members on the board.

6) V.C. Slight, Regional Cooperation In East African Civil Aviation, McGill Term Paper (December, 1964), p. 18.

7) Id. p. 19.

8) "East Africa Opens the Door to Foreign Carriers," The Aeroplane and Commercial Aviation News (October 29,1964), p. 9.

9) Article 3 of the Salisbury Agreement between the Governments of Southern Rhodesia (Now Rhodesia), Northern Rhodesia (now Zambia) and Nyasaland (now Malawi) concluded on December 4, 1963.

10) Article 12 of the Agreement.

11) Articles 12 and 13 respectively.

12) Article 12.

13) Article 14; it was provided in the Draft Provisions on Airways for Inclusion In Order In Council by the United Kingdom that: the Higher Authority is entrusted with exercising its powers on behalf of the three governments to obtain and grant traffic rights in the bilateral air agreements it may conclude with third countries; see section 2 (2) of the Order.

14) The Treaty Relating to Air Transport in Africa, concluded at Yaoundé (March 28, 1961), Article 10, para. 1.

15) Article 8 of the Treaty of Yaoundé.

16) Article 10, paras. 2 and 3 of the Treaty of Yaoundé.

17) Bahr, op. cit. supra, note 3, p. 228; see also ICAO Circular, op. cit. supra, note 1, p. 9, para. 14, which sates that it became possible through the Seandinavian cooperation in SAS to obtain fifth freedom traffic rights from third States.

18) Bahr, supra, p. 230.

19) Provisions in other Exchanges of Notes following the conclusion of bilateral air agreements by each of the three Scandinavian States are almost identical; see for ecample, the Exchanges of Notes in the bilateral air transport agreements between Denmark and Yugoslavia, of February 11, 1964 (ICAO-Registration No. 1838); the Agreement of June 17, 1961 between Guinea and Sweden (ICAO-Registration No. 1638); the Agreement of January 17, 1961 between Denmark and Poland (ICAO-Registration No. 1573); the Agreement of January 29, 1957 between Denmark and the Federal Republic of Germany (ICAO-Registration No. 1385) the route schedule of which was amended on February 16, 1961, the Agreement of February 7, 1958 between Sweden and Sudan (Sudan Legislative Supplement No. 924, 1958), the Agreement of 5 April 1959 between Norway and the Sudan (Sudan Legislative Supplement, No. 934, 1959), and the Agreement of May 11, 1959, between Denmark and the Sudan (Sudan Legislative Supplement No. 950, 1960).

20) Bin Cheng, The Law of International Air Transport (London 1962), p. 275.

21) Id., p. 276; the absence of the clause may be observed in such agreements as for example the agreements between Cyprus and Sweden, signed on January 26, 1963 (ICAO-Registration No. 1779), Cyprus and Denmark, signed on April 27, 1963 (ICAO-Registration No. 1780) and Cyprus and Norway, signed on March 5, 1963 (ICAO-Registration No. 1671).

22) Signed on January 15, 1964 (ICAO-Registration No. 1730).

23) Similar provisions employ a 'notwithstanding' clause by making reference at the tail of the "Substantial Ownership and Effective Control" clause, or their designation provision appears directly after the "ownership" clause; see for example, para. 2 of Article 14 of the Agreement between Cameroun and Israel, signed on August 9, 1963 (ICAO-Registration No. 1720), and Article 13 of the Agreement between Ivory Coast and France, signed on October 19, 1962 (ICAO-Registration No. 1659).

24) Article 13; the Agreement is registered with ICAO under Registration No. 1728.

25) Article 14, para. 2.

26) Article 13 of the Agreement (ICAO-Registration No. 1660); a provision of similar nature and content is found in Article 12 of the Agreement of June 20, 1962, between Czechoslovakia and Senegal (ICAO Registration No. 1737), and also in Article 14 of the Agreement of December 19, 1963 between Ivory Coast and Lebanon (ICAO Registration No. 1735).

27) Para. 4 of Article 3 of the Agreement (ICAO-Registration No. 1825); other agreements which may have been concluded by Central African States could not be traced in ICAO.

28) ICAO-Registration No. 1812.

29) The Term "East Africa" is defined in para. (a) of Article 1 to mean Kenya, Tanganyika and Zanzibar, and Uganda.

30) ICAO Circular, op. cit. supra, note 1, p. 14; this can also be deduced from analyzing the route schedules annexed to their bilateral air agreements; see also Nelson, op. cit. supra, note 1, p. 194, and Wager, op. cit. supra, note 1, pp. 316-317.

31) "Aviation Problems in East Africa," ITA Bulletin, No. 5/31 January 1966, p. 118.

32) The Aeroplane and Commercial Aviation News, (June 10, 1961), p. 8.

33) John Seekings, "Airline of the Month: UTA," The Aeroplane and Commercial Aviation News, (June 3, 1965), pp. 4,6.

34) "Rhodesian Problems — 1," Flight International (17 Feburary 1966), p. 248.

35) D. Geeduis, "The Basis of the Present Regime of the Air," Recueil Des Cours (1952) II, p. 209 at p. 213.

36) Ibid.

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

38) Id., pp. 63-64.

39) Id., p. 62, note 1; also Bin Cheng, The Law of International Air Transport (London 1962), p. 378.

40) Id., p. 378.

41) Wassenbergh, op. cit. supra, note 37, p. 62, note 1.

42) Bin Cheng, supra, note 39, pp. 379 and 359; this was in the U.K. bilateral agreements with these countries in the years 1958-1959.

43) The condition was waived in the United Kibgdom-Denmark, Norway and Sweden Exchanges of Notes of June 23, 1952; Id., p. 379.

44) ICAO-Registration No. 1838.

45) Article 3, para. (4).

46) Article 3, para. (4).

47) The clause is found in Articles 3, para. (4) and 4, para.(a); the waiver occurs in Article 5, cited note. 29, supra.

48) Article 13 of the Agreement (ICAO-Registration No. 1728); the provision was cited above: see note 24. supra.

49) The provision is cited above: see note 22, supra; a similar provision occurs in the Agreement of August 9, 1963 between Israel and Cameroun in Article 14 by employing the "notwithstamding" clause; see ICAO Registration No. 1720.

CONCLUSION

As indicated in Chapter I of this study, the economic realities of air transport point to the urgent need, in many parts of the world, for the organization of the industry in transnational collaborations -- a fact which has been realized by considerable groups of States. Thus we find, in addition to existing multinational airlines, a number of similar arrangements proposed for certain regions. The economic success achieved by existing transnational arrangements suggests such enterprises as a feasible and practicable means for the progressive development of air transport.

Certain non-economic factors, such as politics, may however intervene and either wreck the whole project or enhance its realization. Thus the absence of sharp political disagreement among potential participants would be an essential prerequisite for securing integration: a factor which had, on certain occasions, dominated the apparent consensus on the economic necessity and feasibility of such arrangements. A striking instance of this is the failure of the Arab States in their attempts to set up the long awaited multinational Arab air carrier.

The absence of serious political disputes, combined with close cultural relations, common bonds of history, and geographical proximity, would accelerate the realization of the desired enterprisory cooperation. The achievement of such cooperation would tend to build mutual understanding and trust among participating nation-States,

and so ultimately increase the chances of maintaining peace and security among nations.

A better organization of such multinational arrangements may be sought in the establishment of true international airline companies, since such organizations may be indicative of a clear tendency towards general political cooperation and may become at times a symbol of the drive towards political unity. From its economic aspect it would seem that the deficient financial, technical and personnel resources of certain participants would not permit the partition of such joint effort into separate subsidiary national organizations. A clear example of this is found in the inability of some States to purchase a single supersonic transport aeroplane. Multinational ownership and operation would seem to be the most practicable, if not the only, solution in such cases.

From the current practice of other international bodies corporate it may be concluded that the creation of a true international airline company, subject to international law, would be possible. Such organization might either have its own prescribed municipal law or adopt a chosen national legal system or part thereof. In this way claimant users of air transport would have access to a definite legal system in which to find redress.

The establishment of such internationally owned and operated airline companies would pose important legal questions under the Chicago Convention, the most striking of which are those relating to nationality and registration of aircraft. These questions might be

resolved by adopting a liberal interpretation and application of the relevant provisions of that Convention. Such a course of action would be practicable and legitimate, since the substance of the rules of the Convention would be observed. The obligations, as well as the enjoyment of the privileges, of a State of registry under the Convention could be undertaken jointly by the States composing the international operating agency or, alternatively, by an intergovernmental organization created by them for that purpose.

One of the important consequences of the creation of multinational airlines relates to the bilateral air transport agreements concluded by member States with third States. It was found that certain departures from the conventional form of bilateral agreement would be necessary. It may be presumed that no insurmountable difficulties would be encountered, since bilateral provisions could always be adjusted to meet special needs with the consent of the two parties. Thus, as indicated in Chapter V , the usual requirement of substantial national ownership and effective control has been waived or varied in many agreements to which member States of existing joint enterprises are parties.

Finally, it is apparent that there is a current movement, in many regions of the world, toward such regional collaborations. Hence the coming decade may witness the creation of a host of multinational airlines, a trend which may be hastened by the technical developments of aviation, which have long moved at a faster pace than the rate of traffic growth.

APPENDIX A

TREATY RELATING
TO AIR TRANSPORT
IN AFRICA

TRANSLATION

TREATY RELATING

TO AIR TRANSPORT

IN AFRICA

YAOUNDÉ, March 28, 1961

CORRIGENDA

TREATY RELATIVE TO AIR TRANSPORT IN AFRICA

III - ARTICLES OF ASSOCIATION OF THE COMMON COMPANY

ARTICLE 5 (2)

SHARING OF CAPITAL

paragraph b :

b) Those modifications, which could intervene in the sharing of Capital, particularly as a result of the cession of shares, the increase or reduction of capital, may in no way touch the principle of the equality of state-owned participations nor render participation by shareholders other than the States less than that of a State.

ARTICLE 8 (2)

ADMISSION OF A NEW STATE

Admission of a new State takes place :

— either through cession of shares consented by shareholders other than States, or, when there will be reason to apply the stipulations of article 5 *b*), by States or by other shareholders;

— or through increasing capital.

Those shares owned by A state, which withdraws from the Company, are purchased in equal shares by the other shareholder States and, if there be reason to apply the stipulations of article 5 *b*), also by shareholders other than States.

ARTICLE 10 (2)

RESTRICTIONS TO TRANSFERS

paragraph a :

a) Shares held by a State cannot be ceded except under those conditions laid down in article 8.

ARTICLE 16 (1)

CHAIRMANSHIP OF THE BOARD

2nd paragraph :

The Chairman is chosen from among the Directors. He is elected for the period of his office as Director. He is eligible for re-election. He may be revoked by the Board by a majority vote.

T. S. V. P.

ARTICLE 21 (1)

DELEGATION OF POWERS

The Chairman of the Board of Directors assures the General Management of the Company on his own responsibility.

The Board of Directors invests him with the necessary powers to this effect with the faculty of partially substituting as many special representatives, which he will deem useful, with his powers.

On the proposal of the Chairman, the Board may, to assist him, adjoin to him a General Manager being either one of its members or a representative chosen from outside.

ARTICLE 23 (1)

COMPANY SIGNATURE

All acts and understakings of the Company, withdrawals of funds and shares, debit or deposit drafts on bankers, subscriptions, endorsements, acceptances, deposits, guarantees or settlements of commercial notes of hand are validly signed, either by the Chairman of the Board or by any special holder of powers designated by the Board of Directors or its Chairman, each acting within the limits of their respective powers.

(1) Modified by decision of the Extra-Ordinary General Meeting of Shareholders of November 19 th, 1962.
(2) Modified by decision of the Extra-Ordinary General Meeting of Shareholders of January 4th, 1963.

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TREATY
RELATING TO AIR TRANSPORT
IN AFRICA

— The Republic of Cameroun
— The Central African Republic
— The Republic of the Congo
— The Republic of the Ivory Coast
— The Republic of Dahomey
— The Republic of Gabon
— The Republic of Upper Volta
— The Islamic Republic of Mauritania
— The Republic of Niger
— The Republic of Senegal
— The Republic of Chad

Whereas the future development of Civil Aviation and of Air Transport in particular can greatly help to create and preserve friendship and understanding among the contracting States.

Whereas the existence of an instrument of air transport common to their States may serve to improve international relations by enabling all the States to acquire a better knowledge of one another.

Whereas articles 77 and 79 of the Convention on International Civil Aviation signed in CHICAGO on 7 december 1944 aiming at the setting up by two or more States of joint operating organizations or international operating agencies and a the participation of the States in these organizations and agencies.

Have accordingly decided to conclude a Treaty to that end and have agreed on the following provisions.

PART I

ON THE SETTING UP OF
A JOINT AIR TRANSPORT CORPORATION
(SOCIETE COMMUNE DE TRANSPORTS AERIENS)

CHAPTER I

PURPOSE OF THE CORPORATION

ARTICLE 1

With a view to exercising their rights in respect of air traffic between their territories and with outside territories, the contracting States have decided to set up an Air Transport Corporation with an appropriate legal status which shall be referred to hereinafter as "THE JOINT CORPORATION" (LA SOCIETE COMMUNE).

ARTICLE 2

The contracting States undertake to designate the joint Corporation (Société commune) as the instrument chosen by each of them for exercising their rights in respect of international traffic and air transport rights.

ARTICLE 3

Each contracting State may commit to the joint Corporation (Société commune) the operation of the domestic air services within its territory. The terms and conditions of this operation shall form the subject of a protocol agreement between the contracting States and the joint Corporation (Société commune).

Each contracting State shall nonetheless reserve the right to designate one or more undertakings to operate its domestic transport services. In this event, the State shall take whatever measures necessary to ensure that the activity of said domestic transport undertakings is co-ordinated with that of the Joint Corporation (Société commune).

CHAPTER II

LEGAL STATUS OF THE CORPORATION

ARTICLE 4

The joint Corporation (Société aérienne commune) shall be endowed with the fullest legal capacity recognized by the laws of the contracting States in the case of bodies corporate and shall be deemed as possessing the nationality of each contracting State, both in respect of said States and in respect of other States.

The joint Corporation (Société aérienne commune) shall be set up in the form of a Joint Stock Company legally constituted as an entity with a private statute under common law by the contracting States and a legally constituted undertaking with a private statute under common law considered as apt to contribute its assistance.

ARTICLE 5

This treaty and its annexes, including the Articles of Incorporation of the joint Corporation (Société commune), shall determine the legal terms of existence and operation granted to the Corporation by the contracting States by departing, if need be, from the present or future provisions of their national laws.

The Articles of Incorporation of the Corporation may be modified only with the unanimous agreement of the contracting States insofar as the following provisions are concerned

- Purpose of the Corporation
- Rules governing the allotment of the authorised capital
- Terms of admission for new shareholders
- Majority rules
- Voting rights or shareholders and members of the board
- Rules for liquidation.

ARTICLE 6

Each of the contracting States shall have an equal part in the Corporation's capital.

ARTICLE 7

Failing the possibility of joint registration, each aircraft belonging to the joint Corporation (Société commune) shall be registered in one of the States.

The States shall reach agreement concerning the apportionment among themselves of the registration of the aircraft belonging to the joint Corporation (Société commune), it being specified that the aircraft may be used freely and indiscriminately to perform the Corporation's services, whatever their registration.

PART II

ON THE COMMITTEE OF MINISTERS OF TRANSPORT

(Civil and Commercial Aviation)

ARTICLE 8

A Committee of Ministers of Transport (Civil and Commercial Aviation) shall be set up, composed by the Ministers responsible for Civil and Commercial Aviation in each of the contracting States or their representatives, within which Committee they shall discuss their common policy, prospects for the development of air transport and programms and, in a generalmanner, all questions relating to Civil and Commercial Aviation.

The joint Corporation (Société commune) may be represented in an advisory capacity at Committee meetings.

ARTICLE 9

The Committee of Ministers shall meet at least once a yeareither on its own initiative or at the request of one-third of the contracting States.

It shall be presided over by representative of the Government of the contracting State in which it meets and said State shall provide the Secretariat, for the Committee.

ARTICLE 10

The contracting States undertake to adopt, for the purpose of negociating air traffic rights within the framework of inter-governmental agreements, a position in coordination with that of the other contracting States, due account being taken of the operation and interests of the joint Corporation (Société commune).

To this effect, each contracting State undertakes to submit to the Committee of Ministers of Transport for its opinion any air traffic draft agreement to be concluded by said State.

Each State shall endeavour to take into the highest consideration the Committee's opinion so as to avoid concluding intergovernmental agreements which may be prejudicial to the interest of the joint Corporation (Société commune).

Article 11

The contracting States shall bring into uniformity their laws and regulations in matters of civil and commercial aviation particularly in respect of the following items :

— Rights to aircraft
— Registration and airworthiness of aircraft
— Air navigation
— Measures to facilitate carriage by air
— Contract of carriage by air
— Technical operation of aircraft for carriage by air
— Status of professional flight personnel.

The drafts of acts, rules and regulations shall be the subject of recommendations on the part of the Committee of Ministers of Transport.

The contracting States shall bring into uniformity theirs positions in respect to international conventions on Civil Aviation which shall be submitted for consideration to the Committee of Ministers of Transport which shall formulate recommendations on this matter.

MISCELLANEOUS AND FINAL PROVISIONS

Article 12

The contracting States shall take the legal, financial, fiscal and customs measures enabling the normal carrying out by the corporation of its activities, due account being taken of its special status and of its quality as instrument chosen by each of them for operating their international services.

Article 13

The treaty shall be open to accession by al interested States. The admission of a new State to the provisions of this treaty shall, however, be subject to unanimous agreement on the part of the contracting States. The instrument of adherence shall be deposited with the Government of the Republic of Cameroun which shall notify the Governments of the other signatory and adhering States.

Article 14

This treaty shall be ratified in accordance with the formalities set forth in the Constitution of each State.

The instruments of ratification shall be deposited with the Government of the Republic of Cameroun.

The treaty shall come into force on the first day of the month following the deposit of ratification by the last signatory State to proceed with this formality.

The Government of the Republic of Cameroun shall notify the other signatory States of each deposit of the instrument of ratification and of the date on which the treaty comes into force.

Article 15

Notwithstanding the provisions contained in the preceding article, the signatory States shall agree to put this treaty into effect provisionally on the expiry of a period of three months as from the date of its signature, provided it has been ratified by at least one State and that the full amount of the authorised capital of the joint Corporation (Société commune) has been subscribed.

ARTICLE 16

Any State may denounce this Treaty subject to six months' notification being given to the depository State. The depository State shall notify the other States.

On the expiry of this period of notification, the State effecting the denunciation shall cease to be part of the joint Corporation (Société commune) and the shares belonging to said State shall be equally distributed among the other shareholder States. The liquidation of its rights and obligations within the Company shall be effectued by mutual agreement between the withdrawing State and the other States or, failing this, by means of expert appraisement.

The withdrawing State shall accord the joint Corporation (Société commune) all authorizations and facilities for the export, transfer or sale of property and assets possessed or held by said Company in its territory.

ARTICLE 17

The disputes between the contracting States relating to the interpretation or application of this Treaty which cannot be settled by consultation shall be submitted to arbitration in conformity with the established rules of international law.

ARTICLE 18

In accordance with article 83 of the Convention on International Civil Aviation signed at Chicago on 7 december 1944, this Treaty and its Annexes shall be registered with the Council of the International Civil Aviation Organization by the Government of the Republic of Cameroun.

Done at Yaounde the twenty-eighth day of March 1961 in one single copy wich shall remain deposited in the archives of the Government of the Republic of Cameroun and duly certified copies shall be transmitted by that Government to all the signatory States.

ANNEX TO THE TREATY CONCERNING FISCAL AND FINANCIAL PROVISIONS GRANTED TO THE JOINT CORPORATION

1 - The Corporation shall be exempt from all fees and taxes, within the territories of the contracting parties, on its constitution, when its capital is subscribed or increased and on extension of the period fixed for the duration of the corporation as well as from various formalities which its activities may require. Similarly it shall be exempt from all fees, and taxes on its dissolution or winding up.

The Corporation shall be exempt within the territories of the contracting parties from all fees and taxes payable upon the acquisition of immovable property, from inscription and registration fees with the exception of the fees and taxes corresponding to the payment of a service rendered.

The Corporation shall also be exempt, within their territories, from taxes of an exceptional or discriminatory nature andfrom all fees and taxes invoved for issuing loans.

The contracting parties shall determine the terms and conditions of a taxation arrangement of long duration appropriate to the special status and the activity of the Corporation; they shall, in particular, take, insofar as required, the necessary measures to prevent said Corporation from being the subject of double taxation among them.

2 - The contracting parties undertake to harmonize their respective laws so that the aircraft and the specific aeronautic or non aeronautic equipment destined to be incorporated in the aircraft or to complete their equipment and necessary to the Corporation to ensure its operation, shall be admitted into their territories free of customs duties and of charges on the turnover or of all duties and charges of like effect.

The contracting parties also undertake to harmonize their respective laws so that the equipment mentioned hereinabove and publicity and advertising material shall be allowed to circulate among their respective territories with similar exemptions.

3 - The contracting parties undertake to accord to the Corporation in accordance with the terms set forth in the applicable national regulations and international agreements, all authorizations and facilities to enable it to perform all transfers of funds and to dispose of all currencies necessary for carrying out its activities (including the issue and service of loans).

Done at Yaounde the twenty-eighth day of March 1961 in one single copy which shall remain deposited in the archives of the Government of the Republic of Cameroun and duly certified copies shall be transmitted by that Government to all the signatory States.

ARTICLES OF INCORPORATION

CHAPTER I

GENERAL

ARTICLE 1

FORM AND NAME

A joint stock Corporation under the registered name of "AIR AFRIQUE" is hereby constituted and is governed by :

1) The international treaty signed on the twenty-eighth day of March 1961 and by the present articles of incorporation attached thereto.

2) Residuarily and only in so far as they are compatible with the provisions of the treaty and the articles of Incorporation by the principles partaining to the laws of the signatory States of this treaty.

ARTICLE 2

PURPOSE

The purpose of the Corporation is the operation of scheduled. supplementary or special air transport of passengers. freight and mail. It shall be authorized to conclude any agreements and to engage in all commercial and financial operations serving for the attainment of this purpose.

ARTICLE 3

HEAD OFFICE

The Corporation shall have an establishment having the attributes of a head office in the Capital of every State signatory to this treaty, that is to say in the following towns:

— Yaounde
— Bangui
— Brazzaville
— Abidjan
— Porto Novo
— Libreville
— Nouakchott
— Niamey
— Dakar
— Fort Lamy
— Ouagadougou

ARTICLE 4

DURATION

The Corporation shall be constituted for a period of 99 years subject to its anticipated dissolution or its extension provided for under the terms of these articles of incorporation.

CHAPTER II

CAPITAL - SHARES

ARTICLE 5

ALLOCATION OF CAPITAL

a) The authorised capital of the corporation shall be fixed at 500 million francs C.F.A.. It shall be divided into 50,000 shares of 10,000 francs C.F.A. each, which shall have been subscribed as follows :

— 33,000 shares by the States signatory to the treaty, these shares being divided equally between said States.

— 17,000 shares by the Corporation signatory to the protocol annexed to the treaty.

b) Any changes which shall occur in the allocation of the capital as a consequence particularly of shares transfers, of any increase or a reduction of capital shall in no circumstance prejudice the principle of the equal participation of each of the States, nor in any way modify the relation between the participation of the States and that of other shareholders.

ARTICLE 6

PAYMENT OF SHARES

The shares shall be paid up for 1/4 of their value at the time of constitution of the Corporation, the balance shall be paid on the decision of the Board of Directors and subject to the conditions decided upon by them.

ARTICLE 7

INCREASE AND REDUCTION OF CAPITAL

a) The capital may be increased on one or more occasions either by contributions in kind or in money, or by incorporating all available reserves.

b) Capital increases shall be decided upon or authorized by a general meeting of the shareholders ruling in accordance with the conditions laid down in article 36 of the articles of Incorporation.

The general meeting will determine the conditions of new issues and the procedure for the checking of the Corporation's assets subject only to the provisions set forth in the treaty and by these articles of Incorporation.

c) Except in the case provided for by article 8 hereunder, each shareholder has a preferential right to subscribe for new shares. The conditions covering the rights of a share transfer are laid down in article 10 hereunder.

ARTICLE 8

ADMISSION OF A NEW STATE

The admission of a new State be effected by the transfer of shares belonging to the other States or by increasing the Corporation's capital.

The shares owned by a State which withdraws from the company shall be bought up inequal parts by the other shareholder States.

Article 9

TYPE OF SHARES

The shares shall be registered in the name of the holder.

The Corporation shall maintain a single share register in which the names and addresses of the share — holdersshall be entered. The Corporation shall recognize as shareholders only those whose names are entered in this register.

As photocopy of the above mentioned share-register shall be deposited at each of the head offices mentioned in article 3 above.

Article 10

RESTRICTION OF TRANSFERS

a) The shares held by a State are non-transferable except when transfer is made to a new State taking up membership in the Corporation in accordance with the provisions of the treaty and of the articles of Incorporation.

b) Those shares which are not held by a State are transferable only with the unanimous agreement of the Board of Directors.

The Corporation shall be notified by registered letter addressed to one of its head offices of the particulars of the proposed shareholder or shareholders and of the sale price and condition of the transfer.

The Board must certify its acceptance or its refusal within a period of 30 days from the date of receipt of the proposed transfer. If within this period no such action has been taken by the Board it shall be considered that the proposal for transfer is accepted. The Board shall not be compelled to give reasons for its acceptance or its refusal of a proposed transfer.

c) The transfer of subscription rights shall be subject to the same restrictions at those applied to the transfers of shares.

Article 11

METHOD OF TRANSFER

The transfer of shares shall be made exclusively by a declaration of transfer signed by the transferring party or its authorized agent and entered in the share register referred to in article 9 above.

Article 12

RIGHTS AND OBLIGATIONS OF SHARES

The rights and obligations attached to the shares shall be identical. In particular, each share shall entitle its holder to an equal part in the ownership of the assets of the Corporation. This right shall be exercised only in the case of the winding up and distribution of the Corporation's assets. Furthermore each share entitles its holder to a part of the profits as is laid down in articles of Incorporation.

The shares entitle their holder to voting rights or to representation at the general meetings according to the conditions laid down by these articles of Incorporation.

Each shareholder may examine the books of the Corporation at each of the head-offices listed in article 3 above.

The rights and obligations attached to a share shall not be affected by any change of holder. Only the transferee shall be entitled to receive current divident and, if any, to the part of the reserves of the Corporation. The ownership of a share shall establish full legal acceptance of the articles of Incorporation and of the decisions of the general meetings of the Corporation by the shareholder.

The assignees or creditors of a shareholder may in no circumstance demand the affixing of seals to the property and/or the books of the Corporation nor may aks for its distribution or auction or in any way interfere in its administration. In the exercise of their rights they shall be constrained to rely upon the stocktaking and decisions of the general meeting of shareholders.

CHAPTER III

ADMINISTRATION OF THE CORPORATION

ARTICLE 13

BOARD OF DIRECTORS

The company shall be administered by a Board of Directors. Persons attending Board meetings as representatives of a legal entity with either a private or a public statute shall not be compelled to hold shares themselves in the Corporation.

ARTICLE 14

COMPOSITION OF THE BOARD

The number of members of the Board shall be fixed in such a way that each shareholder shall have a number of seats proportional to the part of the authorized capital he holds in the Corporation, subject to the provise that in every case each State shall hold two seats.

ARTICLE 15

APPOINTMENT OF MEMBERS OF THE BOARD

The members of the Board shall be proposed by the shareholders and shall be appointed for a period of 4 years by an ordinary general meeting of the shareholders. They may be reelected.

Any member of the Board ceases to be a member of the Board if the shareholder who had proposed said member's appointment withdraws his proposal and makes this known to the Board or to a meeting of the shareholders.

If a member of the Board discontinues to exercise his duties during the course of his tenure of office, for any cause whatsoever, the Board shall replace him provisionally by appointing a new member for the balance of the term of office still due, which new member shall be proposed by the shareholder who had proposed the appointment of the member to be replaced. A provisional replacement made according to the provisions of the preceding paragraph shall be confirmed by the general meeting of the shareholders at their first reunion following this replacement.

ARTICLE 16

CHAIRMAN OF THE BOARD

The Board of Directors shall elect its chairman by a majority of the votes expressed.

The chairman shall be chosen from among the members of the Board.

He shall be elected for a period of two years. He may be reelected. He may be dismissed by a majority vote of the Board; should the chairman cease to be a member of the Board, he shall thereby automatically lose his appointment as chairman of the Board.

In the event of a chairman's ceasing to exercise his function for whatever cause, his successor shall be chosen by the Board under the same conditions to serve during the unexpired period of the appointment of the chairman whom he is replacing.

In the event of the temporary incapacity of the chairman, his place shall be taken by the member nominated by him or, failing this, by the oldest member of the Board present at the meeting.

ARTICLE 17

BOARD MEETINGS

The Board shall meet at the summons of the chairman as often as the affairs of the corporation shall require. The convening notice shall be dispatched at least fifteen days prior to the meeting and shall be accompanied by the agenda.

The chairman shall convene the Board in the event of the written request being made to him by at least 4 members who shall set out the question they wish to have placed on the agenda of this meeting. In these circumstances a meeting of the Board shall be held not later than two weeks after the receipt of this written request.

The Board shall determine the place of each of its meetings at one of the head-offices listed in article 3 above.

Any member prevented from attending a meeting of the Board may arrange to be represented by another member. One member may not represent more than 3 other members.

The Board shall appoint a secretary who need not be a member of the Board.

ARTICLE 18

DECISIONS OF THE BOARD

The Board shall not discuss nor take valid decisions unless it has been officially convened and unless the majority of its members are present or represented. However, in the case of urgency, decisions may be taken by letter or by telegram provided a meeting of the Board has not already been requested by one of the members to discuss the question at issue.

All decisions shall be taken by a majority of the votes expressed.

In the case of an equal decision of votes, the chairman shall decide either to call a second vote on the same meeting, with or without a short period of interruption, or to place the item at issue on the agenda of a new meeting of the Board of which he shall fix the date.

In the event of a second equal division of votes the chairman shall use his casting vote.

ARTICLE 19

POWERS OF THE BOARD

The Board of Directors shall be endowed with full powers to act in the name of the Corporation both in respect of shareholders and of any third party; it shall have power to determine any matter not coming within the competence of another body of the Corporation by the articles of incorporation.

The following lines shall describe but not limit the powers of the Board:

1) The Board shall represent the Corporation in its dealings with Governments, public and private organisations, trading bodies and in general all third parties;

2) The Board shall appoint and dismiss where necessary all trustees, managers, representatives, agents and employees of the Corporation, determine their duties, their conditions of service, their retirement and their salaries;

3) The Board shall establish offices, depots, and branches wherever it may consider necessary, even in any foreign country;

4) The Board shall be responsible for fulfilling all the formalities necessary to enable the Corporation to operate within the terms of the laws and the regulations of the countries in which it shall operate;

5) The Board shall determine the general administrative costs, it shall control all supplies and it shall arrange the operating programmes of the Corporation:

6) The Board shall decide upon all treaties, agreements, tenders, adjudications, contract work or otherwise coming within the framework of the activities of the Corporation:

7) The Board shall receive the moneys due to the Corporation and shall pay its debts;

8) The Board shall sign, and endorse, accept and pay all checks, bills, promissory notes or bills of exchange: it shall stand surety and give guarantee on behalf of the Corporation;

9) The Board shall authorize all purchases, withdrawals, movements and transfers of all movable goods and all rights to movable property and in particular rents, values, credits, patents and licences:

10) The Board shall agree or accept, surrender or rescind any lease and tenancy with or without promise to sell;

11) The Board shall authorize all acquisition. sales or exchanges of immovable goods and real estates:

12) The Board shall undertake all building and works, set up and install all factories and establishments:

13) The Board shall decide upon the investment of all moneys available and control the use of reserve capital of all kinds including reserve funds and amortization funds;

14) The Board shall authorize all contracted loans and advances or opening of credits with or without guarantee;

15) The Board shall contract all loans wheter against established credit or otherwise;

16) The Board shall be responsible for all mortgages, real estates pledges, collateral security, assignments, guarantees, indorsements and other personal and real guarantees on the assets of the Corporation;

17) The Board shall decide the conditions under which deposits and advance accounts shall be opened and operated in all banks and credit establishments of all nationalities including post-office accounts;

18) The Board shall set up or cooperate in the establishment of all companies without reference to nationality; it shall be responsible for all allocation of capital which it may consider advisable to companies incorporated or to be incorporated, it shall underwrite by transfer all shares, obligations, founders - shares, interest - bearing shares and all rights whatsoever; it shall interest the company in all participations and all associations;

19) The Board shall exercise all judicial action whether as plaintiff or defendent:

20) The Board shall authorize all treaties, transactions, compromises, acceptances and waivers, as well as all priorities and subtitution with or without guarantee, restoration of registration, attachments, stoppage of payment and other rights before or after payment, with waiver of all rights, actions, privileges and mortgages;

21) The Board shall draw up the financial statements, inventories and accounts to be submitted to the general meeting of the shareholders: it shall decide upon all proposals to be put lorward at the general meeting of shareholders and shall draw up the agenda of said meeting:

22) The Board may decide to set up a management committee and shall determine its composition and duties;

23) The Board shall convene the general meetings:

24) The Board shall submit to an extraordinary general meeting all amendments to these articles of Incorporation.

ARTICLE 20

MINUTES OF MEETINGS

The deliberations and decisions of the Board of Directors shall be recorded in a report signed by the Chairman of the Session and by the Secretary. Copies and extracts shall de signed by the chairman (or failing this, by a member delegated by the Chairman for this purpose), and by the secretary. The minutes shall be recorded in a single register kept in a place determined by the Board. A photocopy of the register shall be deposited in each of the head-offices listed in article 3 above.

ARTICLE 21

DELEGATION OF AUTHORITY

The management of the Corporation shall be carried out by a Managing Director. The Board of Directors shall delegate to the Managing Director the powers necessary for the exercise of his duties.

The Managing Director may be chosen from among the members of the Board of Directors or elsewhere. He shall be nominated by the Board and may be dismissed by the Board at any time.

ARTICLE 22

REMUNERATION OF THE BOARD

The members of the Board shall not receive any renumeration; they may be allowed attendance fees, the overall value of which shall be determined by the general meeting of shareholders and the distribution of which shall be made between its members by the Board of Directors as these may decide.

ARTICLE 23

CORPORATION'S SIGNATURE

All acts and engagements of the Corporation, the withdrawal of funds and stocks, orders on the bankers, debtors, or trustees, subcriptions, endorsements, acceptances and guarantees or receipts for negociable instruments shall be officially signed either by the Chairman of the Board of Directors, by the Managing Director or by a person endowed with special powers of attorney substituted by the latter, each acting within the limit of his respective powers.

ARTICLE 24

LIABILITIES OF THE MEMBERS OF THE BOARD

The members of the Board by virtue of their administration shall not contract any individual obligation or joint liability in relation to the engagements of the Corporation. They shall be held liable only for the execution of their duties.

CHAPTER IV

AUDITORS

ARTICLE 25

DESIGNATION OF AUDITORS

Three auditors shall be elected for three years by the Ordinary General Meeting of shareholders irrespective of nationality in the event of death, refusal, resignation or prevention of any kind of one or a number of the auditors, replacement shall be obtained for them by the same procedure.

The following are not eligible as auditors :

1) Family members or relations by marriage, up to the fourth degree inclusive, or the wife or husband of a member of the board;
2) Persons receiving a salary or remuneration in any form whatsoever and for an office other than that of auditor, from the members or from the Corporation or from any firm of which this Corporation shall hold not less than one-tenth of the capital:
3) Persons for whom the performance of the office of Company Director or Member of the Board of a Company is forbidden in a shareholding State, or who have forfeited a right to hold such office in such State;
4) Wives and husbands of persons hereinbefore designated;

Auditors shall have the right to a remuneration to be determined each year by the General Meeting.

ARTICLE 26

AUTHORITY OF AUDITORS

Auditors shall be empowered to check whether the profit and loss statement and the balance sheet conform to the Corporation's account books, whether the latter are correctly kept and whether the general rules pertaining to company accounts have been implemented.

In the performance of their work the auditors shall be empowered to peruse the Corporation's account books and all supporting documents. The balance sheet and the profit and loss statement shall be submitted to them not less than thirty days prior to the holding of the General Meeting.

They shall furnish to the General Meeting convened to decide on the accounts a written report containing their motions. In the event of disagreement between them, each of them may present a special report.

CHAPTER V

GENERAL MEETINGS

ARTICLE 27

CONSTITUTION

The General Meeting shall be constituted of all the shareholders, each of whom shall hold a voting right proportional to the number of shares he holds.

ARTICLE 28

CONVENING

The General Meeting shall be convened in ordinary session each year, within the six months following termination of the financial year, at the hour, date and place specified in the notice of meeting.

Extraordinary meetings may be convened, either by the Board of Directors, or by the auditors. The Board of Directors is held to convene the Meeting if requested therefor by one or a number of the shareholders holding not less than 25 % of the authorized capital.

Shareholders shall be notified of the General Meeting by the Chairman of the Board of Directors, by a registered letter sent not less than sixteen clear days prior to the date of the meeting. The letter of convening shall comprise the agenda, shall specify if the meeting is ordinary (although possibly convened extraordinarily), or an Extraordinary General Meeting provided under Article 36 hereof, in which case it shall have annexed to it the text of the decisions for submission to the Meeting.

ARTICLE 29

REPRESENTATION

Shareholders may attend the General Meeting without prior formality.

A proxy mandate valid for a particular meeting is valid for any other meeting arising directly therefrom (unless revoked).

The extent and the revoking of powers shall be specified by the Board of Directors. Unless the Board of Directors have brought to the notice of the shareholders in the notice of meeting any special ruling it may have decided on, no authentification of signatures may be demanded.

ARTICLE 30

QUORUM

On a meeting of the General Meeting of shareholdes being summoned, it shall be entitled to proceed to business as soon as two-thirds of the shares are represented. Should this quorum not be present, a further session shall be convened and shall be entitled to proceed to business whatever may be the number of shares represented save in the case provided under Article 36 hereof.

ARTICLE 31

AGENDA

The agenda shall be determined by the Board of Directors. No items may be discussed other than those carried on the agenda, save such decisions as shall be a direct consequence of discussions arising therefrom. The Board shall be held to carry in the agenda any questions as shall be demanded by shareholders representing not less than 25 % of the authorized capital.

ARTICLE 32

HOLDING OF MEETINGS

The General Meeting shall be presided by the Chairman of the Board of Directors, or in his absence by a member to be designated by the Board; or failing such, the Meeting shall elect its own Chairman.

The Chairman of the Meeting shall be assisted by a secretary, who may be selected from outside the members of the Meeting.

An attendance sheet shall be maintained containing the names and addresses of shareholders present and/or represented and the number of shares held by each. This attendance sheet shall be duly initialled and checked by shareholders present or their proxies; it shall be deposited at the place of the meeting and shall be communicated to any shoreholder requesting such.

ARTICLE 33

DISCUSSIONS

Unless otherwise provided under Article 36 hereof, the General Meeting shall decide upon a majority of the votes expressed the President, having a casting vote in the event of equality of votes.

Each member of the Meeting shall have as many votes as he holds and / or represents shares, without limit thereto.

ARTICLE 34

MINUTES OF MEETING

Discussions of the Meeting shall be noted in the minutes which shall be signed by the Chairman of the session and the Secretary. They shall be transcribed into a special minute-book of which the original shall be kept in the place determined by the Board of Directors, and copies thereof kept in each of the Corporation's head offices specified under Article 36 hereof.

Copies or abstracts of the minutes shall be validly certified by the Chairman of the Board of Directors and one member of the board.

ARTICLE 35

POWERS OF THE MEETING

The General Meeting shall validly discuss and rule on any questions relating to the Corporation. Its powers amongst others cover the following.

1. To appoint members of the Board of Directors, in the conditions provided under Article 15 hereinbefore.
2. To appoint the auditors.
3. To amende the articles of Incorporation.
4. To decide upon any increase or reduction in the authorized capital.
5. To declare the dissolution of the Corporation and appoint the liquidators.
6. To declare the extension of the period fixed for the duration of the Corporation.
7. To consider the auditors' report, to examine and approve the management report, balance sheet and profit and loss account to decide on the allocation of the net profit, and to receive the directors' report on their conduct of the Corporation's business.
8. To decide any other question reserved to it under the Treaty or the Articles of Incorporation submitted to it by the Board of Directors.

ARTICLE 36

EXTRAORDINARY GENERAL MEETINGS

Any General Meeting called upon either to check holdings in kind, or to decide on or authorize any increase in capital, or to discuss any statutory amendement including those pertaining to the object and constitution of the Company, shall be properly constituted and shall discuss validly only insofar as they comprise shareholders representing not less than one-half of the authorized capital.

Nonetheless the authorized capital which must be represented for checking holdings shall not comprise shares held by persons who have provided the holdings submitted for consideration of the Meeting.

In any meetings provided under this Article, resolutions to be valid shall comprise not less than two-thirds the votes of shareholders present or represented, save in the case of an increase in capital decided on to enable the admission of a new State. The text of the proposed resolutions shall be forwarded to shareholders annexed to the registered letter convening the meeting.

CHAPTER VI

FINANCIAL YEAR - ACCOUNTING - PROFITS

ARTICLE 37

FINANCIAL YEAR

The financial year shall begin on January 1 and terminate on December 31.

The first financial period shall comprise the period starting on the date of final constituting of the Company until December 31, 1962.

ARTICLE 38

ACCOUNTING - BALANCE SHEET

Upon closing each financial year, the Board of Directors shall establish a single inventory, a single profit and loss account, and a single balance sheet. It shall furthermore draw up a report to shareholders on the operation of the Corporation during the past financial year.

Inventory, balance sheet and profit and loss account shall be placed at the disposal of the auditors not less than thirty days prior to the date of the General Meeting.

The auditors shall draw up a report in which they shall render account to the General Meeting of the performance of the mandate conferred upon them and shall notify any irregularities and/or errors they may have detected.

Discussions of the meeting covering approval of the balance sheet and profit and loss account shall be voided if it has not been preceded by the report or reports of the auditors, in conformity with the provisions hereof.

The balance sheet and profit and loss account presented to the shareholders'meeting established each year in a form wich shall have been determined as required by the meeting having constituted the Corporation : methods of evaluating the different items shall be immutable, unless modified by the General Meeting upon advice by the auditors, relative either to the method of presenting the figures, or the methods of evaluating said items.

The annual balance sheet and profit and loss account shall be deposited at the place determined by the Board. A photocopy or a copy duly certified by the Chairman or a member of the board, together with the Board Secretary, shall be deposited at each of the head offices designated under Article 3 hereof.

Any shareholders may at any time of the year take cognisance or a copy at any of the said head offices, either in person or by proxy, of any document submitted to the

General Meetings during the past three years and of the minutes of said meetings; he may also, not less than fifteen days prior to the date of the General Meeting, take cognisance of the list of shareholders at the head office.

ARTICLE 39

DISTRIBUTION OF PROFITS

By net profits shall be understood the earnings of the financial year after deduction of overheads, other company expenses, and after the depreciation of company assets and any provisions for commercial and industrial hazards.

Of the net profits, 5 per cent shall be earmarked for the constitution of a reserve fund. This earmarking shall cease to be mandatory as soon as the reserve fund has attained an amount equal to one-tenth of the authorized capital. It shall become effective once more if for any reason the reserve fund should sink below the said one-tenth part.

The Ordinary General Meeting may at any time, if so proposed by the Board of Directors, decide on an earmarking from the available surplus, after constitution of the legal reserve and before any other allocation of the amounts it deems proper. Such amounts shall remain the property of shareholders and shall either be carried over into the next financial year or shall be credited to one or a number of extraordinary reserve funds, either general or special, of which the General Meeting shall determine the use and allocation. The remaining profitor loss shall be distributed amongst the shareholders in a manner proportional to the portion of authorized capital which they hold.

Shareholder States may agree among themselves on a different distribution of profits accruing to them, or of the loss they may be called upon to make good, as the case may be. They may to this effect call a special meeting whose powers shall be restricted to the distribution among members of the profits or losses, but which shall have no say in the management of the Corporation.

ARTICLE 40

PAYMENT OF DIVIDENDS

The payment of dividends shall be effected annualy on the date and at the place determined by the General Meeting or by the Board of Directors as the case may be. It shall be made validly to the bearer of the nominal share certificate.

CHAPTER VII

CONSTITUTION

ARTICLE 41

FORMALITIES

The constitution of the Corporation shall be effected at the date determined under Articles 14 and 15 of the Treaty and shall give rise to the performance of the following actions :

— Subscriptions in the proportions and amounts determined under Article 5 hereinbefore shall be established in the individual allotment letters signed by each of the shareholders;

— A subscriber or any number among such, shall take office as founders of the Corporation and shall be designated to this effect to collect all allotment letters and the initial payment amounting to one-quarter of the corresponding capital;

— Once the whole of the capital shall be thus subscribed and conditional upon one of the States having ratified the Treaty to which these Articles of Corporation are annexed, the founder shareholder or shareholders shall convene by registered letter all of the shareholders to a constituent meeting, at a place agreed between them or in the capital of the State which first ratified the Treaty;

— The meeting, to which the founder or founders shall make a statement of the operations of subscription, shall have the object of checking this subscription and the payment of one-fourth of the capital, of appointing the first members of the Board and of appointing the auditors for the first financial period. It shall as far as necessary draw up the general rules governing the method of establishing and keeping the Corporation's accounts, methods of evaluating and determining the inventory, the balance sheet and the profit and loss account.

The constituent meeting shall comprise all of the subscribers of the authorized capital or their representatives. It shall rule by a majority of the votes expressed. It shall establish the definitive constitution of the Corporation subject to ratification of the Treaty by all of the signatory States.

ARTICLE 42

TERMINATION OF THE FUNCTIONS OF FOUNDERS

After holding the constituent meeting the Company shall be deemed to be legally constituted and an end shall be made to the functions and designation of the founders.

ARTICLE 43

PUBLIC NOTIFICATION

Formalities pertaining to registration and public notification of the Articles of Incorporation together with all acts and minutes relating to the constitution of the Corporation in all place where the Corporation has a head office, shall be performed by persons designated therefor by the Board. In regard to third parties, al bearers of a certified copy or abstract of said documents shall be considered valid attorneys in respect of publicity and/or publications.

ARTICLE 44

CONSTITUTION COSTS

Costs and fees in connection with the Articles of Incorporation and with acts and meetings relating to the constitution of the Corporation together with registration and public notification fees, and in a general manner all other expenses that the founder may have been called upon to incur for constituting and organizing the Corporation, shall be borne by said Corporation and carried as initial expenses, and shall be settled as decided later by the Board of Directors.

CHAPTER VIII

ARTICLE 45

DISSOLUTION - LIQUIDATION

a) Upon liquidation of the Company whether anticipated or upon expiry of its authorized duration, the General Meeting shall by a two-thirds majority, appoint one or a number of liquidators and determine their powers, remuneration and fees. The appointment of the liquidators shall put an end to the powers of the members of the Board.

The properly constituted General Meeting shall during liquidation hold the same attributions as during the life of the Corporation; it shall in particular have the power to approve the liquidation accounts and give the auditors final discharge. It shall be presided by the person appointed thereto by the shareholders at the commencement of each meeting. It shall be convened by the liquidator or liquidators.

b) Once the liabilities of the Corporation have been satisfied and the amount of the shares, paid up and not paid off, has been repaid, the balance remaining shall be distributed between all the shares in equal portions or proportional to their nominal value in the event that certain shares have a different nominal value.

ARTICLE 46

DISPUTES

1) The following shall be settled by arbitration exclusively.

Any dispute relating to the interpretation and application of these Articles of Incorporation and to rights, obligations and liabilities pertaining therto;

2) Any disputes between shareholders, or between shareholders and the Corporation, relating to Company affairs or to rights of shareholders;

3) Any disputes between the Corporation and its members of the Board and trustees also between the members of the Board and trustees on the one part and the shareholders on the other part:

4) Any disputes regarding the nullity of the Company or its statutory provisions;

5) Any disputes regarding the nullity and voidability of decisions and acts of the Corporation's bodies;

6) Any disputes regarding dissolution and/or liquidation of the Corporation.

To this effect, each of the parties shall appoint in each case one arbitrator, and the arbitrators shall agree on the appointment of a third arbitrator. In the event one or other of the parties shall not have appointed its arbitrator whithin two months effective from the date of receipt of the other party's request, or in the event the arbitrators so appointed shall not have agreed within two months on the appointment of a third arbitrator, any party may request the President of the International Court of Justice to perform such appointments.

The arbitral tribunal shall determine its own procedure. It shall prononce its award in equity (amiable composition).

The awards thus made shall be mandatory on each of the parties and shall be subject to no appeal.

Done at Yaounde this 28th day of March 1961 in one copy only, which shall remain in the archives of the Government of the Republic of Cameroun, who shall forward certified copies therof to all signetory States.

SIGNATORY PROTOCOL TO THE TREATY RELATING TO AIR TRANSPORT IN AFRICA

The signatory States.

Desirous. with the signature of the Treaty relating to Air Transport in Africa, of specifying the scope of the provisions of article 2 and of the second paragraph of article 10 of said Treaty.

Have agreed on the following provisions which shall be annexed to this Treaty :

I - The signatory States may. by agreement between the parties. authorize existing Corporations to pursue their activities within the conditions and limits of these activities as on 1 April 1961. In this event. they shall take the necessary measures to co-ordinate the activities of these Corporations with those of Air Afrique.

II - Each of the contracting States. after having referred to the Committee of Ministers and consulted Air Afrique may. while awaiting the Committee's opinion. issue provisional authorizations to the undertakings of an adjacent non-contracting State and receive from said State reciprocal authorizations insofar as said authorizations shall be aimed at performing private inter-States traffic between the State granting the authorization and the adjacent State.

The Airlines of a signatory State which perform the scheduled service on routes of local interest, the natural terminus of which is situated in an adjacent signatory State beyond the frontiers of the signatory State may be authorized. after consultation with the Committee of Ministers of Transport. to operate the scheduled services of inter-States airlines of local interest.

The authorizations granted under the preceding paragraphs shall not constitute diversions of traffic detrimental to Air Afrique not be preiudicial to its operation.

III - Notwithstanding the provisions contained in article 2 of the Treaty. the Government of Chad reserves the right to dispose freely. on behalf of a local Corporation, of its air traffic rights for inter-State links (Equatorial Customs Union. Cameroun) and with adjacent third States. in a proportion which may not exceed fifty per cent of said rights.

Done a Yaounde the twenty-eighth day of March 1861 in one original copy which shall remain deposited in the archives of the Government of the Republic of Cameroun and duly certified copies shall be transmitted by that Government to all the signatory States.

FOR THE REPUBLIC OF CAMEROUN

AHMADOU AHIDJO

President of the Republic

FOR THE CENTRAL AFRICAN REPUBLIC

DAVID DACKO

President of the Republic

FOR THE REPUBLIC OF THE CONGO

FULBERT YOULOU

President of the Republic

FOR THE REPUBLIC OF THE IVORY COAST

FÉLIX HOUPHOUET- BOIGNY

President of the Republic

FOR THE REPUBLIC OF GABON

LÉON M'BA

President of the Republic

FOR THE REPUBLIC OF DAHOMEY

HUBERT MAGA

President of the Republic

FOR THE REPUBLIC OF UPPER VOLTA

MAURICE YAMEOGO

President of the Republic

FOR THE ISLAMIC REPUBLIC OF MAURITANIA

MOKTAR OULD DADDAH

Prime Minister, Head of State

FOR THE REPUBLIC OF NIGER

HAMANI DIORI

President of the Republic

FOR THE REPUBLIC OF SENEGAL

MAMADCU DIA

Chairman of the Council of Ministers

FOR THE REPUBLIC OF CHAD

FRANÇOIS TOMBALBAYE

President of the Republic

IMP. BLONDIAUX - LE PERREUX (SEINE)

APPENDIX B

SALISBURY AGREEMENT

BETWEEN THE GOVERNMENTS

OF

SOUTHERN RHODESIA,

NORTHERN RHODESIA

AND

NYASALAND

4th December, 1963

An Agreement made and entered into by and between THE GOVERNMENT OF SOUTHERN RHODESIA of the first part, THE GOVERNMENT OF NORTHERN RHODESIA of the second part and THE GOVERNMENT OF NYASALAND of the third part.

WHEREAS the Government of Southern Rhodesia, the Government of Northern Rhodesia and the Government of Nyasaland, desire that the Central African Airways Corporation should continue under the joint ownership and control of the said Governments:-

IT IS HEREBY AGREED:-

1. A new Corporation will be constituted, to be called the Central African Airways Corporation (hereinafter referred to as the new Corporation), in which will be vested the assets and liabilities of the present Central African Airways Corporation (hereinafter referred to as the existing Corporation), and which will be responsible, on behalf of the three Governments, for the performance of the functions now performed by the existing Corporation.

2. The new Corporation shall consist of a Chairman appointed on the first occasion by the Governments of the three Territories in agreement and subsequently by the Higher Authority referred to in Article 3 below and five other members of whom two shall be appointed by the Government of Southern Rhodesia, two by the Government of Northern Rhodesia and one by the Government of

Nyasaland. In making these appointments the Higher Authority and the Governments will seek to secure that the new Corporation is composed of persons with diverse technical, professional, business or administrative qualifications. In addition, the Commonwealth Development Corporation may nominate a representative for appointment as an additional member of the new Corporation until such time as the loan made in 1954 by the Commonwealth Development Corporation to the existing Corporation has been fully repaid. The new Corporation will be charged with the duty of conducting its business on sound commercial lines.

3. A Higher Authority for Civil Air Transport, in this Agreement called the Higher Authority, will be constituted, composed of one Minister appointed by each of the three Governments, to exercise functions on their behalf in respect of the new Corporation. No decision of the Higher Authority will have effect unless it is unanimous.

4. Having been informed by the Government of the United Kingdom of their readiness to take appropriate steps with a view to the submission to Her Majesty in Council of a draft Order in Council containing provisions substantially to the same effect as those set out in the draft at Annex A to this Agreement, the three Governments agree that it is expedient that such provision should be made by Order in Council. They also undertake to secure the enactment in respect of each of their three Territories of legistlation, in the terms of the draft at Annex B to this Agreement, conferring on the Higher Authority, and on the new Corporation, the powers

and functions specified in the draft, now exercised or performed in respect of the existing Corporation by the Federal Minister of Transport or by the existing Corporation. Both these drafts form integral parts of this Agreement and each Government agrees that it will not amend either the Order in Council when made or the legislation when enacted without the agreement of the other two Governments.

5. The new Corporation will be required to constitute in each of the three Territories a private limited company wholly owned by the new Corporation and incorporated in terms of the law of the respective Territory.

6. Each of the private limited companies constituted in Northern Rhodesia and Nyasaland will have transferred to it by the new Corporation all the immovable property and chattels (other than aircraft) of the new Corporation in the Territory in which the subsidiary company in question is constituted. The private limited company constituted in Southern Rhodesia will have transferred to it so many of the motor vehicles and so much of the traffic handling equipment and office furniture and fittings of the new Corporation as the new Corporation and the Southern Rhodesia subsidiary company agree between themselves are necessary for the efficient performance by the subsidiary company of its functions. The new Corporation will also transfer to the Southern Rhodesia company all the new Corporation's right, title and interest in --

(i) Accommodation in the Salisbury Airport Passenger and Freight Buildings presently leased by the existing Corporation, except that used by the Air Hostess Superintendent, the Operations Room, the Rostering Section and the Flight Services Unit;

(ii) The Gordon Avenue Booking Office in Salisbury;

(iii) Accommodation on the ground floor in the Travel Centre, Salisbury;

(iv) Accommodation at Kariba Airport and Township;

(v) Accommodation at Bulawayo Airport and Bulawayo City.

7. The company constituted in Southern Rhodesia will also have transferred to it two D.C. 3 aircraft, the company constituted in Northern Rhodesia two D.C. 3 aircraft and three Beaver aircraft and the company constituted in Nyasaland two D.C. 3 aircraft and three Beaver aircraft. All aircraft so transferred will be fully equipped to operate.

8. The subsidiary companies will provide the traffic handling services and will also take over responsibility for the territorial managerial and sales functions presently provided by the existing Corporation, and, in the case of Northern Rhodesia and Nyasaland, operate Beaver services for their own account. The D.C. 3 aircraft will be leased back to the new Corporation for common operation throughout the three Territories and elsewhere. All the aircraft owned by the subsidiary companies will, if desired, be painted in the colours and markings of their

respective owners. The Governments agree that in the replacement of aircraft regard will be had to the needs of the subsidiary companies, and to the need for the maximum possible standardization in the aircraft types used by the new Corporation and its subsidiaries operating as a group.

9. The new Corporation shall recognize, as a general principle, the need to operate aircraft in its own name. It may, however, as one of its normal functions use any of its aircraft to operate air transport services, including services on international routes, for its subsidiary companies and the aircraft so used may be identified with the name and markings of the subsidiary company where this is practicable. In deciding whether to operate any such service for a subsidiary company, the Corporation shall have regard to whether it could, without operational or commercial prejudice, provide, if so requested, similar facilities to one or both of the other subsidiary companies.

10. They undertake that the new Corporation, acting directly or through its subsidiary companies, will be the instrument to supply the needs of each and of all three Territories for air transport services within, into, from and through the three Territories to the fullest extent consistent with the resources of the new Corporation and of its subsidiary companies.

11. They undertake that, at least during the subsistence of the Agreement concluded between the British Overseas Airways Corporation and the existing Corporation, and signed in London on 20th May, 1957, the new Corporation, and no other air transport

operator, shall be the designated airline of the Governments of the three Territories for the purpose of providing, or securing the provision of, those air services between the three Territories and places outside the area comprising Kenya, Uganda, Tanganyika, the Republic of South Africa, Angola, Portuguese East Africa, the Congo Republic (Leopoldville) and Brazzaville, which B.O.A.C. are able and willing to operate on behalf of the new Corporation.

12. They undertake that, in respect of the period between the coming into force of this Agreement and the attainment of independence by any one of the three Territories, they will authorize the Higher Authority to be the body responsible on their behalf for all consultations with the Government of the United Kingdom in respect of air traffic rights.

13. Having been informed by the Government of the United Kingdom of its readiness, in the event of any of the three Territories achieving independence, to make an entrustment to the Higher Authority of the right to conduct, on behalf of the Government of the United Kingdom, relations with other Governments on questions of air traffic rights in respect of the other Territories still dependent, subject to obligations previously incurred by the Government of the United Kingdom in respect of those still dependent Territories being continued to be met by the Higher Authority and to consultation with or the prior agreement of the Government of the United Kingdom on matters of concern to the United Kingdom Government to be specified in the entrustment they undertake themselves, on attaining independence, to entrust to the Higher Authority responsibility for the conduct on their

behalf of their relations with other Governments on questions of air traffic rights.

14. They undertake to recognize all current agreements entered into by the Federal Government in respect of air transport matters, unless or until these are amended or terminated by the Higher Authority in accordance with the provisions thereof.

15. They undertake to secure the enactment in respect of each of their Territories of legislation, in terms of the draft at Annex C to this Agreement, which draft forms an integral part of this Agreement, conferring on the Higher Authority the powers and functions specified in the draft in respect of the issue of permits to operate air services. Each Government further agrees that it will not amend this legislation when enacted without the agreement of the other two Governments.

16. They undertake that the Higher Authority shall be the sole authority for approving, on behalf of the three Territories, with or without conditions, any resolution adopted from time to time by the International Air Transport Association, subject, however (pending the entrustment by the Government of the United Kingdom referred to in Article 13 of this Agreement), to the overall authority of the Government of the United Kingdom in respect of the approval of resolutions on fares and rates affecting the new Corporation, or operations to and from the area comprised by the Territories.

17. They agree that for the purpose of establishing, in accordance with procedures agreed in the International Air Transport Association, international fares and rates between points in the three Territories and other countries, the three Territories shall be regarded as a single area. They further agree that, for purposes of determining fares and rates between points all of which are in the areacovered by the three Territories, the three Territories shall be regarded as a single domestic area, and that the Higher Authority shall be the sole authority for regulating fares and rates in this area.

18. They agree that the Higher Authority shall have a Secretariat consisting of officers seconded from the public services of the Territories in grades and numbers agreed by the three Governments and approved by the Higher Authority. The cost of meeting the salaries and expenses of the Secretariat and the other expenses of the Higher Authority (less fees received by the Higher Authority in the exercise of its functions as defined in the legislation referred to in Article 15) will be paid in equal shares by the Governments of the three Territories. The Higher Authority may authorize the Head of the Secretariat to exercise on its behalf such of its functions as it may decide from time to time.

19. The ownership of the capital subscribed to the Central African Airways Corporation before Federation by the Governments of the three Territories, and earning interest at the rate of 3 1/2 per cent per annum, will, on the dissolution of the Federation revert to the Territories in the original amounts, i.e. Southern Rhodesia

£440,000, Northern Rhodesia £308,000, Nyasaland £132,000. This will be regarded as permanent capital of the new Corporation continuing to earn interest for the owners out of available profits and repayable only in the event of its winding-up.

20. In respect of the permanent capital subscribed to the Central African Airways Corporation by the Federal Government in the amount of £20,000, earning interest at the rate of 5 1/4 per cent per annum, and the loans provided to such Corporation and the existing Corporation by the Federal Government over the years 1955 to 1963, for various periods and at rates of interest varying from 4 3/4 per cent to 6 3/4 per cent, of which £576,650 remained unredeemed on 30th June, 1963, the new Corporation shall become liable to the three Territorial Governments in amounts which, when added to the amounts of the permanent capital subscribed to Central African Airways Corporation before Federation by the Governments of the three Territories and referred to in Article 19, will make the Government of Southern Rhodesia owner of 45 per cent, the Government of Northern Rhodesia owner of 45 per cent and the Government of Nyasaland owner of 10 per cent of the total capital and loan debt of the new Corporation. The ownership of the permanent capital and the balance of the loans unredeemed on 30th June, 1963, will therefore be as follows:-

		Total Capital and Loan debt	Pre-Federation	Post-Federation
Southern Rhodesia Government	45%	£664,492 1/2	£440,000	£224,492 1/2
Northern Rhodesia Government	45%	£664,492 1/2	£308,000	£356,492 1/2
Nyasaland Government	10%	£147,665	£132,000	£15,665
		£1,476,650	£880,000	£596,650

21. The guarantee of the Federal Government in respect of the loan given to the Central African Airways Corporation in 1954 by the Colonial (now Commonwealth) Development Corporation will be replaced by guarantees given by the Governments of the three Territories. Of each and every payment due to the Commonwealth Development Corporation in respect of this loan, the Government of Southern Rhodesia will guarantee the payment by the new Corporation of 45 per cent, the Government of Northern Rhodesia 45 per cent, and the Government of Nyasaland 10 per cent.

22. In the event of the new Corporation and its subsidiary companies together incurring in any year an overall loss, which cannot be met from the new Corporation's general reserve, an amount equal to the shortfall will be paid to the new Corporation by the Governments of the three Territories and liability for the payment of this amount will fall on the three Governments in the same proportions as those specified in Article 21. Similarly, any payments made by the new Corporation to the Governments from available profits in excess of the interest due on capital or any payments made to the

Governments by way of return of capital, shall be in these same proportions. Any return of capital shall, in the absence of agreement to the contrary between the Governments of the three Territories, be applied rateably to both the permanent capital referred to in Article 19 and to the permanent capital and the loan capital referred to in Article 20, so as to ensure that the ownership of the total capital by each Government continues in the proportions specified in Article 20.

23. In the event of the Higher Authority agreeing that the new Corporation should be provided with additional capital from the Governments of the Territories or that guarantees should be given by those Governments in respect of loans and credits to be obtained by the new Corporation from other sources such additional capital or guarantees will, in default of agreement to the contrary between the three Governments, be provided or given by the three Governments in the same proportions as those specified in Article 21.

24. The new Corporation and its subsidiary companies will be exempt, except as will be provided in the legislation referred to in Article 4 of this Agreement, from the provisions of any legislation in any of the three Territories regarding the audit and control of public accounts, and in particular exempt from provisions in such legislation regarding:-

(a) payment of surplus moneys to the Consolidated Revenue Funds or equivalent funds of each Territory;

(b) the submission of capital budgets;

(c) the submission of income and expenditure budgets;

(d) the submission of annual reports and accounts;

(e) the powers of the Comptroller and Auditor-General or the official carrying out similar duties in each Territory.

25. The new Corporation and its subsidiary companies will be exempt from the payment in any Territory of taxes on capital, income or profits.

26. They undertake to waive all stamp duties and fees attributable to the transfers referred to in Articles 6 and 7 of this Agreement and to any charge created by any of the subsidiary companies in favour of the Commonwealth Development Corporation in relation to the loan referred to in Article 21.

27. Customs and excise duties paid by the new Corporation or its subsidiary companies or by importers on goods imported and subsequently purchased by the new Corporation or its subsidiary companies, will so far as practicable be recorded and shared among the three Governments in the proportions of Southern Rhodesia 45 per cent, Northern Rhodesia 45 per cent and Nyasaland 10 per cent.

28. Aircraft, flight equipment and spare parts and accessories therefor shall be deemed in the case of new acquisitions of the new Corporation and its subsidiary companies, to be imported simultaneously into the three Territories in the proportions by value of Southern Rhodesia 45 per cent, Northern Rhodesia 45 per cent and Nyasaland 10 per cent.

29. Aircraft, flight equipment and spare parts and accessories therefor, while in the ownership of the new Corporation or any of its subsidiary companies, may be moved between the Territories without payment of customs duties.

30. When goods owned by the new Corporation or any of its subsidiary companies other than goods mentioned in Article 29 are removed from one Territory to the other:-

(i) If the rate of duty applicable to such goods is the same in both Territories, no duty shall be collected or refunded respectively in the importing and exporting Territories;

(ii) In other cases, whether the goods are new or used, a refund shall be made of any duty paid in the exporting Territory and any duty payable shall be collected in the importing Territory. For the purpose of both the refund and the collection of duty, the value for duty purposes shall be --

(a) in the case of imported good, the original import value,

(b) in the case of goods grown, manufactured or produced in either of the Territories, the original value

less an appropriate allowance in the case of used goods.

31. The detailed application of special customs arrangements in respect of goods owned by the new Corporation and its subsidiary companies shall be subject of agreement between the three Governments, in consultation with the new Corporation.

32. They will facilitate transfers of funds by the new Corporation and its subsidiary companies for the purpose of servicing loans and making other necessary payments in connexion with the obligations or operations of the new Corporation and its subsidiary companies.

33. They agree to accept as meeting the requirements of their own legislation, in respect of aircraft owned by the new Corporation and its subsidiary companies:-

(a) the licences of aircraft maintenance engineers and aircrew employed by the new Corporation or its subsidiary companies;

(b) reports and certificates on aircraft issued by inspectors employed by any of the three Governments, the new Corporation or its subsidiary companies.

34. They agree that:-

(a) in the event of the Higher Authority being unable to render a decision or finding as to any question or matter necessary to the exercise of its functions or as to any question or matter arising on this Agreement, it may submit the question or matter at issue to an arbitrator or board of arbitration to be appointed by it;

(b) the Higher Authority shall be obliged to submit any such question or matter to an arbitrator or board of arbitration to be appointed by it if the Chairman of the new Corporation formally requests it to do so on the ground that the question or matter is one of substantial significance for the satisfactory commercial operation of the new Corporation;

(c) if the Higher Authority is unable to agree on the selection of an arbitrator or board of arbitration, it shall ask the Director General of the International Air Transport Association, or such other independent

authority as it may agree upon, to make a recommendation, which it shall be bound to accept, as to the arbitrator or board of arbitration to be appointed by it;

(d) the Higher Authority shall accept and implement any award amde by an arbitrator or board of arbitration appointed in accordance with this article.

35. Any proposals for the minor modication of this Agreement to assist its smooth working would be for consideration by the Higher Authority with a view to its making recommendations to Governments. In addition, if during the currency of the Agreement, it shall appear to any of the Governments that the Agreement requires substantial revision, then the Government or Governments concerned may give notice of that fact to the other Government or Governments through the Higher Authority, and the Governments agree that they would then meet together to review the Agreement within three months of such notice being given; provided that no such review shall take place within three years of the commencement of this Agreement.

THUS DONE AND SIGNED for and on behalf of the Government of Southern Rhodesia at Salisbury this 4th day of December, 1963.

WITNESSES:

1. G.D. COX

2. J.C.W. LAWRENCE

W.J. HARPER,
Minister of Transport and Power

THUS DONE AND SIGNED for and on behalf of the Government of Northern Rhodesia at Salisbury this 4th day of December, 1963.

WITNESSES:

1. D.P. REES
2. J.C.W. LAWRENCE

F.N. STUBBS,
Minister of Transport and Works

THUS DONE AND SIGNED for and on behalf of the Government of Nyasaland at Blantyre this 5th day of December, 1963.

WITNESSES:

1. G.C.D. HODGSON
2. J.C.W. LAWRENCE

COLIN CAMERON,
Minister of Transport and Communications

ANNEX A
to the Agreement
(Article 4)

DRAFT PROVISIONS ON AIRWAYS FOR
INCLUSION IN ORDER IN COUNCIL

Constitution of Higher Authority for Civil Air Transport.

1. (1) There is hereby constituted jointly for the Territories an authoirty which shall be known as the Higher Authority for Civil Air Transport.

(2) The Higher Authority shall consist of three members, of whom one shall be a Minister of the Government of Southern Rhodesia, one a Minister of the Government of Northern Rhodesia and one a Minister of the Government of Nyasaland, appointed by their respective Governments.

Functions of Higher Authority.

2. (1) The Higher Authority shall have such functions in relation to air services and the control of the Corporation as are conferred by this Order or any law.

(2) The Higher Authority may exercise the powers of the Government of any Territory and such other powers as may be entrusted to the Higher Authority to obtain from, and grant to, other governments, rights or concessions in connexion with air services.

(3) The Higher Authority may, after consultation with the Corporation, give to it such

directions as to the performance of its functions in accordance with the provisions of this Order and any law as appear to the Higher Authority to be requisite, and the Corporation shall give effect to any such directions.

Procedure of Higher Authority.

3. (1) Subject to the provisions of this Order and of any law, the Higher Authority shall determine its own procedure.

(2) No decision of the Higher Authority shall have effect unless it is unanimous.

Constitution of Central African Airways Corporation.

4. There is hereby constituted jointly for the Territories a corporation, to be known as the Central African Airways Corporation, which shall be a body corporate with a common seal and capable of suing and being sued and, subject to the provisions of this Order and any law, of doing all such acts as a body corporate may perform.

Membership of Corporation.

5. (1) The Corporation shall consist of --

(a) a Chairman who shall be appointed on the first occasion by the Governments of the Territories in agreement and thereafter by the Higher Authority;

(b) five other members, of whom two shall be appointed by the Government of Southern Rhodesia, two by the Government of Northern Rhodesia, and one by the Government of Nyasaland; and

(c) so long as the agreement between the Central African Airways Corporation and the Colonial Development Corporation concluded on the sixth day of September, 1954, so requires, one additional member who shall be appointed by the Higher Authority with the approval of the Commonwealth Development Corporation.

(2) Each member of the Corporation shall be paid out of the funds of the Corporation such remuneration and allowances, if any, and, subject to the provisions of this Order, shall have such other conditions of service, as the Higher Authority may determine.

Disqualifications for membership.

6. No person shall be appointed to be a member of the Corporation who --

(a) is a member of the Legislature of a Territory;

(b) has, under any enactment in force in any part of the Commonwealth --

(i) been adjudged or otherwise declared bankcrupt or insolvent and has not been discharged or rehabilitated; or

(ii) made an assignment to, or arrangement or composition with, his crediters which has not been rescinded or set aside; or

(c) has within the immediately preceding five years served a sentence of imprisonment (by whatever name called) exceeding six months imposed (otherwise than as an alternative to, or in default of, the payment of a fine in any part of the Commonwealth, and has not received a free pardon in respect of the offence for which he was sentenced.

Tenure of office of members.

7. (1) Subject to the provisions of this section, a member of the Corporation shall hold his office for a period of three years from the date of his appointment or such a shorter period as may be specified in his instrument of appointment.

(2) The office of a member shall become vacant --

(a) if he resigns by notice in writing given to the Higher Authority;

(b) if any circumstances arise which, if he were not a member, would cause him to be disqualified for appointment as a member in terms of paragraphs (a) or (b) of section 6;

(c) if he begins to serve a sentence such as is referred to in paragraph (c) of that section;

(d) if the Higher Authority removes him from office for improper conduct as a member or failure to perform efficiently

the functions of his office (whether due to infirmity of body or mind or any other cause) or to take all possible steps to cause the Corporation to comply with any court order requiring it to remedy a default;

(e) in the case of a member other than the Chairman, if he is absent without the permission of the Chairman from three successive meetings of the Corporation of which he has had notice;

or

(f) if the Higher Authority is satisfied that the private interests of the member conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as such a member.

(3) A notice of resignation given in terms of paragraph (a) of subsection (2) shall take effect on the expiration of one month or such shorter period as may be agreed between the Higher Authority and the member concerned, from the date on which it is given.

(4) A member vacating his office may, unless disqualified for appointment, be again appointed as a member from time to time.

Acting appointments, etc.

8. If a member of the Corporation is unable to perform the functions of his office by reason of illness, absence from the Territories, or any other cause, the authority by which that member was appointed may appoint any person, not being a person disqualified for appointment as a member, to act in his place; and any person so appointed shall, subject to the provisions of subsection (2) of section 7, continue so to act until the expiration of such period as may be specified in his instrument of appointment or until that member resumes the performance of those functions, whichever is the earlier.

Procedure of Corporation.

9. (1) Subject to the provisions of this Order and of any law and to any direction given to the Corporation by the Higher Authority, the Corporation shall determine its own procedure.

(2) If at a meeting of the Corporation the Chairman and any person appointed to act as Chairman are absent, the members present may elect one of their number to preside as Chairman of the meeting.

(3) Not less than four members shall form a quorum at a meeting of the Corporation.

(4) Decisions of the Corporation shall be made according to the majority of the votes of the members present and voting at a meeting of the Corporation at which a quorum is present, and in the event of an equality of votes, the member presiding shall have a casting vote.

(5) Decisions taken in accordance with the provisions of subsection (4) shall be valid notwithstanding any vacancy among the members of the Corporation or that some person who was not entitled so to do voted or otherwise acted as a member.

Vesting of assets, liabilities, etc., in the Corporation.

10. (1) In this section --

"former Corporation" means the Central African Airways Corporation established by the Central African Airways Corporation Act, 1960, of the Federation;

"new Corporation" means the Corporation constituted by section 4.

(2) On the coming into operation of this section, all assets, rights, liabilities and obligations of the former Corporation shall vest in the new Corporation by virtue of this section, and accordingly --

(a) all agreements and instruments giving rise or otherwise relating to such assets, rights, liabilities or obligations which were subsisting immediately before the coming into operation of this section shall on and after its coming into operation have effect and be enforceable as if references therein to the former Corporation were references to the new Corporation and, where the former was a party thereto, as if the new Corporation had been a party thereto instead of the former Corporation;

(b) in any legal proceedings connected with such assets, rights, liabilities, or obligations which were pending immediately before the coming into operation of this section by or against the former Corporation, the new Corporation shall be substituted for the former Corporation as a party.

(3) Where any person who was in the service of the former Corporation immediately before the coming into operation of this section becomes by virtue of this section a person in the service of the new Corporation, his service under the former Corporation shall be treated as service under the new Corporation for the purposes of determining rights to or eligibility for pension, gratuity or leave in respect of his service.

(4) Where title to any immovable property or any right or obligation relating to such property is vested in the new Corporation by virtue of this section and such title, right or obligation or any deed relating thereto has been registered before the coming into operation of this section in terms of any law, the officer having charge of the register concerned shall, on application by the new Corporation or any person having an interest in such property make the necessary alterations in the register and, if presented therefor, endorsements on the deeds relating to the title, right or obligation concerned, and no stamp or other duties shall be payable in respect thereof.

(5) The provisions of subsection (2) of this section shall have effect subject to any agreement entered into or instrument executed by virtue of section 12 of this Order.

Functions of Corporation.

11. (1) The Corporation shall have such functions within the Territories, within one or more Territories, or outside the Territories, as are conferred by this Order or any law.

(2) The general function of the Corporation shall be to supply the needs of the Territories for air services within, into, from and through the Territories to the fullest possible extent consistent with the resources of the Corporation.

Power of Corporation to execute documents.

12. Notwithstanding any other provision in this Order, the Corporation may, before 1st January, 1964, enter into any agreement, execute any instrument or do any other thing which it deems necessary to enable it to assume its functions on that date.

Power of Legislature of Territory to amend Order.

13. The provisions of this Order may, as respects each Territory, be amended or revoked by a law of the Legislature of that Territory.

Interpretation.

14. In this Order, unless inconsistent with the context --

"air services" includes ancillary services and ancillary transport services;

"Corporation" means the Central African Airways Corporation constituted by section 4;

"functions" means duties and powers;

"Higher Authority" means the Higher Authority for Civil Air Transport constituted by section 1;

"law" means any provision having the force of law in any Territory;

"section" means section of this Order;

"the Territories" means Southern Rhodesia, Northern Rhodesia and Nyasaland, and "Territory" shall be construed accordingly.

Citation and commencement.

15. The provisions of this Order shall come into operation on December, 1963, except for sections 2(2), 10, 11 and 13 which shall come into operation on 1st January 1964.

APPENDIX C

E.A. COMMON SERVICES ORGANIZATION

Act No. 4 of 1963

THE EAST AFRICAN AIRWAYS CORPORATION ACT, 1963

Assented to on behalf of the East African Common Services Organization.

Date: 3rd June, 1963. — JULIUS K. NYERERE, President of Tanganyika.

Date: 31st May, 1963. — W.F. COUTTS, Governor-General of Uganda.

Date: 30th May, 1963. — MALCOLM MacDONALD, Governor of Kenya.

AN ACT TO ESTABLISH THE EAST AFRICAN AIRWAYS CORPORATION, TO PROVIDE FOR ITS POWERS, DUTIES AND MANAGEMENT AND FOR MATTERS CONNECTED THEREWITH

Date of commencement: 3rd June, 1963

ENACTED by the President of Tanganyika, the Governor-General of Uganda and the Governor of Kenya on behalf of the East African Common Services Organization with the advice and consent of the East African Central Legislative Assembly.

Short title.

1. This Act may be cited as the East African Airways Corporation Act, 1963, and shall come into operation upon such date as the Authority may, by notice in the Gazette, appoint.

Interpretation.

2. In this Act --

"the Governments" means the Governments of Tanganyika, Uganda, Kenya and Zanzibar; and "the Postmaster General", means the Postmaster General referred to in Article 41 of the Constitution.

Establishment of East African Airways Corporation.

3. There shall be established a corporation to be known as the East African Airways Corporation (hereinafter called "the Corporation") with perpetual succession and a common seal which shall be capable of suing and of being sued and of purchasing or otherwise acquiring, holding and alienating property moveable and immoveable and of doing or performing all such acts and things as bodies corporate may, by law, do and perform.

Transfer of Assets and Liabilities.

4. (1) All property which, immediately before the date of the coming into operation of this Act, vested in the corporation established under part IV of the East African Territories (Air Transport) Orders in Council 1945 to 1961 (hereinafter referred to as "the previous corporation") shall from such date vest in the Corporation and as from such date the Corporation shall have all rights and be subject to all liabilities which the previous corporation had and to which the previous corporation was subject immediately before such date.

(2) On and after the date of coming into operation of this Act, every contract made by or on behalf of the previous corporation (whether in writing or not and whether or not of such a nature that rights and liabilities thereunder could be assigned by the previous corporation) shall have effect as if it were made by or on behalf of the Corporation, and as if for references therein to the previous corporation and to any servant or authority of the previous corporation there were substituted, in relation to anything falling to be done on or after the date of the coming into operation of this Act, references to the Corporation and to the corresponding servant or authority of the Corporation.

(3) Without prejudice to the generality of subsections (1) and (2) of this section, the Corporation, and any other person or authority, shall have the like rights, powers and remedies (including in particular rights and powers as to the taking or resisting of legal proceedings) for ascertaining perfecting or enforcing any rights or liabilities vested in or attached to them in accordance with the provisions in this section as if they had at all times been the rights or liabilities of the Corporation, or of that person or authority as the case may be, and any proceedings by or against the previous corporation pending on the date of the coming into operation of this Act may be continued by or against the Corporation.

(4) References to the previous corporation in any law or document shall be construed as references to the Corporation.

5. (1) The Corporation shall consist of -- Constitution of the Corporation.

(a) a Chairman who shall be appointed by the Authority;

(b) the person discharging the functions of Financial Secretary of the East African Common Services Organization;

(c) two members, who shall be nominated by the Government of Tanganyika;

(d) two members, who shall be nominated by the Government of Uganda;

(e) two members, who shall be nominated by the Government of Kenya; and

(f) an additional member, who shall be appointed by the Authority, if in the opinion of the Authority it is desirable to appoint an additional member.

(2) The members of the Corporation appointed by the Authority under paragraphs (a) and (f) of subsection (1) of this section shall hold office during the pleasure of the Authority, and the members nominated by the Governments of Tanganyika, Uganda and Kenya under paragraphs (c),(d) and (e) of the said subsection shall hold office at the pleasure of those Governments respectively.

(3) Five members of the Corporation, of whom three shall be members nominated respectively by the Governments of Tanganyika, Uganda and Kenya, shall form a quorum for any meeting of the Corporation.

(4) No defect in the appointment or nomination of a person to be a member of the Corporation shall affect the powers of the Corporation or the validity of any act done by it.

(5) The Chairman shall, in the case of an equality of votes, have a casting vote in addition to a deliberative vote.

(6) If any member of the Corporation shall be prevented by absence or other cause from acting as such the authority by whom such member was appointed or nominated, as the case may be, may appoint some other person to act and vote in his place until such time as such member shall return or be able to resume his duties.

(7) The Chairman and the other members of the Corporation may be paid, in respect of their offices as such, such fees or remuneration from the funds of the Corporation as the Authority may determine.

(8) The Government of Zanzibar may nominate a person who shall be entitled to be present any any meeting of the Corporation and such person shall be entitled to take part in any discussion relating to Zanzibar but such person shall not otherwise be entitled to take part in any discussion thereat or to vote.

(9) The Chairman shall convene not less than four meetings of the Corporation in each financial year.

(10) Any four members of the Corporation may, upon giving reasonable notice thereof in writing, call upon the Chairman to convene a meeting of the Corporation whether or not such meeting is additional to the meetings referred to

in subsection (9) of this Act, and the Chairman shall convene such meeting accordingly.

General Manager.

6. (1) The Authority shall appoint a General Manager who shall have such of the authority and powers of the Corporation as may be delegated to him by the Corporation or as may otherwise be conferred upon him by law.

(2) The General Manager may, with the prior consent of the Corporation, delegate such of the powers delegated to him under subsection (1) of this section or as may otherwise be conferred upon him by law, to such servants of the Corporation as the General Manager may consider necessary and desirable for the convenience and efficient working of the Corporation.

(3) The General Manager shall be entitled to be present at all meetings of the Corporation and to take part in the discussions, but he shall not be entitled to vote.

Powers and Duties of Corporation.

7. (1) It shall be the duty of the Corporation, subject as hereinafter provided, to secure the fullest development consistent with economy, of efficient air transport services within Tanganyika, Uganda, Kenya and Zanzibar and between those countries and such other places as the Authority may authorize and to secure that such services are operated at reasonable charges.

(2) The Corporation shall have power, subject as hereinafter provided, either in connexion with the discharge of their duty under the preceding subsection or as an independent activity --

(a) to acquire aircraft, parts of aircraft, aircraft equipment and accessories and stores;

((b) to acquire, construct and manage aerodromes, buildings and repair shops;

(c) to acquire lights, beacons, wireless installations and other plant and equipment;

(d) to sell, let, or otherwise dispose of any property belonging to them and not in their opinion required for the proper discharge of their functions;

(e) to establish or maintain air transport services and, for that purpose, to enter into arrangements or agreements with any other person;

(f) to act as agents for any other undertaking engaged in the provision of air transport services, or in other activities of a kind which the Corporation have power to carry on;

(g) to undertake flights on charter terms;

(h) to acquire, operate or manage restaurants and hotels and to provide accommodation in hotels for passengers, and facilities for the transport of passengers to and from aerodromes, and for the collection and delivery and storage of baggage and freight;

(i) to make, with persons carrying on a business of providing any facilities for passengers or freight in connexion with air transport services, arrangements for the provision of such facilities;

(j) to acquire, sell or otherwise dispose of stocks, shares, bonds, debentures or securities.

Borrowing powers.

8. (1) The Corporation may, with the consent of the Authority, borrow money by the issue of stock in manner hereinafter provided, for all or any of the following purposes, that is to say --

(a) the provision of working capital;

(b) the redemption of any stock which they are required, or entitled, to redeem; and

(c) any other expenditure properly chargeable to capital account, including the repayment of any money temporarily borrowed under subsection (2) of this section for any of the foregoing purposes.

(2) The Corporation may also, with the consent of or in accordance with the terms of any general authority given by the Authority, borrow temporarily by way of overdraft or otherwise, such sums as they may require for meeting their obligations and discharging their functions and may also, with the consent of or in accordance with the terms of any general authority given by the Authority, mortgage or charge their undertaking and property as outright or collateral security for any debt, liability or obligation of the corporation, or of any

third party, on such terms and conditions as the Corporation shall think fit.

Issue of stock.

9. (1) The Corporation may create and issue stock (whether non-interest bearing or otherwise), for the purpose of enabling the Corporation to raise any money which they are empowered under this Order to borrow by the issue of stock.

(2) Such stock and the interest thereof (if any) shall be charged on the undertaking and all property and revenues of the Corporation.

(3) Any stock issued by the previous corporation shall be held in the same right and on the same trusts and subject to the same powers, privileges, provisions, charges and liability as those in, on or subject to which such stock was issued by the previous corporation.

Airways Fund.

10. The Corporation shall establish a fund known as the Airways Fund and all receipts of the Corporation shall be carried to that Fund and all payments by the Corporation shall be made out of that Fund.

Application of revenue.

11. The revenues of the Corporation (including any grant made to it by any of the Governments) for any financial year shall be applied --

(a) in defraying the working and establishment expenses and expenditure on, or provison for the maintenance and renewal of the undertaking and the discharge of the functions of the Corporation (including

payments in respect of, and provision for, pensions and superannuation allowances), properly chargeable to revenue account;

(b) in paying the interest on any Stock issued, or temporary loan raised, by the Corporation;

(c) in transferring sums required by the Authority to be transferred to a Sinking Fund or otherwise set aside, for the purpose of making provision for the redemption of stock.

Accounts.

12. (1) The Corporation shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year a statement of accounts in such form as the Authority may direct.

(2) Such accounts shall be audited by auditors to be appointed by the Authority.

(3) So soon as the accounts for the Corporation have been audited, the Corporation shall send a copy of the statement of accounts referred to in subsection (1) of this section to the Authority together with a copy of any report made by the auditors on that statement or on the accounts of the Corporation.

(4) The Authority shall cause a copy of every such statement and report to be laid before the Central Legislative Assembly.

13. (1) The Corporation shall, as soon as possible after the end of each financial year, make to the Authority a report dealing generally with the operations of the Corporation during that year and containing such information with respect to the proceedings and policy of the Corporation as the Authority may determine. Annual report.

(2) The Authority shall lay a copy of every such report before the Central Legislative Assembly.

(3) The Corporation shall furnish to the Authority

(a) such financial and statistical returns;
(b) such information with respect to the financial position of any subsidiary company; and
(c) such information with regard to the terms and conditions of employment of the servants of the Corporation

as the Authority may from time to time require.

14. (1) The Corporation shall, on or before the 31st day of October in each year, submit to the Authority a programme of the air transport services which the Corporation proposes to provide for the year next ensuing and of the other activities in which the Corporation proposes to engage during that period. Such programme shall show -- Annual Programme.

(a) each air service proposed to be operated by the Corporation that year with an estimate of the profit or loss on each such service;

(b) the provision of any additional, or the withdrawal of any existing service;

(c) the provision of any additional, or the withdrawal of any existing aircraft or equipment;

(d) the proposed tariff of charges of the Corporation;

(e) a detailed estimate of the revenue of the Corporation and of the expenditure to be incurred by the Corporation;

(f) any proposal to acquire, sell or otherwise dispose of stocks, shares, bonds, debentures or securities.

(2) The Authority may either --

(a) approve the programme;

(b) after consultation with the Chairman direct such deletions from, or modifications or additions to, the programme; or

(c) where the contemplated operation of the Corporation shows an estimated deficiency of revenue over expenditure, direct such reduction in such estimated deficiency as to the Authority may seem fit. Where such a direction has been given, the Corporation shall effect such reduction by such methods, and in such manner, approved by the Authority, as the Corporation may determine.

Servants of the Corporation.

15. (1) The Corporation may appoint such servants of the Corporation as it may consider necessary for the proper working and operation of the Corporation.

(2) The Corporation may accept the services of any person seconded to the service of the Corporation as it may consider necessary or expedient, and any such person so seconded shall be admitted for all purposes to be a servant of the Corporation except so far as the Corporation may agree to the contrary with such person or his employer.

Postal Services.

16. (1) The Corporation shall, if and when required by the Postmaster General, perform all such reasonable services in regard to the conveyance of mails (with or without officers of the East African Posts and Telecommunications Administration in charge thereof) by the Corporation's aircraft or any of them as the Authority shall from time to time require.

(2) The remuneration for any services performed in pursuance of this section shall be such as may be, from time to time, determined by agreement between the Postmaster General and the Corporation.

Prohibition of free or preferential services.

17. The Corporation shall not be required by any of the Governments to provide air transport facilities gratuitously, or subject to preferential conditions or at a rate of charge which is insufficient to meet the cost involved in the provision of such facilities, unless the Government concerned undertakes to pay the amount of loss incurred by reason of the provision of such grant of facilities.

18. The Corporation may make such Rules as it may consider necessary or desirable for the proper working, management and control of the Corporation so far as is not inconsistent with this Act or with any law in force in Tanganyika, Uganda, Kenya or Zanzibar. Rules.

APPENDIX D

CONSORTIUM AGREEMENT

OF

8th February 1951

APPENDIX: D

CONSORTIUM AGREEMENT OF 8th FEBRUARY 1951.

For the purpose of continuing and widening their co-operation, the undersigned:

AKTIEBOLAGET AEROTRANSPORT (below called ABA)
DET DANSKE LUFTFARTSELSKAB A/S (below called DDL)
DET NORSKE LUFTFARTSELSKAP A/S (below called DNL)

have agreed that their present Agreements of the 31st of July 1946, with Amending Agreement of the 4th of July 1947, and the 25th of June 1949, known respectively as the OSAS and ESAS Agreements, shall cease to be valid as of September 30th 1950 and from and including the 1st of October 1950 the following new Consortium Agreement shall apply between them.

§ 1

NAME AND ACTIVITY OF THE CONSORTIUM

1. The parties hereby form a Consortium, which under the name of

SCANDINAVIAN AIRLINES SYSTEM
Denmark — Norway — Sweden

and for their joint account, and as an entity, shall carry on commercial air traffic and other business in connection therewith, in accordance with the provisions of this Agreement, and otherwise to the extent and in a way the Board of the Consortium deems appropriate.

2. The activity of the Consortium shall be governed by sound business considerations, practice and policy.

3. None of the parties may directly or indirectly carry on, or support, or take any interest in any activity of the kind carried on by the Consortium, unless the other parties agree thereto.

4. Should the competent Governmental authorities so request, each of the parties shall have the right to require that the Consortium shall perform, on conditions to be agreed, domestic traffic which is not considered acceptable from a sound business viewpoint.

§ 2

LIABILITIES OF THE PARTIES

1. As against third parties, the parties are jointly and severally liable for due fulfilment of any obligation which might arise for the Consortium in connection with its activity.

2. The internal relation in the Consortium between the parties shall be as follows:

   ABA's share in the Consortium shall be 3/7 (three sevenths)
   DDL's share in the Consortium shall be 2/7 (two sevenths)
   DNL's share in the Consortium shall be 2/7 (two sevenths)

   In accordance herewith the parties shall jointly own all the properties and rights of the Consortium in these proportions, while they in the same proportions shall share any profit or any loss which arises as a result of the activity of the Consortium and between themselves shall be responsible for the obligations of the Consortium.

§ 3

GENERAL PRINCIPLES OF ALLOCATION

Subject to the provision contained in § 1, sub-paragraph 2, the Consortium shall make every effort towards allocating in a reasonable way, the business activities of the Consortium between the three countries.

§ 4

THE CAPITAL OF THE CONSORTIUM

1. The initial capital of the Consortium shall be 157½ million Swedish Kronor, corresponding to approximately 210 million Danish Kroner, and approximately 217 million Norwegian Kroner respectively, to be contributed by the parties causing the following assets and liabilities to be assigned to and taken over by the Consortium:

   a) All properties and rights jointly owned by and liabilities jointly incurred by the parties under the aforementioned Agreements of the 31st of July 1946 and the 25th of June 1949 as from time to time amended.
   b) All aircraft and other physical assets which the parties own individually, except real estate located in the three countries and except such items as the parties may specifically agree upon.
   c) Such liabilities, as the parties may specifically agree upon, for which any of the three parties is responsible.

d) Cash funds to the extent required for reaching a net initial capital as set out above.

2. Between the parties a clearing shall thereafter be effected through necessary cash payments, so that the contributions made by the parties, valued as agreed upon between the parties, will become adjusted to correspond with the proportions set out in § 2, sub-paragraph 2.

3. It is agreed that, notwithstanding the provisions in sub-paragraph 1.b) of this § 4, the ownership of each aircraft is retained by the party registered and recorded as owner thereof in accordance with the provisions of § 6, but all aircrafts shall internally between the parties be regarded as owned by the Consortium, which latter shall, with regard to third parties, exercise any and all powers appertaining to ownership of the aircraft, including — without limiting the generality hereof — the power to control, use, charter, and lease such aircraft as well as to dispose of same by sale or otherwise.

§ 5

REAL ESTATE AND LEASES

1. Real estate in the three countries, owned by any of the parties, shall be placed at the disposal of the Consortium to the extent and on conditions of lease, as specifically agreed.

2. Current leases in the three countries between a third person and any of the parties, shall be taken over by the Consortium on existing conditions.

§ 6

REGISTRATION OF AIRCRAFT

Aircraft contributed by the parties to the Consortium as capital, in connection with its formation, as well as aircraft later acquired by the Consortium, shall be registered, within each type of aircraft, by approximately 3/7 of each type of aircraft in ABA's name in Sweden, by approximately 2/7 in DDL's name in Denmark, and by approximately 2/7 in DNL's name in Norway, without this having any other effects on rights and liabilities under this Agreement. Deviation from this allocation principle can be made should practical reasons so require, as for instance, if certain types are solely or mainly used within one party's national area. At the time of the formation of the Consortium, the allocation between the parties for registration purposes shall be as specified in the appendix hereto.

§ 7

MANAGEMENT OF THE CONSORTIUM

1. The affairs of the Consortium shall be managed by a Board of Directors, an Executive Committee appointed within the Board, and one or several Managers, one of which shall be General Manager (President).

2. The Board of Directors shall consist of the persons, who, from time to time, are members of the Boards of ABA, DDL, and DNL.
   At the Board Meetings of the Consortium, however, no more than six representatives from each party may take part as voting members. These representatives are appointed by the parties for each meeting of the Board of the Consortium.

3. The Board of Directors shall, for one year at a time, elect one of its members to serve as Chairman of the Board, as well as one First Vice Chairman and one Second Vice Chairman, and each shall alternate between the parties unless the Board unanimously decides otherwise. In case of intervening inability, the Board shall elect a successor to serve for the remaining part of the year.

4. The Chairman and the First and Second Vice Chairman, together with three other members of the Board, of which each party shall appoint one, shall constitute the Executive Committee. The members of the Executive Committee shall serve for one year at a time. Each party shall appoint a deputy to serve for each of its members on the Executive Committee, should such member be unable to attend, the deputies to be chosen from the membership of the Board of the Consortium.

5. The Board shall decide which persons, individually or jointly, shall have authority to represent the Consortium and sign for it with binding effect.

§ 8

BOARD MEETINGS

1. Board Meetings shall be held when the Chairman so decides or when a Board Member or the General Manager so requests. A meeting shall be held at least once every quarter, and the place of the meeting shall, as a rule, alternate between the three countries.

2. Notice of Board Meetings shall, if possible, be given at least fourteen days in advance. If special circumstances so require, the time of notice may be

shortened. The Notice shall specify the business to be brought up at the meeting. If any of the Board Members present objects thereto, a decision cannot be reached in a matter which has not been specified in the Notice.

3. The Board Meetings are conducted by the Chairman, or in his absence, by the First Vice Chairman, and in his absence by the Second Vice Chairman.

4. A quorum is formed with at least three members from each of the parties present. If in accordance herewith a quorum is not present, one party can, within eight days, demand that a new meeting be held and at this meeting a quorum shall be formed in matters which were specifically stated in the Notice of the first meeting, with only two parties represented by at least three representatives from each of them.

5. Minutes shall be kept of the Meetings of the Board and shall be certified by the acting Chairman, as well as by one Board Member present from each party. Each party shall be given a certified copy of the Minutes.

6. The members of the Board and the Executive Committee shall receive a reasonable remuneration as well as compensation for travelling and living expenses, as may be decided by the Board.

§ 9
DECISIONS OF THE BOARD

1. The following matters shall always be presented to the Board: yearly budget for the Consortium, yearly accounts, and traffic program.

2. The Board shall prescribe any necessary rules for the Executive Committee's activities and authority.

3. The Board shall appoint the General Manager, and Managers if any, and higher officials as well as determine their salaries.

4. The Board shall decide where the Head Office shall be located as well as the location of other necessary offices.

5. The Board shall decide on major property renewals and property acquisitions for the Consortium, as well as on major insurance questions.

6. At the Board Meetings the members present and entitled to vote shall vote individually, and a decision of the Board shall, unless otherwise provided

in this Agreement, be considered to be the opinion agreed upon by a majority of those voting, or if the voting is equal, the opinion supported by the Chairman.

7. A Board member may not act in this capacity in connection with any matter wherein he has a major personal or economic interest.

§ 10

THE GENERAL MANAGER AND PERSONNEL OF THE CONSORTIUM

1. The General Manager shall be the chief Executive Officer of the Consortium and shall have the same powers and duties as are normally held by a General Manager of a Company, in relation to the Board and the Executive Committee and the personnel of the Consortium and in relation to third parties. The Board shall prescribe any necessary rules for the authority of the General Manager, and the Managers if any.

2. Neither the General Manager nor the other Managers, if any, may be members of the Board of Directors of any of the parties.

3. When appointing the personnel of the Consortium, the Board and/or the General Manager shall make every effort to achieve an organization which is as rational and efficient as possible. When appointing higher officials, as well as in connection with the appointing and training of flight personnel, representatives abroad, technical specialists and engineers, the choice between equally qualified persons shall, subject to the provisions contained in § 1, sub-paragraph 2, be made with due consideration of achieving a reasonable proportion between Swedes, Danes, and Norwegians.

§ 11

ACCOUNTS AND AUDIT

1. The fiscal year of the Consortium shall be from October 1st till September 30th. The first fiscal year shall be from October 1st, 1950, till September 30th, 1951.

2. The accounts of the Consortium shall be audited by six Auditors. Each party shall appoint two of these Auditors from the Auditors who have been elected at that party's General Shareholders' Meeting for auditing the

party's own accounts. The Auditors shall appoint among themselves a Chairman for one year at a time. The Chairman shall alternate between the parties.

3. The yearly accounts of the Consortium shall be handed over to the Auditors not later than four months after the end of the fiscal year. Not later than one month thereafter the accounts shall again be placed before the Board together with the Auditors' Report. It shall then be incumbent upon the Chairman of the Board to call a Board Meeting as soon as possible to review the Auditors' Report and to approve the final accounts. In connection with the closing of the accounts, provision shall be made for such depreciation in respect of the assets of the Consortium, and for such reserves to cover special risks, which the Board may find necessary from a sound business viewpoint.

§ 12

DISTRIBUTION, PAYMENT ON ACCOUNT TO THE PARTIES, AND FUTURE CONTRIBUTIONS

1. The Board shall decide if and to what extent profits shall be distributed to the parties or remain in the Consortium. The Board also shall decide if and to what extent losses shall be covered by payments to the Consortium by the parties as well as the time within which such payments shall be effected.

2. Independently hereof, the Board, when it deems appropriate, may decide, in accordance with sound business principles, if and to what extent the Consortium can place available cash funds at the disposal of the parties. If the Board's decision implies that larger cash funds will remain in the Consortium than are required for current activities as well as for renewals and replacements within a year's time the competent currency authorities may examine the matter. The parties remain responsible to the Consortium for amounts placed at their disposal in accordance with this sub-paragraph 2, and shall, if the Board so requests, effect re-payment thereof to the Consortium.

§ 13

FORCE MAJEURE

The parties mutually exonerate themselves from any and all liability and other consequenses arising from the impossibility of fulfilling the provisions of this Agreement on account of war, danger of war, civil disturbances, blockade, catastrophical acts of nature, or similar circumstances.

§ 14

TRANSFER OF RIGHTS

1. None of the parties is entitled to transfer, wholly or partly, its rights or obligations under this Agreement without the other parties' consent.

2. Irrespective hereof, each of the parties shall for the purpose of its own financing be entitled to pledge or otherwise utilize its rights under the Agreement as security, subject, however, that such an arrangement may not in any way affect that party's obligations or the other parties' rights under the Agreement.

§ 15

THE WITHDRAWAL OF ONE OF THE PARTIES FROM THE CONSORTIUM UNDER CERTAIN CIRCUMSTANCES

1. Should any of the parties

   a) fail to fulfil its obligations under this Agreement, unless the failure be of minor relevance, or

   b) become financially weakened to such an extent that the obligations of the other parties, on account of their joint liability towards third parties, would become considerably more onerous than was the case when this Agreement was entered into,

   the other two parties shall be entitled to demand, jointly, that the third party withdraw from the Consortium. The withdrawal shall take place 6 (six) months after notice of said demand has been given by the other two parties.

2. Should one of the parties not be willing to join a decision taken by the other parties to extend the activity of the Consortium, and should such extension require additional contributions from the parties or should any of the parties not be willing to join a decision taken by the other parties to substantially reduce the activity of the Consortium, the first mentioned party shall be entitled to voluntarily withdraw from the Consortium if he notifies the other parties to that effect within 1 (one) month from the date of the decision. In that case the withdrawal shall take place 6 (six) months after the other two parties' receipt of such notice.

3. When a party withdraws in accordance with the provisions of sub-paragraphs 1 and 2, he shall be entitled to receive that part of the net assets of the Consortium which corresponds to his share in the Consortium as stated

in § 2, sub-paragraph 2. This part shall be estimated in accordance with the principles contained in sub-paragraphs 4 and 5 below as per the date when the withdrawal was demanded in accordance with sub-paragraph 1, or when the withdrawal shall take place in accordance with sub-paragraph 2 as the case may be.

4. In case a party withdraws due to circumstances beyond the party's control, e.g. governmental intervention or a financial crisis in the party's own country as well as when a party withdraws in accordance with sub-paragraph 2 above, the assets of the Consortium shall, for the purpose of calculating the net assets in accordance with sub-paragraph 3, be estimated at such value as can reasonably be expected from a normal and properly carried out liquidation. The good will accrued in the Consortium shall not be taken into account at such estimation.

5. In case a party withdraws due to other circumstances than those referred to in sub-paragraph 4 above, the provisions in said sub-paragraph 4 shall apply with the exception that the estimated value of the assets of the Consortium may not exceed the net value of the assets specified in the last approved Balance Sheet of the Consortium. The ceiling provided in the last sentence shall not apply, however, to assets or liabilities the value of which is computed solely on the basis of current official quotations.

6. Should the parties not agree whether a party is obligated or entitled to withdraw from the Consortium in accordance with the provisions of this § 15, or should the parties not agree on the value of the share of the net assets of the Consortium, which shall be received in accordance with sub-paragraphs 3 to 5 inclusive, by a withdrawing party, or on what property shall be allocated in settlement of such a share, the question in dispute in this connection shall be settled by arbitration in accordance with § 17 below. When deciding the question whether a withdrawing party shall receive his share in cash or kind, the arbitral tribunal shall, in this respect take into special consideration the justified interests of the other parties.

7. If a party withdraws from the Consortium in accordance with the provisions of this § 15, the remaining parties shall be entitled to continue their co-operation under the unchanged name and insignia of Scandinavian Airlines System (SAS). The withdrawing party may not directly or indirectly use the name or insignia of Scandinavian Airlines System (SAS) as long as this name is used by the remaining parties or party. Furthermore, the withdrawing party shall be obligated to lend its co-operation to achieve that all the rights appertaining to the Consortium be transferred to the other parties or to the Consortium, which then will consist only of the remaining parties. The provisions in this Agreement shall thereafter be correspond-

ingly applicable between the remaining parties unless they otherwise agree, it being understood, however, that their shares in the Consortium stated in § 2, sub-paragraph 2, shall be increased in proportion to their previous shares therein.

8. If two of the parties, in accordance with sub-paragraph 1, demand the third party's withdrawal from the Consortium, and such withdrawal is due to only circumstances beyond the last mentioned party's control, the third party shall after its withdrawal from the Consortium be entitled to re-enter the Consortium at a later date when the circumstances which caused its withdrawal have ceased to prevail. In case the parties cannot agree whether or not a party is entitled to re-enter in accordance with this provision or on the conditions for re-entry, such disputes shall be decided by arbitration in accordance with § 17.

9. Should circumstances which according to sub-paragraph 1, entitle two of the parties to demand that the third party shall withdraw from the Consortium become applicable to two of the parties, the third party may demand that the other two parties shall withdraw from the Consortium. Relevant provisions of this § 15 shall be correspondingly applicable in this case.

§ 16
LIQUIDATION

1. When the Consortium is liquidated for reasons other than those referred to in § 15, a final settlement between the parties shall be made on the basis of their respective shares in the Consortium. In connection with the allocation of the assets to the parties, each party shall be entitled to receive from each kind or type of assets, property of a value corresponding with the proportion 3 — 2 — 2, unless the parties agree on another allocation or approve that assets be sold for joint account. In connection with the liquidation a special agreement shall be made between the parties with regard to the continued use of the name and insignia Scandinavian Airlines System (SAS), in various protected and unprotected forms, as well as regarding the taking over or liquidation of companies and other organizations which the Consortium controls. Failing such an agreement, the necessary decisions in this connection shall be made by arbitration in accordance with § 17.

2. Should the parties, within five years from the executing of this Agreement, agree that the Consortium shall be liquidated, the following special provi-

sions shall apply: Each of the parties shall have the right and obligation to receive all the physical assets which the party in question has contributed to the Consortium in connection with its formation, and the assets thus received shall be estimated at the same value, less normal depreciation, which was placed on them when they were contributed.

§ 17

ARBITRATION

1. Any disputes regarding the interpretation or application of this Agreement may not be made the subject of law suit but shall be referred to arbitration for final and conclusive decision.

2. If the parties cannot agree on the appointment of one or several arbitrators to decide the dispute, it shall be decided by an Arbitral Tribunal consisting of one arbitrator appointed by the President of Højesteret in Denmark, and one by the Justitiarius of Høyesteret in Norway and one by the President of Högsta Domstolen in Sweden.

3. The Arbitral Tribunal shall elect its own Chairman and settle its own rules of procedure, including the question of where the Tribunal shall sit, as well as which national legal rules shall apply. The Tribunal shall see to it that the award is given in such a form that it can be executed against the losing party in accordance with its national law.

§ 18

PERIOD OF VALIDITY

1. This Agreement shall continue and be binding on the parties to and including the 30th of September 1975 unless under the provisions of the Agreement it should cease earlier. Not later than one year before expiration of the Agreement the parties shall commence negotiations for continued co-operation.

2. When this Agreement is executed, all previous Agreements between the parties are cancelled and shall be liquidated soonest as per September 30th 1950 in accordance with their provisions.

This Agreement has been executed in three originals in the English language of which the parties each received one. Each party shall translate the Agreement to its own national language and such translations shall be exchanged between the parties, but in case of discrepancies in the national texts, the English shall prevail.

Copenhagen, Oslo, and Stockholm, 8th February, 1951.

AB AEROTRANSPORT		DET DANSKE LUFTFARTSELSKAB A/S		DET NORSKE LUFTFARTSELSKAP A/S	
(sign.)	(sign.)	(sign.)	(sign.)	(sign.)	(sign.)
Axel Gjöres	*M. Wallenberg*	*Axel*	*P. Kampmann*	*Per M. Hansson*	*E. F. Eckhoff.*

APPENDIX E

THE LEAGUE OF ARAB STATES

(The Secretariat --
Communications Department)

AN AGREEMENT FOR THE ESTABLISHMENT OF

"THE INTERNATIONAL ARAB AIRWAYS CORPORATION"

(Baghdad - April 17, 1961)

TRANSLATION

AN AGREEMENT FOR THE ESTABLISHMENT OF THE INTERNATIONAL ARAB AIRWAYS CORPORATION

The Governments of:

The Hashemite Kingdom of Jordan

The Tunisian Republic

The Iraqi Republic

The Kingdom of Saudi Arabia

The United Arab Republic

The Lebanese Republic

The United Kingdom of Libya

The Mutawkelite Kingdom of Yemen

The Kingdom of the Maghreb (Morocco)

The Republic of Algeria

The Kuwait Principality

The Qatar Principality

The Bahrain Principality

pursuant to the Charter of the League of Arab States and to the Chicago Convention on International Civil Aviation, and desiring to unite their activities in the field of civil and commercial aviation, to promote the healthy development of aviation on both the Arab and the international sectors, and to increase economic cooperation among themselves and between them and other countries, have agreed to establish the International Arab Airways Corporation according to the provisions of this Agreement.

CHAPTER I

NAME OF THE CORPORATION, ITS OBJECTS, MEMBERSHIP, AND HEADQUARTERS

Article 1

There shall be established an Arab Corporation for carriage by air, to be called the International Arab Airways Corporation.

Article 2

The Corporation shall be entrusted with exploiting commercial aviation in Arab and foreign countries, and shall foster a healthy civil aviation industry to connect the Arab world with the outside world through a route system of scheduled services with the object of improving the standard of aviation.

To achieve the above purposes the Corporation shall undertake the following:

(1) the provision of services on long-range international routes, as well as on medium-range routes which fall on the long-range routes, and on any other routes that the Corporation may acquire, provided that Article 3 of this Agreement is complied with;

(2) the purchase, sale, lease (whether as lessor or lessee) of aircraft, spare parts and other equipment, and the manufacture thereof, and to undertake overhaul operations;

(3) to serve as ground agent, or commercial and technical agent, for Arab and foreign air carriers in Arab countries and abroad;

(4) to train technicians required for the activities of the Corporation or for other purposes;

(5) to engage in all activities which are directly or indirectly related to international carriage by air.

Article 3

The Corporation shall co-operate with Arab corporations and enterprises operating in the field of commercial aviation; shall maintain a balance between its interests and those of the corporations and enterprises concerned; shall rationalize efforts in order to raise the standards of Arab commercial aviation, and may, for that purpose, enter into specialized agreements.

Article 4

Every Arab country or State shall be entitled to become a member of the Corporation according to the provisions of this Agreement.

Article 5

The Board of Directors shall decide the place of the headquarters of the Corporation as well as its branches, overhaul works and offices required for the activities of the Corporation, and shall appoint its agents abroad.

CHAPTER II

CAPITAL, SHARES, INCREASE AND DECREASE, SUBSCRIPTION AND QUOTAS

Article 6

The capital of the Corporation at the time this Agreement enters into force shall be the gold equivalent, fixed by the International Monetary Fund, of seventeen million pounds sterling.

Article 7

The capital shall be divided into 170,000 shares, each share being valued at 100 pounds sterling according to the definition in Article 6.

Article 8

The Board of Directors may increase or decrease the capital of the Corporation with the consent of two thirds of the total votes. However, the increase of capital for the purpose of the issue of initial shares to the quota of an Arab country admitted to membership in the Corporation after the capital has been fully paid up shall be by simple majority of the total votes.

Article 9

(1) In no case shall the share of a member exceed 20 per cent of the capital of the Corporation. The shares of members shall be determined according to the Schedule annexed to this Agreement.

(2) If the capital is not fully paid up within the first three years after the date of entry into force of this Agreement the maximum share may be increased to 25 per cent, provided that priority shall be given to those members whose shares are less than 20 per cent.

(3) Members joining after the entry into force of this Agreement shall each subscribe according to a quota decided by the Board of Directors.

Article 10

Upon entry into force of this Agreement a member shall pay one fourth of the value of his shares, and the remainder he shall pay according to the decision of the Board of Directors. In case of failure of such member to pay the remainder within a year from the date of claim for payment, the Board of Directors shall be entitled, by a two-thirds majority of the votes, to decrease the share allotted to that member to a share equivalent to the value paid by him, and to offer the remaining shares for the subscription of other members, provided the provisions of paragraph (2) of Article 9 of this Agreement are observed.

Article 11

A member adhering to this Agreement after its entry into force shall pay a portion of the quota allocated to him, which portion shall be a percentage equivalent to the percentage of payments made by the remainder of the members.

Article 12

Shares issued shall be paid in cash in pounds sterling according to the stipulation provided in Article 6 of this Agreement. However, with the consent of the Board of Directors, they may be paid in kind, by way of exception.

Article 13

Every member government shall be entitled to offer a portion not exceeding 49 per cent of its quota in the Corporation to its nationals, provided it takes adequate measures to prevent the involvement of foreign capital in that quota.

Article 14

Subject to the provisions of Articles 9 and 13, the following shall be applied:

(1) All shares are nominal and may be transferred among the nationals of each member government within the limits of its quota; which transfer shall be effected through the issue of a disentitlement certificate signed by the transferor and the transferee subject to approval by the Corporation and shall be recorded in a special book kept by the Corporation.

(2) Ownership of shares cannot be transferred to persons of another nationality. In the case of inheritance, the heirs shall be entitled to claim the actual value of the shares.

(3) Each share is indivisible and the Corporation shall not permit it to be held by more than one owner.

CHAPTER III

LEGAL STRUCTURE

Article 15

The Corporation shall be endowed with legal personality and shall be entitled, within the scope of its objects, to enter into contracts, own moveable and immoveable property and make disposition of the same, as well as to sue and be sued and to pursue all legal proceedings.

Article 16

The liability of the members of the Corporation shall be limited to the share allotted to each in the capital.

Article 17

The Corporation shall be liable to third parties for all undertakings and obligations resulting from its activities.

CHAPTER IV

THE ADMINISTRATION OF THE CORPORATION

Article 18

The business of the Corporation shall be administered by a Board of Directors, consisting of a representative from each member country appointed by the government of that country, which shall also appoint a reserve member to attend the meetings of the Board of Directors in case the original member is unable to attend, and who shall have the same authority.

Article 19

The Board of Directors shall enjoy all the powers necessary for the administration of the Corporation and shall be responsible for all its activities.

Article 20

The Board of Directors shall appoint a General Manager of the Corporation and shall delegate to him the necessary administrative and financial powers for the administration of the affairs of the Corporation, except with respect to the following matters:

1.- approval of the annual budget;

2.- appointment of licensed auditors;

3.- approval, alteration and cancellation of routes;

4.- approval of the purchase and sale of aircraft;

5.- approval of the purchase of spare parts, except those falling under the financial powers of the General Manager;

6.- prescription of the procedures for the administration of the Corporation and the by-laws of the Board of Directors;

7.- approval of the appointment of senior employees and experts and determination of their salaries and gratuities;

8.- approval of the general programme for equipment, purchases, insurance, of the estimates of percentage of depreciation and percentage of the general reserve fund after reaching the percentage mentioned in Article 37;

9.- investment of money and borrowing;

10.- approval of the final accounts;

11.- conclusion of agreements with other companies and organizations that perform activities similar to those of the Corporation, and participation in international associations that have a relation to the Corporation;

12.- determination of the bases of cooperation and rationalization provided in Article 3 of this Agreement;

13.- dissolution of the Corporation and distribution of its assets;

14.- all those powers specifically granted to the Board of Directors.

Article 21

The Board of Directors shall have a Chairman and Vice-Chairman, each of whom shall hold office for a period of one year, the offices alternating according to the alphabetical order of the member States.

Article 22

The Board of Directors shall hold meetings four times a year and, when necessary, also upon an invitation by the Chairman or upon reasoned application to the Chairman by the General Manager and two members of the Board, provided that no period of three months shall elapse without convening a meeting of the Board.

Article 23

Meetings of the Board of Directors shall be lawful if attended by a simple majority of the members, provided it represents a minimum of two thirds of the votes, and provided also that notice of the convening of the meeting has been communicated within the lawful period prescribed in the by-laws of the Board. In case of failure to obtain a quorum the Board shall be convened fifteen days after that date, which meeting shall be deemed to constitute a quorum whatever the number attending and whatever the percentage of their votes.

Article 24

When votes are cast in the Board of Directors each member shall be allotted 5,000 votes, notwithstanding the number of shares he holds,

and, in addition, one vote for every share held by that member. Unless otherwise provided, decisions on all matters put to the Board shall be taken by simple majority.

Article 25

Decisions on the following matters shall be taken by a two-thirds majority of the total votes:

1.- approval of the establishment, cancellation or alteration of routes;

2.- approval of purchase and sale of aircraft;

3.- appointment of the General Manager and determination of his powers and salary;

4.- determination of the location of the headquarters of the Corporation and of its workshops;

5.- approval of the general programme for equipment, purchases and insurance;

6.- investment of money and borrowing;

7.- determination of the percentage for distribution of profits;

8.- approval of the final accounts;

9.- increase of members' quotas pursuant to the provisions of paragraph (2) of Article 9;

10.- dissolution of the Corporation and its liquidation.

CHAPTER V

FACILITATION AND EXEMPTIONS

Article 26

Members shall obtain the freedoms of the air required for the operations of the Corporation.

Article 27

Members undertake to provide all necessary facilitation for the proper conduct of the business of the Corporation and to treat the Corporation in this respect in no less favourable manner than their national air companies and organizations.

Article 28

The Corporation shall be exempt from all fees and taxes -

1.- the shares of the Corporation when issued and when transferred;

2.- moveable and immoveable property as well as profits of the Corporation.

Article 29

(1) Aircraft of the Corporation, spare parts thereto and equipment required for the operation of its routes shall be exempt from customs duties and fees.

(2) There shall be exempt from customs duties and all other fees, whether governmental or local:

(a) fuel, lubricating oils and aircraft stores on board the aircraft of the Corporation on landing in the territory of a member, so long as all remain within the customs enclosure;

(b) fuel, lubricating oils and aircraft stores supplied to the aircraft of the Corporation by a member, provided that, if the laws of a member do not allow such exemption, it shall make a monetary contribution equivalent to those duties.

Article 30

Property, profits and financial transactions of the Corporation shall not be subject to the financial restrictions imposed on transfers and on similar transactions.

Article 31

Employment with the Corporation shall not be subject to the conditions of nationality contained in employment and professional laws.

CHAPTER VI

REGISTRATION OF AIRCRAFT

Article 32

The Board of Directors shall decide, by a two-thirds majority, the method for the registration of the aircraft of the Corporation in conformity with the Chicago Convention on International Civil Aviation, signed on December 7, 1944.

CHAPTER VII

CERTIFICATES OF AIRWORTHINESS AND COMPETENCY

Article 33

Member States shall recognize certificates of airworthiness and certificates of competency of crews issued by the competent civil aviation authorities of member governments, provided their standards and conditions for issuance are not lower than those standards and conditions established by the International Civil Aviation Organization.

CHAPTER VIII

FINANCIAL YEAR, ANNUAL BUDGET, ANNUAL REPORT, FINAL ACCOUNTS, AND DISTRIBUTION OF PROFITS

Article 34

The financial year of the Corporation shall commence on April 1 and close on March 31.

Article 35

The General Manager shall submit to the Board of Directors for its approval:

1.- at the end of January of each year, a budget estimate for the coming financial transactions of the Corporation;

2.- within three months after the close of a financial year, the final accounts and the profit and loss account, together with an inventory approved by licensed auditors showing what is owing to or owed by the Corporation.

Article 36

Within four months after the close of each financial year the Board of Directors shall present to member governments a report on the activities of the Corporation and its financial situation, together with the final accounts of profits and losses, the inventory list and the report of the licensed auditors, and shall publish, within fifteen days of its approval of the accounts, the profit and loss account in a newspaper in each of the Capitals of the members.

Article 37

The Board of Directors shall decide, by a two-thirds majority of the total votes, the percentage for distribution of profits to the shares, after deducting all the costs of operation and depreciation as well as other expenses, and after allocating 10 per cent of the net profits for the general reserve fund, which sum shall cease to be appropriated upon the reserve fund becoming equivalent to half the capital of the Corporation.

CHAPTER IX

WITHDRAWAL, SUSPENSION, DISSOLUTION AND LIQUIDATION

Article 38

No member shall be entitled to withdraw from the Corporation before five years of its membership have expired. Application for withdrawal shall be by notice in writing adressed to the General Manager of the Corporation, who shall place it before the Board of Directors; such withdrawal shall take effect one year after the receipt of such notice by the General Manager unless it has been cancelled before the termination of that period.

Article 39

If a member commits a breach of any obligation to the Corporation its membership may be cancelled by decision of the Board of Directors, taken on a two-thirds majority vote, and such membership shall effectively terminate three months after the date of such decision unless a decision to reinstate its membership has been taken by a two-thirds majority of the total votes.

Article 40

In case of the termination of membership of a member, the Board of Directors shall decide the manner of dealing with the share of that member according to the provisions of Article 9 of this Agreement. In

case of a dispute arising between the Corporation and the government of that member on the assessment of the value of that share and the manner of its payment, the dispute shall be referred to arbitration according to the provisions of Article 46 of this Agreement.

Article 41

Upon the termination of the membership of a member, that member shall continue to be liable for all his obligations towards the Corporation until the date of termination of his membership, and shall be entitled to his share in the capital and profits of the Corporation up to that date.

Article 42

If the termination of a member's membership results in damage to the Corporation, that member shall be liable to compensate the Corporation for such damage.

Article 43

The Corporation may, by a decision of the Board of Directors taken by a two-thirds majority of the total votes, suspend its activities for an indefinite period, except for such transactions and procedures necessary for the preservation and maintenance of its assets.

Article 44

(1) The Board of Directors may, by a two-thirds majority of the votes, agree to dissolve the Corporation, which shall continue to exist until the final settlement of all its rights and liabilities. There shall be no withdrawal or termination of any member's membership within the period between the decision to dissolve and the completion of the final settlement, and none of the assets of the Corporation may be distributed among the members until payment of the debts of the Corporation.

(2) Distribution of the net assets of the Corporation among the members shall be in the ratio of the shares held by each member.

CHAPTER X

INTERPRETATION AND ARBITRATION

Article 45

The Board of Directors shall, by a two-thirds majority of the total votes, adjudicate upon all disputes that may arise between the Corporation and a member thereof, or between the members themselves, relating to the interpretation or application of this Agreement.

Article 46

In the case of a dispute arising between the Corporation and a member whose membership terminated, or between the Corporation and a member during the liquidation of the business of the Corporation, the dispute shall be referred to an arbitral tribunal consisting of three arbitrators, the Corporation appointing one of them, the member party to the dispute appointing the second, and the third arbitrator being appointed by agreement between the first two. The decision of the tribunal shall be by majority vote and shall be final and binding. Failing agreement between the two arbitrators on the appointment of the third, the President of the International Court of Justice shall be requested either to become the third arbitrator or to appoint that third arbitrator without any objection being open to either of the two parties.

Failing the constitution of such tribunal, the dispute shall be referred to the International Court of Justice to adjudicate upon it, and its decision thereon shall be binding.

CHAPTER XI

FINAL PROVISIONS

Article 47

This Agreement shall be ratified by the participant governments of Arab States according to their laws. The instruments of ratification shall be deposited with the Secretariat of the League of Arab States, which shall give notice of such ratification to the other contracting States.

Article 48

Each Arab State or country becomes a member of the Corporation from the date of deposit with the Secretariat of the League of Arab States of the instrument of ratification.

Article 49

The duration of this Agreement shall be fifty years commencing from the date of its entry into force and it shall thereafter become automatically renewable for the same period unless members representing two thirds of the total votes decide otherwise.

Article 50

This Agreement shall enter into force one month after the deposit of the instruments of ratification of a number of members whose total subscriptions must not be less than 60 per cent of the total capital of the Corporation. In witness whereof the duly authorized plenipotentiaries have signed, their names being inscribed on this Agreement.

This Agreement was done at Baghdad on April 17, 1961.

For:-	The Hashemite Kingdom of Jordan	... signed (Wasfi El Tal)
	The Tunisian Republic	
	The Republic of the Sudan	
	The Iraqi Republic	... signed (Názim El Zahawi)
	The Kingdom of Saudi Arabia	... signed (Abdalla El Tarqi)
	The United Arab Republic	... signed (Fakhir El Kiali)
	The Lebanese Republic	
	The United Kingdom of Libya	
	The Mutawkelite Kingdom of Yemen	
	The Kingdom of the Maghreb (Morocco)	
	The Republic of Algeria	
	The Kuwait Principality	... signed (Fiasal Al Mazeedy)
	The Qatar Principality	
	The Bahrain Principality	
	The Syrian Arab Republic	... signed (George Táamá) on February 27, 1964.

SCHEDULE TO THE AGREEMENT FOR THE ESTABLISHMENT OF THE INTERNATIONAL ARAB AIRWAYS CORPORATION

The shares allocated to the promoter members shall be the following:

	Ratio at promotion
The Hashemite Kingdom of Jordan	1%
The Tunisian Republic	
The Republic of the Sudan	
The Iraqi Republic	20%
The Kingdom of Saudi Arabia	15%
The United Arab Republic	20%
The Lebanese Republic	
The United Kingdom of Libya	
The Mutawkelite Kingdom of Yemen	
The Kingdom of the Maghreb (Morocco)	
The Republic of Algeria	
The Kuwait Principality	15%
The Qatar Principality	
The Bahrain Principality	

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