

P R E F A C E

I would like to express my gratitude to the Government of the Republic of the Philippines and also to the Government of Canada through the Canadian International Development Agency for extending my scholarship in the Institute of Air and Space Law for another year, without which this Study could not have been undertaken. To write a thesis on the subject of the present Study is my obsession for the last few years.

Being connected with a government office which regulates air transport, I have the privilege to observe the developments in aviation in my country and to know also for myself the problems confronting the Civil Aeronautics Board along the legal and practical aspects of its regulatory activities.

In this dissertation, I explored the areas in the Philippine law on aviation and current practices of the Board where possible improvements may be introduced with the suggestion to adopt into our system the modern practices of other regulatory agencies, if possible.

This thesis is divided into two parts. For a better understanding of its background, the first part traces the growth of domestic air transport and the law on civil aviation from the beginning up to the present. In a brief manner, I have endeavored to show why air travel is so important to the life of the Filipinos and the need for the government to regulate the industry.

The second part, which is the subject of this thesis, analyzes the organization, functions and duties of the Board in the light of the Ci-

vil Aeronautics Act pointing out the advantages and disadvantages of the present set-up with the recommended solution. More important, I have also dealt quite critically on those provisions of the Act which require supplementation, revision or amendment in order to give more force and effect to the law.

In submitting this thesis to the Faculty of Graduate Studies and Research of McGill University, I acknowledge my indebtedness to Professor Martin A. Bradley of the Institute of Air and Space Law for his kind words of encouragement in developing this topic and also for his valuable help during the preparation of this thesis.

To my colleagues and friends in the Civil Aeronautics Board, Department of Foreign Affairs, Civil Aeronautics Administration, the Air Transport Committee of Canada and the United States Civil Aeronautics Board goes my sincerest appreciation for their unselfish support.

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AN ANALYTICAL STUDY OF THE ORGANIZATION, FUNCTIONS AND DUTIES

OF THE PHILIPPINE CIVIL AERONAUTICS BOARD

by

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PART I. HISTORY OF AIR TRANSPORT IN THE PHILIPPINES

CHAPTER I. BRIEF INTRODUCTION

Air travel is the fastest mode of transportation known to man today. It still fascinates the millions of people who travel by air every year. The future of civil aviation holds many possibilities for humanity. With the current developments in aeronautics, nobody knows that in the years to come, the moon and the celestial bodies may well be within the reach of man and scheduled passenger service to outer space may be a regular feature of airline timetable within our lifetime.¹

The progress of civil aviation is rapid. From the modest speed of twenty miles an hour achieved by the early pioneers, we now accept speed of 600 miles per hour without surprise. And, with the coming of the supersonic airliner in a few years, giant aircraft carrying up to 500 passengers² will reduce flying time three or four times. It is not a remote possibility, therefore, that a passenger will leave Manila in the morning and arrive in Canada before lunch time on the same day.

The present state of civil aviation in the Philippines is the consequence of more than fifty years of endeavor. These fifty years have had a profound influence on the present.

First Exhibition Flights

Barely eight years after the Wright brothers made the first successful flight performed at Kitty Hawk on December 17, 1903, the first³ heavier-than-air machine made its public appearance in the Philippines.⁴

An American barnstormer J. C. "Bud" Mars, brought to Manila a "Shriver" biplane in 1911 to perform in the Philippine Carnival. His companion, Capt. Thomas S. Baldwin, made the first cross-country flight in a "Red Devil" biplane on February 25, of the same year. Baldwin sold his plane to an American resident Edward Schimming, who, on one or two occasions, gave flying demonstration, but unfortunately one day, the cumbersome-looking machine crashed and the whole aircraft was destroyed. This Schimming had the dubious honor of being involved in the first aircraft accident in the Philippines.

A year later, Lee Hammond brought to Manila a new "Red Devil". He took an Ifugao with him on a brief flight over the Carnival grounds on February 12, 1912. The Ifugao, who was one of the mountain tribesmen in the show at the Exposition, was the first man in the Philippines to fly as an airplane passenger.

In the same year, the United States Army received at Fort William McKinley a Wright type "B" biplane followed by type "C" the following year to train pilots. The first American to become a military aviator was Lt. Frank Lahm, Jr. Cpl. Vernon L. Berge was the first enlisted man to be taught flying. Lt. C. Perry Rich of the Philippine Scout had the dubious honor of being the first man to die in an airplane accident in the Philippines.

Tom Gunn, the "Wright of China", was one of the early flyers who aroused the fancy of the inhabitants for the flying machine. In 1914, he gave flying exhibitions to huge crowds in his Curtiss seaplane. He flew a nurse with him and carried the first mail by air. Cora Wong,

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a nurse in the Philippine General Hospital, was the first woman in the country to fly in an airplane. Later in 1916, Charles L. Miles performed exhibition flights also in the first monoplane to be seen¹⁰ in the City.

The First Aero Club

The United States' entry in the war in Europe in 1917 inspired the¹¹ organization of the Philippine National Guard. An aviation section was created and fifteen Filipinos were recruited to train as pilots in the island fortress of Corregidor. Unfortunately, however, the training was cut short. The aircraft and the pilots were withdrawn from the Islands to meet the combat requirements in Europe.

Gov. Gen. Francis Burton Harrison, however, to encourage air mindedness, initiated the organization of an Aero Club. It was formally established on October 8, 1917. Ruth Law, one of the first American woman pilots, thrilled Manila residents with exhibition flights on her Curtiss pusher biplane in 1919. The flight was sponsored by the Aero Club of the Philippines. She dropped mailbags with commemorative post-¹²cards as a highlight of the show.

First Airmal Service

The first aviation school was established in 1919. Major Joseph E. Stevenot and Alfred J. Croft founded the Curtiss School of Aviation and the Philippine Airways Service at Camp Claudio near the site of the present Manila International Airport. Thirty cadets, 20 from the¹³ Philippine National Guard and 10 from the Philippine Constabulary

were selected to train as pilots. A Curtiss "Jenny" biplane and Curtiss "Sea Gull" hydroplane surplus military aircraft were used as training facilities.

Stevenot and Croft offered service to operate airmail service for the government. They flew mail for free to demonstrate the feasibility of the service. This flight was the first airmail service in the country. However, it was discontinued later for lack of funds.

Out of the class of 30, 20 passed and gave public demonstration of their flying ability on June 21, 1920. These pilots were the nucleus of the present generation of aviators in the country. Unfortunately, however, on November 23, 1920, Lt. Alfonso de Guzman of the Philippine National Guard crashed in a "Sea Gull" owned by the aviation school, but luckily, he was not injured. That accident was the first aircraft accident involving a Filipino pilot.

Plans for An Airline

The graduation of the Filipino pilots encouraged the government to plan the Philippine Air Service which would serve both as an airline and as a military unit. The Council of State appropriated money for the establishment of the Service on July 7, 1920. Five hydroplanes were purchased from the United States Navy in 1921 to transport passengers, mail and cargo between Manila and the cities in the south. However, economy measures instituted later in the year by the government deeply cut into the available resources even before it started operating. At the end of the year, the National Assembly failed to appropriate new funds for the Philippine Air Service and Gov. Gen. Leonard Wood ordered

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its abolition.

In 1920, Jose Tinsay, the first Filipino to own an aircraft commenced flying in Central Philippines with a Curtiss "Oriole" two-seat biplane. He gave flying exhibitions and took passengers with him for charter or joyrides. Tinsay started to fly for reward in 1925. He bought two more aircraft - a Curtiss "Junior" and an "Aeromarine" flying boat and began operating a passenger service between Iloilo and Bacolod charging a flat rate of ₱50.00 for the 27-mile route. He also served the towns along the western coast of the Negros Island in the Visayas. Tinsay was the first to sustain commercial operation in the
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Philippines.

This Iloilo-Bacolod route was the first passenger air service. Much interisland flying was undertaken by the United States Army for the carriage of mail, aerial photography and reconnaissance. Two former students of the Curtiss Aviation School, Jose Valeriano and Briccio Sanchez established the Valeriano School of Aviation. Their equipment consisted of a Curtiss pusher and "Kitty Hawk" biplanes. Don Ramon Fernandez, a businessman, bought a Curtiss "Jenny" from an American officer for his firm the "Servicio Nacional Informativa" to deliver materials to his customers in the southern part of the Philippines. Juan Calvo, a graduate and former pilot in the Philippine Air Service was the pilot. The first officially supposed commercial airmail service began on March 21, 1929 when Capt. Calvo took off on the first official
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delivery of mail to the northern part of the country.

Early International Flights

Flyers from Italy and Spain came to the Philippines in 1925 and 1926. Manila welcomed Italian Major Francesco de Pinedo in his flight from Rome to Tokyo in a Savoia single-engine, 2-seat flying boat. On May 13, 1926, Spanish Captains Eduardo Gonzales Gallarza and Joaquin Taboada Loriga arrived in the Breguet-type 19 biplane.¹⁸

Gallarza and Loriga and a third pilot Ramon Estevez flew to Manila on April 8, 1926 following the route by way of Egypt, Greece, Persia, Arabia, India, Burma, Thailand, Vietnam, and China. On the way, Estevez was forced to land on the North African desert and abandoned his plane. Loriga damaged his aircraft in a forced landing between Hanoi and Macao. In Macao, Gallarza narrowly escaped death when his plane overshot the runway. Gallarza and Loriga joined together and took off from Macao for Cagayan in the northeastern part of the Philippines covering a distance of 600 miles in a little more than seven hours.¹⁹

The Madrid-Manila flight established two firsts - 1. It was the first visit of airmen from Spain, and 2. It was the first international carriage of mail for the pilots carried letters from the King of Spain for the Governor General of the Philippines. Other flying visitors before the decade ended were the British Royal Air Force seaplanes which stopped at Manila in November 1928.²⁰

After the historic flight of Gallarza and Loriga, the Islands became the object of more flying visits from Europe. For example, British pilot F.C. Chichester arrived in 1931 on a flight from Australia to Japan. Writer Halliburton and pilot M. W. Stephen arrived in a "Flying

Carpet" seaplane in 1932 in the course of a round-the-world trip. Spanish aviator Fernando Rein retraced the Gallarza-Loriga route in a single-engine monoplane from Hongkong on July 11, 1932. Capt. Wolfgang von Granau of Germany arrived in a Dornier WAL flying boat on September 27, 1932 and a Japanese transport plane arrived on November 14, 1935 to bring guests to the inauguration of the Philippine Commonwealth Government.²¹

Philippine Aerial Taxi Company (PATCO)

The progress in aeronautics awakened the Filipinos to the importance of the aircraft in the national life. The war impressed the role of the airplane as a weapon of destruction, but the early flights of Tinsay stressed the potentials of the winged contrivance for peaceful purposes.

The first real effort to establish an airline came in December 1930. A group of businessmen organized the Philippine Aerial Taxi Company on December 3. PATCO, for short, did not wholly engaged in the public service. It was intended more to cater to the travel needs of the organizers in connection with business. It operated a shuttle service between Manila and Paracale and Manila and Baguio and other mining districts.²²

The airline was inaugurated on March 18, 1931 with a flight from Manila to Iloilo in a Stinson cabin monoplane. PATCO's services generated a favorable demand and on December 31, 1931, the airline began regular scheduled flights to Baguio and Paracale. It had four service-

able equipment - 1 Waco, 4-seater and 3 Bellanca "Skyrocket". On January 25, 1932, it began carrying air mail between Manila and Baguio under a contract with the Bureau of Post. It was not until four years²³ later when it was granted a franchise by the Government.

It appeared that air transport was already a going concern since 1930. Air services expanded and traffic increased. Airline personnel were getting more and more organized. The authorities became aware of the economic potentials of the aircraft. On November 30, 1931, Act No. 3909 (See Appendix I) was enacted by the Philippine Legislature directing the Secretary of Commerce and Communication to create an aeronautics division to establish rules for the licensing of airmen and aircraft, conduct of air traffic, scheduling of flights and charging of rates. The Office was formally established on February 15, 1932. Capt. Russel Maugham of the United States Army Aviation Corps became the head of the Office assisted by a young Filipino aeronautical engineer²⁴ Gregorio Y. Zara. Dr. Zara is dubbed as the "Father of Civil Aviation in the Philippines."

In actual practice, the Aeronautical Division formulated and issued rules and regulations on air navigation, constructed landing fields, examined and rated airmen, licensed and inspected planes and enforced rules pertaining to aviation. Restrictions imposed by the Division did not apply to civil and military aircraft under the United States jurisdiction.

From 1932 to 1935, PATCO operated on a year to year basis. On November 14, 1935, it was granted a franchise to operate air service

for the carriage of persons, mail and cargo up to the Visayan Islands.

Up to 1937, the airline carried without any fatal accident 21,000 passengers averaging 3,500 a year between Manila and Baguio and 1,600 between Manila and Paracale. Although it was successful in generating traffic, the company didn't make profit. Four factors held back the airline in the struggle for life. - 1. operation on losing routes as dictated by private motives; 2. airplanes are of old vintage and expensive to operate; 3. limited capacity; 4. insufficient traffic.

With the slackening of business in 1939, the company was dissolved. However, Don Andres Soriano, with a few friends, took control of the corporation prior to final dissolution. He reorganized the company and placed an order for two 17-seater Loadstar Model 18 transports and incorporated the company under a new name - the Philippine Airways, Inc. This name was later changed to Philippine Air Lines, Inc. ²⁵ On March 15, 1941, PAL's first Beech 18 light plane took off for Baguio on the first flight of Philippine Air Lines. Another Beech aircraft model 18 arrived with another two twin-engine planes. American and Filipino pilots flew for the airline. Later in 1941, the airline operation was suspended due to the threat of war. The aircraft were impounded by the military forces and all were destroyed or captured by the enemy.

Iloilo-Negros Air Express Company, Inc. (INAEC)

PATCO had a competitor in two years after it started. The Iloilo-Negros Air Express Company, Inc. was organized early in 1933 by a wealthy family in the south. On February 3 that year, it began scheduled

operation with a flight from Iloilo in one of its three Stinson tri-motor planes. This was the first commercial passenger air service using multi-engine aircraft. The airline opened routes to Bacolod, Cebu, Davao and Cagayan de Oro in 1935. On May 29, 1936, one of the Stinsons ditched in the Sibuyan Sea off the coast of Capiz. No one was injured. This was the first accident to occur to an airline in the Philippines.²⁶

INAEAC continued to progress. It gained popular support and became a promising venture. In fact, after three years of operation, it claimed: "During the three years of flying, an average of 2,000 passengers were carried safely. It flew 7,000 hours covering a distance of 750,000 miles without accident to plane or passenger."

It acquired another 16-seater Sikorsky 43 amphibian for ₱360,000 including spares and extended services to Surigao and other cities in southern Philippines.²⁷ It was granted government airmail contracts under Commonwealth Act No. 223 approved by the National Assembly on November 29, 1936. The airline was paid ₱.18 for every 20 grams of mail flown. But, like PAL, the developing airline was "nipped in the bud" with the Japanese invasion of the Philippines. All aircraft were destroyed before falling into the Japanese hands.

Pan American World Airways Flight to the Philippines

Two significant events linked the Philippines with the United States and Europe. - 1. The establishment of regular air service between the United States and Manila by Pan American World Airways, and 2. The flight

of Antonio Arnaiz and Juan Calvo from Manila to Madrid in 1936.

The American flag carrier was granted by the Philippine Govern-
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ment a franchise to operate and maintain an air transport service between the two countries and countries in transit for twenty-five years at a minimum of one flight a month. The expeditionary flight started from Alameda, California on November 22, 1935 using the giant Martin
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flying boat, the "China Clipper" with Capt. Edwin Musick at the controls and a crew of six. The aircraft, after an uneventful journey of six days via Honolulu, Wake and Guam, landed at the Manila harbor at 3:32 p. m. on November 29, 1935 after 59 hours and 48 minutes of flying. This writer, a small boy then, has a vivid recollection of the giant of an aircraft ripping the placid waters of Canacao Bay without knowing that history was unfolding before him.

Commenting, Pres. Manuel Quezon said: " The bold project of Pan American World Airways means the dawn of a new day in the history of
30 "
intercommunication between the East and the West.

Later, on October 8, 1936, the Dutch KNILM airline flew a DC-2
31
from Batavia but the airline was not given permission to serve Manila.

Arnaiz-Calvo International Flight

The world was astounded in July 1936 by the adventure of two Filipino pilots. Antonio Arnaiz and Juan Calvo flew to Madrid by retracing the route of the Spanish flyers who visited the Philippines a decade earlier. The bold project was financed by the DMHM chain of newspapers in Manila especially the Philippines Herald under the editorship then of Gen.

Carlos P. Romulo, the 4th president of the United Nations Organization.
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The two pilots took off at the old AFESA Airport at dawn of May 29, 1936 in a single-engine Fairchild 24 and flew to Hongkong. Two American employees of PANAM in Hongkong who could not believe what they saw cabled the Philippines: "We had been privileged to witness the arrival of Arnaiz and Calvo upon the successful completion of the first crossing of China Sea by Filipino pilots..... Please accept our congratulations on the latest demonstration of Filipino courage and daring..."

After 44 days and nearly 100 hours of flying, with considerable difficulties along the way, Arnaiz and Calvo reached Madrid on July 11 and received tremendous welcome. Gen. Gallarza, one of the Spanish pilots who came to Manila 10 years earlier, was on hand to receive them.

The pilots returned to Manila later by ship. They were showered with honors in the homeland. As a token of appreciation, the Philippine Assembly passed a law appropriating P25,000 as reward. The "Commonwealth", the aircraft used by the Filipino pilots, was destroyed when a ship bringing it out of war-torn Spain was bombed by rebel aircraft and scuttled by its crew.
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Aircraft Manufacturing in the Philippines

Civil aviation training for Filipinos with more substantial facilities than available before was offered by the American Far Eastern

School of Aviation (AFESA), established in 1935 by Col. Curtis Lambert with a Filipino and fellow Americans at the Nielson Airport. Lambert, who came to the Philippines as an aircraft maintenance officer in the United States Army, built the first glider in the country in 1930.

He also organized the Philippine Aircraft Corporation in 1935 for the design and construction of aircraft. In March 1938, the company's product, the "Snipe", a low-wing single-engine monoplane was successfully test flown. The AFESA, meantime, progressed with a fleet of planes and shops.

In the south, however, Jose Tinsay, the first Filipino to become³⁴ an airline pilot, also established a flying school at Iloilo.

CHAPTER II. GROWTH OF PHILIPPINE AIR LINES

Expansion of Domestic Service

Philippine Air Lines recommenced operating scheduled service on February 14, 1946 with five DC-3's to 8 points - Naga, Legaspi, Tacloban, Cebu, Baguio, Bagabag, Tuguegarao, and Aparri.³⁵ Three Beechcraft C-45's and a Piper Super Cruiser were used for non-scheduled flights to feeder routes and charter.

Far Eastern Air Transport, Inc., another domestic airline, started on November 15, 1945, followed by Commercial Air Lines, Inc.³⁶ in January 1946. Three domestic airlines served the travel needs of the people during the early liberation boom.

A year later, the domestic market began to decline. Traffic was hardly sufficient to support one airline. PAL and FEATI sought capital assistance. The government, however, could afford to invest in one airline only. After a series of negotiation, FEATI lost out to PAL in the bid for financial support and was bought by the latter in 1947.³⁷ CALI followed suit in 1948. Thus, PAL became the only scheduled operator.

With the new acquisitions, PAL's fleet increased to 35 DC-3's, 6 DC-4's, several C-45's and Noordyn Norseman C-64's. The smaller airplanes were used as landplanes or seaplanes to reach small airports and isolated coastal areas.

At this stage, Jose Tinsay, whom we met in the early part of this dissertation died in an airplane explosion when operating an air cargo

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DC-3 as Philippine Air Express.

PAL placed an order for three twin-engine Convair 340 aircraft in 1951 for regional and domestic routes. The government provided capital and became the majority stockholder in the corporation. The first of the three aircraft arrived in April 1953 and was used in the Manila-Cagayan de Oro route and the routes to Taipei and Bangkok. Moreover, two Hiller H-12B helicopters were acquired for charter service in the remote areas. In January 1954, the low-fare DC-3 "Economic" service was introduced in the Ilocos region in the north and was later extended to the Visayas and Mindanao in June. The following year, PAL launched the "Rural Air Service" using single-engine de Havilland DHC-5 Otter equipment. In addition, two F-27 Fokker Friendship aircraft were acquired for the trunk routes and three Scottish Aviator twin-pioneer for the rural service.

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Unfortunately, however, following two DC-3 accidents in one month, the service was suspended. The Senate Committee on Transportation and Public Service conducted an investigation to determine the cause of the accident. This inquiry culminated in the resignation of Don Andres Soriano as president of Philippine Air Lines.

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Under the new management, PAL introduced the low-fare "Night Mercury" service using the 4-engine Viscount aircraft. Another F-27 Fokker Friendship was added, thus phasing out the twin-pioneer service. In March 1964, PAL launched another low-fare DC-4 "Maya" service to Bacolod, Cebu, Davao and discontinued the rural air service.

This was followed later by the purchase of Hawker Siddeley 748's which replaced the DC-3's in the trunk and secondary routes (Figure 1).

The 15,000,000th passenger travelled in a F-27 Fokker Friendship from Manila to Larap on April 17, 1968. For the year 1967, PAL carried a total of 1,500,376 domestic passengers (Table 1).⁴¹

International Operation

PAL operated the first non-scheduled international flight to Oakland in the West Coast of the United States in 1946, with the use of a chartered DC-4 from Trans-Ocean Airlines.⁴² Proving flights were conducted to Hongkong, Shanghai, Taipei and Bangkok. In the same year, the airline became an IATA Member. The Philippine Government signed the air transport bilateral agreement with the United States.⁴³ PANAM, the American flag carrier, operated to Manila in 1946, followed by Northwest Airlines in 1947.

PAL's first scheduled DC-4 service started on December 3, 1947 and was extended later to London. The following year, a DC-6 service was opened to Tokyo in addition to the DC-4 flights to Hongkong and to Tokyo. PAL purchased the two DC-4's and two DC-6's to serve the route to San Francisco.

In the annals of Far Eastern aviation, PAL was the first airline to use DC-6 aircraft across the Pacific. It was one of the top ten in the world's airlines in unduplicated routes.⁴⁴ It was also the first air carrier to operate scheduled service to Hongkong with DC-4 equipment. By 1950, PAL foreign operation practically covered two-thirds

the world involving five continents. It operated the largest and fastest aircraft available in 1951.

With the arrival of the DC-6B aircraft in 1952, flight frequencies were increased on the international routes. The service to Zurich and Frankfurt were inaugurated on July 30. In the same year, PAL was authorized to operate non-stop service between San Francisco and Mexico City following the conclusion of the Philippine-Mexico air agreement. Nevertheless, Compania Mexicana de Aviacion, a subsidiary of PANAM, secured a court injunction preventing the Philippine flag carrier from operating along the San Francisco-Mexico City route. The injunction, however, was lifted by the Supreme Court of Mexico in 1957.⁴⁵

Suspension of International Flights

With the advent of the jet aircraft, the management proposed further financing from the government to buy DC-7 and jet equipment, to compete in the international field. However, instead of supporting the project, the President of the Philippines suspended the international service. The government had no funds to finance the purchase of pure-jet aircraft. The suspension resulted in the operation of foreign airlines to Manila.

In 1955, plans were submitted to revive the suspended international service. It was approved in 1958 and, immediately, an order was placed for two DC-8's. A new turbine test cell and a Link electronic flight simulator were acquired. Meantime, the United States Civil Aeronau-

tics Board approved PANAM's purchase of 120,000 shares of PAL making the American airline a stockholder in the domestic air carrier. To assist in the reactivated service, Congress approved Republic Act No. 2232 appropriating funds for airmail compensation as support to PAL and Republic Act No. 2360 extending the corporate life of the airline⁴⁶ to another twenty-five years.

Abrogation of the US-PI Air Agreement

The year 1959 saw the abrogation of the US-PI air agreement concluded in 1946 after the failure of the negotiation for a new treaty granting PAL equal privilege with the American airlines in the Trans-Pacific route. On December 11, 1961, PAL leased a Boeing 707 aircraft from PANAM and operated to Hongkong. A year later, PAL signed a cooperative agreement with KLM Royal Dutch Airlines for the operation of the first DC-8 in the resumption of the Trans-Pacific service.

⁴⁷

The terms of the agreement were the following:

1. To purchase from KLM Royal Dutch Airlines one Douglas DC-8 fan jet aircraft within 4 to 7 years;
2. To charter a KLM DC-8 aircraft to operate on the routes granted under the PI-Thai and PI-UK air agreements once a week frequency;
3. Training of PAL crew while KLM crew shall be made available to PAL during the training period;
4. General sales agency agreement shall be in conformity with IATA regulations;
5. Maintenance to be done by PAL and periodic overhaul will be done at Schipol at current prices.

The first DC-8 aircraft christened "Sampaguita", arrived on June

15, 1962 and was used in the Manila-Hongkong sector. It left Manila on June 20 for the first scheduled international flight to the United States on a weekly frequency. PAL was permitted by the United States Civil Aeronautics Board to operate only on the Central Pacific route without an intermediate stop at Tokyo. For the first time since 1946, total revenue passengers for one year passed 1,000,000.⁴⁸

Transfer of Control

Control of Philippine Air Lines was transferred from the government to the private sector when five percent of the government shares were sold to RUBICON, a company owned and controlled by the President of the airline thereby making it the majority stockholder in the corporation. As a consequence of the program for modernization of equipment, PAL increased its capital to ₱25,000,000. It introduced in-flight movies in the Trans-Pacific flights and it was the first airline to feature a double show.

Services to Sydney and Singapore were opened with a new DC-8F⁴⁹ "Mabuhay". The "Champaca", the third DC-8 aircraft, was delivered in March 1968. In addition, PAL ordered for two more DC-8 Series 63 on February 18, 1968. Meanwhile, PANAM's shares in PAL were sold to RUBICON also thus increasing the latter's shares to 74 percent and⁵⁰ virtually Philippinizing the airline (Figure 2).

As of October 11, 1968, PAL has 61 aircraft - 6 Cessna 150, 22 DC-3's, 3 DC-4's, 14 F-27's, 3 BAC 1-11's, 3 DC-8's, 9 HS748's⁵¹ and 1 Bell jet.

CHAPTER III. ESTABLISHMENT OF OTHER DOMESTIC AIRLINES

Filipinas Orient Airways, Inc.

Filipinas Orient Airways, Inc. was granted a franchise by Congress⁵² to establish and maintain domestic and international air services. It initially operated with seven DC-3's and one DC-6B for scheduled⁵³ and non-scheduled day and night services. About ten months after operation, the airline had an aircraft accident. Filipinas suspended all services pending overhaul of the operational and administrative set-up of the airline.

However, services were resumed a month later. YS-11 aircraft were added to its fleet. On February 24, 1967, a Nord 262 twin-jet aircraft was leased from Japan to replace the DC-3's in the trunk⁵⁴ routes. Aside from operating in the trunklines and secondary routes, Filipinas was also allowed to serve Hongkong and Saigon.

As of April 24, 1968, Filipinas has 4 YS-11's, 1 Nord 262, 1 DC-6B and 7 DC-3's.

Air Manila, Inc.

Similar to Filipinas Orient Airways, Inc., Air Manila, Inc. was also a holder of a franchise from Congress. It was granted a permit⁵⁵ on June 19, 1965. It operated along the trunk, secondary and feeder routes with 2 DC-3's and 2 Dart Herald aircraft competing with PAL and Filipinas. Later, F-27 Fokker Friendship aircraft were added to its fleet for domestic operation.

Air Manila, Inc. had 14 aircraft - 2 Dart Heralds, 7 F-27 Fokker⁵⁶ Friendships and 6 DC-3's.

Non-Scheduled, Charter and Special Air Services

Non-scheduled flights and charter services were encouraged more in areas where the airfields are not suitable to the operation of bigger type of equipment and traffic do not permit the operation of scheduled airlines. These were services to feeder airports which comprised the greater bulk of the airports in the Philippines. The policy was in accordance with the Board's decision to distribute the benefits of air transport to all segments of the population as much as practicable.

Pacific Airways Corporation was the first grantee of a letter of authority from the President in 1947⁵⁷ to engage in domestic non-scheduled air transport using C-64 type of aircraft to carry passengers and cargo but excluding mail. It was also granted a permit to engage in international non-scheduled air freight service for a limited period.

The following year, Philippine Air Transport Service was temporarily allowed to perform charter seaplane service. Its permit became permanent in 1958. PATS services were extended to experimental and sightseeing activities and test flights throughout the country.

Similarly, Security Delivery Service was also granted a Certificate of Public Convenience and Necessity in 1962⁵⁸ to deliver security cargo with the use of an L-5 light plane.

In agricultural flying, Manila Aviation Service was granted an air commerce permit in 1958⁵⁹, not only for charter and contract ser-

vices, but also in such activities as aerial spraying, crop-dusting, seedling and leaflet dropping for commercial and industrial purposes. One Stinson L-5, 4 Cessna's, 1 Comanche 250 and 1 Bonanza E-35 were used for the purpose.

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In the north, however, Arsenio P. Camposagrado engaged in passenger and cargo service, charter, commercial and industrial flights.

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Southern Air Lines, a sole proprietorship, was the first non-scheduled operator to undertake charter, commercial and industrial flights throughout Mindanao and points in the Visayan Islands with Davao as the base of operation. SAL's permit, however, was cancelled in 1966 for engaging in dubious activities.

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Southern Aviation Corporation, another licensee, had a similar fate as SAL. At the beginning, its activities extended outside of the Philippines, but the permit was withdrawn in June 30, 1966 for charging rates lower than that approved by the Board.

For the first time, in 1965, the Board authorized the use of helicopter for commercial purposes. Charter Service Corporation was granted a licensee to use two helicopters for charter and ferry flights around Manila and outlying communities.

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Civil Air Transport, Far East Aviation Service, Philippine Aviation Corporation were all granted licenses in 1967 to engage in non-scheduled and charter flights with aircraft less than 12,500 lbs. Tropical Airways was the last air carrier added to the list of non-scheduled operators.

In addition to these non-scheduled, charter and special air service operators, a number of aircraft owners engaged in business flying were exempt from securing permit from the Board.

CHAPTER IV. GOVERNMENT REGULATION OF AVIATION

First Air Navigation Law

Legislative Act No. 3909 promulgated in 1931 was the first air navigation law concerning licensing of airmen and aircraft, traffic rules, schedules, rates and its enforcement.

The Secretary of Commerce and Communication administered the provisions of the Act. He issued regulations, including traffic rules, which must conform as much as possible to the United States Air Commerce Act of 1926. Rates and fares of aviation companies were approved by the Public Service Commission.

Initially, ₱30,000 were appropriated for the selection and survey of possible airfields and construction of airports. The help of the United States Coast and Geodetic Survey Station at Manila was solicited to facilitate the selection of sites for landing fields. Airports constructed at the time were classified as municipal, insular, provincial and commercial.

To implement the provisions of the Act, Aeronautical Bulletin No. 1 was issued containing rules and regulations regarding the use of private aircraft and for air commerce, requirement of airworthiness, maintenance of equipment, licensing of airmen and the establishment of airways and aeronautical facilities. In 1933, there were 13 aircraft engaged in air commerce, 34 pilots and 37 licensed mechanics. Six other minor aeronautical bulletins were also issued.

On October 1, 1934, the Department of Finance and the Department

of Commerce and Communication issued a joint Bulletin No. 309 providing that "no public service shall be operated without a franchise granted by the Philippine Legislature." It also contained regulations governing the operation of foreign aircraft, customs, health and immigration.

With the expansion of the Aeronautical Division, more American servicemen were assigned to the Office and Filipino surveyors were hired to do airport surveying and construction due to the clamor of municipalities for more airports. For the project, the government appropriated ₱200,000 for the construction of landing fields and purchase of navigational equipment. More airports were added to the 68 twenty-two existing landing fields. None were more than 3,000 feet.

Creation of the Bureau of Aeronautics

The advent of the China Clipper in 1935 placed air transport in the Philippines on a stable footing. President Quezon created the National Transportation Board, which embraced all transport activities including the air and fixed responsibility for the construction, maintenance and administration of airports. Throughout the country, there were 34 landing fields and airports, 9 designated as national, 14 emergency, 1 military and 10 private.

In 1936, the National Assembly enacted Commonwealth Act No. 168 abolishing the Aeronautical Division and in its place established the 69 Bureau of Aeronautics. The principal activities of the Bureau were the expansion in airport construction and provision of more naviga-

tion facilities. An aeronautical station was established near Manila, four civil airways were designated and "Fortnightly Notice to Airmen" were issued. (Appendix II).

On May 11, 1940, Commonwealth Act No. 529, amending Commonwealth Act No. 168, was passed authorizing the Director to adopt and promulgate civil air regulations. Accordingly, a comprehensive set of rules patterned after those of the United States Civil Aeronautics Administration was issued. The general supervision and control of the Bureau of Aeronautics was transferred to the Department of National Defense.

To summarize, air transport activities assumed a substantial public service function between 1936 and 1941. Runways were laid out, air navigation facilities were installed and safeguards to insure safety were provided. At the outbreak of the war, the Bureau maintained fifteen aeronautical point-to-point and air-ground-air communication stations at which both surface and upper air observations were carried out. There were 187 pilots licensed by the Bureau, 26 Filipinos and 161 Americans.

Post-War Regulation of Aviation

The Bureau of Aeronautics was one of those government agencies immediately reestablished after the war. Despite the absence of any military activity, it was still placed under the Department of National Defense. Its priority was the rehabilitation of the war-damaged aeronautical facilities.

The Director, a war ace, initiated a series of radical changes.

He converted the Bureau into a civilian Office. He was responsible also for the establishment of the Civil Aeronautics Board and the Civil Aeronautics Administration, both patterned largely after the United States counterparts, the Civil Aeronautics Administration under the Department of Commerce and Industry. The Civil Aeronautics Commission,⁷⁰ a makeshift body created by the President after the war, became the Civil Aeronautics Board, a body not as elaborate as the United States counterpart due to lack of qualified personnel to handle the economic aspect of aviation regulation.

In addition, the Manila International Airport, which was under the control of the United States Army, was transferred to the Philippine Government. The sum of ₱200,000 was appropriated for the repair and maintenance of airports throughout the country. Simultaneously, President Roxas approved Republic Act No. 224 (See Appendix III) creating the National Airports Corporation, which handled the operation and management of all airports throughout the Islands. The Director of the Civil Aeronautics Administration was concurrently the manager of the Corporation. However, in the course of his administration, his management policies often ran counter to those of the other directors of the Corporation and as a result of the irreconcilable differences, the Director of the CAA was forced to resign.

The National Airports Corporation was without a manager until it was finally abolished on November 10, 1950. The functions of the Office were absorbed by the CAA and the Manila International Airport

was brought under the administrative supervision and control of the former.

The next two years after the abolition of the NAC saw a period of reorganization in the internal set-up of the CAA and readjustment in the management policies with respect to the MIA - whether the airport should be operated as a public service or a profit-making concern. Meanwhile, plans were underway to reorganize the civil aviation offices. Finally, on June 20, 1952, the law reorganizing the CAA and the CAB was signed by the President. The Civil Aeronautics Act of the Philippines became effective on the date it was approved.

The Civil Aeronautics Act of the Philippines

Air transport is relatively young compared with other public utilities, but, conversely, it is the scene of a technological revolution.⁷¹ The developments in aeronautics are fantastic. Aviation today is again on the threshold of a new era called the "Supersonic Age". The growth of aviation in the Philippines, however, is also fast if not as rapid as in other countries. In 1952, only one scheduled domestic airline with a handful of equipment and a couple of foreign air carriers serve domestic and foreign air travel. Now, air transport, both domestic and foreign, has multiplied many times. Three airlines provide the travel needs, aside from a hundred licensed non-scheduled air carriers and private operators. The combined fleet of 88 aircraft ranging from the single-engine light plane to the most sophisticated Boeing 707 or DC-8 operate within and without the country 24 hours a day. This is

without mentioning the sixteen foreign airlines that serve Manila every half hour as a point of origin, intermediate stop or final destination.

The basic law on aviation in the Philippines is Republic Act No. 776, otherwise, known as the Civil Aeronautics Act of the Philippines (Appendix IV). The Act is more comprehensive than earlier aviation legislations. For the first time in the history of government regulation is there a clear delineation of duties and functions between the two regulatory bodies. Like the United States Civil Aeronautics Act of 1938,⁷² it may also be called the "Magna Carta" of civil aviation in the country.

The general purpose of the Act is to reorganize the two aviation offices which are set up after the war. The provisions of the law do not apply to military aircraft and airmen in the Philippines and airmen of foreign countries and to foreign civil and public aircraft other than those duly licensed.⁷³ However, air traffic rules do apply to those aircraft and persons.

Republic Act No. 776 is divided into two main divisions. Chapters III and IV deal with the Civil Aeronautics Board (Sections 5-24). Chapters V and VI relate to the Civil Aeronautics Administration (Sections 25-41). The last four chapters concern penalties, appeal from the decisions of the CAB and the CAA, collection of fees and other miscellaneous provisions.

Congress allocated the power of regulating air transport between

the two separate but coordinated agencies. The CAB, the policy-making body, is concerned with the economic aspect of air transport. It has "general supervision and jurisdiction of, and control over air carriers, their property, property rights, equipment, facilities and franchises." ⁷⁴ The Board has a number of specific powers, all of which are discussed in detail in the later part of this dissertation.

The CAA, however, is in charge of the operational and technical phases of aviation, and includes such powers as the grant of air carrier operating certificate, airworthiness certificate, license of airmen, construction and maintenance of airports, provision for navigational aids, conduct of accident investigation and other related activities.

Under Section 4 of the Act, there is enumerated a list of guidelines for the two agencies to consider in the exercise of their separate functions and duties, as being in public interest and in accordance with public convenience and necessity. Each of these goals is explained in this Study.

As in the case of any important piece of legislation, two questions ⁷⁵ may be asked pertaining to the law. - 1. What are the conditions or factors which produced the adoption of the legislation; and 2. What is the source of the provisions incorporated under the law.

The basic concept of Republic Act No. 776 is taken from the United States Civil Aeronautics Act of 1938. However, the Act is not as comprehensive as the United States aviation law because it was fashioned

by the framers to suit conditions obtaining in aviation at the time. For sixteen years, the law has been in force without being superseded, amended, revised or altered. The rules and regulations which are supposed to supplement the provisions of the Act, insofar as the CAB is concerned, are almost nil..

About two years ago, a bill was filed in Congress proposing to reorganize again the CAA and the CAB and to create another agency called the National Aviation Commission. However, for reasons unknown to the writer, the bill did not become law. And, it is doubtful whether a new aviation law will be enacted in the near future.

Now, how adequate and how effective is the Civil Aeronautics Act of the Philippines for the government of commercial aviation in the country after sixteen years is the subject of the present Study.

CHAPTER V. REASONS FOR GOVERNMENT REGULATION OF AVIATION

Air transport has been the subject of government regulation since the beginning. The intervention by the state is based on the contention that the industry is affected with public interest. Others, however, say that the industry is a public utility or public service. It is with the latter concept that governments regulate and control the air transport industry.

Besides, there are still others who entertain the idea that air transport is a quasi-public utility simply because it does not possess the characteristics of a natural monopoly, like the telephone, railroad, electricity and water where many enterprises of one kind may be too expensive and uneconomical for both the industries and the public to operate. The airline industry does not have the physical limitations of capital, nor is it required to maintain ground connections between various facilities.

It is worthwhile to note, however, that to a large extent all industrial activities affect the interest of the public and there are no strict criteria by which an activity may be classified as of general interest.

Safety

One of the primary reasons of the government in regulating air transportation is to ensure safety. Everywhere, countries place emphasis and concern on this matter. For example, in the case of the Philip-

panies, it is a policy declaration to assure a high degree of safety in air carrier operation by laying down standards and guidelines for airlines to follow.

One reason why people are reluctant to travel by air despite the convenience of travel it affords, is the lack of assurance as to safety although it is said that air transport is the safest of travel in point of accident occurrence compared to other means of transportation. If no safety measures are taken with respect to air travel, the present state of the industry as one of the most progressive and fast-moving may not be achieved.

Economics

Another reason for government regulation of the airline industry is economics. As human activities become more and more complex and diversified, the government, which is expected to provide for the preservation of peace and order and defense through the administration of law, police and judicial measures, now provides people with a variety of services. The government, in some instances, controls areas of production where public interest is involved and tends to supervise those areas by private enterprise.

It is not argued that economic conditions vary from one epoch to another. With the advent of the machinery replacing the crude methods of manufacturing, methods of production have undergone rapid changes. Businessmen tend to monopolize the market by cut-throat competition. However, free competition, without government regulation, is destruc-

tive and for the sake of efficiency, the government must come to aid for the interest of the public.

Air transport does not possess the natural monopoly characteristics of public utilities like the telephone, railroad, electricity and water. Not it has the characteristics of a business to fit in a perfect competitive system. When the number of sellers is few, the resulting competitive situation is called "oligopoly". However, if the product sold is the same by all sellers, the situation is called "homogenous oligopoly".⁸⁰ Scheduled air transport is not a homogenous commodity. This is the reason why conditions of supply in a scheduled air transportation are essentially "oligopolistic."⁸¹

In a competitive market where prices are identical, the tendency of business is to follow the low price seller. It follows in most cases that to sustain business, other sellers lower their prices accordingly. Such price differential seemed likely to end up in destructive competition. To avoid the serious consequence of the price war, enterprises usually resort to non-price methods of competition in the form of product differentiation.

In the airline industry, these may be in the form of "frills" such as better meals, in-flight entertainment, better passenger ground handling facilities, attractive stewardesses even without lowering the⁸² prices.

But in the airline business, such product differentiation does not hold much importance. Although the minimum scale of efficient ope-

ration has increased in the modern era, small carriers are not at a serious disadvantage as against the largest that size is a barrier to the new entry.⁸³ While other oligopolistic industries succeed at times without being regulated despite entries which may result in destructive competition, the airline could not maintain such equilibrium. This is another reason for the restriction of free entry in air transportation.

In socialist countries, the government exercises control over the internal and external affairs of the airline industry. The industry in such countries enjoys legal monopoly.⁸⁴ In other countries, however, the major airlines are wholly or partly owned by the State thus constituting as the chosen instrument of the government.⁸⁵

Government subsidy is another factor which subjects the airline industry to government regulation and control. He who accepts subsidy must accept government control.⁸⁶ Every airline in the world is subsidized directly or indirectly. Direct subsidy generally connotes a contribution as a gift without provision for repayment. Indirect subsidy is provided by the use of airports and navigational facilities at less than cost.

The objective of better coordination between air transport services so that all communities may benefit from the services of air carriers is another reason for the government regulation of the airline. In a regulated air transport industry, an airline is compelled to offer such service to the public and the losses incurred are compensated by subsidy.⁸⁷

The Government coordinates the operation of air carriers with those of surface transportation to provide an integrated system of transportation to the public. In some developed countries, coordina-

tion between surface and air carriers has ceased to exist, but, in
88
developing countries, such coordination is still of immense value.

It is said by some economists that air transport has little quantitative value in the economy of most countries in relation to national prosperity. In the United States, the share of the gross national product originating in the industry is less than 1/20 of 1%. It is less than 1/2 of 1% in the United Kingdom for all kinds of travel. The industry, some economists also say, form part of the "social overhead capital" - the basic element to the growth and operation of all
89
other parts of the nation's economy. A general feature of this thinking is that returns from investment in these activities are not necessarily earned by the industry itself. The national economic contribution of the air transport lies on the external economies which is generated.

Defense

The present administration of government seeks to identify itself with two objectives - the economic satisfaction of as many citizens as
90
possible and superior national defense. The economic satisfaction of the citizen is closely related to the national economy, to which air transport contributes. Transportation is the pipeline through which
91
the blood of the industry flows. In the years after the war, the establishment of a sound and fast means of transportation is the priority
92
in the program of government for the development of the economy.

To a layman, air transport means air commerce and air power. It

is associated with the armed forces. For a country, air power is the ability to fly which includes both the armed forces and air commerce. Its significance in the national defense during the war has left no ground for politicians to say that aviation should be left alone by itself for it is a vital link between war production, the armed forces and the war potentials just as it links the peacetime
93
economy.

Much has been written about air transport contribution in war and much is also remembered of the destruction it did to humanity. In almost all countries, civil air transport is regulated as a reserve for military mobilization. One compelling reason in support of this consideration was the support to the national defense that the production of additional aircraft would provide. Furthermore, it provides a reserve to relieve any deficit which might exist in military airlift in
94
case of full mobilization.

Politics

Another important reason for the control of air transport by the government is the role it plays in the promotion of international relations. No country can possibly stay in isolation without having, in one way or the other, any form of inter-relation with other countries. History is replete with records of nations and races that flourished
95
briefly because of lack of exchange of ideas.

Especially at this modern age of air travel, the aircraft is the fastest means of communication between distant communities. It has

greatly reduced the world in size. It has created an atmosphere for better understanding and co-existence. Mental reservation and distrust have given way to cooperation. Airlines are also considered as instrument of propaganda of national standard or of national ideology. Communication unites countries and transcends local independencies, separation in a national domain resulting in language, racial and cultural differences.

The Philippines, being a country divided into more than 7,100 islands, with 17 local dialects and with different creeds, air transportation is the only effective link to integrate the people into a unified whole.

Prestige

Prestige is one of the reasons for government regulation of civil aviation. Apart from the economic, political and defense contributions to the country, air transport has been considered as an instrument of creating a favorable image for the country abroad. Today, almost every country, especially the newly independent countries, tries hard to establish a national airline. The international service performed by the flag carrier is sometimes uncompetitive and uneconomical. In the words of Stephen Wheatcroft, this airline is acting in the apparent conviction that the operation of international air service is in the same category as the possession of a flag and exchange of ambassadors as external signs that nationhood have been achieved.

The statement that prestige is the ultimate reason for the establishment of an airline is no longer a fact for with the increase of air traffic, economic and commercial considerations exercise a considerable influence.⁹⁹

Today, air transport is an industry for which the flow of traffic constitutes an export product. If this product is not handled by a national airline, the business and the currency involved will be gained by the airline of another country. No newly independent nation in its true sense is independent unless self-sufficient. Self-sufficiency, however, carries with it industrialization. A newly organized industry cannot profit immediately. It needs perseverance, experimentation and research to realize profit. The profit or loss that a country makes through the air transport industry cannot be estimated by the airline's financial statement or balance sheet only. Such loss or profit are quite difficult to determine since the industry has a remarkable contribution in the social overhead capital, employment, technological and political achievements of a nation.¹⁰⁰

CHAPTER VI. WHY THE NEED FOR AIR TRANSPORT?

Reference to a map will help to appreciate the need for air transportation in the Philippines, which is a typical aviation state in many respects - geographical, topographical, political and economic.

The Philippines is ideally located in the air route between the East and the West. By air, it is some 15 hours by jet from Canada and the United States and about 17 hours to Europe. The country lies 600 miles off the southeast coast of Asia and 15 degrees above the equator. It is a neighbor to Korea, Japan and Formosa to the north, Borneo to the south and Vietnam and Thailand to the West. The vast Pacific Ocean
101
laps its eastern seaboard.

The Archipelago consists of more than 7,100 islands spread out like emeralds on the sea along the 1,000-mile north and south latitude and across its widest 605-mile east to west girth. The irregular coastline of 10,850 statute miles is double that of the world's largest international boundary - that of Canada and the United States stretching from the Atlantic line to the Pacific Coast.

The country has a total land area of 116,000 square miles, scattered, discontinuous, predominantly hilly and mountainous. Land mass is heavily concentrated in the two largest islands - Luzon in the north and Mindanao in the far south. The population is about 32,000,000 and
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population density is 97.4 persons per square kilometer.

To tourists, the "Pearl of the Orient Seas" is beautiful. It is

blessed by nature with two wonders of the world - the peerless Mayon Volcano in the Bicol region and the panoramic Banaue rice terraces in the Mountain Province in the north. (Figures 3 & 4).

The Philippines became independent on July 4, 1946. As a developing country, it is fast acquiring a place for itself in the community of nations. It is a regular member of the United Nations Organization, in which, as said earlier, the Philippine Ambassador Carlos P. Romulo became a renowned figure. A Filipino is a magistrate in the International Court of Justice and in the association of world airlines, the President of Philippine Air Lines was president last year.

As to the communications system, the Americans laid the system of transportation. Placed end to end, the highway system would circle the coastline 4-1/2 times. But, over 1/2 of this system is laid out in Luzon unconnected to other provinces in the central and southern part of the country.

Four years ago, the country licensed 820 vessels for coastwise shipping. Nevertheless, with the slow-moving watercraft, it took 2 to 3 days to go from one island to the other.

The airplane is the most expedient and effective link between the island provinces. Air transportation, as a means of travel, gained rapidly the patronage of the people as a fast and reliable means of transport. PAL alone carried more than 1-1/2 million domestic passengers last year. There were similar increases in the volume of mail and cargo carried. These are indications that the trend will require more

and more demand for the convenience and speed of air transport for trade and communication.

Domestic air transport needs are provided by Philippine Air Lines, Filipinas Orient Airways, Inc and Air Manila, Inc. and a number of non-scheduled air carriers using less than 12,500-lb. aircraft. Domestic air transportation is handled by 71 national airports and private airfields. Manila has direct scheduled service to more than 30 cities and more than 20 countries.

PART II. ORGANIZATION, FUNCTIONS AND DUTIES

CHAPTER VII. THE CIVIL AERONAUTICS BOARD

Nature of the Office

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Like the United States Civil Aeronautics Board or the Air Trans-
109
port Committee of Canada, the Civil Aeronautics Board of the Philip-
pines is the chief instrument of control of commercial aviation. It
is an administrative body vested with quasi-judicial, quasi-legisla-
tive and quasi-executive powers unlike the United States Civil Aero-
nautics Board which is not an agency under the executive branch of
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the United States Government.

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Similar also to other administrative bodies in the Philippines
with adjudicatory powers like the Securities and Exchange Commission,
Social Securities Commission or the Workmen's Compensation, but unlike
112 113
the licensing authorities in the United States, Canada or the United
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Kingdom, the decisions of the Civil Aeronautics Board, except those
decisions with respect to the issuance of a permit, are appealable only
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to the Supreme Court.

The Civil Aeronautics Board is not under the control of any of
the executive departments unlike the Civil Aeronautics Administration
which is under the supervision and control of the Department of Pub-
lic Works and Communication. It is said to be under the Department
of Commerce and Industry for budgetary purpose only. In contrast with
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the United States counterpart, but similar to the Air Transport Licen-

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sing Board, the Civil Aeronautics Board submits the annual report to
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the President.

The principal office of the Board is in the City of Manila. Again,
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like the United States Civil Aeronautics Board or the Air Transport
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Committee, the Board holds hearings at such time and place within the
Philippines as may be provided in writing. Ordinarily, the meeting
is held once a week except in emergency cases.

In the performance of its duties, the Board is assisted by a technical staff and permanent employees appointed in accordance with the civil service rules. The administrative head is the Executive Director. The Board Secretary records all proceedings, takes charge of and keeps
121
all papers, and perform other duties as may be prescribed.

With the approval of the President of the Philippines, the Board may engage temporarily the services of duly qualified consulting engineers and agencies or other qualified persons as may be necessary and fix their compensation without regard to civil service rules and regulations.
122
The United States Civil Aeronautics Board has a similar authority as the Philippine Civil Aeronautics Board. The Canadian Transport Commission, however, has a staff which performs the office and field functions of the Commission.

The office and field activities of the Board are handled by six divisions, each further divided into sections. - 1. Office of the Board Secretary; 2. Administrative Division; 3. Air Operations Division; 4. Air Carrier Accounts Division; 5. Legal Division; and 6. Hearing Examiners Division (Figure 5).

Office of the Board Secretary

The Secretary of the Board records the formal actions of the Board; processes and reviews petitions as to accuracy, form and content and authenticates for official purpose documents released by the Board. He compiles agenda of matters for presentation to the Board for formal action; records and transmits action taken; drafts opinion, orders, permits, resolutions and prepares minutes of Board's meetings.¹²³

Administrative Division

The Division provides the budget, fiscal, management, personnel and other administrative services; studies and prepares the annual appropriation; develops the Board's annual fiscal plan and maintains administrative control of expenditures and plans management techniques and improvement in policies and procedures.¹²⁴

Air Operation Division

The Division, which consists of the Air Carrier and Service Section and the Air Rate Section, provides technical and expert advice to the Board on rates and route policies, both international and domestic. It prepares and promulgates procedures and regulations on airline route and rate structure and operational practices. It also analyzes, evaluates application for approval of rates, routes, tariff, frequencies, schedule, change of equipment and service and conducts market research on traffic movement.¹²⁵

Air Carrier Accounts Division

The Division administers accounting and reporting regulation of all domestic and foreign air carriers operating in the Philippines; makes regulations related to general accounting and statistical reporting programs; provides expert advice on accounting, auditing and statistical matters; conducts field examination of accounts and records of air carriers; designs and develops a uniform system of accounting and financial reports and conducts comprehensive surveys and studies related to the development and regulation of civil aviation.

Legal Division

The Division provides legal advice to the Board regarding policies and procedures, in economic proceedings; analyzes and evaluates and recommends action on contracts and agreements entered into by air carriers; represents the Board in court hearings; conducts legal studies on matters of interest to the Board; participates in drafting air agreements; represents the Board in air negotiations and institutes enforcement proceedings in connection with the economic regulatory activities of the Board.

Hearing Examiners Division

The Division conducts formal hearings or proceedings on application for certificates of public convenience and necessity, amendment of permit, schedules, increase or decrease in rates; administers oaths,

examine witness, issues subpoena, rules on motion and regulates the
course and conduct of hearings and submits examiner's report to the
128
Board for decision.

CHAPTER VIII. COMPOSITION OF THE BOARD

The Civil Aeronautics Board is composed of the Secretary of Commerce and Industry as Chairman, the Civil Aeronautics Administrator, the Commanding Officer of the Philippine Air Force and two other members appointed by the President of the Philippines. In case of absence or incapacity of the Secretary of Commerce and Industry, the Civil Aeronautics Administrator acts as Chairman. ¹²⁹

In case the Undersecretary of Commerce and Industry and/or the Deputy Administrator act in stead of the Secretary of Commerce and Industry and/or Administrator, respectively, they shall hold office and be entitled to per diem for each meeting actually attended.

No member of the Board shall have any pecuniary interest in, or own any stock or bond of any civil aeronautics enterprise. ¹³⁰ The Chairman and two members of the Board constitute a quorum to transact business. A majority vote of the members constituting a quorum is necessary for a valid and enforceable decision or order of the Board.

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A tie vote is referred to the President for decision.

Comparison with other Air Transport Regulatory Agencies United States

The United States Civil Aeronautics Board has five members appointed by the President, by and with the advice and consent of the Senate, for a term of six years, beginning upon the expiration of the

term for which their predecessors were appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term; but upon the expiration of the term of his office a member shall continue to serve until his successor¹³² is appointed and shall have qualified.

The members of the USCAB may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No more than three of the members are appointed from the same political party. The President designates annually one of the members of the Board to serve as Chairman and one of the members to serve as Vice-Chairman, who shall act as Chairman in the absence or incapacity of the Chairman.¹³³

The members of the USCAB are appointed with due regard to their fitness for efficient dispatch of the powers and duties vested in and imposed upon the Board by the Act. No member shall have any pecuniary interest in, or own any stock or bond of any civil aeronautics enterprise, or engage in any other business, vocation and employment.¹³⁴ Each of the members is a citizen of the United States.

Three of the Board members constitute a quorum. Its principal office is in the district of Columbia where its general sessions are held, but whenever convenience of the public or of the parties may be prevented, the Board may hold hearings or other proceedings at any other place.¹³⁵

United Kingdom

The Air Transport Licensing Board consists of not less than 6¹³⁶
nor more than 10 members appointed by the Minister, who also appoints
2 of those members to be Chairman and Deputy Chairman. There is no
qualification for membership in the Air Transport Licensing Board.

¹³⁷
There are 9 members of the ATLB at present.

The Chairman, the Deputy Chairman and all other members hold
and vacate office in accordance with the terms of the instrument
¹³⁸
appointing them. In case of temporary disability of the Chairman
or Deputy Chairman to discharge the function of his office owing to
illness or any other cause, the Minister may appoint some other members¹³⁹
to act for the time being in place of the Chairman or Deputy Chairman.

If the Minister is satisfied that a member of the Board has been
absent from meetings without permission for a continuous period ex-
ceeding six months; or has become bankrupt or made an arrangement
with creditors; or by reason of illness or any other cause become una-
ble or unfit to act as a member, the Minister may by notice declare¹⁴⁰
that the person's office as a member to have become vacant.

No person, with any interest, whether as a shareholder or other-
wise, in the business of an operator of an aircraft or of the holder
of an airdrome license, shall act as a member of the Board unless he
has declared his interest to the Board and to the Minister. If the
Minister is satisfied that, by reason of that interest or of any failure
to so declare such an interest, it is right and proper so to do, he

may declare the person's office as vacant.

The ATLB acts in spite of a vacancy in the membership thereof and no act may be invalidated by reason of any irregularity in the appointment of any member or by any person irregularly acting as a member.

Canada

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The Air Transport Committee, which is in charge of air transport under the Canadian Transport Commission, replaced the former Air Transport Board. The Air Transport Committee has three commissioners. They are appointed by the Governor in Council and hold office during the good behavior for a period of ten years, but may be removed for cause. 142

Any retiring member is eligible for reappointment. Each member may hold office up to the age of 65 but ceases to hold office upon reaching the age of 70 years. 143

The Governor in Council designates one of the members to be Chairman. If any member by reason of absence or other incapacity is unable to attend at any time to perform the duties of his office, a temporary substitute member may be appointed upon such terms and conditions as the Governor in Council may prescribe. 144

No member of the Board shall directly or indirectly engage in the manufacture or selling of aircraft or in the transport of passengers or goods by aircraft for hire or reward, nor shall be a shareholder, member, director or partner of any company, association or firm engaged in manufacturing or selling aircraft or in the trans-

port of goods or passengers by aircraft for hire or reward. ¹⁴⁵

Egypt

The Supreme Board of Civil Aviation is responsible for the development of civil aviation and air transport. The eleven members are appointed without regard to qualification. Its functions are too broad and the relation with the Department of Civil Aviation is not well defined. ¹⁴⁶

Thailand

The Civil Aviation Board of Thailand has no more than seven members excluding the Minister of Communications (Ex-Oficio Chairman) and the Vice-Chairman. ¹⁴⁷ All members except the Chairman hold office for a term of four years and are only relieved from office before the expiration of the term for death, resignation or retired by the Council of Ministers

The "Board" or "Commission" system of regulating the economic aspect of aviation is not found in Japan where the Minister of Transportation performs all licensing activities and the technical and the operation, and Hungary where the combined functions of the economic and operational are merged in the Civil Aviation Board. ¹⁴⁸
¹⁴⁹

Appointment, Tenure and Removal of Board Members

While the five members of the Board are considered large enough to bring into play a variety of viewpoints in formulating decisions or arriving at conclusions, but an overwhelming of individual preju-

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dice is still small to avoid unwieldiness, yet it is observed that it is the unique board among the many regulatory agencies not even one of the members served on full-time basis. Under the law, unlike the licensing offices in the United States, Canada and Thailand where the Board members are appointed with fixed tenure of office and removable only for causes specified in the respective laws, the members of the Philippine Civil Aeronautics Board are appointed by the President, but without fixed term of office and removable at his pleasure.

Comments and Suggestions

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While the Philippine Constitution expressly provides that the entire executive power is vested in the President and in the exercise of such power, he has the right to remove executive officers appointed by him as being incidental to the exercise of such power, the reasons which give the President authority to dismiss subordinate employees (at pleasure) do not apply to officials whose discretion is not subject to hierarchical direction like the Civil Aeronautics Board.

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The President controls those actually engaged in the executive tasks like the department secretaries, but this is not true of officials not performing executive functions and not exercising executive duties vested by the Constitution on the President.

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The Civil Aeronautics Board is vested with an important power which is judicial in nature. Its characteristic common with the

the Securities and Exchange Commission and the Public Service Commission of the Philippines, the Federal Trade Commission and the Interstate Commerce Commission of the United States, and other similar agencies in other countries, is the power to hear and adjudicate cases in their respective fields of competence. The exercise of this power, however, is best performed in an atmosphere of independence rather than being subject to external control. This is the reason why quasi-judicial agencies are not under any of the executive departments.

Congress, in giving quasi-judicial bodies like the Civil Aeronautics Board freedom and independence, considers paramount the right of the citizen to a fair and impartial hearing of his case. If the President can remove any member at his pleasure and to decide cases in case of a tie vote, then the CAB will have the appearance of simply an office under the President and it will be difficult for the Board to resist effectively the President's will for it is evident that one who holds office during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.¹⁵⁴

However, this is not the intention of Congress. The intention is to create an agency with full independence not only in practice but in legal principles.

B. Schwartz, in his commentary on the Constitution of the United States, stated that the President does not have the unlimited power of removal of members of a quasi-judicial body which he has over officers appointed by him. On the contrary, in case of quasi-judicial agencies

the President's power was restricted to removal for cause provided in the statute. The power creating quasi-judicial bodies requiring them to act in the discharge of their duties independently, carried with it the authority to fix the period during which the members shall continue in office and forbid their removal except for cause.

Nevertheless, in a case where the law has not made provision with respect to security of tenure, and while it may be thought that the members are removable at anytime by the President, the position is that they are removable by the President only for cause. The key element is the power confided to the particular agency, not the fact that Congress has been silent on the subject of removal.¹⁵⁵

It would be in the best interest of the Civil Aeronautics Board in particular and the aviation industry in general if the members of the Board could be appointed with fixed tenure of office, or similar to judges removable only on specified grounds to give continuity to the regulative traditions.

Powers and Duties of Board Members

The Civil Aeronautics Board performs a variety of functions - quasi-executive, quasi-legislative and quasi-judicial. For the full realization of statutory objectives, they must hold office on full-time basis similar to other members of other regulatory agencies. Under the present structure, a small portion of their time is available for most of them are top government officials with multifarious duties.

The CAB is a policy-making body. It has the complex task of formulating aviation policies. This involves balancing of rights and interests and necessarily requires time for deliberation, expertise and experience in aviation. Aside from the statutory obligation to hear cases, unless delegated, members participate in decision-making, negotiate agreements, make decisions for the administrative staff and other aspects that are necessary for the maintenance of continuity in the office. In addition, they engage in public relation activities, consult members of the industry, community representatives, members of Congress, government officials and other persons.

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With these duties, there is no time for independent research and study in the standard work-week. In the licensing work alone, factual questions, economic statistics and data and the concomittant legal and policy questions arising therefrom must be carefully weighed and seriously considered to render an impartial and intelligent decision. The factual questions, however, may be answered by records in the office, but the members have no significant contact with the data.

The Board has insufficient time also to examine and consider the records or to resolve conflicting claims, reconcile or discern partial truths or differences of approach and emphasis. Moreover, personal assistants are of little help to the members because they are also

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swamped with administrative details. These are the profound difficulties on the way of the Board in formulating sound and well-considered decisions.

The writer has described above the complexity and magnitude of the responsibilities of the members of the Civil Aeronautics Board. These responsibilities can only be accomplished by a full-time Board.

Absence or Incapacity of Chairman in Board Meeting

Ordinarily, the Board meets once a week. The Chairman and two members constitute a quorum. A majority vote of the members present is necessary for a valid decision. In the absence or incapacity of the Secretary, the Administrator shall act as Chairman. However, it is provided further under the law that the Undersecretary of Commerce and Industry can act in stead of the Secretary in case of the latter's absence or incapacity.

In a case where the Secretary is absent or incapacitated to attend a meeting, the query is: Who will act as Chairman when both the Undersecretary and the Administrator are both present? This matter is not clearly thrashed in the law. The Board at times is confronted with similar problem, and in this case it is the view of the writer that the Undersecretary and not the Administrator shall act as Chairman. For, whenever the Undersecretary sits as a member, he acts in no lesser capacity than the Secretary. To allow the Administrator to act as Chairman in a meeting where the Undersecretary is present in place of the Secretary, would relegate the Undersecretary to the post of an ordinary Board member, which situation is not contemplated under the Act. Even in the government hierarchy, the Undersecretary

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occupies a higher position than the Administrator.

Under the Federal Aviation Act of 1958 of the United States, the law on the resolution of questions arising from the "absence or incapacity" of the Chairman is quite simple and clear. The President designates annually one of the members to serve as Chairman and one of the members as Vice-Chairman, who shall act as Chairman in the absence or incapacity of the latter.

In Canada, the Governor in Council designates one of the members of the Committee as Chairman. If any member of the Board by reason of absence or other incapacity is unable to attend at anytime to perform the duties of his office, a temporary substitute member may be appointed upon such terms and conditions the Governor in Council may prescribe.

In the United Kingdom, the Minister appoints two members of the Board as Chairman and Deputy Chairman. If the Chairman and Deputy Chairman are temporarily unable to discharge the functions of their offices due to illness or any other cause, the Minister may appoint some other members to act in place of the Chairman or Deputy Chairman, as the case may be.

CHAPTER IX. DECLARATION OF PRINCIPLES

The Philippines has almost similar aviation goals as the United States. The United Kingdom, however, has no positive policy statement for the Air Transport Licensing Board. The ATIB forms its own views on desirable policy especially in the absence of precedents.

The Civil Aeronautics Board and the Civil Aeronautics Administration are required to consider the following, among others, as being in the public interest and in accordance with public convenience and necessity.

- (a) The development and utilization of the air potential of the Philippines;
- (b) The encouragement and development of an air transportation system properly adapted to the present and future of foreign and domestic commerce of the Philippines, of Postal Service, and of the National Defense;
- (c) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in and foster sound economic conditions in such transportation, and to improve the relations between, and coordinate transportation by air carriers;
- (d) The promotion of adequate, economical and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair and destructive competitive practices;
- (e) Competition between air carriers to the extent necessary to assure the sound development of an air transportation system properly adapted to the need of the foreign and domestic commerce of the Philippines, Postal Service and the National Defense;
- (f) To promote safety of flight in air commerce in the Philippines; and

(g) The encouragement and development of civil aeronautics.

Most of these statement of policies are the principal goals within the jurisdiction and competence of the Board. Each of these goals may be valid although at times one may conflict with some other valid goals. For example, the present and future of air commerce may call for a different policy. Or, what if "sound economic conditions" require price discrimination? Despite the conflict, the Board, however, is given freedom as to which ones it may pursue.

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Concept of "Public Interest"

The concept of "Public Interest" originated in the Western law. It relates to the economic and legal rights of the people with the government as the guardian of the rights. It serves as a basis for determining public policy.

To economists, the consumer's satisfaction and the efficiency with which such satisfaction is served is the main public interest. Nations are assessed in terms of the rising standard of living and the economic satisfaction of the citizen as much as possible.

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To politicians, public interest, however, is equated to the majority. It manifests itself in the statements of public officials who influence public policy. The distribution of government benefits to all the members of the community is public interest achieved.

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It also consists of positive and negative acts. Examples are the provisions of goods and public services by the government and the police power of the state, respectively. Whenever defined in a sta-

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tute, such statute requires the execution of the law in the public
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interest, convenience and necessity.

Pragmatically, it emerged as affecting certain industries whose
operation have concerned more than the interest of the owner, compe-
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titor, employees and immediate customers.

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The term "Public Interest" has no universal definition.
When courts apply criteria to public interest, it resorts to economic
measures. Thus, if one has permission to operate a business and he
happened to be the only one with whom the public can deal, his business
is said to be affected with public interest. He must deal with the
173
people in reasonable terms.

For there to be public interest, therefore, there must be close
relation between the public and those engaged in it and raise affir-
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mative obligation to be reasonable in dealing with the people.

In air transportation, however, there is public interest in a
"system that is oriented to customer and operated to carry traffic
where it wants to go with adequate quantity and quality of service
justified by economic demand and at the lowest price with efficient
profitable air carrier operation contributing to national growth."

The totality of public interest in this case is the net resultant
of all various forces working in various directions. There is no pre-
cise yardstick to measure exactly public interest in aviation. It
is a matter of balancing all factors in a given situation which aid
in air transport development in accordance with policies laid down

as against any adverse effect which it may have upon such development.¹⁷⁵
This is the reason why agencies clothed with power of determining public interest have broad procedural powers of investigation and inquiry.¹⁷⁶

For instance, in a case where there is sufficient traffic to support competitive service, the presumption in favor of competition is not always conclusive. Other factors such as operating cost, traffic potential, benefit to the public, financial condition of the carrier and other factors contributing to constant improvement of air transport must be considered in public interest. On the other hand, to limit at times air transportation to one carrier would place upon a small group responsibility for handling matters of national importance.¹⁷⁷

Similar to the United States, Canada, and Ireland, but unlike the United Kingdom and Germany,¹⁷⁸¹⁷⁹
¹⁸⁰¹⁸¹ public interest is the foremost concern of the Civil Aeronautics Board.

Meaning of Phrase "Convenience and Necessity"

The term "Convenience" is interpreted on the basis of whether or not a proposed service is fitted or suited to the need of the public.¹⁸²
"Necessity" as interpreted, connotes a definite need for transportation service in a community where no reasonable service exists.¹⁸³

Similar to "public interest", the term "public convenience and necessity" is not susceptible of exact definition. Its meaning is largely ascertained by reference to the context and objectives of the particular statute in which the term is used.¹⁸⁴

Under the Philippine law, the sources of these objectives are the declaration of policies under Section 4 of the Act, each of which is discussed below.

In determining convenience and necessity, regulatory agencies are given freedom to determine the public need through the exercise of reasonable judgment and knowledge of the public utility they regulate. ¹⁸⁵ It is presumed to be an expert on its own field of activity, a status acquired only from the thorough knowledge of the industry. It is expected to deal with the manifold aspects of the industry daily in the ¹⁸⁶ administration of the law and award of decisions.

Goals of the Civil Aeronautics Board

1. Development and Encouragement of Air Transportation System.....

Of all the factors in Section 4 of the Act which are being considered as in public interest and in accordance with public convenience and necessity, the most comprehensive is the "encouragement and development of air transportation system properly adapted to the present and future need of foreign and domestic air commerce, of Postal Service and of National Defense." All other factors like fostering sound economic conditions, improvement of air carrier relationship and coordination of operation serve only to complement or point out the way ¹⁸⁷ to achieve the goal.

In foreign commerce, it is the objective to have a Philippine flag carrier that is economically healthy and growing and that will promote the present and future needs of foreign trade, international

obligation, national defense and sound economy. The Philippine need in foreign commerce is an international flag carrier or a system of air transport that is fast, assured and at the lowest feasible rate.

The national defense requirement of the Islands requires an airline operation to the outlying cities and communities in constant preparedness and readiness in case of national emergency.

To foster international relations and enhance prestige abroad, foreign operations should be undertaken by an airline or airlines bearing the Philippine flag with Filipino pilots and crew as much as possible. Besides, the local economy demands that airline operation will produce expanded employment potentials, capital investment, facilities and opportunities to help increase national production.

To achieve the aspired goal in international air transport is difficult and disheartening at times in view of the competitive disadvantage of the Philippine flag carrier in competition with other international airlines. The Philippines deals with foreign governments and people who are sovereign in their own spheres and most often, it is extremely difficult to obtain concessions in its favor.

In view of economic pressures, the Philippines sometimes traded
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aviation values for tourism and revenue. Routes were granted to foreign airlines without reciprocal exchange of air services in the interest of tourism and other economic considerations. The bargaining position of the Philippines in the negotiation for international rights is in some cases weak due to the meager traffic originating

from the Philippine market. However, be that as it may, the Philippines should strive to bargain for routes, rates, capacity and traffic most favorable to the flag carrier.

Recently, the Philippines has adopted the policy of welcoming airlines of all countries on the basis of mutual exchange of fifth freedom rights - a policy no more and no less to be expected of a sovereign nation.
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In the domestic field, the need of local commerce and trade must be served by economically sound airlines, profitable route structure established by a system of permits and operated privately owned airlines. A number of factors must be considered in the grant of permits such as the traffic potential of stations served, density of route traffic, distance of hauls, types of service and kind of equipment.

The national defense goal, however, should be geared to cases where, in case of emergency, there should be an adequate, immediate and responsive air transport with skilled personnel available as a direct military transport auxiliary.

2. Inherent Advantages of Air Transportation

The Civil Aeronautics Board is charged with the regulation of air transport in such manner as to recognize and preserve the inherent advantage of air transportation such as speed and the ability to operate from point to point in a straight line without regard to surface barrier.
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Air transport, in this case, should be allowed to exert the full effort of its inherent advantages by the greatest practical influence of the economic forces in a free enterprise system. Each mode of transport should be permitted to compete on its inherent economic merits for passengers to have freedom of choice. The government, for this matter, should not favor any particular transportation, but must side with no one by applying the uniform principles of regulation.

3. Sound Economic Condition in Air Transportation

The achievement of sound economic condition of air transportation is also a goal. There should be access to all areas under conditions permitting recovery of costs, under efficient, honest, economical management including a fair rate of return to provide equitable competition for capital, labor, technical progress and contribution to sound national economic growth. It must possess an equitable opportunity to obtain requirements from the competitive pool of financial and manpower resources in the Philippine free enterprise society. The determinants in air transport financial success are route structure, choice of aircraft, fixing the order of magnitude of its expenses and quality of management and fixing how much of its potential is actually realized.

4. Service by Air Carriers

The improvement of relationship between and coordination of transportation by air carriers is another goal. Efficient and economi-

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The improvement of relationship between and coordination of transportation by air carriers is another goal. Efficient and economi-

cal service must be aspired. The carrier management must be given maximum opportunity for individual initiative in developing sufficient and economical service, while government regulation should be limited to a minimum of controls and should only establish basic rules and standards.

5. Reasonable Charges

Air transport rates and fares should be as low as possible consistent with economic carrier costs and fair rate of return. Cost finding is the starting point in rate-making for the air carriers. Cost may vary from short run, long run, fully allocated or incremental, cost to the carrier or full social cost. One of the key determinants in cost is load factor. Capacity in excess of what is needed to handle demand is uneconomical. The passenger and the cargo are two major cost areas. For passenger, it embodies cost differential by quality of service difference, reservation, ticketing, food, space, speed and type of equipment and special services; whereas, cargo includes handling, line-haul operation, size of shipment, number of places, density, floor space, special handling, directional or seasonal movement, regularity of shipment and paperwork.

6. Competition to the Extent Necessary.....

Normally, optimum competition in each major passenger market is two strong and stable carriers. The Philippine policy of free enterprise in the domestic air transportation, in the view of the writer,

must be changed. Economic wastes brought about by excessive competition should be avoided. In air transportation, the government has the final power over management authority and those to enter the field of competition. Merger, agreements among air carriers and deceptive practices to promote monopoly to stifle competition should be discouraged. Air carrier agreements are only desirable to the extent that they will provide better transport and lower rates to the public and produce effectively balanced competitive system.

7. Promotion of Safety

This is more of a function of the Civil Aeronautics Administration.

Powers and Duties of the Civil Aeronautics Board

1. Licensing of domestic air carriers and with the approval of the President, international air services operated by the Philippine and foreign air carriers;
2. Regulation of fares and rates for the carriage of persons, property and cargo;
3. Participation in negotiation of air agreements between the Philippines and other governments in exchange of rights;
4. Approval and disapproval of merger and control of inter-carrier agreement affecting air transportation;
5. Regulation of air carrier accounting practices and development of air carrier reporting system;

6. Maintenance of public record of tariffs, schedules and other materials required to be filed by air carriers;
7. Enforcement of the economic provisions of Republic Act No. 776;
8. Authorization of navigation of foreign aircraft in the Philippines;
9. Determination of probable cause of aircraft accident;
10. Adjudication of appeal from the safety enforcement decision of the Civil Aeronautics Administration.

CHAPTER X. LICENSING OF DOMESTIC AND FOREIGN AIR CARRIERS

Licensing Process (Domestic Air Carrier)

The licensing of domestic air carriers, whether for domestic or international air service, is the principal function of the Civil Aeronautics Board. A license is issued by the Board in the form of a ¹⁹¹ "Certificate of Public Convenience and Necessity." This Certificate is a privilege, not a right, granted by the government in the exercise of its function of ensuring the orderly development of air transportation and is exercisable by the licensee subject to certain limitations.

Domestic air carriers, more particularly, are certificated by the Board if the applicant is fit, willing and able and the proposed service is required by public convenience and necessity. The test of the capability of applicant to operate the proposed service involves assessment of the organizational basis of the petitioner, his conformity with the various legal regulations relating to certificated service, adequacy ¹⁹² of financial resources and the plan to conduct the service applied for.

Within this legal framework, domestic transportation in the Philippines developed into three categories.- 1. Trunkline, (Figure 6), ¹⁹³ Secondary Route, ¹⁹⁴ (Figure 7) and Feeder Route ¹⁹⁵ (Figure 8). Servicing each of these routes poses a continuing problem to the Board.

Application for Permit

Request for air transportation permit is made by filing a verified ¹⁹⁶ application in writing with the Secretary of the Board. The application shall contain the following: 1. Name and address of the applicant;

2. Nature of the organization, whether individual, partnership or corporation, etc.; 3. Name of state where organized in case of foreign airline; 4. Statement that the applicant is a citizen of the Philippines; 5. Certification of route desired indicating type of service, whether passenger, mail or property or whether scheduled or non-scheduled; 6. Identification of the route, terminal and origin; 7. Map showing the points and what aircraft are to be used and whether it is owned by the applicant or not.

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The application must be accompanied by proof of service upon interested persons as the Board shall by regulation require. Upon filing of the application, The Board gives notice thereof to the public by posting a notice of such application and by publication once a week for three consecutive weeks in a newspaper of general circulation and to other persons as may be determined by the Board. The notice of publication, however, may be dispensed with whenever, in the Board's judgment, public interest so requires. Any interested person may file with the Board a memorandum in support of, or in opposition to, the issuance of the permit.

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Thereafter, the application is referred to the technical divisions for study as to the formal requisites and verification of accuracy of information. Each division concerned prepares a memorandum as guide for the Board in the consideration of the petition.

Amendment

Any document filed in the proceeding which is not substantially in conformity with the applicable rules and regulations as to content or which is insufficient, may be dismissed by the Board of its own motion or on motion of a party, or may be required to be amended. Answer to formal petition or order pertaining to a proceeding is not usually required. Such answer must be filed within seven days except where otherwise specifically required.

Within a week after the last publication, the Board or its designated representative sets the time and place for the meeting of the parties interested in the application. If the publication has been dispensed with, the Board immediately sets the time and place for the meeting.

Hearings on all applications are open to the public unless decided by the Board otherwise for reason of national security.

Who Are Entitled to Appear at the Hearing?

Any person, including any political division or public body, may appear at any hearing other than in an enforcement proceeding, and present any evidence which is relevant to the issues. With the consent of the examiner or the Board, if the hearing is held by the Board, such person may also cross-examine witnesses directly. In addition, such person may present to both the examiner and the Board oral or written statement on the issues involved in the proceeding, which shall conform to the requirements of the rules as to form, content, service and time for filing of briefs to the examiner and the Board.

Any person with a statutory right to be a party shall be permitted by the Board to intervene. Other persons whose intervention will be conducive to the end of justice and will not impede the conduct of the Board's business after considering the nature of his interest in the case, ²⁰⁷ may be permitted to intervene also in any proceeding.

Any person who is permitted by the Board to intervene becomes a party to the case. However, the intervention of any person, whether he has a statutory right to be a party, or whose intervention will be conducive to the end of justice and will not impede the conduct of the Board's business, is for administrative purposes only and no decision granting leave to intervene constitutes an expression by the Board that the intervening party has so substantial interest in the order that is to be entered in the proceeding as will entitle him to judicial review of such ²⁰⁸ order.

Motion

All applications for order or ruling during the pendency of a case is made by motion in writing stating with particularity the grounds relied upon and the relief sought. It must be accompanied by affidavit or document supporting it. Answer to a motion may be filed within seven days after filing of such motion unless a different period is fixed by the Board or the examiner. Oral arguments may be heard and written memoranda may be filed stating points and authority or authorities in support of position taken. The examiner shall pass upon all motions addressed to him unless in a case where a prompt decision is essential, ²⁰⁹ he may refer such motion to the Board, who shall pass upon them for action.

Subpoena and Subpoena Duces Tecum

All applications for subpoena and subpoena "duces tecum" are made orally or in writing. The Board or the examiner, as the case may be, issues the subpoena or subpoena "duces tecum" if it complies with the requirements of law without the need of determining the admissibility of evidence. No detailed or burdensome showing should be required as
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a condition.

Deposition

Testimony of witnesses may be taken by deposition and to produce evidence when the person's testimony is not available at the hearing to perpetrate his testimony. Any application for deposition sets forth the reason therefor and the description of matters concerning which witness will be asked. It may also be submitted on written interrogatories in substantially the same manner as taken by oral examination. A deposition does not constitute a determination that it is admissible in evidence. Only that part of the entire deposition as is received in evidence at a hearing shall constitute a part of the record upon which a
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decision may be based.

Hearing Examiner

As to the person designated by the Board to hear the case, it includes the presiding officer, hearing examiner, individual board member or any representative of the Board. His powers are closely related to a judge in a regular court of justice. He withdraws in a case, if he thinks he is disqualified. In some cases, he determines the matter by

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means of a hearing.

In the hearing of cases before the Board or the hearing examiner, the members of the technical staff are present and allowed to give testimony or evidence based on the Board's records which may be of help in the impartial adjudication of the issues.

Pre-Hearing Conference

In proceedings before the Board, pre-hearing conference is conducted in some cases except in economic enforcement proceedings where the issues are drawn in the pleading. The purpose of the pre-hearing conference is to define and simplify issues and to limit the scope of the proceedings. For example, matters that may be admitted without proof, admission of facts and genuineness of documents, admissibility of evidence, limitation as to number of witness, reducing oral testimony to exhibit form, etc. may be thrashed out in the pre-hearing.

The examiner may, on his own motion or on motion of a party, require to be prepared and be submitted studies, forecasts or estimates on matters relevant to the issue.

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After the pre-hearing conference, the examiner makes a report defining the issues, date of hearing, giving account of the result, and specifying schedule for exchange of exhibits. The report, which constitutes the official account of the conference, must be served on all parties to the proceedings. It controls the subsequent course of the proceedings subject to modification in public interest to prevent injustice. The Board or the examiner, in the conduct of the hearing, is

not bound by the technical rules of evidence invoked in a regular court. Evidence presented should be limited to material evidence related to the issues as drawn by the pleadings. Whenever necessary, evidence may be presented in written form. Objections or conclusions must be concise stating the grounds therefor.²¹⁶

However, rulings of the examiner on motion may not be appealed to the Board prior to the consideration of the whole proceedings without his consent except in extraordinary cases. An appeal is disallowed unless it is necessary to prevent substantial detriment to public interest or prejudice to any party. Any party may file a brief or be heard in oral argument before the Board.

The ruling of the examiner is reviewable by the Board in connection with its final action irrespective of the filing of an appeal. Exhibits offered in evidence must be furnished to each party preferably before the commencement of the hearing. The hearing before the examiner is recorded and transcribed and supplied to parties at rates not to exceed²¹⁷ the amount fixed by the Board.

No document or other writing shall be accepted for the record after the close of the hearing except as agreed by the parties and consented to by the examiner. The examiner shall give the parties adequate opportunity to present argument during the hearing in support of or in²¹⁸ opposition to motions, objections and exceptions to his ruling.

Action of the Hearing Examiner

At the close of the reception of evidence and receipt of proposed

findings and conclusions, the examiner takes the following action. -

1. In case of rates, fares or charges, classifications, rules, regulations or practices affecting matters or value of service, the examiner renders an initial decision orally on the record or in writing, if any party requests it before the close of the hearing. If there is no such request, he certifies the records to the Board for decision. This is the justification for the need on the part of the parties to file briefs to include proposed findings and conclusions of law with reference to records and authorities relied upon before the close of the reception of evidence to help the Board to formulate a decision.

2. In case the action of the Board is subject to the approval of the President pursuant to Section 10(C)(1) of Republic Act No. 776, the examiner renders a recommended decision. For other matters not related to the two above, an initial decision orally on the records or in writing shall be rendered.

Effects of Initial Decision of the Examiner

Ordinarily, the final decision in any proceeding lies with the Board. In non-controversial and routine cases, however, the initial decision of the examiner under certain circumstances becomes the Board's ultimate decision. So that, unless timely exception to the initial decision are made, the Board, unless on its own motion decides to review the decision, the initial decision becomes the final and ultimate disposition of the case. This is made effective by the issuance of a Board's order.

Tentative Decision of the Board

However, in a case where the examiner certifies the records directly to the Board without an initial or recommended decision, the Board, after the consideration of the proposed findings and conclusion submitted by the parties prepares a tentative decision, telling when to file exceptions and briefs in support thereof and the date when it will become final in the absence of exception. If no exceptions are filed to the tentative decision of the Board within the period fixed (which in no case shall be less than ten days), the decision becomes final at the expiration of such period unless the Board orders otherwise. But, in case of a rule-making proceeding or one of administrative nature, the Board may omit the initial decision when the execution of its functions imperatively and unavoidably so requires.

Exception to the Initial or Recommended Decision of the Examiner or Tentative Decision of the Board.

Within ten days after service of any initial or recommended decision, or at such longer time as may be fixed, any party to the proceeding may file exception which shall contain grounds for such exception citing statutory provisions or principal authorities in support thereof. They may file briefs in support of such exception or opposition to the exception filed by another party. The parties may be required to file briefs at different periods if it will assist in the proper disposition of the case.

A party may also be allowed to argue the case orally. If allowed, all parties to the proceedings will be advised of the date, hour and

time limit set for such argument. Pamphlets, charts, and other written data may only be presented to the Board at oral arguments and shall be limited to facts on the record. Parties to the proceedings, however, may agree on the waiver of all the foregoing procedural requirements in the
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license proceeding.

Final Decision

Upon submission of a case to the Board for final decision, the Board considers the records of the whole case including initial, recommended or tentative decision, any exception thereto, resolves all questions of fact by what it deems to be the greater weight of the evidence and makes a decision, stating the reasons and make the appropriate order. The order of the Board becomes final and conclusive after fifteen days from the receipt of the copy of the order unless appealed to the Supreme Court on certiorari. However, if no motion for reconsideration or appeal is made
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after fifteen days, the Board orders the issuance of the Board.

Licenses granted by the Board, like the United States and Canada,
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but unlike the United Kingdom, are not transferable.

Modification, Suspension or Revocation of Permit

The permit issued by the Board contains specifications like type of service, terminal and intermediate points, time of arrival and departure and the frequency of flights, rates to be charged and such other condi-
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tions as the Board deems appropriate to impose.

Upon complaint or upon its own initiative, the Board may alter,

amend, modify, suspend or cancell, in whole or in part, any permit after notice and opportunity for hearing, if public convenience and necessity so requires, or revoke any permit for intentional failure to comply with the provision of the Act or any rule, order or regulation issued thereunder or any of its terms, conditions or limitations. 228

However, for good cause, the Board may by order without notice and hearing, suspend for a period not exceeding thirty days any permit or the exercise of any privilege, or authority issued or granted whenever such step is necessary to avoid serious or irreparable damage or inconvenience to the public.

Effectivity of Permit

Permits issued by the Board are effective on the date specified and continue in effect until suspended or revoked, or the Board certifies that the operation has ceased. If any service authorized by a permit is not inaugurated within a period of ninety days after the date of authorization as fixed or otherwise designated by the Board, it may direct that such permit ceases to be effective. 229

Licensing Process (Foreign Air Carrier)

The formal requirements of the application to engage in foreign air transportation are the same as the domestic insofar as execution, number of copies, specifications, verification, notice, time and place of hearing, intervention, deposition and award of decision are concerned.

More important, the application must be subscribed and sworn to before a notary public or officer authorized to administer Oath in the jurisdiction in which the application is executed. An application verified before a consular officer of the Republic of the Philippines is
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sufficient. The application is forwarded to the Board through diplomatic channel by the government of the applicant's country of citizenship. It is deemed to have been filed with the Board on the date it is actually received. Any information which the Board may require subsequent to receiving the application and any information which the applicant may submit thereafter are furnished in the form of amendment to the appli-
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cation.

As much as possible, incorporation by reference should be avoided. Lengthy exhibits attached to one may be incorporated in the other by reference if the reference will reduce the cost to applicant. Statements in the application are restricted to significant and relevant facts, free from arguments or expressions of opinion and with adequate information to acquaint the Board fully with the circumstances of the case.

The application shall contain the following:

1. Full name and address of the applicant, nature of the organiza-

tion, name of the country under the laws of which it is organized and the statutory citation of such law, if any; citizenship of the applicant, percentage of direct and indirect beneficial and non-beneficial interest in applicant held by each government and aggregate of nationals of each country other than the country of the applicant's citizenship. If the applicant is governmentally-owned or controlled in whole or in part, the extent of such government ownership or control should be shown;

2. The name and official address of the competent air authority of applicant's country of citizenship having regulatory jurisdiction over applicant;

3. Identification of route or routes to be covered specifying the type of service to be rendered on such route and whether it is scheduled operation or not. The identification of each route shall name every terminal or intermediate point to be served in connection with the service for which a permit is sought;

4. A map showing all terminal and intermediate points, in all countries to be served by the applicant in connection with the service for which a permit is sought, giving approximate air mileage between the principal overall distance.

In the hearing of the application, if a party interested in the application fails to appear or if no party appear at the designated place and time, the Board or its duly authorized representative may proceed "ex parte" or, or in its discretion adjourn the proceeding to a future date, giving notice to the absent parties of the adjournment.

After the hearing, if the Board finds that the applicant is fit, willing and able to perform the service properly in conformity with the provisions of the Act and the rules and regulations issued and that such service is required by public convenience and necessity, the Board does not issue the foreign air carrier permit (underscoring supplied). It prepares the decision containing its findings and recommendations and forward the same to the President for his consideration.

Comments on the Provision of the Act re Foreign Air Carrier Permit.

The Board has the power, in accordance with the provisions of Chapter IV of the Act, to issue, deny, amend, revise, alter, modify, cancell, suspend, or revoke, in whole or in part, upon petition or complaint or upon its own initiative, any temporary operating permit or a Certificate of Public Convenience and Necessity, provided, that, in the case of foreign air carriers, the permit shall be issued with the approval of the President of the Republic of the Philippines. (Underscoring supplied.)

Paraphrasing the above provision of the Act, the Board has the authority to issue, deny, amend, revise, alter, modify, cancell, or revoke, in whole or in part any temporary permit or Certificate of Public Convenience and Necessity held by domestic air carriers. This is also true for foreign air carriers, except that the issuance of the permit to foreign air carriers must be approved by the President.

Stating it more clearly, it can be said that the issuance of the

foreign air carrier permit by the Board requires the approval of the President, but, the denial, amendment, revision, alteration, modification, cancellation, suspension, or revocation is not subject to the control of the President.

Explaining further, the word "issue" means "to go or come out; to
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flow out; to come forth or sally out." The term "issue" has a specific meaning which does not include the meaning of the terms "denial",
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"amendment", etc. In this case, the writer believes that the above-cited provision of the Act does not convey the real intention of Congress for, to limit the Presidential power to the approval or disapproval of the issuance of foreign air carrier permit, exclusive of the power to deny, amend, etc. such permit, is a construction that may be contrary to the "plenary and exclusive power of the President as the sole organ in the
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field of international relations."

Comparing the above provision with the corresponding provision in the United States Federal Aviation Act of 1958, " the issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions and limitations contained in overseas or foreign air transportation between places in the same territory or possession, or any permit issuable to any foreign air carrier x x x shall be sub-
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ject to the approval of the President."

It is quite clear, therefore, that if the principle of the supremacy of the President in the international relations is correct, then

the Board does not have the final say on matters related to a foreign air carrier permit. It is neither the final arbiter or judge of the issues. Matters pertaining to the permit of foreign air carriers are the sole prerogatives of the President who has the complete right to veto the issuance of the permit issued by the Board, or to disapprove the denial, amendment, etc. of the same. ²³⁷

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As the case of C&S Airlines v. Waterman Corporation shows, the Board operates only as an advisory body to the President. It is under the complete control of the President insofar as the issuance of foreign carrier permit is concerned. The Board's true function is to advise the President and to make recommendations on the basis of records before it. The President can even direct the Board to issue the permit notwithstanding a prior adverse decision. The decision as to whether a permit will issue or not lies with the President and not with the Board. ²³⁹

Who May Be Granted Domestic Air Carrier Permit?

Section 12 of Republic Act No. 776 provides that "except as provided in the Constitution and existing treaty or treaties, permit authorizing a person to engage in domestic air commerce and/or air transportation shall be limited to citizens of the Philippines."

Under the Act, "citizen of the Philippines" means -

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1. An individual who is a citizen of the Philippines; ²⁴¹
2. Partnership of which each member is such an individual; ²⁴²
3. Corporation or association created or organized under the

laws of the Philippines of which the directing head and 2/3 or more of the Board of Directors and other managing officers are citizens of the Philippines, and in which 60% of the voting interest is owned or controlled by persons who are citizens of the Philippines.

But, under the Ordinance appended to the Constitution (Appendix V), the right of citizens of the Philippines, corporations or associations, at least 60% of the capital of which is owned by Filipino citizens, in the development, exploitation, disposition or utilization of all agricultural, timber and mineral lands, water, mineral, coal, petroleum and even public utilities, is extended to American citizens at least during the effectivity of the Executive Agreement entered into by the President of the Philippines and the President of the United States on July 4, 1946 and to last up to 1974.

That Ordinance (popularly known as the Parity Law) provides in substance that the development, disposition, exploitation and utilization of the natural resources of the Philippines and the operation of public ²⁴³ utilities (underscoring supplied) will, if open to any person, be open to citizens of the United States, and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same condition imposed upon citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

The above provision of the Ordinance appended to the Philippine Constitution is reflected in Article VI, Section 1 of the 1954 Revised Trade Agreement concluded between the United States and the Republic of the Philippines, otherwise known as the Laurel-Langley Agreement

(see Appendix VI), with the addition that, in the case of rights accorded to the citizens of the United States, such rights may be exercised only through the medium of a corporation organized under the laws of the Philippines and at least 60% of the capital stock of which is owned or controlled by citizens of the United States.²⁴⁴

Under the same Article, the "United States reserves the right of the several States of the United States to limit the extent to which citizens or corporations or associations owned or controlled by citizens of the Philippines may engage in the activities. Likewise, the Republic of the Philippines reserves the power to deny any of the rights specified to citizens of the United States who are citizens of States, or to corporations or association at least 60% of whose capital stock or capital is owned or controlled by citizens of States, which deny like rights to citizens of the Philippines, or to corporations or associations which are owned or controlled by citizens of the Philippines²⁴⁵
x x x"

In a nutshell, citizens of the United States have equal opportunity as the Filipinos in the utilization, exploitation, and development of the natural resources and operation of public utilities including air transportation, under certain conditions. An American citizen may be granted a certificate of public convenience and necessity to engage in domestic air transportation, if qualified. This situation, however, is unusual in many jurisdictions.

In the United States, permit for domestic air carriers are

given only to citizens of the United States, who may either be a:

1. An individual who is a citizen of the United States or one of its possessions;
2. A partnership of which a member is such individual;
3. A corporation or association created or organized under the laws of the United States, or of any state, territory or possession of the United States of which the President and $\frac{2}{3}$ or more of the Board of Directors and other managing officers are such individual and in which at least 75% of the voting interest is owned or controlled by persons who are citizens of the United States or one of its possessions.

In Canada, no air carrier may operate commercial air service unless the aircraft is registered by a person qualified to be the owner of a Canadian aircraft. A person is qualified to be the registered owner of a Canadian aircraft when - 1. He is a Canadian citizen; 2. A person lawfully admitted to Canada for permanent residence who, since being admitted, has been ordinarily resident in Canada for a period of not more than 6 years; 3. A corporation incorporated under the laws of Canada or any province at least $\frac{2}{3}$ of the directors are Canadian citizen; or 4. In case of private aircraft, (a) a citizen or subject of a contracting state who normally resides in Canada, or (b) a corporation incorporated under the laws of Canada or a province.

Air service license in the United Kingdom, however, except with the consent of the Minister, which may be either granted generally or in respect of a particular class of cases, are granted only to -

1. Citizen of the United Kingdom or colonies, or a British protected

person; 2. A body incorporated in the United Kingdom or any part thereof, or in any of the Channel Islands, the Isle of Man, or a colony, protectorate or United Kingdom trust territories, which in the opinion of the Board is substantially controlled by persons each of whom is either a citizen of the United Kingdom and colonies, or a British protected person.
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In Japan, any person who intends to engage in scheduled air transportation shall obtain a license from the Minister of Transport and must not come under any of the following: a. Any person who does not have a Japanese nationality; b. Any foreign state or public entity or its equivalent in any foreign state; c. Any juridical person or body established in accordance with the laws and ordinances of any foreign state; d. Any juridical person of which the representative is any one of the three items above or of which more than 1/3 of the voting interest is owned by such persons; e. Any person who has been sentenced to a penalty heavier than imprisonment for violation of any provisions of the law, and less than 2 years have passed after he completed the sentence, or it has been cancelled; f. Any person whose license for scheduled air transportation, non-scheduled air transportation, freight forwarding, or aircraft using enterprises was cancelled and less than two years have passed since the date of cancellation; g. Any juridical person, whose officers and employees come under any of the provisions of items c and d above.
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Lastly, in India, the Director General of Civil Aviation may grant

permission to operate scheduled air transport service only to either
a - 1. Citizen of India; 2. A company or a body corporate provided
that - a. It is registered and has its principal place of business
within India; b. The Chairman and at least 2/3 of its directors are
citizens of India; c. Its substantial ownership and effective control
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is vested in Indian nationals.

Exemption from Requirement of Permit

The exemption of certain types of air carrier or classifications
of air carrier from the requirement of permit prior to operation seems
to be a standard practice in other countries.

In the United States, the Board may exempt any air carrier or
class of air carrier from the requirements of the economic provisions of
the Federal Aviation Act, certificate of public convenience and necessity
or any provision thereof, or any rule, regulation, term, condition or
limitation, if it finds that the enforcement of the requirements, rule,
regulation, term, condition or limitation would be an undue burden on
such carrier, or class of carriers by reasons of the limited extent of,
or unusual circumstances, affecting the operation of such carrier or
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class of carrier and is not in the public interest.

The President of the Board of Trade in the United Kingdom may by
regulation require that an air service license shall apply to certain
flights as may be specified in the regulation. He may in writing
exempt from the requirement of air service license any other particular
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flight or a series of flights.

In Canada, with the approval of the Governor in Council, the Commission may exempt from the requirement of a license or compliance with the requirements of the provisions of law, rules or regulations, any air carrier or commercial air service or class or group of air carrier or commercial air service.²⁵⁴

The Government of India, however, has also the power to exempt any aircraft or class of aircraft and any person or class of persons from the requirement of permit, or may direct that such provision shall apply to such aircraft or persons subject to such modification as may be specified in the notification.²⁵⁵

However, the Civil Aeronautics Act of the Philippines, unlike the laws of the United States, United Kingdom, Canada and India, does not contain any provision empowering the Board to grant exemptions. But, the Board by order exempted certain classes of air carriers from the requirement of certificate, i.e. those owners of aircraft used in the furtherance of business and those operators navigating aircraft from one place to another for operation in the conduct of business of the owner.

Comment on the Power of the Board to Exempt Certain Classification of Air Carriers.

Under the law, any person who engages in commerce, whether domestic or international, must possess a certificate of public convenience and necessity issued by the Board, or, in case of foreign air transportation, such permit shall first be approved by the President.

"Air Commerce" is defined to include air transportation for pay or

hire, the navigation of aircraft in the furtherance of business, or the navigation of aircraft from one place to another for operation in the conduct of a business (underscoring supplied).

"Air Transportation" is the service or carriage of persons, property or mail, in whole or in part, by aircraft.

To the above classifications of air carrier are included those industrial firms engaged in mining, lumbering and other similar activities, which operate aircraft in the transportation of personnel and cargo from one place to another in connection with business, and those owners of aircraft used in general aviation or agricultural flying and other special services not for pay or hire. The Board licenses all the above types of air carriers, whether scheduled, non-scheduled, charter or other special air services without exception.

However, by exempting certain classifications of air carrier from the requirement of permit through the issuance of an order is, in the opinion of the writer, beyond the purview of the rule-making power of the Board, for while it is true that the Board may issue rules and regulations, such rules and regulations must be pursuant to a specific provision or provisions of law, not from a general one.

In the absence of any provision in the statute empowering the Board to make exemptions to its licensing jurisdiction, to do so would be "ultra vires" under the well-known principle of statutory construction that the Board, or any agency for this matter, can't exercise any power that is not provided under the law. In granting exemptions without legal basis, the Board may be said to have unlawfully abandoned its con-

trol power over certain air carriers which are within its lawful jurisdiction.

To legally exempt the afore-mentioned classifications of air carrier from the requirement of permit from the Board, the Act should be amended to provide the CAB with such power like those in the aeronautics acts of the United States, United Kingdom, Canada and India.

CHAPTER XI. REGULATION OF FARES AND RATES FOR CARRIAGE OF PERSONS AND PROPERTY

One of the most effective ways to attain the objectives of the Board as enumerated under Section 4 of the Act is by regulating fares and rates charged by air carriers in the carriage of persons and property.

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As in the United States, there was no positive control over fares and rates in air commerce in the Philippines prior to 1931. Operators of aircraft for pay or hire fixed their own fares and rates. For example, in the early commercial flights of Jose Tinsay in 1925, he fixed a flat rate of ₱50.00 for a 27-mile route. Government regulation of fares and rates during the formative stages of air transport did not seem advisable.

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Regulation of fares and rates of commercial air carriers was first introduced by Act. No. 3909 promulgated in 1931. Under the Act, the Secretary of Commerce and Communication had the duty to foster air commerce, encourage and establish airports, civil airways, navigational facilities and issue air traffic rules. These rules were required to be patterned after those made under the United States Air Commerce Act of 1926. However, "persons engaged in air commerce were required to submit for approval of the Public Service Commission or the authorized representative uniform charges and rates applied for merchandize and passengers per kilometer or over specified distances between given airports."

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The Commission was authorized to make regulations as are necessary to insure safety, regularity and reliability in air commerce. (Appendix VII).

The basis of the present authority of the Board over fares and rates in air transport, domestic and international, is Republic Act No. 776. The Board is authorized to "fix and determine reasonable, individual, joint or special rates which an air carrier may demand, collect or receive x x x. The Board may adopt any original, amended or new individual, joint or special rates, charges or fares proposed by an air carrier if the proposed individual, joint or special rates, charges or fares are not unduly preferential, unduly discriminatory or unreasonable x x x."

Tariffs of Air Carriers

"Tariff" means fares or freight to be charged and any condition upon which the fares and rates depend. The precise origin of the requirement to publish a tariff setting forth the charges and other terms of the offer does not seem to be known although there is evidence that it was employed in the United States and the United Kingdom prior to 1887. In general, it is required to be published, posted and open for public inspection to insure that the shippers and passengers is protected and to avoid discriminatory practices among airlines. Initially, the carrier is permitted to determine the rates and fares and the terms and conditions of the offer to the public, but these have to be filed in the manner and in a form specified in the instruction issued by the

Board and any of them that are inconsistent with the instruction are
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void.

As a rule, tariff must be allowed if it is in the public interest. No fare or rate can be effective unless incorporated in a tariff and no carrier can charge greater or lesser or different compensation for any service other than the fare provided in the tariff. Rebating or refund of any portion of rates charged or to grant privileges or facilities different from those specified in the tariff is prohibited. The carrier cannot deviate from the terms of the tariff and as far as the rates are concerned, the filed tariff is conclusive evidence of the terms of the contract. The passengers and the shippers are bound by its terms when they use the air carrier's services. Any contract entered into by an air carrier including terms not specified in the tariff has been held to be invalid and unenforceable.

Once a tariff has been allowed, it is likely that changes or alterations thereon may be made in the course of operation. In such a case, it is better policy to allow changes or alterations if there are good reasons behind it like change in the form of the service, reduction or increase in rates, fares or charges, correction of errors, change in routing, cancellation of joint rates, etc. However, any changes or alterations in the tariff should be done by supplement pointing out the section of the original tariff so changed or cancelled. Tariff is not restored by merely cancelling the supplement, but it must be filed again as if it contains new rates.

The regulatory agency may examine any tariff or supplement thereto,

or any person may complain that the fare or rate is unjust, unreasonable, unjustly discriminatory, unduly preferential or unduly prejudicial. It may be investigated by serving notice on the carrier which filed it. After investigation or hearing, the rate may be allowed and become effective if found just and reasonable, or, if it is unjust or unduly discriminatory, it may issue an order setting forth the lawful rate.

Rules in Rate-Making

In the case of Civil Aeronautics Board, although the Act does not provide for the exact method of fixing the reasonable and just fare or rate, the Board has wide discretion to decide just what is fair and reasonable in the public interest by considering the following rules in conjunction with the Declaration of Principles under Section 4 of the Act:

- a. The effect of such rate upon the movement of traffic;
- b. The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;
- c. Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;
- d. The inherent advantages of transportation by aircraft; and
- e. The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

The writer is not aware, however, of any instance when any of the above rules of rate-making has been interpreted in a public decision by the Board.

Effect of Rate on Movement of Traffic

To determine the effect of rate upon the movement of traffic, the Board should study the magnitude and elasticity of demand of the actual and potential users of air transport services and its changes with the passage of time. This is necessary to estimate accurately as possible the result of increase or decrease of each rate.²⁷⁵

The Need in Public Interest of Efficient and Adequate Transportation...

As to the "need in public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service," the Board must set up standards of adequacy and efficiency and make cost studies for various quantities of service. This may require revision of accounting systems.²⁷⁶ Cost is easier to estimate than demand.

Character and Quality of Service

The rule requires a standard of service required by law. In this regard, the Board must take into account the fact that air transportation is closely regulated with respect to safety. Its maintenance may be expensive for the carrier. Rates, therefore, must be high enough to insure safety and should not be so low that carriers are strongly tempted to neglect safety of the service.²⁷⁷

Inherent Advantages of Transportation by Aircraft

In considering the "inherent advantages of air transportation by aircraft," the rate policy should be one which will allow airlines full

opportunity to exploit speed, ability to travel over undeveloped or difficult terrain and should not merely divert traffic from other types of air carriers with advantages of a different kind.

The Board must have in mind the desirability of coordination of transport facilities rather than the development of one type of carrier at the expense of others with deficit from such practice to be made up
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from public purse.

The Need for Sufficient Revenue to Provide Efficient Air Carrier Service.

The rules requires consideration of the need of each carrier for revenue sufficient to enable the carrier under honest, economical and efficient management to provide adequate and efficient service. In this case, discrimination may be allowed in rates if the Board is willing to set up rates in conformity with the principle of equating marginal revenue and marginal cost. The Board must decide whether it will take the initiative in setting up rates which may be productive of revenue or merely pass upon the merits of rates established by the operator.

Has the CAB the Power to Require Filing of Air Carrier Tariffs?

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Unlike the aeronautical laws of the United States, Canada, or the
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United Kingdom, the Civil Aeronautics Act of the Philippines does not contain any specific provision, or the Board have issued rules or regulations requiring the preparation, filing and the content of the tariff to be submitted for the Board's consideration. In some cases, carriers file tariffs and it is the practice of the Board to consider and approve

or amend. The procedure, except in relation to fares and rates, is extra-legal. At present, if ever the CAB acts on tariffs filed "motu proprio" by air carriers, the Board relies on the general powers of supervision, regulation and control of air carriers and to "make general and special rules, regulations and procedures as it shall deem necessary to carry out the provisions of the Act."²⁸²

In this regard, the writer doubts the reliance of the Board on the general "supervisory and control" provision over air carrier tariffs because such power is so broad and general as to require norms and standards to include air carrier tariff within its jurisdiction. Granting, that the Board is possessed with the power to require air carriers to file tariffs for its consideration based on the general power under Section 10(A) and thereby issues rules and regulations prescribing the form and the procedure of filing, still the writer maintains that such rules or regulations are beyond the rule-making authority of the Board in the absence of an express and specific provision in the Act, not a general one, granting the Board the power to require the filing of air carrier tariffs.

The situation is different in the United States. Air carriers are required to file, post and publish tariffs showing all fares, rates and charges to the extent required by regulation. Strict observance of tariffs is required from air carriers. It may be changed on proper notice only except in some cases. The Board determines whether the rates or fares are unjust, unreasonable and unjustly discriminatory.²⁸³²⁸⁴

In Canada, the Air Transport Committee under the Canadian Transport Commission replaced the former Air Transport Board which has the power, with the approval of the Governor in Council, to issue rules and regulations respecting tolls and tariffs. It provides for disallowance or suspension, the substitution of a tariff or toll satisfactory to the Board, or the prescription of other tariffs or toll so disallowed. Pursuant to such power, the Air Transport Committee issued Rule 1/52 governing the construction and filing of tariff; General Order No. 20/58 regarding tariff and statistics required from charter operators; General Order No. 35/63 as amended, requiring uniform charter tariff; and General Order No. 1967-A-1 relating to charter tariff for helicopter.

Free and Reduced Rate Transportation

The following acts of air carriers are prohibited by the Board.

- (1) Discounts or rebates on authorized rates, fares and charges;
- (2) Adopting rates, fares and charges which have been found or determined by the Board to be unjust, unreasonable, unduly preferential or unjustly discriminatory in a final report; or which have not been previously approved and authorized by the Board;
- (3) Issuing any free pass, free ticket or free or reduced rates, fares or charges for passenger except to the following persons:
 - a. Officers, agents, employees of the air carrier and their immediate families;
 - b. Witnesses and attorneys attending any legal investigation into accidents or any legal investigation in which such air carrier is interested;

- c. Persons injured in aircraft accident and physicians and nurses attending such persons;
- d. Members of the Board;
- e. Officers and employees of the Civil Aeronautics Administration when travelling on official business upon exhibition of their credentials;
- f. Members of Congress; and
- g. Such other persons duly approved by the Board.

The basic prohibitions under Paragraphs (1) and (2) above are directed against any deviation by the carriers from the approved fares and rates. Paragraph (3), however, is not intended as a prohibition but rather an exception to the other two. Under the Act, there are two exceptions to the requirement of full fare for services rendered by airlines.-²⁸⁷
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- 1. Persons allowed by law free and reduced rate transportation;
- 2. Persons allowed free and reduced rate transportation by the Board.

Persons Allowed Free and Reduced Rate Transportation by the Board.

Free and reduced rate transportation may be given by carriers to other persons provided it is approved by the Board. The initiative to issue free and reduced rate transportation to other persons must come from the airline, which is not absolutely prohibited from granting free or reduced rate transportation, but such concession can be made only when provisions therefor has been published in the carrier tariff and no unlawful discrimination will result. The practical effect of this is to limit the issuance of passes to persons other than those named in the²⁸⁹

first classification except with the permission of the Board.

Development of Domestic Air Fares and Rates

The history of domestic air fares and rates in the Philippines is synonymous with the development of Philippine Air Lines' because scheduled air transportation is a monopoly of PAL for more than two decades. It started at the rate of ₱.19 per seat mile in the Beech twin-engine ²⁹⁰ monoplane service in 1941.

In 1946, when the airline recommenced operation, it charged ₱.20 a passenger mile in the DC-3 scheduled service. This rate was revoked in 1949. However, prior to revocation, the airline was authorized to introduce the "First Class" and "Economico" DC-3 services at the rate ²⁹¹ of ₱.17 and ₱.13, respectively. The former rate was cancelled by the Board after nine years.

With the introduction of the Convair 340 aircraft in the domestic trunk routes in 1951, PAL launched a new type of service - the Convair De Luxe. The rate approved by the Board for the new service is ₱.21 per seat mile. The same rate is approved for Viscount "Rolls-Royce" service in 1957, the F-27 Fokker Friendship in 1960 and the HS748 in 1967.

In 1957, PAL had a competitor in James H. Fleming, an American resident who was permitted to operate a British Oxford twin-engine airplane for non-scheduled service charging fares similar to PAL. Later, he acquired a DC-3 aircraft and was allowed to serve routes not parallel ²⁹² to PAL's at a rate 25% lower than that of the latter.

Subsequently, to extend air transportation to low-income people, the airline launched a much lower DC-4 "Maya" service at ₱.10 per seat mile. Indeed, the "Maya" service generated traffic, but with the coming of competition in the later years, the service was discontinued as being destructive to competition.

In the history of domestic air transport, the year 1965 marked the turning point from a system of "monopoly" to "free enterprise." Two new airlines were established in a period of one year -Filipinas Orient Airways, Inc. and Air Manila, Inc. Both airlines charged ₱.13 a passenger mile in the DC-3 service. Air Manila, Inc. charged ₱.21 for the Dart Herald day service, ₱.16 for the Dart Herald night flights and ₱.21 for the F-27 Fokker Friendship. Filipinas Orient Airways, Inc., however, charged ₱.15 for the DC-6B, ₱.21 for the YS-11 day service and ₱.12 for the night service.

With the acquisition of a BAC 1-11 aircraft in 1966, pure jet domestic service was introduced in the trunklines. The "PALjet" service charged ₱.21 per passenger mile plus ₱20.00 for the day service and ₱.21 for the night service.

With the variable rates of the three domestic airlines for almost similar categories of aircraft, the Board, about the middle of 1968, adopted a temporary uniform rate for the piston and turbo-prop equipment pending the outcome of a study on the most reasonable and just fares for the passengers and the shippers, as follows:

DC-3 Service	₱.14/seat mile plus ₱2.00
Turbo-Prop Service (Night)	₱.14/seat mile plus ₱2.00
Turbo-Prop Service (Day)	₱.17/seat mile plus ₱5.00

International Air Fares; Power of the Civil Aeronautics Board.

The fixing of air fares for foreign air carriers is a complex problem of the Civil Aeronautics Board due to the numerous interrelated rates, frequent revisions, developing mass market and competitive pressures. Fares for international air transportation are now recommended by the airlines in the form of Resolutions approved at the IATA Traffic Conferences, which are in fact agreement between air carriers which are IATA members. These agreements are binding on the Philippine air carriers after the Philippine Government approves them. However, in case the Resolutions are disapproved by the government authority, the proposed fares or rates are ineffective and an open rate situation exists with respect to such fares or rates.

The Board fixes and determines rates for domestic and international
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air transportation. Any agreement entered into by the Philippine flag carriers with other foreign airlines to regulate rates and fares is ineffective unless approved by the Board. In fixing rates and fares for international air transportation, the Board is guided more by the various rate provisions in the bilateral air agreements entered into by the Philippines with other countries. For example, the UK-PI Air Agreement of January 7, 1948 provides that "the tariffs to be charged x x x shall be fixed at reasonable levels, due regard being paid to all relevant factors, including economic operation, reasonable profit, difference of characteristics of service including standard of speed and accomodation and the tariff charged by other airlines on any part of

the route.

The tariff shall x x x be agreed in respect of each route between designated airlines concerned, in consultation with other airlines operating on the same route or any section thereof. Such agreement shall where possible be reached through the rate-fixing machinery of the IATA. The tariff so agreed shall be subject to the approval of the Contracting Parties."

In the event of disagreement between designated airlines concerning tariff, the Contracting Parties shall endeavor to determine them by agreement between themselves. If the Contracting Parties fail to agree, the matter shall be referred to arbitration x x x.

Substantially similar provisions as the above appeared in the PI-Pakistan, PI-Israel, PI-India air agreements, with the addition in the case of the PI-India agreement that "the approval of the aeronautical authorities of a Contracting Party shall not be necessary in respect of tariffs for a route or section in which no designated airline of that Contracting Party is concerned and nothing in this Article shall be deemed to prevent either Contracting Party in agreement with the other Contracting Party, from bringing into force tariffs fixed in accordance with the practice recommended from time to time by the ICAO."

The PI-Spain Air Agreement contained similar tariff provision except that the "Contracting Parties shall insure that no new or revised fare or rate shall be made effective while a disagreement exist between the aeronautica authorities of both parties."

In determining the rate under the PI-Switzerland Air Agreement, " the recommendation of the International Air Transport Association shall be taken into consideration. Failing such recommendation, the designated airlines shall consult the airline of a third country serving the same sector.²⁹⁹ However, in the air transport agreement between the Philippines and the United States of Mexico on November 21, 1952, there is no provision on rate. In the absence of such provision, the rate shall be that fixed and agreed upon by the aeronautical authorities of both countries.

CHAPTER XII. PARTICIPATION IN NEGOTIATION OF AIR AGREEMENT FOR EXCHANGE OF TRAFFIC RIGHTS

During the American regime, foreign air carriers operated into the Philippines for commercial purposes on the basis of "reciprocal or other agreements entered into by the Government of the United States or the Philippines with other countries covering the operation of such foreign air carrier. Foreign aircraft are flown subject to the provisions of the agreement." Administrative Order No. 309(1934) contains the regulations governing the operation of foreign aircraft including customs, health and immigration.

Similarly, the privilege of foreign airlines at present to serve the Philippines and that of the Philippine flag carrier to fly to other countries for commercial purposes is made possible through a series of bilateral air agreements concluded with other states. ³⁰⁰ Of the 19 bilateral agreements, 5 are in the nature of treaties and the others are in the nature of executive agreements. Fourteen of them are either registered with the ICAO or UN or both.

Executive Agreement

What is an executive agreement? An "executive agreement" is an international agreement made by the President or official of the Executive Branch without the consent and advice of the Senate by giving ³⁰¹ 2/3 majority for the conclusion of a treaty. "Treaty" is an international agreement entered into by the President with the concurrence of ³⁰² 2/3 of all the members of the Senate. But, the constitution of the Philip-

pinas contains no provision granting the President authority to enter into executive agreements. Since it has no constitutional basis, such power has proceeded from the "vast but ill-defined, very delicate, plenary and exclusive" authority of the President as the sole organ in the field of international relations. In the exercise of the plenary power, the President makes valid executive agreements on any matter subject of a treaty.³⁰³ The power of the President to enter into executive agreement extends to all occasions where treaty-making is impractical.

With the promulgation of the Civil Aeronautics Act, the power to determine the capability of foreign air carriers to operate for traffic purposes in the Philippines is vested in the Civil Aeronautics Board. Of most importance are the comprehensive provisions of Chapter IV of the Act concerning the requirement of a certificate of public convenience and necessity prior to operation. A permit to foreign airline is granted if the applicant is fit, willing and able and the service is required by public convenience and necessity. Orders of the Board with respect to foreign air carriers are subject to the approval of the President and are exempt from judicial review.³⁰⁴

In the negotiation of air agreements, the Civil Aeronautics Board is "advised of, and consults with the Department of Foreign Affairs concerning any air agreement for the promotion and establishment or development of foreign air transportation."³⁰⁵

"In the exercise of such power and duties, the Board takes into

consideration the obligation assumed by the Philippines in any treaty, convention or agreement with foreign countries affecting civil aviation." ³⁰⁶

Procedural Steps in Negotiation of Air Agreement

Prior to the constitution of the Permanent Air Panel on February 14, 1968, the Department of Foreign Affairs was the entity delegated by the Chief Executive with power to negotiate and conclude agreements, including air transport agreements with other states. ³⁰⁷ Ordinarily, a foreign airline which proposes to come to the Philippines makes representations to its government, which in turn, through diplomatic channel, communicates with the Philippine Department of Foreign Affairs regarding the proposed exchange of air rights.

Upon receipt of the diplomatic note from the foreign government, the Secretary or his duly designated representative calls a preliminary conference of representatives from the Civil Aeronautics Board, Civil Aeronautics Administration, Philippine Air Force, the Philippine flag carrier, the industry and other persons whom he thinks may be interested or otherwise to be affected by the agreement, to find out whether the Philippine flag carrier can reciprocally implement the agreement, if concluded, and any economic advantage or benefit in the promotion of international relations. The Civil Aeronautics Board advises the Department on the economic aspect of the proposed agreement.

In the absence of any serious objection, the Department communicates with the foreign office of the other government informing it that

the Philippine Government has no objection to the bilateral air talks. A day is set for the negotiating panels of both countries to meet and discuss the terms of the proposed air agreement. In case the members of the negotiating panels agree on the terms, conditions, limitations of the arrangement such as capacity, designation of airline, frequency, rates, routes, type of equipment to be used, exemption privileges and mode of termination in case of dispute or disagreement, the text of the agreement is prepared and finalized and signed by the duly authorized representatives of the Contracting Parties.

The implementation, or any modification or change in any of the terms, conditions and limitations of the agreement are ordinarily effected through exchange of letters of understanding between the Contracting Parties.

Power of the President Over Air Transport Agreement

The power of the President over foreign air carrier permit is not quasi-judicial but rather based on his foreign affairs and national defense powers. In considering foreign air carrier permit, the President is free to give effect to his own policy regardless of the views of the Board and to enforce any international obligation he assumed by agreement. He is not confined and bound by the records of the case and required to attach particular weight to the findings of the Board. He may decide to grant operating privileges to foreign airlines as a gesture of friendship or for any political reasons unrelated to air transport even though it may result in loss of the flag carrier.

He ultimately decides whether a certificate shall be issued, including terms and conditions, or whether he should amend, suspend or revoke the permit or not. The decision of the Board is only recom-
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mentary.

Possible Conflict Between the President's Power and Duty of the Board.

While the Board "shall take into consideration the obligation assumed by the Republic of the Philippines in any treaty, convention or agreement with foreign air matters affecting civil aviation," the law, however, does not require the President to act consistently with the provisions of the treaty, convention or agreement. For example, the Board is required not to make any order denying operating privileges to foreign air carriers entitled to such privilege under an international agreement, but the President may direct the Board to act
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contrary to the obligation under the agreement.

Nevertheless, despite the possible conflict between the power of the President and the duty of the Board, it is not likely that question on the validity and effect of such agreement purporting to impose obligation to grant foreign air carrier operating permit will arise in view of the fact that the President has the sole power to give foreign air carrier permit and his decision on the matter is exempt from judicial review.

Judicial Review of the Board's Decision; Comments.

Under the Act, the Supreme Court may review any order, ruling or decision of the Board, modify or set aside such order, ruling or deci-

sion when it clearly appears that there is no evidence to reasonably support them or that such order, ruling or decision is contrary to law, or that the Board does not have or has exceeded its jurisdiction. Any order, ruling or decision of the Board, except those with respect to the issuance of a permit may be reviewed upon a writ of certiorari in proper cases (underscoring supplied).

Proceedings before the Board are of two kinds: 1. Economic proceeding which relates to application for permit and which necessarily concerns routes, rates, frequencies, equipment, points to be served and goes into proof of fitness, willingness and ability of the applicant; and 2. Enforcement proceeding which concerns violation of the provisions of the Act, rules and regulations issued thereunder and the terms, conditions and limitations of the permit.

As to the power of the Supreme Court to review the decisions of the Board, the Court may review any order, ruling or decision of the Board in enforcement cases, but it is deprived of the power to review any order, ruling or decision of the Board regarding the issuance of permit, not only to foreign air carriers, but also to domestic air carriers for the word "permit", as it appears in the Act is used in a general sense as to include both domestic and foreign airlines. Moreover, it is said that any order, ruling or decision of the Board on any motion or petition raised by the parties to an application for a permit of both classes from the time the application was filed up to the award of the decision are, likewise, not reviewable because such motion or

petition is, in one or another, related to the issuance of a permit.

This is not the intention of Congress in enacting Section 49 of the Act. It is not the desire of the law-making body to deprive the Supreme Court of the review power over the ruling, order or decision of the Board in connection with the permit of domestic air carriers. But, be that as it may, the provision of the law is quite explicit as to admit of no other interpretation.

In view of the fact that in the United States, Canada, and the
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United Kingdom the aeronautical statutes provide for the system of appeal from the decision of the regulatory agency with respect to permit of domestic air carriers, Section 49 of Republic Act 776 should be amended to show in clear and unambiguous terms that the order, ruling or decision of the Board with regards to the issuance of permit to domestic air carriers is appealable to the Supreme Court, or to such other courts as Congress deems appropriate.

CHAPTER XIII. APPROVAL AND DISAPPROVAL OF
MERGER AND INTER-AIR CARRIER AGREEMENT

The Civil Aeronautics Board approves and disapproves petitions
of air carriers for increase of capital, sale of equipment, consoli-
dation, merger, purchase, lease, operating contract, or acquisition
and control between domestic air carriers, or between a domestic air
carrier and a foreign air carrier, or between a domestic air carrier
and any person engaged in any phase of aeronautics.

Merger, Consolidation or Acquisition of Control

Considerations of petitions for approval of merger, consolidation
or acquisition of control between air carriers, or between a domestic
air carrier and a foreign air carrier, or between an air carrier and
any person engaged in any phase of aeronautics, is one of the duties
of the Board which should be exercised with caution, for a petition
for merger, consolidation or acquisition of control is once approved,
it is virtually irrevocable.

Different countries have different motives for these combina-
tions. For instance, in the United Kingdom, during the early days
of surface transportation, merger of public utilities was inspired
more by politics. During the merger boom years in the United States,
it was motivated to a large extent by the desire for more capacity,
to save the assets of an enterprise on the verge of bankruptcy, or to
reduce competition.

Merger has advantages. It may either bolster a weakened air-
line crippled by competition, or eliminate a carrier whose net-
work has not been fully studied. It may also redound to public in-

terest, or conversely, result in monopoly and restraint of competi-
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tion.

The Civil Aeronautics Board, in the absence of specific criteria to determine whether public interest will benefit from merger, or will result in monopoly, is guided by the principles laid down in Section 4 of the Act which are also the same criteria for public convenience and necessity. If merger will promote public interest through improved public service, traffic development and will not give any degree of control as to constitute monopoly, or where two airlines to be merged are not competing in the same area and the merger will not result in restraint of competition, the merger should be approved.

However, if it will "kill" competition or jeopardize the operation of another carrier not a party to the agreement, or will increase the size and control of one carrier so as to give competitive advantage over other airlines operating along the same route, such merger is against public interest and must be disapproved. Nevertheless, even if the merger will enhance the public interest, but on the other side, it will create monopoly or curtail competition, such contract is to be disapproved.

Unless permission is obtained from the Board, merger is prohibited. It is even illegal for any of the above relationships to continue although they exist prior to the promulgation of the Act unless approved by the Board. The Board's power to disapprove merger is confined to cases where it can be shown that public interest is in jeo-

pardy or that monopoly will result, restraint of competition, or will prejudice the operation of another carrier not a party to the agreement. In all other cases, the Board should approve them.

Lease of Aircraft

Lease of aircraft in foreign air transportation is generally shown in cases of interchange of aircraft between airlines where through service is provided from one point to another on the route of one carrier to the route of another. The Board disapproves any lease contract if it is contrary to public interest. Any contract of lease should not involve undesirable combination, restraint of competition, or jeopardy to another carrier not a party to the lease agreement. Lease which restrains competition or jeopardizes another carrier is prohibited in the event that either one or both of such results will follow from the creation of monopoly.

With these guiding principles, the Board approved in 1957 the lease of one 4-engine Viscount aircraft to TACA International Airlines, SA for a period of six months followed by another one on October 30, 1958. A Fokker F-27 aircraft was leased by PAL to McRobertson Miller Airlines of Australia for a period of one year renewable thereafter.

Increase of Capital

The procurement of capital to finance the purchase of commercial aircraft is the primary concern of airline management. It is a pro-

blem for the air transport industry due to the fact that the cost of equipment is tremendously high in proportion to the low airline earning.

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With the advance in technology and the advent of competition and in
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the interest of safety, airlines are compelled to take advantage of every new device and re-equip their fleet with the latest type of aircraft. This means that equipment must be retired or scrapped long before its usefulness is exhausted.

In recent years, the most successful domestic or international airline has not raised internal funds through earning, depreciation or issuance of stocks and bonds to enable it to buy aircraft or to pay a
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reasonable part thereof in cash. Airline capital requirement is so great that the ratio between equity and debt often exceeds the limit acceptable to lending institutions thereby curtailing the ability of the airline to obtain loans.
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Moreover, airlines have grown unpopular with investors because of the unstable earning record and the great risks attached to investment.
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In these cases, the Board, in order to promote and develop air transportation, must have a sense of understanding of the airline's problem of attracting capital and win the confidence of investors in air transport enterprises.

There are four basic sources of airline capital. - 1. equity fund; 2. preferred capital; 3. loans, and 4. revenue accumulated by retention of profit and by depreciation. Each one of these has its own advantages and disadvantages. For example, equity cannot be counted upon as a source of capital now due to low airline earning. The stocks in

the market are selling below par. Preferred shares are difficult to sell during inflationary period although in a sound economy it carries a high dividend. The issue of stock is suitable to a company to raise funds where it has already issued a substantial amount of debenture stocks and its ordinary shares are sufficiently attractive to support
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a further issue of equity capital. In loan capital, the airline is obliged to repay the loan and to pay interest in the obligation outstanding. If airline capital poses a problem to the industry, overcapitalization is not advisable either for it may result ultimately in waste of resources and lower income.

The principal sources of capital for the Philippine Air Lines and other domestic air carriers are - 1. equity funds; 2. loans from financial institutions; 3. government shares; and 4. equipment purchased from manufacturers on a credit basis.

In the Philippines, the Civil Aeronautics Board and the Civil Aeronautics Administration exercise some forms of control over airline capital by controlling capital increases and by providing a system of recording conveyances showing the extent of the interest of the person to whom the conveyance is made, or in case of conditional sale, the interest of the vendor and the interest transferred by the conveyance,
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respectively.

The following is a record of PAL's capital development:

1. September 28, 1941 - Capital increased to ₱1,000,000.00
2. August 11, 1945 - " " " ₱2,000,000.00

3. November 29, 1946 - Capital increased to ₱5,000,000.00
4. May 8, 1947 - " " " ₱10,000,000.00
5. June 1, 1949 - " " " ₱12,000,000.00
6. August 25, 1954 - Capital decreased to ₱8,000,000.00
7. December 2, 1955 - " " " ₱6,000,000.00
8. November 7, 1962 - Capital increased ₱ 25,000,000.00

In 1966, the stockholders of Philippine Air Lines voted to increase the capitalization of the airline to ₱100,000,000.00

Sale of Equipment

The Civil Aeronautics Board authorizes domestic airlines to sell aircraft provided that the service or any part thereof for which the aircraft is utilized is not abandoned and that public interest is not prejudiced by such alienation. Records of aircraft disposal show that airlines dispose of equipment either due to dissolution, overcapacity, phasing out of obsolete equipment, or to finance the purchase of better aircraft.

When Commercial Air Lines, Inc. "closed shop" in 1948, it was authorized to sell all its equipment to Philippine Air Lines thereby increasing the fleet of the latter to 35 DC-3's, 6 DC-4's, several C-45's and Noordyn Norseman C-64's. PAL, at this stage, had more than sufficient equipment for domestic requirement. The maintenance of these aircraft tolled heavily on the airline's operational costs.

With the restoration of normal commercial operation after the war

coupled with increased demand for more capacity during the early liberation boom, PAL started a program of equipment disposal for replacement with better ones. On July 30, 1952, five DC-3's were sold in one time followed by another DC-3 and one DC-6B on January 22, 1953. Another four DC-3's were disposed of on July 2 of the same year. Authority to sell four Noordyn Norseman C-64's was granted three weeks thereafter.

With the suspension of the international flights in 1954, PAL had no need for the heavy aircraft. Two DC-6B's were allowed to be sold in July 1954. The two of the three Convair 340's which were unsuitable for some trunk airports were allowed to be sold followed by the third one on May 14, 1957. More DC-3's were written off from the books of the airline on May 31, 1955 and May 7, 1956.

With the introduction of the Fokker F-27 aircraft in the domestic trunk routes, the DC-3's were diverted to the secondary routes thus phasing out the "Twin-Pioneer" service in the secondary and feeder routes. Four twin-engine Pioneer aircraft were sold on September 26, 1963 and with the substitution of the Fokker F-27 aircraft for the 4-engine Viscount in the domestic trunk routes, PAL had no need for these expensive aircraft to operate in the domestic trunk routes. On January 22, 1965, it was authorized to sell the three Viscounts, the proceeds therefrom to be used for the purchase of a BAC 1-11.

Lately, PAL phased out the DC-3's in the domestic service. These aircraft were fast being replaced by the HS718 equipment. But, in the

interest of the public, the President ordered its retention.

Other Contracts, Agreements and Arrangements

The Civil Aeronautics Board may require any air carrier within its jurisdiction to file with it any contract, agreement, understanding or arrangement between any carrier and any other person in relation to any traffic affected by any provision of the Act. ³⁴⁰ One of these agreements which requires consideration by the Board in the public interest is the pooling agreement.

A pooling agreement is a contract between air carriers for the operation by them of one service or one group of service including the allocation of revenue derived from such operation. ³⁴¹ Pool is not a merger, nor a partnership. It has no capital. It is a commercial contract without any particular legal status and governed by the general law of contract. ³⁴² It may either be an expenditure or revenue pool, or may include all services operated by applicant. It may be bilateral or multilateral and it is permitted by the Chicago Convention of 1944.

A pool does not eliminate but reduces competition among the participants by excluding from the pool revenue beyond a predetermined load factor an amount to be retained by the operating carrier. ³⁴³ The advantages of a pool are that it permits better use of equipment, reduces operating cost and results in better service to the public.

Examples of other inter-airline agreements affecting foreign air transportation requiring approval of the Board are IATA Resolutions approved at the Traffic Conference, the Universal Travel Plan, the Standard

Form of Passenger Ticket, Conditions of Carriage and Inter-Cargo Handling Agreement.

The inter-change of equipment in the domestic routes, temporary loans and leasing of equipment, schedules of flights, issuance and honoring of passes, use of terminal facilities, rerouting of passengers, servicing of equipment, furnishing of spare parts and reservations, are examples of domestic inter-air carrier arrangements which require the approval of the Board.

CHAPTER XIV. REGULATION OF AIR CARRIER ACCOUNTING PRACTICES
AND DEVELOPMENT OF AIR CARRIER REPORTING SYSTEM

The Civil Aeronautics Board prescribes the form of accounts and records of the movement of traffic as well as the receipt and expenditure of money and the length of time such accounts or records shall be kept. No carrier can legally keep any other accounts aside from those prescribed by the Board except when - It can be shown that by so doing, it will not impair the integrity of the system; and 2. The keeping of two sets of accounts will not constitute an undue financial burden on the ³⁴⁴ carrier.

The accounting procedure is enforced by the Board by inquiring into the management of the business of air carriers and by obtaining full and complete reports and other information which shall be furnished under oath. The power to investigate accounts and management of air carriers, directly or indirectly connected with the operation of air services, is comprehensive. The functions of dealing with records and accounts is administered by requiring air carriers to submit periodic and special reports and to file them with the Board in the prescribed man-³⁴⁵ ner and form.

These reports consist of a statement of the number of airplanes owned or used, seats per plane, value, details regarding accidents, amount of expenses and freight carried including payments, fuel consumption, passenger miles flown, passengers carried, passenger seat miles, load factor, scheduled trips, personnel employed, rate of pay, and balance sheet and income statement. These financial and operating

reports constitute the principal factual data available to the Board for the economic regulation of the air transport industry. It is necessary that these bodies of facts should be so accurately as possible. Violation of air carrier's reporting practices to conform with the regulation and professional accounting standards are discovered through the examination of records and books of accounts to check the integrity and reliability of reports affecting the efficiency and economy of air carrier operation. The field audit provides the Board with verified facts upon which to base economic decision and to assure that the carrier's books reflect the transactions and are kept in accordance with the prescribed regulations.

Uniform System of Accounts

In the accounting field, the Board prescribes a uniform system of accounts similar to the one prescribed by the United States Civil Aeronautics Board. The principal objective in the requirement of a uniform system of accounts is to enable more effective regulation to check whether just and reasonable rates are charged by air carriers.

Accounts are classified into six classes each further divided into sections.

1. Operating Revenue Account is divided into - a. transportation; b. air service; and c. incidental. Under transportation is recorded receipts for carriage of persons and cargo. Air service includes all receipts from non-scheduled operation as charter trips, aerial photography, crop dusting, special advertising trips, etc. Incidental re-

cords transaction as sale of portion of motor fuel, repair works, restaurants operated, rents from land, building and miscellaneous
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services.

2. Operating Expense Account is more detailed and involves controversial matters. Under "Maintenance of Fields, Structures and Equipment" are included not only repair, maintenance, depreciation and retirement of buildings and flying equipment, but also superintendence, insurance, injuries on persons and other miscellaneous expenses.

3. Income Account shows for each fiscal year the total amount of money which a carrier receives or is entitled to receive from other sources, the total amount of money paid out and the gain or loss sustained. Income from "Operation" shows all revenue from transportation and other activities, all operating expenses, taxes and collectible revenue. The balance of these entries determines the net income.

"Non-Operating Income" includes balances in all accounts, showing net income from miscellaneous physical properties, interest on investments in bonds, income from special fund, dividend, amortization and other miscellaneous items. The total of this account, added to net income from operation, gives the gross income of the carrier. Deductions from gross income include net loss on miscellaneous physical property, rent, taxes, interest on long-term debts, interest deductions, amortization, discounts, expenses and other items. The total of this amount, deducted from gross income of the company gives net income. "Disposition of Net Income" shows the sinking fund, dividend and miscellaneous appropriation

after deducting the total of these items, the remainder is carried
349
to profit and loss.

4. Profit and Loss consists of small groups of account which form the connecting link between income account and balance sheet. This explains the changes in surplus or deficit from operation in each period as well as changes caused by appropriation of surplus by accounting adjustment attributable to periods for which books have already been closed or by miscellaneous losses and gains not recorded elsewhere.

This Account is divided into two.- 1. Credit which includes the credit balance at the beginning of the fiscal year, balance transferred from income, profit on equipment sold, delayed income credit and appropriation to reserves, the dividend appropriation of surplus and miscellaneous items. After closing this account, the balance is transferred to the balance sheet statement under the general heading of unappropriated
350
surplus, if any.

5. The Balance consists of assets and liabilities. On the asset side are listed investment, current and accrued assets, special fund, deferred debts and reacquired and treasury securities. On the liability side are the stock, long-term debts, current and accrued liability, deferred credit, reserves, appropriated and unappropriated surpluses.

6. Real Property and Equipment Account is an expansion of the section of the balance sheet account concerned with investment and is designed to exhibit the investment of each company in property used in air service and in incidental operation. Lands, buildings and equipment

are included in this account. All charges on this account are based
351
on cost of items secured.

Accounting and Statistics Forms

The following accounting and statistics forms are required to be submitted to the Board by air carriers periodically:

1. Statement of Traffic and Operating Statistics (monthly) showing traffic carried on revenue flights, total revenue and non-revenue income ton miles, utilization and performance factors and other information.
2. Flight Report showing type of aircraft, registration number, name of charter, points of origin and destination, time of arrival and departure, amount of cargo and passengers carried and total revenue passenger and cargo ton-miles.
3. Insurance Coverage showing type of aircraft, policy number, insurance company, amount of coverage for hull, passenger, cargo and third party liability per accident occurrence.
4. Report on Gross Receipts and Expenditures (quarterly) showing receipts and disbursement.
5. Balance Sheet (semi-annual) showing assets, liabilities, investment for assets, deferred charges and other assets.
6. Liability and Stockholders Equity (Annual) showing current liability, unearned transportation revenue, total liability and stockholder's equity.
7. List of Aircraft owned showing type of aircraft, engine, pro-

seller, addition or deduction, depreciation, net book value.

8. List of aircraft leased showing type of aircraft, date of lease, date approved by the Board, owner, registration number, configuration, block speed, etc.
9. List of stockholders (annually)
10. List of General Officers and Directors.

Maintenance of Public Records of Documents Submitted by Air Carriers.

The Board maintains a public record of periodic reports, agreements, contracts, arrangements entered into between air carriers, accounts, records, memoranda, tariffs, schedules and other documents submitted by air carriers to the Board. Are these documents held in strict confidence by the Board, or are those disclosable to the general public?

Furnishing information to administrative agencies like the Civil Aeronautics Board is not equivalent to disclosure of such information to the public. In fact, it is a practice that statutes creating administrative agencies make it a misdemeanor for any officer of an agency to improperly disclose information. In some instances, elaborate provisions in the statute and regulations control the precise conditions under which and to whom the information may be revealed, while some allow administrative agencies in their discretion to release information to the public.

However, much of the information coming into the possession of administrative agencies is not the subject of statutory provision. The Civil Aeronautics Act is not an exception to this general observa-

tion. The Act contains no provision concerning the disposition of documents submitted by air carriers to the Board as to which of them are considered trade secrets and which are disclosable to the public. One danger, in the absence of regulation to determine the confidential or non-confidential character of documents on file with the Board, is that records which may properly be classified as trade secrets may be released for public consumption, or vice-versa.

Under Sec. 15(b)(2) of Administrative Order No. 1, s. 1960, any Board member, officer or employee, or any person associated with these persons, shall not use any confidential information or facts which came into their possession or to their attention during the official association without the permission of the Board. This provision, however, does not resolve the question as to which of these records on file with the Board are considered confidential or not.

The determination to make public disclosure of the Board's records is reviewable by the courts.³⁵⁴ In the absence of statutory assistance, the courts require that information in the possession of administrative agencies be kept secret or confidential. However, in some cases, the courts are unsympathetic to keeping business facts confidential.

It is recommended that a new provision should be incorporated in the Act authorizing the Board to release for public information as it shall deem expedient in the public interest documents submitted by air carriers, providing for exceptions like trade secrets and names of certain customers and to supplement it by appropriate rules and regulations defining such exceptions.

CHAPTER XV. ENFORCEMENT OF THE ECONOMIC PROVISIONS
OF REPUBLIC ACT NO. 776

Rule-Making Power of Administrative Agencies

The delegation of the rule-making power to administrative agencies originated in the industrial age. In the agricultural era, statutes were complete, specific and detailed. The complexity ushered in by the technical age required new and flexible forms of control. As a result, the law-making authorities were compelled to enact general principles only and to entrust to administrative agencies the task of applying them to particular situations by the issuance of rules and regulations. ³⁵⁵

For the delegation to be valid, however, it must have legal basis. The subject must be defined, standards must be laid down and norms must be provided to enable the rule-making authority to act with certainty, ³⁵⁶ otherwise, the agency will be misguided in the performance and execution of its duties. ³⁵⁷

The trend in legislation now is to commit administrative functions to heads of bureaus, boards and commissions. In the United States, public utilities control is given to commissions with the intention to give such commissions quasi-judicial status independent of political department heads. In France, the Executive acts on the advice of a consultative body. In the United Kingdom, the point of control lies with the Parliament giving rule-making power to ministers. ³⁵⁸

The trend in the Philippines, however, follows the United States. Rule-making is entrusted to department heads, but in the case of public utilities, it is entrusted to administrative agencies. In air

transportation, the Civil Aeronautics Board issues rules and regulations to implement the provisions of the Civil Aeronautics Act in the regulation and supervision, and in the exercise of jurisdiction and control over air carriers, their property, property rights, equipment, facilities and franchise. Pursuant to the general power, the Board performs such acts, conducts investigation, issues and amends orders, general and special rules and regulations and procedures as it deems necessary to carry out the provisions of the Act.

The powers of the Board as a regulatory body are divided into two broad categories. The first is quasi-legislative or "rule-making" which includes proceedings designed to implement, interpret or prescribe rules and regulations or policy and gives the agency greater freedom to accomplish the policy objectives. The second is quasi-judicial (adjudicatory) which is akin to those handled by the courts having accusatory and disciplinary powers characterized by allegation of past infractions of laws, rules and regulations and resulting in punitive action such as cease and desist orders, suspensions, revocations and loss of privileges. These do not include other functions such as investigation, supervision, prosecution and advisory.

Rule-Making Power of the Civil Aeronautics Board.

In general, the Board derives authority to issue rules and regulations from Section 10(B) of Republic Act No. 776, the pertinent provisions of Section 10(C) and Chapter IV of the Act which relates to certificate of public convenience and necessity. However, it is held

that rules and regulations cannot be adopted by the Board and imposed upon those subject to its jurisdiction on the basis of Section 10(B) alone for such provision confers general rule-making power. Specific rules and regulations issued by the Board, if any, derive authority from the pertinent provisions of Sec. 10(C) and those set forth under Title IV only. Hence, all derivative rules and regulations issued pursuant to the relevant provisions of Sec. 10(C) and Title IV of the Act are the complete statement of rules and regulations to guide air carriers on economic matters subject to government regulation.

These regulations are substantive rules and are different from Administrative Order No. 1, s. 1960 which prescribes the rules in the conduct of business before the Board. Violation of these regulations is punishable. Their constitutionality were upheld in a foreign jurisdiction.

The subject of supplemental regulations is divided into three types. -

1. Those which directly authorizes the Board to issue implementing regulations.
 - a. Proof of service of application for permit (Sec. 15).
 - b. Terms, conditions and limitations of permit (Sec. 11, par. 5).
 - c. Application for abandonment of routes (Sec. 11, par. 6).
2. Those which regulate air carriers in general terms without stating that the Board shall implement them by regulation but require some directive to make them effective.

- a. Effectivity and duration of permit (Sec. 24).
 - b. Filing of division of rates and charges (Sec. 10(C)(2)).
 - c. Filing of annual, monthly, periodic and special reports (Sec. 10(C)(6)).
 - d. Prescribing forms of accounts, records, memoranda on movement of traffic (Sec. 10(C)(7)).
 - e. Report on shares of stocks of air carriers (Sec. 10(C)(8)).
3. Those which are so specific as to require no regulation to make them effective.
- a. Requirement of permit to engage in air commerce (Sec. 11, par. 1)
 - b. Notice of application (Sec. 16).
 - c. Issuance of permit (Sec. 21).
 - d. Alteration, amendment, modification, etc. of permit (Sec. 11, par. 2).
 - e. Transfer of permit (Sec. 23)
 - f. Prohibition of proprietary, etc. rights in the use of airspace, etc. (Sec. 11, par. 4).
 - g. Requirement of reports from air carriers (Sec. 10(C)(5)).
 - h. Filing of contract, agreement, understanding or any arrangement (Sec. 10(C)(6), 3rd.sentence).

The first and second categories require some sort of implementing action to impose penalties, or to make the meaning clear while the third category are self-executing rules of conduct. The specific rule-making

provision under the first category confers legislative power upon the Board, while the others are merely interpretative without statutory force and not binding upon those affected. Questions arising from the third category may be presented before the courts.

Adjudicatory Power of the Civil Aeronautics Board.

The Board adjudicates - 1. economic cases, which refers to application for air carrier permits; 2. economic enforcement cases pertaining to violation of the provisions of the Act, rules and regulations, or terms, conditions or limitations of the permit.

The main objective of the Board in an economic enforcement proceeding is to enforce compliance with the economic provisions of the Act, rules, regulations, orders, certificates, and exemptions primarily to protect the public and the carrier from unfair and destructive competition, unjust discrimination, abuse and maltreatment of passengers and to improve quality and dependability of service.

In the execution of this function, the Board, upon complaint or upon its own initiative conducts an investigation to see whether any individual or air carrier, domestic or international, is committing any infraction and takes such appropriate measures to prevent further violations. ³⁶⁷

A complaint is ordinarily disclosed to the Board formally or informally by a member of the industry, the public, government agency, the Board records, or an air compliance officer of the Board. It covers a variety of subjects from irregular and service deficiencies, failure to observe schedules, omission of stops, early or delayed departures, can-

cellation of confirmed reservations, tariff problems, collection of additional fares, undercharges, overcharges, misleading advertisements, preferential treatment to other passengers.³⁶⁸

Informal Complaint

Informal complaint is made to the Board in writing. Matters are handled by the Board by correspondence or conference with the appropriate person.³⁶⁹ Informal enforcement actions may consist of a warning or a gentle reprimand to encourage voluntary compliance with the matters complained against, unless the subject is of such a nature as to be the proper subject of a formal complaint. The filing of an informal complaint is not a bar to the filing of a formal complaint.

Formal Complaint

A formal complaint filed in economic enforcement proceeding, however, must conform with the Board's requirement as to form and filing of documents.³⁷⁰ It must be properly signed and verified under oath. In case it is verified or subscribed by any other person other than the person filing it, the reason must be stated. The power of attorney or other authority must be filed with the document. If the complaint does not sufficiently set forth the materials required by the applicable rules, the party may be advised of the deficiency and additional information may be supplied³⁷¹ by amendment.

The person complained against is given the opportunity to submit facts and to make an offer of settlement or proposal of adjustment, unless from the nature of the grounds in the complaint, public interest

will not permit. This is done in writing together with responses thereto and submitted to the Board within fifteen days after notice of complaint.

If in the Board's opinion there are reasonable grounds to believe that a violation is being committed and efforts to arrive at adjustment or settlement failed and that investigation is in the public interest, the Board may proceed with the case by docketing it. Copies of the complaint must be served on the respondent. The Board is not precluded, if necessary, from instituting a separate investigation or inquiry with-
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in its jurisdiction.

Procedure When No Enforcement Proceeding is Instituted.

After receipt of the formal complaint and the Board believes that no enforcement proceeding will be instituted, the Board advises the complainant in writing of its decision together with the reason. The letter of the Board is an order dismissing the complaint unless a request is made by the complainant to review the order. Upon conclusion of the proceeding, the Board shall enter an order either dismissing the com-
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plaint or directing such other action as it may deem appropriate.

Appearances by Persons Not Parties to the Complaint.

After issues are formulated, the Board or the examiner, as the case may be, gives the parties reasonable notice of time and place of the hearing. With consent, appearances may be entered without request or grant of permission to intervene by interested persons not a party

to the proceeding. Such person may cross-examine a particular witness or suggest question or interrogation to be propounded to witness called by any party, but may not examine witnesses and may not introduce evidence or participate in the proceeding. He may present an oral or written statement of their position on issues involved in the proceeding.³⁷⁴

Offer of Settlement

Any time prior to final decision, a party to an economic enforcement proceeding may submit offer of settlement or proposal of adjustment, which shall be submitted in writing and addressed to the Board, which will promptly notify the party whether such offer or proposal is acceptable or not. The submission of such offer or proposal shall not alter the course of the proceeding unless so ordered.³⁷⁵

Violations and Penalties

Insofar as the Civil Aeronautics Board is concerned, the following are the offenses enumerated under the Act with the corresponding penalties:

1. Engaging in air commerce without a permit. ₱5,000 (not exceed) or imprisonment for not more than one year or both, upon the discretion of the court.
2. Violation of any terms, conditions, or limitations in the permit, or amendment thereto. ₱1,000 (not exceeding) for each violation.
3. Granting discounts, rebates, adopting rates, fares and charges which are unjust, unreasonable, unduly preferential ₱1,000 (not exceeding) for each offense.

or unjustly discriminatory, issuing free pass, free tickets, or free and reduced rate transportation to unauthorized persons.

4. Unauthorized consolidation, merger, purchase, lease, operating contract or acquisition and control between air carriers. ₱5,000 or imprisonment of not more than one year or both, at the discretion of the court.
5. Unapproved and unauthorized adoption, establishment, maintenance, change, revision, abandonment, alteration, amendment, rejection, discontinuance, suspension, restoration, of any classification, rule, regulation or practice affecting routes, itineraries, schedules, classification, increase or decrease of flight frequencies. ₱5,000. Repetition is sufficient ground for revocation.
6. Interference, obstruction, hindrance or delay of the CAB, or any person duly delegated in the performance of duties in the public interest. ₱5,000. (not exceeding).
7. Knowingly and wilfully forging, counterfeiting, altering or falsely make any certificate or knowingly use or attempt to use any fraudulent certificate. ₱5,000 or imprisonment of one year or both at the discretion of the court.

Any violation of the provisions of the Act, or any order, rule, regulation issued thereunder, or any term, condition, or limitation of any certificate or permit where no penalty is expressly provided is punishable with ₱500. for each violation.

The Board, under Sec. 44 of the Act, may enter into compromise with any of the penalties or fine imposed by the provisions of Republic Act No. 776. Failure to comply with the order or decision of the Board respecting such compromise shall be deemed good and sufficient ground

for the suspension of the permit or any certificate until compliance is made. Compliance may also be enforced by appropriate action brought in a court of competent jurisdiction(Underscoring supplied.)

Comments on Sec. 44 of Republic Act No. 776.

Except for the three violations enumerated above which carry imprisonment and/or fine by way of penalty, all other offenses are punishable with purely pecuniary fines. The law does not distinguish, however, which of the offenses punishable with monetary penalty is civil or criminal. The distinction is necessary as will be explained in the later part of this Chapter. Of course, it is not easy to distinguish between the two. There is no precise measure to exactly determine whether a monetary penalty is civil or criminal. In the case where a tax is assessed and double the amount is collected for illegal manufacture with a penalty of \$500.00, it was held that the United States Congress did not intend that the criminal penalty of \$500.00 should be imposed by executive officials. However, a 50% addition to the total amount of the deficiency to be paid, is a civil administrative sanction. Moreover, the wilful or intentional commission of an offense as a basis for determining the criminal nature of the penalty is not controlling because there are situations where intentional or wilful commission of an offense does not carry with it imprisonment as a form of punishment, but monetary penalty in the form of fine.

Reiterating, the Board has the power to compromise both civil and criminal penalties. While the Board has such power, does it have

the authority to impose such penalties thereby giving rise to the power to compromise? For, if the Board has no power to impose such penalties, as it has no power under the Act, technically, there is nothing to compromise.³⁷⁸

Under the Civil Aeronautics Act, the penalty for the violation of the provisions of law, terms, conditions and limitations of the permit including the violations of the rules and regulations issued by the Board is fixed by Congress. These violations are made offenses by Congress in the Statute and it is Congress which fixes the penalty and not the Board. The determination of whether violation of such rule or regulation is punishable or not lies with Congress. The power to impose these penalties through regulation is not conferred upon the Board. The CAB is only given the broad power to compromise any of these penalties, civil or criminal.³⁷⁹

Procedure in the Conduct of Economic Enforcement Proceedings.

Economic enforcement proceedings are ordinarily instituted against two types of air carriers. - 1. Those who operate air service without a permit; 2. Those who are duly authorized by the Board to engage in air commerce. The proceedings for both cases are not the same.

In the case of air carriers operating without a license, the Board, upon complaint or upon its own initiative may conduct a preliminary investigation. Air compliance agents are sent out in the field where the alleged violator is reportedly operating. The investigators check airport logbooks to see if the illegal operator carries passengers or

or cargo for pay or hire. They interview witnesses and the operator himself, if possible, informing him of the complaint against him. In some cases, he is informally summoned before the Board.

In case he denies the charge, but the Board has established a *prima facie* case against him, a criminal case is filed through the Board's counsel against the operator in the appropriate Court of First Instance for violation of Section 42(A) of Republic Act No. 776, i.e., for engaging in air commerce without a permit. The Board is the complainant and the operator is the respondent.

If at the conclusion of the trial, the respondent is found guilty by the Court, it imposes the penalty corresponding to that provided under the Act for the offense committed with reduction thereof depending on the mitigating circumstances. An order of prohibition or injunction may also be issued by the court. The power of the Board to compromise penalties does not apply in this particular situation. Nor the court, in the view of the writer, has the right to do so.

In the second case, however, where the alleged violator is a duly licensed air carrier, the Board, likewise, upon complaint or upon initiative may conduct an investigation. In the case of a formal complaint, the procedure in the hearing before the Board is explained on page 136 of this Study.

However, at any time in the course of the hearing and prior to the final decision, the respondent may submit an offer of compromise settlement or proposal of adjustment in writing addressed to the Board

which will promptly notify the party whether such offer or proposal is acceptable or not. The submission of such offer or proposal does not, however, alter the course of the proceeding unless so ordered.

In case the Board enters into a compromise with the carrier, but the carrier fails to carry out the terms of the compromise agreement, the Board may suspend the permit until compliance is made. However, in case no compromise is made and the hearing is continued, and finally the Board finds the respondent guilty of the offense charged, the Board issues an order penalizing the offender in accordance with the Act. In some instances, the Board suspends the permit, or in extreme cases, revokes or cancels the license. The power of the Board to compromise penalties, in the view of the writer, applies to offenses punishable with monetary penalty only and does not apply to violations punishable by imprisonment and/or fine.

Nevertheless, it is not unusual that in some instances, the offender, despite the Board's order, fails to carry out the decision of the Board. In the absence of coercive power, the Board petitions the appropriate court for a judicial enforcing order, which if disobeyed is enforced by judicial contempt process. The ultimate execution of the Board's order comes from the judiciary.

On the other side, in case of violation involving statutory fine and/or imprisonment, the criminal proceeding is instituted against the respondent in the competent court based on the infraction committed. The trial of the case is held before the court. If, at the conclusion

of the hearing the respondent is found guilty by the court, the judge renders the decision and metes out the punishment corresponding to the offense. The penalty is imposed appropriate to the circumstances of the case for mitigating reasons.

Administrative imposition of criminal penalty is generally forbidden to administrative tribunals unlike the imposition of civil and other remedial penalties like revocation, suspension or non-renewal of the permit.
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The power of the Board to compromise indicates the magnitude of its power. It is an act of grace. If one refuses to pay a mitigated penalty, he may pay the maximum penalty in the appellate court. This system is defective. Opportunity for discrimination is more than theoretical in this case. This loose administrative practice affords an opportunity for judicial review, but the appeal in the majority of cases is illusory for reasons like distaste of criminal prosecution, expense, risk of paying the maximum penalty, inconvenience and delay.

CHAPTER XVI. AUTHORIZATION FOR THE NAVIGATION
OF FOREIGN AIRCRAFT

The Chicago Convention of 1944,³⁸¹ International Air Services
³⁸²
(Two Freedoms) Transit Agreement and the bilateral air agreements
concluded with other countries are the bases for the authority of
foreign air carriers to navigate in the territory of the Philippines.

The Chicago Convention of 1944

The most notable achievement of the Chicago Conference was the
Convention on International Civil Aviation, otherwise known as the
Chicago Convention of 1944. In effect, the Convention solved techni-
cal problems of international aviation, air navigation and air trans-
port, but did not have the power to regulate the economic aspect of
international civil aviation.³⁸³

As a consequence of the failure of the Conference to produce a
multilateral agreement on the exchange of commercial rights, States
parties to the Conference reverted back to the old concept of airspace
sovereignty under the Paris Convention of 1919. Under Article I of
the Paris Convention, "the Contracting States recognize that every state
has complete and exclusive sovereignty over the airspace above its
territory." This provision is reproduced in Article I of the Chicago
³⁸⁴
Convention.

The Chicago Convention of 1944 to which the Philippines is a sig-

natory contained a number of guiding principles governing the operation of foreign airlines to and through the country. For example, the Convention granted the right to all aircraft of Contracting States "being aircraft not engaged in scheduled international air services" to make flights into or in transit non-stop across the territory of another Contracting State and to make stops for non-traffic purposes without the need of obtaining prior permission, but subjected the privilege of taking and discharging passengers or mail to authorization.

Article 6 states that "no scheduled international air service may operate over or into the territory of a Contracting State without previous authorization." The right of cabotage is reserved to the discretion of States subject to the understanding that such right, if granted to a foreign state, will not be a basis for discrimination (Article 7).

Article 17 of the same Convention confirms the principle that aircraft have the nationality of the State in which it is registered, and that States have the right to designate the route to be followed within its territory by international air service and the airport in which any such service may use(Article 68).

International Air Services Transit Agreement.

The Chicago Conference produced two other independent agreements besides the Convention.- 1. The International Air Services Transit Agreement; and 2. International Air Transport Agreement. Most states accepted the first agreement but the latter was adopted by only a few states like the United States, Netherlands, Sweden and a few Latin American

countries. The Transport Agreement was even denounced by the United States later. It is practically a dead letter now.

The Transit Agreement provides for the exchange of traffic privileges of flying across foreign territory, and of landing for non-traffic purposes - the first "two freedoms of the air"³⁸⁶. The Agreement, which was signed by twenty-six states, aimed to create a conventional right of innocent passage for scheduled flight granting the first two freedoms³⁸⁷. But, by the fact that some states did not sign the agreement goes to show that those states did not recognize the right of innocent passage³⁸⁸. This Agreement, although not yet accepted by a number of states, is said to represent a positive achievement towards the freedom of the air.

Bilateral Agreement - Chicago Standard Form.

The failure of the Chicago Conference to come out with a multilateral agreement on the exchange of commercial rights in international air transport regarding the economic control of international aviation³⁸⁹ gave rise to bilateral negotiation as the only means with which "commercial freedoms"³⁹⁰ could be obtained. To states which are both not parties to the Convention, bilateral treaty is the most practical way for the mutual exchange of air rights.

The Final Act of the Conference contained a Standard Form of Agreement³⁹¹ for Provisional Air Routes which serves as a model for bilateral arrangements. Under this form, "Contracting Parties grant the right specified in the Annex hereto necessary for establishing international

civil air routes and services therein described."

The Annex to the Agreement includes a description of the routes, rights granted and conditions incidental to the granting of such rights. Where rights of non-traffic stops or commercial rights are granted, the Annex includes a designation of the port of call at which stops could be made or at which commercial rights for the embarkation and disembarkation of passengers, cargo or mail are discharged. Each state is entitled to designate the carrier by which the rights granted will be exercised with the other state bound to give the appropriate permission to the designated carrier may be required to qualify before the competent aeronautical authority.

The Standard Form contains provisions concerning non-discrimination in airport charges, custom duties, exemption from taxes on fuel, equipment stores on board the aircraft, mutual recognition of certificate of airworthiness and compliance with the national laws and regulations of the state flown.

"Bermuda Type" Bilateral Agreement.

The form which later became the model bilateral air transport agreement between countries was the "Bermuda Type" agreement which was worked out by the United States and the United Kingdom at the Conference at Bermuda in January 1946³⁹². Under this type, carriers grant to the carriers of the other countries the two "technical freedoms" (right of overflight and landing for non-traffic purposes), subject to

the rights of each country to designate the route to be followed and the airport to land. Each country grants the privilege of entry and departure to embark traffic in the territory under certain traffic principles and limitations such as rate approval and adequate capacity³⁹³ and ex post facto review of the carrier operation.

Non-Scheduled International Air Service.

The Convention draws a distinction between non-scheduled flight not engaged for pay or hire and that engaged in the carriage of passengers and cargo for remuneration. It provides that each State agrees that aircraft of the other Contracting States in non-scheduled flights are granted: a. right to stop for non-traffic purposes; b. right to enter and fly over non-stop; and c. right to enter and fly over and stop for non-traffic purpose on a transit flight.³⁹⁴ However, these rights³⁹⁵ are not absolute. The practice of States are inconsistent and haphazard.

With respect to the first category, entry and departure of non-scheduled flights in the Philippine territory shall be given in advance and must comply with the national regulation in force. For aircraft of States parties to the Convention, it is not necessary to obtain permission from the Philippine Government, but prior notification shall be given to the Civil Aeronautics Administration concerning the details of the flight such as name of the operator, type of aircraft, flight number, radio call sign, pilot and crew, purpose of the flight, passengers and cargo carried, origin and destination of the flight. Moreover, appropriate clearances as to the entry of the aircraft and security of the flight must be secured from the Department of Foreign Affairs and the

Philippine Air Force, respectively, aside from the Customs and Immigration clearances in case the aircraft has passengers and cargo to disembark and unload. The Civil Aeronautics Board, which is concerned with the economic aspect of the flight, has no participation in this type of operation.

With respect to the second category, i.e., non-scheduled flight for pay or hire, the aircraft has the privilege of taking on or dis-³⁹⁶charging passengers, cargo or mail. The same formal entry requirements are demanded like that of the first category. But, in case the aircraft will discharge or pick up passengers and cargo, the Civil Aeronautics Board has the authority to impose such restrictions, conditions and limitations as may be considered desirable. A permit must be secured from the Board to lawfully operate such kind of non-scheduled flight. An example of this flight is an international charter flight.

Even if the ICAO Council stressed that the imposition shall not be exercised as to render the operation of this type of transport impossi-³⁹⁷ble or non-effective, the Philippine law on aviation requires that a³⁹⁸ permit shall be first secured prior to operation.

In conformity with Article 7 of the Convention, the Board would not allow any aircraft to pick up or discharge passengers or cargo in any place to be disembarked or unloaded in any other place in the Philippines. To enable the foreign air carrier to carry passengers or cargo and discharge them within the national territory, there must be the prior approval of the Board.

International Scheduled Air Service.

Article 6 of the Convention provides that "no scheduled international air service may be operated over or into the territory of a Contracting State except with special permission of the State flown and in accordance with the terms of such permission." "Air Service" is defined as any scheduled service performed by aircraft for the public transport of passengers, mail or cargo (Article 96).

However, the term "scheduled" is not defined in the Convention, but the Council of ICAO, for the guidance of the Contracting Parties has adopted the following definition:

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

- a. It passes through the airspace over the territory of more than one state;
- b. It is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use by each member of the public;
- c. It is operated, so as to serve traffic between the same two or more points, either -
 - (1) according to a published timetable, or
 - (2) with flights so regular or frequent that they constitute a recognizable systematic series.

Foreign airlines operate scheduled service to Manila on the basis of the permit granted by the Board as approved by the President pursuant to the bilateral air agreements concluded by the Philippine Government

with other states. These agreements contain provisions providing for the reciprocal exchange of traffic rights and privileges between the flag carriers of the contracting parties. For example, Article 5 of the UK-PI Air Agreement when still in force, provided that the "airlines designated by either Contracting Party shall enjoy, while operating the agreed services, the rights to fly their aircraft across the territory of the other Contracting Party, to make stops therein for non-traffic purposes, and to make stops for the purpose of putting down international traffic in passengers, cargo and mail." Substantially similar provisions appeared under Article III of the India-PI Air Agreement, Pakistan-PI Air Agreement and PI-Israel Air Agreement.

Under the Annex attached to the PI-Spain Air Agreement, "the airline of each Contracting Party shall enjoy in the territory of the other the right of transit and non-traffic stops at airports open in each country for international traffic, as well as the right to embark or disembark international traffic consisting of passengers, cargo and mail."

However, under the PI-Mexico Air Agreement, both governments reciprocally grant one or more designated airlines of either country to conduct air transport services and to enjoy rights of transit and stops for non-traffic purposes, as well as the right of commercial entry and departure for international traffic in passengers, cargo and mail.

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CHAPTER XVII. DETERMINATION OF CAUSE OF
AIRCRAFT ACCIDENT

The investigation of accident involving civil aircraft is the responsibility of the Civil Aeronautics Administration, not the Civil Aeronautics Board. The Aircraft Accident Investigation Board, which is directly under the Administrator, actually handles the investigation. In the performance of the function, the Board observes Article 26 of the Chicago Convention which is the relevant article relating to aircraft accident in the international field. The national regulation on aircraft accident and practices of the Aircraft Accident Investigation Board have no difference with the international standards and recommended practices under Annex 13 to the Convention.

Background of Aircraft Investigation

"Aircraft Investigation" is recognized as one of the fundamental elements of improved safety and accident prevention. This is brought about by the increased capacity of modern aircraft and continuing growth of air traffic that inspite of the technological advances in air transport and efforts to improve air safety to forestall accidents, still aircraft mishaps continue to occur. The need for investigation is so fundamental in the future of air safety. The reason for investigation is not primarily to locate responsibility but to discover the true cause of the accident.

There are few records on the subject of aircraft accident investigation prior to the Chicago Convention of 1944. The Paris Convention

of 1910 made no mention of aircraft accident investigation, nor was it specifically referred to even in passing in the Paris Convention of 1919 "except that with regards to salvage of aircraft wrecked at sea, ⁴⁰⁶ the principles of maritime law will apply." This is the closest link to the present understanding on aircraft accident.

The first real effort to solve the problem of accident investigation was made at the Chicago Conference of 1944⁴⁰⁷ which study gave rise to Article 26 of the Convention. Article 26 of the Convention as interpreted by the ICAO Council means the following:

1. It deals only with rights and obligations of two states (state of registry and state of occurrence);
2. It applies only to accident to an aircraft belonging to one Contracting State that occur in the territory of the other Contracting State;
3. The accident must involve death or serious injury, or must indicate some technical defect in the aircraft or air navigation facilities;
4. When conditions (2) and (3) are satisfied, the unconditional obligation of the State of Occurrence to institute an inquiry may be delegated to another authority;
5. The inquiry must be in accordance with the procedure recommended by the ICAO in "so far as its laws permit;"
6. The opportunity is given to State of Registry to appoint observers to be present at the inquiry.

However, while Article 26 of the Convention provides for injury on certain types of accident, it failed to provide for other important matters. The matter of filling the gap, insofar as accident investigation is concerned, was entrusted to the drafters of Annex 13 to the Convention which in the foreword states that "standards and recommended practices for aircraft accident inquiries were first adopted by the Council on April 1, 1951 pursuant to Article 37 of the Convention of International Aviation in 1944 and were designated as Annex 13 to the Convention." ⁴⁰⁸ A draft resolution dealing with the application of the Annex to aircraft accident was prepared. It recommended that the provisions of Annex 13 should be followed only in inquiries involving death or serious injuries excluding "serious technical defect in aircraft or in navigational facilities."

Explaining the exclusion, "the Commission considered that the procedures in the Annex were appropriate for inquiries into accidents involving death or serious injury, but might go too far into accidents indicating a serious technical defect in a facility." States may not be prepared to allow accredited representatives of other States to take ⁴⁰⁹ active part in the investigation of the accident."

The limitations of Article 26 of the Convention have been recognized and Article 37 and Annex 13 are used to bridge the gap. The Council recommended that Annex 13 and its procedures should follow the procedure laid down in Article 26 of the Convention. Contracting States are not obliged to follow the procedure outlined in Annex 13 when the

accident does not involve death, serious injury, or substantial damage to aircraft, even if the accident indicates serious technical defect in the aircraft or air navigation facilities. Accidents involving serious technical defect in the aircraft or air navigation facilities continue to be governed by the national law of the Contracting States. ⁴¹⁰

Aircraft Accident Inquiry

Accident investigation procedure in the international level is governed by the relevant provisions of Annex 13. Many amendments have been made in the Annex such as - a. Definition of the terms "inquiry", "investigation" and "investigator-in-chief" which were added to Chapter I; b. Inclusion of the state of manufacture in the participation in an investigation; c. New provisions were included for the protection of evidence pending arrival of the accredited representative of the state of manufacture; d. Provision for the timely notification of aircraft to the state of manufacture; and e. To introduce as a recommended practice a specification permitting the attendance of representatives of the operator. ⁴¹¹

Throughout the Annex, the word "inquiry" is used as an all embracing term covering the gathering of all factual and relevant details of the accident, presentation of evidence to the court of inquiry in accordance with established legal procedures and the submission of the final report. The word "investigation" previously used indiscriminately has now been reserved to indicate that part of the inquiry which relates solely to the procurement of evidence.

The explanation, however, did not refer to the determination of a probable cause of an accident although there is a need for an all embracing definition to cover all aspects of the examination to include the special function of gathering the factual and technical information relating to the accident. It was agreed, however, that the scope of an inquiry covers - a. The investigation of the accident; b. The analysis of the evidence; c. The determination of the cause; d. The completion of relevant report; and e. Making of recommendation when appropriate.

Applicability

Annex 13 applies to aircraft accidents occurring in the territory of a Contracting State to aircraft registered in another Contracting State, subject to certain standards and recommended practices. ⁴¹² It requires States in which the accident occurred to take reasonable measures to insure - a. The protection of evidence including safe custody of the aircraft and its contents; b. Reasonable protection against further damage, access by an unauthorized person, pilfering or deterioration; and c. The preservation by photographic records or other means of any material evidence which might be removed, effaced, lost or destroyed. To this has been added that "if a request is received from the State in which the aircraft was manufactured, the aircraft remained undisturbed pending inspection by an accredited representative of that State. The State in which the aircraft accident occurred shall take all reasonable steps to comply with such a request so far as this is compatible with the proper conduct of inquiry and does not result in undue delay in returning ⁴¹³ the aircraft to service where it is practicable."

The State where the aircraft was manufactured plays an important role in accident inquiries. Persons with intimate knowledge of the performance of aircraft can assist to determine the cause of the malfunction of the aircraft. Due to the technical complexity of modern aircraft, the task of determining the causes of accident becomes difficult. Thus, the most effective contribution of the State of manufacture would be to participate actually in the investigation.

There are opposing views as to the free and unrestricted participation of the State of manufacture in aircraft accident investigation. However, a compromise solution was agreed upon and the following provision was adopted into Annex 13 in the form of Standard:

"The State in which the aircraft was manufactured shall be entitled to appoint an accredited representative to be present at an inquiry into an accident to a turbine-engine transport aircraft unless it is specifically indicated in the initial notification of the accident referred to 4.1 that such action is unnecessary."⁴¹⁴

It is also a recommended practice that "when the State conducting the inquiry makes a request to the State of manufacture to participate in an inquiry, such State should provide an accredited representative to attend the inquiry."⁴¹⁵

Notification of Accident

Timely and expeditious participation of accredited representatives depends upon speed of communication between the States concerned. There

was no uniform system in communication. These snags add to other problems in organizing an investigation in some countries. To facilitate communication, it was agreed that ICAO should establish a uniform communication system.

Now, an initial notification has to be sent immediately after an accident which contains only the essential information. A subsequent notification provides the further details concerning the accident and progress of investigation. ⁴¹⁶ It is now a standard that the State of manufacture be notified with the same priority as the State of registry.

Inquiry

The inquiry instituted by a State includes the investigation and obtaining and recording of all available relevant information, analysis of evidence, determination of cause, completion of the report and making of recommendation when appropriate. Whenever possible, the scene of the accident shall be visited, wreckage examined and statements taken from witnesses. The State in which the accident occurred is responsible for the conduct of the inquiry or the facilitation of its conduct by any State to which it has delegated the responsibility. ⁴¹⁷

After stating what should be included in the inquiry, it proceeds to recommend that the investigation should have procedures over any other phase of the inquiry. Any Contracting State should, on request by the State conducting the inquiry, furnish all relevant information available and shall be entitled to appoint an accredited representative. It is further recommended that participation in the inquiry should confer entitlement to visit the scene of the accident, examine wreckage, ques-

tion witnesses, have full access to relevant evidence and to provide copies of all pertinent documents and make submissions in respect to the various elements of the inquiry.⁴¹⁸

Finally, it is the responsibility of the State of registry to conduct any inquiry which might result from an accident occurring in a location which cannot be established as being in the territory of a Contracting State. The State of registry should endeavor to carry out an inquiry in cooperation with the State in which the aircraft accident occurs, but failing such cooperation should itself conduct an inquiry with such information as is available.⁴¹⁹ Nothing precludes a State conducting or participating in an aircraft accident inquiry from calling upon the best technical adviser from sources like operation, the manufacturer and the pilots.

Report

Two types of reports may be necessary - 1. Report on Inquiry; and 2. Summary of Report. The Report on Inquiry is more flexible in the preparation because of different legal procedures. In the case of Summary of Report, standardization of format and terminology is required to facilitate speed of dissemination and understanding of its contents.⁴²⁰

The Report of Inquiry provides a basis for initiating improvement for the promotion of safety in aerial navigation and aviation in general. To achieve this end, it becomes necessary to know the whole story behind the accident. The State of registry, the State of manufacture, and other participating states are also entitled to receive copy of the

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Report. The preparation of the Report is the prime responsibility of the State which institutes and conducts the inquiry. But, it is a recommended practice that such State should consult the State of registry and the State in which the aircraft was manufactured, if that State in which the aircraft was manufactured had appointed and accredited representative at the inquiry before publishing a Report or any part thereof. 422 It is a recommended practice that a State receiving a Report or any part thereof should not circulate or publish such information without the consent of the State instituting the inquiry unless the Report has been released by the State instituting the inquiry.

Where the report of an inquiry into an accident which occurs in the territory of the State of registry contains matters of exceptional interest in the promotion of aviation safety, the State should send to the International Civil Aviation Organization three copies of the Report in 423 the prescribed manner.

Problems of Implementation

When ICAO Council adopted Annex 13 in April 1951 and recommended to States that the Standards and Recommended Practices for aircraft be followed for accident inquiries in accordance with Article 26 of the Convention, some States find it difficult to follow the standards and recommended practices laid down in the Annex. 424 However, it was accepted that States may, in accordance with Article 38 of the Convention, deviate from any provision of Annex 13 in view of the varying degrees in the stages of aviation development in Contracting States, except those

required under Article 26.

- a. In accident involving death or serious injury or indicating serious technical defect in the aircraft or air navigation facilities, States are obliged to institute an inquiry if an accident occurs within their boundaries;
- b. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry; and
- c. The State holding the inquiry shall communicate the report and findings to the State of registry.

Aircraft Accident Investigation in the Philippines

When death or serious injury to persons or property resulted in an aircraft accident, a report of such accident will be made immediately by the pilot and the registered owner to the Administrator or to the nearest known inspector of the Civil Aeronautics Administration. However, when the accident causes damage to aircraft, the accident shall be reported without delay by the registered owner, operator or by the pilot to the Administrator in the form provided for the purpose.

The inspector, upon receipt of the information about the accident within his jurisdiction, will notify the appropriate person in charge of aeronautical matters and the law enforcement officers and request their aid in securing assistance to injured persons, policing the place of the accident and determining the probable cause thereof. No person is allowed to remove from the place of accident any materials nor enter

upon the place except for giving assistance to injured persons. The wreckage shall be preserved unless released by the investigator in charge of the Accident Investigation Board, or any authorized inspector of the Administration in the following cases:

1. Accident involving death or serious injury;
2. Accident involving structural failure in flight;
3. Accident involving any circumstances which indicate to the airmen involved the necessity of preserving the wreckage in order to permit a complete and full investigation.

Upon receipt of notification, the Accident Investigation Board or the members thereof proceed to the place of accident, inspect and provide for the preservation of evidence pertaining to the accident and hear testimony orally or by deposition or by affidavit duly recorded. The Administrator designates the chairman who will conduct the hearing, administer oath, issue a subpoena and a subpoena "duces tecum" and take depositions.

At the conclusion of the hearing, the Accident Investigation Board will forward its findings with testimony and other evidence to the Administrator, who shall make a report to the Civil Aeronautics Board the facts, conditions and circumstances relating to the accident and the probable cause thereof and makes recommendations as to prevent similar occurrences in the future. The Civil Aeronautics Board determines the cause of the accident.

If the accident resulted in serious or fatal injury, the Board

makes public such report and recommendations. No report of any accident or any statement made during any investigation or during the hearing relative to such accident may be admitted as evidence or used in any lawsuit or action for damage growing out of any matter within such
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report.

CHAPTER XVIII. ADJUDICATION OF APPEAL FROM SAFETY ENFORCEMENT
DECISIONS OF THE CIVIL AERONAUTICS ADMINISTRATOR

Regulations designed to ensure a high degree of safety in air transportation are the joint responsibility of the Board and the Administrator. The Board is principally concerned with the promotional aspect of air safety; whereas, the Administrator is in charge with the development and enforcement of the safety provisions of the Act and the rules and regulations affecting aviation safety.

In the performance of its function, the Administrator, among others, establishes civil airways, issues airmen's certificates, type certificate for aircraft, engine and propeller and the inspection and classification of air navigation facilities. He promulgates rules and regulations in the interest of safety in air commerce pertaining to the issuance of airmen's certificates and other rules and regulations and standards governing practices, methods and procedures. Furthermore, to assure the enforcement of the rules and regulations, he conducts investigations. Refusal to submit to the reasonable requirements of the investigation
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is punishable.

With respect to airmen's certificates, the Administrator issues, denies, cancels, or makes any certificate, permit or license pertaining
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to aircraft, airmen and air agencies. It imposes fines and/or civil
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penalties and makes compromises with respect thereto.

The Board, however, on appeal from the decision of the Administrator, reviews, revises, reverses, modifies, or affirms any decision or

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order of the Administrator on matters pertaining to -

1. Grounding of airmen and aircraft;
2. Revocation of any certificate or the denial by the Administrator of the issuance of any certificate; or
3. The imposition of civil penalty of fine in connection with violation of any provision of the Act, rules and regulations issued.

The Board determines whether it will impose, remit, mitigate, increase, or compromise such fines and civil penalties, as the case may be.

Antecedents of the Appeal Power of the Board

The power of the Board to review the decision of the Administrator on matters pertaining to the issuance of certificates to airmen and the denial, cancellation, etc. is traced back to the United States Air Commerce Act of 1926. Under Act No. 3909 promulgated by the Philippine Legislature in 1931, the Secretary of Commerce and Communication issued the rules and regulations regarding licensing of airmen and aircraft, air traffic rules, which rules and regulations should conform with those of the Air Commerce Act of 1926.

Under the United States law, the Secretary of Commerce, through the Bureau of Air Commerce, administered the regulatory and promotional activities in aviation. But, the Bureau of Air Commerce failed to administer the safety provisions of the Act as expected. It suffered from unfavorable criticisms from the public. An investigation was made and

in 1938, with the enactment of the Civil Aeronautics Act the power of the Secretary of Commerce on aviation safety was transferred to the Civil Aeronautics Authority, the Administrator and Air Safety Board, which agencies earned excellent reputation in the administration of the safety provisions of the Act.⁴³⁰

With the reorganization of the Authority in 1940, the agency was renamed the Civil Aeronautics Board. The Administrator became an administrative agent reporting directly to the President and made an official under the Department of Commerce. The Air Safety Board was abolished and its investigation function was turned over to the Civil Aeronautics Board.

The USCAB prescribed the rules and standards of safety, but the enforcement of the rules and regulations was the duty of the Administrator except that the "Board retains the power to apply the most stringent penalties for the violation of civil air regulations promulgated by the Civil Aeronautics Board such as suspension and revocation of pilot licenses, mechanics and other certificates, or denial or renewal of certificates after it has expired."⁴³¹

In the enforcement of the safety rules and regulations, the Administrator arranges examination of persons and equipment and maintains general supervision over the holders of all certificates to make certain that the original qualifications are maintained. He had the right to reprimand, to collect civil penalties and to compromise the same.⁴³² While the USCAB was stripped off the enforcement of the safety regulations,

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however, it retained the rule-making power.

But, with the enactment of the Federal Aviation Act of 1958, the Federal Aviation Agency was created and the safety rule-making functions of the Board were transferred to the new agency. Under the Act, the Administrator issues airmen's certificates in connection with aircraft and providing the terms, conditions and limitations as to direction, periodic and special examinations and test of physical fitness. In case of persons whose certificates are at the time of denial under order of suspension, or whose certificates have been revoked within one year of the date of such denial, any person whose application for the issuance or renewal of airmen's certificate is denied, may file with the Board a petition for review of the Administrator's action. The Administrator issues the order amending, modifying, suspending or revoking any type, production, airworthiness or airmen's certificates. However, any person whose certificate is affected by such an order of the Administrator may appeal such order to the Board, who after notice and hearing, may amend, modify, or reverse the order of the Administrator.

Observation and Comments

Under the Civil Aeronautics Act of the Philippines, the Administrator issues, cancels or makes any certificate, permit or license pertaining to aircraft, airmen and air agencies and to impose fines and civil penalties and make compromises with respect thereto. The Board, however, on appeal from the decision of the Administrator, may

review, revise, reverse, modify, or affirm any order or decision of the Administrator pertaining to the grounding of airmen and aircraft, revocation of any certificate or the denial by the Administrator of the issuance of any certificate or the imposition of civil penalties.

These provisions of the Act which granted the Civil Aeronautics Board the power to review, revise, reverse, modify or affirm the decision of the Administrator on specific cases, are substantially reproduced from Sections 602 and 609 of the United States Civil Aeronautics Act of 1938 and while normally, the issuance, denial, cancellation, etc. of airmen's certificates should be the function of the Civil Aeronautics Board similar to the Authority as provided in the United States Civil Aeronautics Act of 1938, Congress of the Philippines reposed such powers to the Administrator and not to the Board.

This is one aspect where Congress of the Philippines was one step ahead of the United States counterpart, for while the Civil Aeronautics Administrator acquired the power to issue, deny, cancel, etc. airmen's certificates since the promulgation of Republic Act No. 776 in 1952, the Federal Aviation Agency, the counterpart of the Philippine Civil Aeronautics Administration, acquired similar powers six years later.

CHAPTER XIX. SUMMARY AND CONCLUSION

Transportation facilities and services in the Philippines, like in other countries, influence the progressive changes in the social and economic life of the people. Air transport helps to bring out these changes not only because an airline engages in a form of business enterprise, but because it is closely linked with other forms of commercial ventures thus making it important.

For example, tourism, as an industry, relies on the availability of modern and fast-moving aircraft to facilitate the inflow and outflow of tourists coming from other countries. Domestic and foreign trade is enhanced through the expeditious flow of goods.

With the establishment of more domestic airlines and other air carriers, air travel contributes to the national income in the form of taxes. In the field of foreign relations, however, Philippine Air Lines is a valuable instrument in promoting friendly relations with other countries. It plays an important role in creating a favorable image for the country abroad.

Since its inception, air transport, both domestic and international, has gained an increasing measure of public acceptance as a modern and reliable means of transportation. In 1946, PAL carried only 120,637 domestic passengers; whereas, in 1967 it carried over 1-1/2 millions. In the international service, the same carrier lifted 114,649 passengers in 1967. This number of passengers is more than fifty times than that carried in 1946. Filipinas Orient Airways, Inc. and Air Manila, Inc. had

similar increases although in a much lesser scale.

The consistent growth in passenger and cargo carriage and the growing popularity of air travel to the riding public are attributed more to the comfort, speed, economy and safety which are not present in other means of transportation.

With the many benefits derived from air transport, control of the industry at the government level is the most effective way to ensure maximum gains through the promulgation of laws, rules and regulations which are progressive and consistent with the demand of modern air transportation.

Sources of Aviation Law

The Philippine law on commercial aviation is derived from two principal sources. - 1. Statutory legislations like the Civil Aeronautics Act of the Philippines and other aviation laws, and 2. Regulations issued by the Board pursuant to the provisions of the Act. A third source of law is judicial decisions. However, there is a dearth of jurisprudence on aviation in the Philippines due to the few cases contented in court.

The Civil Aeronautics Act, similar to other aviation laws, contains only the broad outline of the regulatory functions. Insofar as it pertains to the Board, the practical details of the law are left entirely to the agency through the promulgation of subordinate legislation. It is emphasized that these regulations are very important and necessary. The standards and procedures laid down in these regulations are the pattern of conduct to which those affected must conform. Without them,

the Board, no less than the staff and the air carrier are, in some instances, uncertain as to what course of action to follow in practical situations. And, as explained earlier, these regulations partake of the nature of substantive law and violation thereof is punishable.

It is in the area of supplementary economic regulations, however, where the Board lags behind the growth of air transportation. Much as they are needed, the regulations purporting to supplement the provisions of Republic Act No. 776 are far from adequate for the requirements of air transport. It is suggested that the Board must formulate and issue more economic regulations to supplement the provisions of the Act in the regulatory activities of the Board.

The Civil Aeronautics Act is the main source of the Board's adjudicatory and rule-making powers. Under Section 11, par. 1 thereof, a permit is required prior to engaging in air commerce. This requirement is an excellent aid in regulation. It prevents waste of resources from unnecessary duplication of facilities. ⁴³⁶ The power of the Board to amend, alter, modify, revoke, etc. an air carrier permit is a powerful weapon to assure compliance with law.

One disadvantage with certificates, however, is the selection of the carrier to be given the permit. Usually, applicants with financial backing and experience are more or less assured of getting the permit. No allowance, however, is given to potential carriers who have no chance to prove their worth before the Board. How to keep the door open to these potential carriers is a problem.

The promotion of adequate, efficient and economical air transpor-

tation at reasonable charges without unjust discrimination, undue preference or advantage is one of the immediate goals of the Board. But, to fix the just and reasonable charges for the passengers and shippers is not easy because there are different kinds of discrimination in passenger and cargo rates. The cost of the service is difficult to determine. Accurate data on demand for air transportation are difficult to secure because there is no one demand for air travel. It is necessary that statistics on both the immediate and past demands for air transportation should be known to be able to set a rate that is fair and equitable.

In the absence of accurate data, however, a trial device may be used as a temporary measure to ascertain the demand characteristics by varying the rates on a single route, noting the effect of each change and estimating the demand for service on other lines from the result.

There is no objection to the requirement of reports from air carriers. As long as no question of public policy arises from combinations entered into between air carriers, it is desirable that the Board be informed of any change at least once a year, if not more often. Audit examination of property and investigation to see what accounts are kept is much more desired. The need for such audit is explained in Chapter XIV of this Study.

The Board has not been confronted with problems involving merger, consolidation and acquisition of control between air carriers. Nevertheless, petitions for merger, consolidation, etc. should be approved if those are in the public interest. Moreover, the Act does not pro-

vide for the regulation of air carrier securities. In the public interest, the regulation of issuance of airline securities should be a function of the Board to ensure honest and prudent spending on the part of the airlines and to guard against the evils of overcapitalization.

Provisions of Republic Act No. 776

Like some aeronautical statutes, the Civil Aeronautics Act is not without imperfections. Some of the provisions are improperly worded, the meanings are vague and a literal interpretation of the clear language sometimes leads to absurdities, or fails to convey the true intention of Congress.

For example, the last sentence of Section 10(C)(1) of the Act unduly restricts the power of the President over foreign air carrier permit. The sentence reads: "Provided, however, That, in case of foreign air carriers, the permit shall be issued with the approval of the President." (Underscoring supplied). To restrict the President's power over air carriers of foreign countries operating to the Philippines is not the intention of Congress. This sentence should be amended to read: "Provided, however, That, in case of foreign air carriers, the issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions and limitations in the permit, shall be approved by the President." The reason for the proposed amendment is explained in Chapter XII of this Study.

Section 10(C)(4) of the Act should also be amended in the public interest. While the Board has the authority to approve or disapprove

increase of airline capital, it has no power to control capital reduction of airlines. Moreover, while the Board authorizes the sale of equipment, it does not regulate equipment purchases. The power of the Board over sale of equipment is much less important than the power to authorize equipment purchases because the latter is one way of effectively safeguarding overcapitalization, overcapacity and undue competition in the industry. To maintain a balanced air carrier competition, the Board should control equipment purchases and capital decreases of air carriers.

"The Board may review, revise, reverse, modify or affirm any administrative decision or order of the Administrator on matters pertaining to grounding of airmen and aircraft, or revocation or denial of any certificate by the Administrator and the penalty imposed or fine in connection with violation of any provision of the Act, rules and regulations issued.⁴³⁷"

The Administrator is the Vice-Chairman of the Board and in some instances acts as Chairman in the absence of the latter. Now, is it not possible that the Administrator, in case of appeal from his decision to the Board, can exercise influence, or play a leading role in revising, reviewing, reversing, modifying or affirming his own decision?

Under Section 32(11) of the Act, "the Administrator investigates aircraft accident and reports to the Board the facts, conditions and circumstances relating to the accident and the probable cause thereof x x x." This provision contemplates of a situation where the power of investigation lies with the Board. The Administrator has been delegated

the function of investigating aircraft accidents because he has the facilities and reports to the Board the facts, conditions and circumstances and the probable cause of the accident without, however, determining the cause of the accident. The Board determines the cause of the accident.

In the case of the Board, while the Administrator conducts the investigation and makes the report containing the facts, conditions and circumstances and probable cause of the accident, the Board lacks the expertise and technically trained personnel in accident investigation to determine whether the investigation is properly conducted, or the findings are based on actual facts leading to the determination of the probable cause. More often than not, the Board supports the findings of the Aircraft Accident Investigation Board without much discussion for obvious reasons.

With aircraft accident investigation, there are two alternative courses of action. - 1. Either transfer the function of aircraft accident investigation to the Board, together with the facilities and personnel of the Aircraft Accident Investigation Board, or 2. To maintain the present system without the need of the report to the Board.

Section 44 of the Act is partly an illegal exercise of a power which does not properly pertain to the Board. The pertinent portion of the provision of the Act reads: "The Civil Aeronautics Board may enter into a compromise with respect to any penalty or fine imposed by virtue of the provisions of the Act." (Underscoring supplied.)

Sections 42 and 43 of the Act contain an enumeration of the various

offenses, both civil and criminal, with the corresponding penalties. Under the law, the Board is empowered to compromise both types of penalties. But, is it not an established principle in criminal law that criminal offenses are in the nature of crimes committed against the State and, therefore, are not subject to compromise by the courts, much more of the Board? The power of the Board to compromise criminal penalties is, in the view of the writer, beyond the purview of its regulatory power. This provision should be reworded to state in clear terms that the authority of the Board to compromise penalties does not apply to criminal offenses.

Section 49, par. 2 of the Act is another provision with a vague meaning. Interpreted literally, it fails to convey the real intention of Congress. "Any ruling, order, decision or award of the Civil Aeronautics Board, except such ruling, order, decision or award with respect to the issuance of a permit may be reviewed by the Supreme Court." (Underscoring supplied).

The word "permit" in the above-cited provision of the Act is used in a general sense to include both domestic and foreign air carrier permits. Nowhere in the immediately preceding provisions can it be inferred that the word "permit" under Section 49, par. 2 relates exclusively to foreign air carriers. Properly, this provision should read: "Any ruling, order, decision or award of the Civil Aeronautics Board, except such ruling, order, decision or award with respect to foreign air carrier permit, may be reviewed by the Supreme Court." so as not to deprive the highest tribunal of the inherent power to review the decisions of lower

courts and quasi-judicial bodies.

In this Study, the writer has endeavored to explore the law on commercial aviation and practices of the Board where possible improvements can be introduced. The recommendations in this dissertation are not exhaustive of all changes that can be made along the line of government regulation of air transport. Much more is desired to keep pace with the developments in the industry.

However, the writer has pointed out in this Study the major problem areas in the legal and practical aspects of government regulation which require immediate solution to make the Civil Aeronautics Act more effective and the Civil Aeronautics Board more powerful in the performance of its functions.

- End -

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- 3 See Dorman, 50 Years Fly Past 18 (1951) p. 18. Citing City Daily Mail (New York, December 18, 1903).
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- 7 Gurney, G., A Chronology of World Aviation (New York, 1965) p. 21
- 8 Op. cit. supra note 4 at 2.
- 9 Horvat, W., Above the Pacific (California, 1966) p. 29
- 10 Op. cit. supra note 4 at 2.
- 11 The Philippine Militia was established in 1917 under Legislative Act No. 2715 to help the United States in the great war. Malcolm, G and Kalaw, T., Philippine Government (New York, 1923) p. 83.
- 12 Op. cit. supra note 4 at 2.
- 13 The Philippine Constabulary was organized in 1901 for the purpose of capturing the outlaws and the rebels. Malcolm and Kalaw, op. cit.
- 14 Op. cit. supra note 4 at 3.
- 15 Morante, op. cit. p. 3.
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- 19 Morante, op. cit. p. 6.
- 20 Morante, op. cit. p. 6.
- 21 Op. cit. supra note 4 at 5.
- 22 The organizers of the Philippine Aerial Taxi Company were: Joseph Stevenot, William Shaw, L. Weingheimer, Andres Soriano, Tirso Lizarriaga, K. Gronke, Max Keimer, E.N. Badrach, Vicente Madrigal, John H. Marsman, N.E. Muller, R.K. Lockwood and Angel Elizalde. Bachrach was the first President of PATCO. Morante, op. cit. p. 8.
- 23 PATCO was granted a franchise on November 29, 1936 (Commonwealth Act No. 221). Op. cit. supra note 4 at 5.
- 24 Op. cit. supra note 4 at 5.
- 25 Morante, op. cit. p. 12.
- 26 Op. cit. supra note 4 at 6.
- 27 Morante, op. cit. p. 13.
- 28 Legislative Act No. 4249 granted Pan American World Airways a franchise to maintain and operate air service between the Philippines and the United States. PANAM inaugurated a regular weekly service between Manila and San Francisco on October 21, 1936. See Gurney, op. cit. 59.
- 29 Captain Edwin Musick and a crew of eight died on board the Samoan Clipper while on flight from Honolulu to New Zealand on July 11, 1938. See Horvat, op. cit. p. 39.
- 30 Morante, op. cit. p. 11.
- 31 Op. cit. supra note 4 at 7.
- 32 Morante, op. cit. p. 16
- 33 Op. cit. supra note 4 at 7.
- 34 Op. cit. supra note 4 at 7.
- 35 Daza, Francisco Ma., "Airline Competition" Weekly Nation (Manila, March 21, 1966) p. 33.

CHAPTER II.

- 36 A letter of authority was granted by the Department of National Defense to Commercial Air Lines, Inc. on September 15, 1947 to operate international non-scheduled air transportation.
- 37 Daza, op. cit. supra note 35.
- 38 Op. cit. supra note 4 at 11.
- 39 Op. cit. supra note 4 at 14.
- 40 Op. cit. supra note 4 at 14.
- 41 Philippine Air Lines, Annual Report (1967).
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- 45 Op. cit. supra note 4 at 13.
- 46 Op. cit. supra note 4 at 13.
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- 48 Philippine Air Lines, Annual Report (1963).
- 49 The DC-8F "Mabuhay" was replaced by a DC-8 Series 50 named "Ylang-Ylang" in 1967. Op. cit. supra note 4 at 15.
- 50 Op. cit. supra note 4 at 17.
- 51 Philippine Air Lines' records of Operation and Equipment on file with the Civil Aeronautics Board and received on October 17, 1968.

CHAPTER III.

- 52 Republic Act No. 4147 dated October 20, 1964 authorized Filipinas Orient Airways, Inc. to establish and maintain air transport service between any and all points in the Philippines and other countries.

- 53 Civil Aeronautics Board Resolution dated March 4, 1965.
- 54 Civil Aeronautics Board Resolution dated January 8, 1968.
- 55 Republic Act No. 4501 approved on June 19, 1965 granted Air Manila, Inc. a franchise to establish and maintain air transport service between the Philippines and other countries.
- 56 Air Manila's record of Operation and Equipment on file with the Civil Aeronautics Board and received on October 17, 1968.
- 57 The Letter of Authority of Pacific Airways Corporation approved by the President on April 21, 1947 was for one year only. The Board granted PAC an air commerce permit on May 14, 1948. Civil Aeronautics Resolution dated May 14, 1948.
- 58 The Certificate of Public Convenience and Necessity granted to Security Delivery Service is for five years from October 31, 1962. Civil Aeronautics Board Resolution dated October 31, 1962.
- 59 The Certificate of Public Convenience and Necessity issued by the Board to Manila Aviation Service is for a period of ten years. Civil Aeronautics Board Resolution dated September 29, 1958.
- 60 The Certificate of Public Convenience and Necessity issued to Arsenio P. Camposagrado was for a period of five years. Civil Aeronautics Board Resolution dated May 10, 1967.
- 61 The Certificate of Public Convenience and Necessity issued to Southern Air Lines is for a period of 10 years. Civil Aeronautics Board Resolution dated May 15, 1962.
- 62 The Certificate of Public Convenience and Necessity issued to Southern Aviation Corporation is for a period of five years. Civil Aeronautics Board Resolution dated April 29, 1965.
- 63 Civil Aeronautics Board Resolution dated August 7, 1967.

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- 75 Tipton, S.G., Regulation of Air Transportation, State, Federal, Local Including Taxation, its Prospects and Problem and Prospects of Aviation, directed by Leverett Lyon and Lewis Sorrel, Chicago Association of Commerce (1945) p. 173.

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- 76 Richmond, Regulation and Competition in Air Transportation. Columbia Univ. Press (1961), p. 11.
- 77 Wheatcroft, S., Air Transport Policy (London, 1964) p. 4.
- 78 Saljooqi, Air Transport Regulation; An Analytical Approach with Selected Countries Including Afghanistan. Thesis, Institute of Air and Space Law, Montreal (1967) p. 3.
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- 80 Richmond, op. cit. pp. 25-28.
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- 82 Richmond, op. cit. p. 28.
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- 84 See Infra pp. 165-177.
- 85 See Infra Chapter II - United Kingdom.
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- 100 Saljooqi, op. cit. 15.

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- 101 The Philippines; Handbook of Economic Facts and General Information. Published by the Research and Information Division, Department of Commerce and Industry, Manila (1966) p. 9.
- 102 Ibid. p. 10.
- 103 Former Chief Justice of Philippine Supreme Court Cesar Bengzon is a judge in the International Court of Justice.
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- 105 Op. cit. supra note 101 at 83.
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- 107 Op. cit. supra note 101 at 85.

CHAPTER VII.

- 108 The United States Civil Aeronautics Board is charged with the economic regulation and control of air transportation with rule-making and accident investigatory functions of the Air Safety Board. All functions, powers and duties of the USCAB with regards to aircraft accident investigation were transferred on October 15, 1966 to the Department of Transportation. See: Calkins, N.G. "The Role of the CAB in the Grant of Operating Rights to Foreign Air Carriers." 22 Journal of Air Law and Commerce (1955) p. 181.
- 109 The Air Transport Committee has the functions similar to the United States Civil Aeronautics Board. See: Vary, Sources and Problems of Air Law in Canada. Thesis, Institute of Air and Space Law, Montreal, p. 85.
- 110 In matters of rule-making or adjudication, the USCAB is in any way responsible to the Department of Commerce or the Executive Branch. See: Durfie, J., Chairman, USCAB; Subcommittee Hearing on Aviation, 85th Congress, May 22 and 23 (1958) on S.3880.
- 111 Revised Rules of Court in the Philippines, Rule 45, Sec. 1.
- 112 The decision of the USCAB, except those with respect to any foreign air carrier subject to the approval of the President, is reviewable by the courts of appeal of the United States and the US Court of Appeals for the District of Columbia. 72 Stat. 795, 49 USC 1486.

- 113 A final decision of the Canadian Transport Commission with respect to an application for a license under the Aeronautics Act to operate commercial services may be appealed to the Minister of Transport. Any license or certificate of public convenience and necessity, which is suspended, cancelled or amended by the Commission may be appealed to the Minister, who shall certify his opinion to the Commission. National Transportation Act, 14-15-16 Eliz. II, Sec. 18(1)(2).
- 114 The decision of the Air Transport Licensing Board is appealable to the Minister (now President of the Board of Trade), who appoints a Commissioner to hear each appeal. See: Civil Aviation (Licensing) Regulations 1964, S.I. 1964, No. 1116, Sec. 14 (1)(6).
- 115 RA 776, Sec. 49, par. 3.
- 116 The USCAB submits annual report to Congress and transmits recommendations as to legislation. 72 Stat. 744, 49 USC 1325.
- 117 The Air Transport Licensing Board is an administrative tribunal. See Lopez-Gutierrez, Government Control of Airlines in Western Europe; A Study in Comparative Administrative Law. Thesis, IASL, (1965) p. 116.
- 118 RA 776, Sec. 9.
- 119 Whenever public convenience or interest of the parties may be promoted, or delay or expense may be prevented, the USCAB may hold hearings or any proceedings at any other place. 72 Stat. 741, 49 USC 1321.
- 120 Hearings of Air Transport Committee are held at a place most convenient or area closest to the proposed or existing air bases. Vary, op. cit. p. 101.
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- 122 Federal Aviation Act 1958, Sec. 202(c).
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130 Ibid. Sec. 5, par. 2.

131 Ibid. Sec. 6.

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135 Ibid. Sec. 201 (c).

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Sec. 2.

137 Wheatcroft, S. Air Transport Policy, London (1964) p. 132.

138 Op. cit. supra note 136 at Sec. 2.

139 Op. cit. supra note 136 at Sec. 5.

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141 National Transportation Act, Sec. 17(1), 14-15-16 Eliz. Chapt. 69,
Part I, Sec. 4, p. 609.

142 Ibid. Sec. 6.

143 Ibid. Sec. 2(8).

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Journal of Air Law and Commerce (1954) p. 431.

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- 157 Ibid. pp. 89-90.
- 158 Federal Aviation Act 1958, Sec. 201(a)(2).
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- 161 Civil Aviation (Licensing) Act 1960, Schedule, Sec. 1.
- 162 Ibid. Sec. 5.

CHAPTER IX.

- 163 72 Stat. 740, 49 USC 1302.
- 164 Air Transport Licensing Board, Third Annual Report (1962-1963) p. 11.
- 165 RA 776, Sec. 4.

- 166 Caves, R., Air Transport and Its Regulators; An Industry Study. Harvard Univ. Press, Mass. (1962) p. 127.
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- 169 Barry, B.M., "The Use and Abuse of Public Interest," ibid. pp. 191-217.
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- 173 Cooley, Constitutional Limitations, p. 746.
- 174 Chas Wolff Packing Company v. Court of Industrial Relations of the State of Kansas, 43 S.Ct. 630, 633; 262 US 522, 67 L. ed. 1108.
- 175 Alaska Island Airline, Petersburg Air Service, 9 CAB 16.
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- 177 Northwest Airlines, et. al., North Atlantic Routes, 4 CAB 325.
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- 179 See Frank Ellis, Canada's Flying Heritage, p. 369.
- 180 In the United Kingdom, there is no provision in the legislation regarding "public interest" as a primary aim in the Board's policy to further the development of British aviation. It is inconceivable that British aviation could be successfully developed against the Board's current of public interest. ATIB, Third Annual Report, March 1963.
- 181 In Germany, public interest is endangered if the existing enterprise declare their reactions to establish new lines. The law favors those already in the business. Fielitz, Mieir and Montigel, Personenbefoerderungsgesetz, Sec. 13 note 36 (1961).

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c. PUR, p. 436.
- 183 Canton & East Liverpool Co. v. Public Utilities Commission of
Ohio, 123 Ohio State 127, 174, N.E. 224 (1931), c. PUR
- 184 National Airlines, Duluth-Twin Cities Operations, 1 CAA 73.
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- 186 New-York-San Francisco, Non-Stop, Reopened, 35 CAB 504.
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1 CAA 612.
- 188 See Statement of the Executive Director, Civil Aeronautics Board,
Paper on Proposed Civil Aviation Policy 1963.
- 189 Speech of President Ferdinand E. Marcos of the Philippines, 23rd.
Annual General Meeting, International Air Transport Association,
Manila, December 4, 1967. Reprinted in the Philippine Aviation
and Travel Magazine, Vol. VII, No. 111, 1968.
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CHAPTER X.

- 191 The license of domestic air carriers is called "Air Service Li-
cense" in the United Kingdom (Civil Aviation (Licensing) Act
1960, Sec. 2(1); "License" in Canada; "Certificate of Public
Convenience and Necessity" in the United States. Federal Avia-
tion Act 1958, Title IV, p. 18.
- 192 Landis, Report on Regulatory Agencies to the President Elect,
1941 (1960).
- 193 "Trunkline" is one where the airport served is one of the princi-
pal commercial centers of the Philippines and is intended for use
of medium range jets, the greater capacity and the speed of which
will best serve the transportation needs between principal centers
of commerce, trade and population. Civil Aeronautics Administration,
Philippine Airports and Airways Development Program, 1966-1970.
(September 1966.) p. 27.
- 194 "Secondary Route" is one which serve the principal towns and ci-
ties with regular traffic densities that warrant the operation
of prop-jet aircraft. Ibid. p. 33.

- 195 "Feeder Route" is one where the airport served towns with limited passenger traffic and are intended for use by piston aircraft, the range and capacity of which are suitable for the kind of service. Ibid. p. 53.
- 196 Administrative Order No. 1. s. 1960, Sec. 7.
- In Canada, the applicant writes a letter to the Chief of the Licensing Division of the Air Transport Board (now Air Transport Committee). Vary, op. cit. p. 98.
- In the United States, request for air transportation may originate from the air carrier (49 USCA, Sec. 137(b), community (49 USCA Sec. 137(g), or the Board may originate the request itself (49 USCA Sec. 1482 (b)).
- 197 In the United Kingdom, particulars of application for air service license are contained in Regulation 4(1)(a-k), Civil Aviation (Licensing) Regulations 1964.
- In the United States, particulars of the application are contained in the USCAB Economic Regulations, Part 201.
- 198 "Proof of Service" may be a certificate of mailing executed by the person mailing the document or an acknowledgment, or a certificate of the person making personal service. Op. cit. supra note 196 at Sec. 5(2).
- In the United Kingdom, persons to be furnished copies of the application are (1) applicant, if any; (2) Other persons who are holders of a license to which it relates; (3) Anybody which the Board are by Regulation (8)(1) to consult with respect of the application or proposal. Civil Aviation (Licensing) Regulations 1964, Regulation 8(1).
- 199 In the United Kingdom, particulars of the application are published in the official record indicating the substance thereof and make copies available at the office for inspection by any person at any particular time. Civil Aviation (Licensing) Regulations 1964, Regulation 4(8).
- In Canada, application for a license is advertised in newspapers in the area to be served by the applicant. Vary, op. cit. p. 99.
- 200 In the United Kingdom, publication may be dispensed with in case of license other than Class A or E if for reason of emergency, it is desirable to do so. Regulations 4(8).

201 RA 776, Sec. 16.

In the United Kingdom, any objection or representations relating to application x x x shall be made in writing signed by or on behalf of the person making it x x x served on the Board. Regulations 7(1).

202 In Canada, the application is referred to the Licensing and Inspection Division, Traffic and Economics and Accounting Branch. Vary, op. cit. p. 99.

203 Administrative Order No. 1. s. 1960, Sec. 10.

204 In Canada, an application may be decided by the Board with or without hearing, except when there is intervention. An application for Class 5 (Contract Air Carrier), Class 6 (Flying Clubs), or Class 7 (Specialty Air Carrier) license does not require hearing. Class 1 (Scheduled Air Carrier) always require hearing. In the case of Class 3 (Irregular Specific Point Carrier) and Class 4 (Charter) license, hearing is conducted by the hearing examiner. Vary, op. cit. pp. 100-101.

205 In the United Kingdom, every Board hearing is held in public unless, unless it is otherwise decided in relation to the whole or part of the particular case. Regulation 11(2)

206 In the United Kingdom, aside from applicant, the following have a right to be heard at a meeting to consider the grant x x x of any license: (1) Holder of air service or airdrome license; (2) Persons whose business includes performance of business of carriage of passengers, mail or cargo for reward by rails, or by sea and whose principal place of business is in the United Kingdom or any of the Channel Islands or of the Isle of Man; (3) Holder of road service license authorizing services of express carriage; (4) Holder of A and B licenses; (5) Government departments or Minister of the Crown, including Department or Minister of the Government of Northern Ireland, but not including Minister of Aviation. Regulation 10.

In the United States, the parties to the formal proceedings are: (1) The carrier applicant seeking new or expanded authority; (2) Civic interests, either as applicant or intervenors; (3) Incumbent air carriers or intervenors concerned with preventing an authorization competitive with them, (4) Bureau counsel. Jones, Licensing of Domestic Airlines by the USCAB, (September 1962) p. 60.

In Canada, representative or agent of any province or municipal

government or any association or body representing the interest of the shipper or consignees may also appear to be heard in person at a Committee hearing. National Transportation Act, Sec.(17)(5).

- 207 In Canada, any person may intervene in a case when the grant of a license will prejudice his interest by writing to the Board of his intention to intervene. Vary, op. cit. p. 96.
- 208 Administrative Order No. 1, s. 1960, Sec. 19(d).
- 209 Ibid. Sec. 22 (a - e).
- 210 Ibid. Sec. 23
- 211 Ibid. Sec. 25
- 212 Ibid. Sec. 26
- 213 For similar provisions in the United States Civil Aeronautics Board, see Rules of Practice in Economic Proceedings 23(a), 314 CFR Sec. 302.
- 214 In the United States, pre-hearing is accomplished by a notice of the Chief Hearing Examiner setting forth time and place of the conference and identity of presiding officer. Ibid.
- 215 In the United States, the hearing examiner prepares two reports.-- (1) Confidential report to the Board describing various applications, recommendation and a draft of the order disposing of the matter and defining the scope of the proceeding with presumptive finality; and (2) Public report containing assumptions and conclusions of the hearing examiner. Rules of Practice 23(b).
- 216 Administrative Order No. 1, s. 1960, Sec. 28.
- 217 In the United Kingdom, all proceedings at a hearing in connection with any license shall be recorded by shorthand writer, or if the Board thinks fit, by some other means and if any person so demands at anytime after publication of the decision in the Board's official records, the Board shall cause a transcript of the records to be made available for purchase at a reasonable price. Regulation 10(13)
- 218 Administrative Order No. 1, s. 1960, Sec. 29.

In the United States, oral arguments are extremely rare. It may

be permitted at the conclusion of the hearing by the hearing examiner subject to the time limit he may impose. Rules of Practice 25(b).

- 219 In the United States, the examiner makes an initial decision, copies thereof served to the parties and given ten days to file exception. Rules of Practice 30.
- 220 Administrative Order No. 1, s. 1960, Sec. 31(a)(3).
- 221 In the United States, if no exception is filed within ten days and if the Board within the next twenty days takes no action to review the initial decision, such initial decision becomes the order of the Board. Rules of Practice 27(c).
- 222 In the United States, the tentative decision of the Board is embodied in a press release for public disclosure. Jones, op. cit. p. 69.
- 223 Administrative Order No. 1, s. 1960, Secs. 35 and 36.
- 224 In the United States, parties have twenty days within which to petition for reconsideration, rehearing or argument from the Board's opinion. Rules of Practice 37(a).
- 225 No permit may be transferred unless it is approved by the Board as being consistent with public interest. Federal Aviation Act 1958, Sec. 40(h).

In Canada, licenses issued to air carriers are not negotiable. Vary, op. cit. p. 104.

- 226 In the United Kingdom, if the holder of a license dies, the license is treated from the time of death as if it has been granted to his legal personal representatives. In case of reconstruction or amalgamation of body corporate, the license shall be considered from the date of transfer of sale of the whole or part of the business as if it has been granted to that other body corporate. Civil Aviation(Licensing) Act 1960, Sec. 16(1)(a)(b).
- 227 In the United Kingdom, the conditions imposed on the permit are embodied under Regulation 12(a-o), Civil Aviation (Licensing) Regulations 1964.

In the United States, the terms and conditions of the permit issued by the Board are contained in the Federal Aviation Act 1958, Section 401(e).

In Canada, the power to impose conditions and limitations in the permit are contained under Section 15(b) of the Aeronautics Act of 1952.

- 228 For revocation of licenses in the United Kingdom, see Section 3, Civil Aviation(Licensing)Act 1960.

In Canada, the Board x x x may suspend, cancell or amend any li-
cense or any part thereof when public interest and convenience so
requires. Aeronautics Act 1952, Sec.15(8).

In the United States, similar provision to that of the Philippine
law appears under Section 401(g), Federal Aviation Act 1958.

- 229 As to effectivity and duration of permits issued by the United
States Civil Aeronautics Board, see Section 401(e), Federal Avia-
tion Act 1958.

- 230 Administrative Order No. 1, s. 1960, Section 60.

- 231 Ibid. Sec. 62.

- 232 Ibid. Sec. 64.

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- 234 Gundry v. Penniger (1852), 1 De G.M. & G. 502, 505.

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229 US 304, 318 (1936).

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- 237 Calkins, N., "Acquisition of Operating Authority by Foreign Air
Carriers: The Role of the CAB, the White House and State Depart-
ment," 31 Journal of Air Law and Commerce (1965) p. 66.

- 238 233 US 103.

- 239 Calkins, N., "The Role of the CAB in the Grant of Operating Rights
to Foreign Air Carriers" 22 Journal of Air Law and Commerce (1955)
p. 629.

- 240 In the United Kingdom, the President of the Board of Trade, who
is the head of an executive department, issues licenses to fo-
reign airlines, not the Air Transport Licensing Board. See
Air Navigation Order 1966, Article 72.

In Canada, the executive department and not the Air Transport Committee controls all aspects of the licensing of foreign air services, but by Section 18 of the Aeronautics Act 1952, the power conferred upon it are to be exercised subject to any international agreement to which Canada is a party. In case of scheduled air service, before issuing the license, the Board submits the application to the Cabinet for approval.

- 240 Philippine Constitution, Article IV, Sec. 1. See Sinco, V., Philippine Constitutional Law, Manila (1960).
- 241 "Partnership" is a voluntary contract between two or more persons to place their money, effects, labor or skill or some or all of them, in lawful commerce or business with the understanding that there shall be lawful sharing of profit and losses between them. Storey, Partnership, Sec. 2; Cooley, Partnership, Sec. 2; Black's Law Dictionary, 4th ed. 1951, p. 1277.
- 242 "Corporation" is an artificial person or legal entity created by or under authority of the laws of a state or nation composed in some rare instances of a single person and his successor, being the instrument of a particular office, but ordinarily consisting of an association of numerous individual, who subsist as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of each several members and which is by the same authority, with the capacity of continuous succession, irrespective of changes in membership, either in perpetuity or for a limited term of years and of acting as a unit or single individual in matters relating to common purpose within the scope of the power and authorities conferred upon such bodies by law. Dartmouth College v. Woodward Coal Co., 4 Wheat, 518, 636, 657, 4 L.ed. 629.
- "Association is the act of a number of persons in uniting together for some special purpose or business. The persons so joining. It is a word of vague meaning used to indicate a collection of persons who have joined together for a certain object. US v. Martindale, DC Kansas 146, 7280, 284; W.R. Roach & Co. v. Harding, 348 Ill. 454, 181, N.E. 331, 336.)
- 243 "Public Utility" is a business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need such as electricity, gas, water, transportation or telephone or telegraph service. Gulf State Utilities Co. v. State, Tex. Civ. App. 465 W. 2nd 1018, 1021.

- 244 Agreement between the Republic of the Philippines and the United States of America Concerning Trade and Related Matters During a Transitional Period Following the Institution of Independence signed at Manila on July 5, 1946, revised, Article VI, Sec. 3.
- 245 Ibid.
- 246 Federal Aviation Act 1958, Sec. 101(13).
- 247 Air Regulations 1960, Sec. 204 (1)(a).
- 248 Ibid., Sec. 204(2)(a, b, c, d).
- 249 Civil Aviation (Licensing) Act 1960, Sec. 2(7).
- 250 Civil Aeronautics Law of Japan, Article 100.
- 251 Indian Aircraft (4th Amendment) Rule, 1965, Schedule XI, par. 1.
- 252 52 Stat. 1005, Civil Aeronautics Act of 1938, as amended.
- 253 Civil Aviation (Licensing) Act 1960, Sec. 1(3). For flights exempted from the requirements of air service license, see Sec. 3(1), Civil Aviation (Licensing) Regulations 1964, S.I. 1964, No. 1116.
- 254 Aeronautics Act 1952, Chapt. 2, Part II, Sec. 13(f).
- 255 Indian Aircraft Act 1934 (Act No. XXII), Sec. 13.
- 256 See Faulker, D., Introduction to Administrative Law. (London, 1964) p. 18.

CHAPTER XI.

- 257 In the United States, there is no control over fares and rates prior to the enactment of the Civil Aeronautics Act of 1938. See Thomas, Economic Regulation of Scheduled Air Transport, National and International. New York (1951) p. 118.
- 258 The Aeronautical Chamber of Commerce, the National Aeronautics Association, the Guggenheim Fund for the Promotion of Aeronautics and the American Bar Association are in agreement that regulation of fares and rates during the formative stages of air transport is not advisable. See Aviation, November 1929, p. 1065.
- 259 Legislative Act No. 3909, Sec. 15.

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- 245 Ibid.
- 246 Federal Aviation Act 1958, Sec. 101(13).
- 247 Air Regulations 1960, Sec. 204 (1)(a).
- 248 Ibid., Sec. 204(2)(a, b, c, d).
- 249 Civil Aviation (Licensing) Act 1960, Sec. 2(7).
- 250 Civil Aeronautics Law of Japan, Article 100.
- 251 Indian Aircraft (4th Amendment) Rule, 1965, Schedule XI, par. 1.
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- 254 Aeronautics Act 1952, Chapt. 2, Part II, Sec. 13(f).
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- 259 Legislative Act No. 3909, Sec. 15.

- 260 Reasonableness of rates refers to price level as too high or too low in relation to the cost of performing the service and value to customers. The standard of reasonableness changes depending on airline earning. Cherington, Airline Price Policy, A Study of Domestic Airlines Fares. Mass. (1958), pp.74, 114-115.)
- 261 Preference and the alternative prejudice occur whenever an individual or a locality receives special treatment not justified on cost basis. Ibid. p. 114.
- 262 There is discrimination when there is a difference in the charge made to two or more customers for approximately the same or contemporaneous service. Ibid. p. 114.
- 263 RA 776, Sec. 10(C)(2).
- 264 Civil Aviation (Licensing) Regulations 1964, Regulation 10.

Tariff contains the following: (1) Table of Contents; (2) Name of participating carrier; (3) Description of commodity; (4) Index of stations; (5) Explanation of reference marks used; (6) Rules governing tariff; and (7) Statement of passenger and property rates.
- 265 Markheim and Blair, "Effects of Tariff Provision Filed under the Civil Aeronautics," 15 Journal of Air Law and Commerce (1948) p. 252.
- 266 Ibid. p. 254.
- 267 Ibid. p. 258-260.
- 268 Puffer, C., Air Transportation. (Phila., 1941) pp. 372, 380.
- 269 Texas and Pacific Ry. v. Mugg and Dryden, 202 US 242 (1906).
- 270 Markheim and Blair, op. cit. p. 260.
- 271 Markheim and Blair, op. cit. p. 273.
- 272 Puffer, op. cit. 372.
- 273 United States Civil Aeronautics Board Economic Regulations, Part 221.1.
- 274 Puffer, op. cit. pp. 380, 381.
- 275 Puffer, op. cit. p. 384

- 276 Puffer, op. cit. p. 384.
- 277 Puffer, op. cit. p. 385.
- 278 Puffer, op. cit. p. 385.
- 279 In the United States, every air carrier and foreign air carrier shall file with the Board and print and keep open to public inspection tariffs showing all rates, fares and charges x x x and showing x x x all classifications, rules, regulations, practices and services in connection with such transportation. 72 Stat. 758, 49 USC 1373.
- 280 In Canada, the Air Transport Board (now Air Transport Committee under the Canadian Transport Commission), subject to the approval of the Governor in Council, may make regulations requiring applicant to furnish information as to the nature of proposed tariff or tolls, prescribing the form and providing for disallowance or suspension x x x and the substitution of a tariff or toll satisfactory to the Board or the prescription of other tariffs or tolls in lieu of the tariff or toll so disallowed. Civil Aeronautics Act 1952, Sec. 13 (g-j).
- 281 In the United Kingdom, every air service license shall include a provision with respect to tariff or provision specifying the manner in which the tariff is to be determined and confirmed by the Minister. Civil Aviation (Licensing) Act 1960, Sec. 2(5)(a)(b).
- 282 RA 776, Sec. 10(A)(B).
- 283 Federal Aviation Act 1958, Sec. 403(a)(b)(c).
- 284 Ibid. Sec. 1002(d).
- 285 Aeronautics Act 1952, Sec. 13(i).
- 286 RA 776, Sec. 42(D).
- 287 Pan American Ferry Flight Case, 18 CAB pp. 216, 217.
- 288 Under the Federal Aviation Act of 1958, there are three categories of persons authorized free and reduced rate transportation. See USCAB Economic Regulations, Part 223.2.
- 289 In the United States, the Board has directed free and reduced rate to air carrier inspectors, airways communicator and air traffic

controllers (USCAB Economic Regulations, Part 221.), communications supervisors, members of Congressional Committee investigating safety of air transport (CAB Order No. 954, March 20, 1941.)

In Canada, air carriers may provide free transportation to personnel of the Department of Transport (Air Carrier Inspector, Meteorological Forecasters and Assistants, Air Traffic Controllers, Radio Aviation Operators) for purposes of carrying out their duties when authorized by the Department of Transport. Air Transport Committee, Rule 8/57.

- 290 In the United States, from 1939-1943, the rate level of trunkline passenger revenue per passenger mile ranged from \$.04 to \$.06. Most airline fare per non-stop mile in 1940 ranged from \$.05 to \$.065. Gills and Bates, Airline Competition, Boston (1949), pp. 447, 448.
- 291 In the United States, from 1946-1949, all big carriers adopted a base rate of \$.046 in 1947. This was increased to \$.051 per seat mile. Losses continued and rate was increased again to \$.056 per seat mile. Ibid. p. 459.
- 292 In the United States, most large carriers at the end of 1957 had a basic fare level in the vicinity of \$.0618 passenger mile plus \$1.00. Cherington, op. cit. p. 145.
- 293 The USCAB has no power to fix rates for international air carriers. It has indirect control over international rate-making by giving it power to disapprove any rate which may be adverse to public interest. Federal Aviation Act 1958, Sec. 412(a).
- 294 UK-PI Air Agreement (January 7, 1948), Art. 9, pars. 1-4.
- 295 PI-Pakistan Air Agreement, Art. VI, Secs. A-E.
- 296 PI-Israel Air Agreement, Art. VII, Secs. 1-5.
- 297 PI-India Air Agreement, Art. VI, A-C.
- 298 PI-Spain Air Agreement, Annex, Secs. g-i.
- 299 PI-Switzerland Air Agreement, Art. 4.
- 300 The Philippines has bilateral air agreement with the following countries: Australia (Provisional), January 30, 1950; Belgium (Provisional), January 27, 1959; Burma (Provisional), February 14, 1952; Nationalist China (Provisional), October 23, 1950;

Denmark (Provisional), August 18, 1954; India, October 20, 1949; France (Provisional), August 6, 1954; Greece, October 8, 1949; Israel, August 7, 1951; Japan (Provisional), March 2, 1959; Mexico, November 21, 1952; Netherlands (Provisional), March 15, 1952; Norway (Provisional), August 18, 1954; Pakistan, July 16, 1949; Spain, October 6, 1951; Sweden (Provisional), August 18, 1954; Switzerland, March 8, 1952; Thailand, April 27, 1953; United Kingdom, January 31, 1955.

- 301 Villamin, M., Executive Agreements on Air Transport and Their Recognition under the Aeronautical Statutes of the United States. Thesis, Institute of Air and Space Law, McGill Univ., Montreal (1960) p. 15.
- 302 Philippine Constitution, Article VII, Sec. 10(7).
- 303 McClure, International Agreements, 1941.
- 304 RA 776, Sec. 49, par. 2.
- 305 Ibid. Sec. 10(H)(1).

In the United States, the Secretary of State x x x shall advise the Board x x x and shall consult with the x x x Board x x x concerning the negotiation of any agreement with foreign government for the establishment and development of air navigation including air routes and services. 72 Stat. 783, 49 USC 1462.

- 306 Ibid. Sec. 10(H)(2).

Similar provision is found in the Federal Aviation Act of 1958. See Sec. 1102.

- 307 In the United States, the Secretary of State is empowered to perform such duties x x x as may be enjoined or entrusted to him by the President relative to negotiation with public ministers from foreign states or to such other matters respecting the foreign affairs as the President of the United States shall assign to the Department. See Sec. 156 of Title V, US Code.

In the United Kingdom, the Foreign Office is the treaty maker and the Ministry of Aviation is the department responsible for civil aviation negotiation. Jack, P., "Bilateral Agreement," Reprinted from the Journal of Aeronautical Society, Vol. 69, No. 655, July 1965.

In Canada, normally, the Chairman of the Air Transport Committee is the head of the negotiating panel. Representative from the External Affairs Department are observers.

- 308 See Statement made in the course of Legislative History of the Act, Hearing on H.R. 9738 before H. Committee on Interstate and Foreign Commerce, 75th Congress, 3rd. Session at 36-40, 147-148.
- 309 Lissitzyn, O., "The Legal Status of Executive Agreement on Air Transportation," 17 Journal of Air Law and Commerce (1950) p. 452.
- 310 Chicago & So. Air Lines v. Waterman SS Corporation, 333 US 103, 114 (1948)
- 311 Lissitzyn, op. cit.
- 312 In the United States, only orders, affirmative or negative, issued by the Board in respect of any foreign air carrier subject to the approval of the President are not reviewable or appealable. All other orders with respect to domestic carriers are subject to review by the court of appeals of the United States, or the United States Court of Appeals for the District of Columbia. 72 Stat. 795, 49 USC 1486.
- 313 In Canada, decisions of the Air Transport Committee (formerly Air Transport Board) are subject to appeal to the Minister of Transport. Where the Committee denies an application, suspends, cancels x x x any part thereof or issue a license different from that applied for, the decision may be appealed to the Minister. RSC 1952, c.2, Sec. 15 pars. (9)(11). Any applicant or intervenor may appeal a decision or ruling of the ATC to the Supreme Court of Canada only on question of jurisdiction, law and on both ground. Vary, op. cit. p. 94.
- 314 In the United Kingdom, the decision of the Air Transport Licensing Board with respect to any service license or any application for such license is appealable to the President of the Board of Trade. Civil Aviation (Licensing) Act 1960, Sec. 5(C). If the Minister does not accept the report of the Commissioner, he must give the reason. Civil Aviation (Licensing) Regulations 1964, Secs. 14 and 15.

CHAPTER XIII.

- 315 "Capital" have different meanings in different connections. It may mean actual property or estate (People v. Comm. of Taxes, 23 N.Y. 192); aggregate of property (Southern Packing Corp. v. State Tax Commission, 195 Miss. 864); all capital invested plus surplus or undivided profit (W.A. Gordon & Co. v. Lines, DC La., 25 F. 2nd, 894, 895); assets (Pace v. Pace Bros. Co., 91 Utah

149, 63 P. 2nd, 590, 591); money required of partners by agreement (M&C Creditor Corp. v. Pratt, 17 N.Y. State, 2nd. 240, 258, 259, 172 Miss. 695) and sum total of corporate stock (Haggard v. Lexington Utilities Co., 260 Ky 261, 84 S.W. 2nd. 84, 87.)

- 316 "Consolidation" takes place when two or more corporations are extinguished and a new one is created, taking over the assets and assuming liability of those passing out of existence. It is the unification of two or more corporations into a single new corporation having the combined capital, franchise and powers of all the constituents. Alabama Power Co. v. McNinch 68 app. DC 192, 94 Fed. 601, 611, 612; Freeman v. McNinch, 50 Ohio App. 299, 198 NE, 197, 200.
- 317 "Merger" is the fusion or absorption of one thing or right into another. It is a case where one of the subjects is of less dignity or importance than the other (Marfield v. Cincinnati, D&T Traction Co., Ill. Ohio St. 1939, 144 HE 689, 696, 40 AIR 357). In merger, one corporation absorbs the other and remain in existence while the other is dissolved. (Von Weise v. Comm. of Int. Rev. CAA Fed. 2nd., 439, 442; Alabama Power Co. v. McNinch, 94 F. ed. 601, 610, 611, 612, 68 App. DC 132.)
- 318 "Lease" is a contract in writing, under seal, whereby a person having a legal estate in hereditaments, corporeal or incorporeal, conveys a portion of his interest in another in consideration of certain annual rent or render or other recompense. It is an instrument granting exclusive possession of premises or portion thereof though the use be restricted by reservation (Barnett v. Lincoln, 162 Wash. 613, 299 P. 392, 394). It is also a consensual contract by which one person binds himself to grant temporary use of a thing or the rendering of some service to another who undertakes to pay some rent, compensation or price. Civil Code of the Philippines, Art. 1643.
- 319 "Operating Contract" is an agreement to operate the property or substantial part thereof, of any other air carrier. See Fed. Aviation Act 1958, Sec. 408.
- 320 "Control" is the power or authority to manage, direct, superintend, regulate, direct, govern, administer or oversee. State v. First State Bank of Jud, 52 ND 231, 202 NW 391, 402. To control a thing is to have the right to exercise a directing or governing influence over it (Trust Co of N.J. v. Greenwood Cemetery, 21 HJ Misc. 169, 32A 2nd. 519, 523).
- 321 "Aeronautics" is defined as the science and the art of flight. (RA 776, Sec. 2(c)). The phrase "Any person engaged in any phase of aeronautics" is broad enough to include all persons so engaged

whatever nationality and wherever they engage in such activity.
Acquisition of TAGA, SA by American Export Air, 23 CAB 220.

- 322 Kreln, "Motives of Merger" in Transportation Merger and Acquisition, ed. Nadreen Burnie, Ill. (1962), pp. 1-3.
- 323 Thomas, Economic Regulation of Scheduled Air Transport, N.Y. (1951), p. 148.
- 324 Acquisition of Marquette by TWA, 2 CAB 1, 9 (1944).
- 325 Acquisition of Island Airlines by Western Air Lines, 4 CAB 754 (1944).
- 326 Acquisition of Western Air Express, 1 CAA 739, 745 (1940).
- 327 Merger of Western Air Express with United Air Lines, 1 CAA 745.
- 328 Thomas, op. cit. pp. 149-150.
- 329 In the United States, any act of merger, consolidation, acquisition of control of one carrier by another x x x and operating contract, before they can lawfully be consummated, must be approved first by the Board. 72 Stat. 767, 49 USC 1378. Once approved, it is relieved from the operation of the Anti-Trust Laws (Fed. Aviation Act 1958, Sec. 414.)
- In Canada, every merger, consolidation, including acquisition of control or agreement for the operation of commercial air service shall have prior approval of the Commission. National Transportation Act, Chapter 69, 14-15-16 Eliz. II, Sec. 20.
- 330 Puffer, op. cit. p. 491.
- 331 Keefer, R., "Airline Interchange Agreement," 25 Journal of Air Law and Commerce (1958) pp. 55-67.
- 332 United Air Lines-Western Air Express, Interchange of Equipment, 1 CAA 727.
- 333 Donahue and Perry, "Airline Financing and Operational Problems," 23 Journal of Air Law and Commerce (1956) p. 157.
- 334 Frederick, Commercial Air Transportation, Chicago (1947) p. 412.
- 335 Adkins and Bilyou, "Development in Aircraft Equipment Financing," 13 The Business Lawyer (1958) p. 199.

- 336 Johnston, D., Legal Aspects of Aircraft Finance, Thesis, IASL, Montreal, (1961), p. 3.
- 337 Hines, "Legal Difficulties in Secured Airline Equipment Financing," 15 Journal of Air Law and Commerce (1948) p. 11.
- 338 Cole, Morley and Scott, "Corporation Financing in Great Britain," The Business Lawyer (July 1957).
- 339 RA 776, Secs. 38 and 39.

The Federal Aviation Act of 1958 provided for the maintenance by the Administrator of a system of recording conveyances, including conditional sale, contracts and mortgage liens affecting title to or interest in civil aircraft of the United States.

In Canada, there is no central registry for the recordation of title to and encumbrances against Canadian civil aircraft. Johnston, op. cit. p. 182.

- 340 RA 776, Sec. 10(C)(6)

In the United States, pooling and other agreements are required to be filed with the Civil Aeronautics Board. The Board may order disapproved such pooling or other agreement if found to be adverse to public interest. 72 Stat. 770, 49 USC 1382.

In Canada, the Air Transport Committee, subject to the approval of the Governor in Council may make regulations requiring copies of agreement affecting commercial air services to be filed with the Committee. Aeronautics Act 1952, Sec. 13(c)

- 341 "Les pools dans l'aviation commerciale" Expases (April 1946) p. 15.
- 342 Cf. Wheatcroft, op. cit. (1956) p. 252.
- 343 Cf. Arts. 4 and 5 of Specimen Pool Agreement, reproduced in ICAO; Cir. 28-AT/4 (1952), pp. 212-213.

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- 344 RA 776, Sec. 10(C)(7)
- 345 Ibid., Sec. 10(C)(6)
- 346 United States Civil Aeronautics Board, Annual Report (1960), pp. 27 and 28.

- 347 Puffer, op. cit. p. 749.
- 348 Puffer, op. cit. p. 467.
- 349 Puffer, op. cit. p. 475.
- 350 Puffer, op. cit. p. 476.
- 351 Puffer, op. cit. p. 477-478.
- 352 55 Stat. 722 (1941), 26 USC 55 (1946).
- 353 The US Civil Aeronautics Act of 1938 provides that whenever written objection to public disclosure is made, "The Board shall order such information withheld from public disclosure when in its judgment, a disclosure of such information would adversely affect the interest of such person and is not required in the interest of the public." 52 Stat. 1026, 26 USC 55 (1946)
- 354 Utah Fuel Co. v. National Coal Commission, 306 US 56, 59, S.Ct. 409, 83 L. ed. 483.

CHAPTER XV

- 355 Cf. Andrews, "Administrative Labor Legislation," in Witte, A Break for the Citizen, 95 State Government 72 (1936).
- 356 Hart, J., An Introduction to Administrative Law With Selected Cases, N.Y. (1940) p. 165.
- 357 South-Western Bell Telephone Co. v. Mo. Public Service Commission, 262 US 276, 292.
- 358 Freund, E., Administrative Power Over Persons and Property; Comparative Study, Ill. (1928) p. 41.
- 359 RA 776, Sec. 10(A)
- 360 Ibid., Sec. 10(B).
- 361 Western A. L. et. al, Motions, 11 CAB 302.
- 362 Anent v. US, 266 US 127 (1924); US v. Grimaud, 220 US 506 (1911).
- 363 Magnusson, J., "Observations on Economic Regulations of the CAB," 18 Journal of Air Law and Commerce (1951) p. 182.

- 364 Trans-Pacific Airline v. Hawaiian Airlines, 174 F. (2nd) 63 (1949).
- 365 Norwegian Nitrogen Product v. US, 288 US 294, 305 (1933).
- 366 Federal Cooperative Insurance Co. v. Merrill et. al, 332, 380, (1947).
- 367 RA 776, Sec. 10(D).
- 368 United States Civil Aeronautics Board, Annual Report (1963) p. 49.
- 369 Administrative Order No. 1, s. 1960, Sec. 42.
- 370 Ibid., Sec. 7.
- 371 Ibid., Sec. 45.
- 372 Ibid., Sec. 47.
- 373 Ibid., Sec. 48.
- 374 Ibid., Secs. 55 and 56.
- 375 Ibid., Sec. 57.
- 376 Lepke v. Lederle, 259 US 557.
- 377 Helvering v. Mitchell, 203 US 391.
- 378 Some administrative agencies in the United States have the power to impose and fix the penalty. Cohn v. Ketchum, 123 Va. 534, 17 SE 2nd. 43 (1944).
- 379 The United States Civil Aeronautics Board has no authority under the Federal Aviation Act of 1958 to compromise criminal penalty. It was only in 1963 when it was granted statutory power to impose civil penalties for criminal offenses due to the severity of some penalties for offenses which are considered not so grave. United States Civil Aeronautics Board, Annual Report 1963, p. 52.
- 380 Jaffe, L., Administrative Law, Boston (1955), pp. 18-19.

CHAPTER XVI

- 381 The Philippines signed the Chicago Convention of 1944 on March 1,

1947. Appendix A - Treaties, Part I: Status, Beaumont and Shawcross, Vol. I, Issue No. 1, Nov. 1967.

- 382 The Philippines signed the International Air Services Transit Agreement on March 22, 1946; Ibid.
- 383 Wayurakul, Control of International Air Transport in Thailand, Thesis, IASL, Montreal (1966) p. 39.
- 384 Latchford, "Comparison of the Chicago Aviation Convention with the Paris and Havana Conventions," 12 Dept. of State Bulletin (1945), pp. 411-420.
- 385 See Cooper, A Study on the Legal Status of Aircraft, Princeton (1949) pp. 23-50; See also: Honig, Legal Status of Aircraft, The Hague (1956), pp. 41-47.
- 386 For definition of "Freedom of the Air", see: ICAO Doc. 8291, Lexicon of Terms used in Connection with International Civil Aviation, 2nd. ed. (1964), pp. 280-81.
- 387 Article 1, Sec. 1 of the Agreement is similar to Article 5 of the Convention. Cf. Heller, The Grant and Exercise of Transit Rights in Respect of Scheduled International Air Service, Thesis, IASL, Montreal (1954).
- 388 See: Prof. Goedhuis' recommendation at the International Law Association Conference at Dubrovnik in 1956 "that States which have not as yet signed the Agreement, do so without any undue delay."
- 389 Hamajima, "A Study of the Development in Bilateral or Multilateral Agreement of the Bermuda Agreement Concerning Frequency and Capacity", Term Paper, IASL, Montreal, (1957)p. 1.
- 390 Sand, P., A Historical Survey of the Law of Flight, Montreal, (1961) p. 33.
- 391 Resolution III. See: Proceedings, op. cit. p. 128-129.
- 392 Sand, op. cit. p. 34.
- 393 Fifth freedom traffic was understood to be secondary only and related to traffic requirement. See: Sec. 6, Final Resolution; Wassenbergh, p. 54.

- 394 Chicago Convention of 1944, Article 5.
- 395 See: Cheng, B., The Law of International Air Transport (1962), p. 195.
- 396 Chicago Convention of 1944, op. cit. par. 1.
- 397 See: ICAO Doc. 7278 C/841, May 10, 1952.
- 398 RA 776, Sec. 10(C)(3)
- 399 See: Definition of Scheduled International Air Service, ICAO Doc. 7278 C/841, p. 3.
- 400 PI-Mexico Air Agreement, Annex, Secs. I, II, III.

CHAPTER XVII

- 401 The Aircraft Accident Investigation Board is composed of seven members: Chief, Air Carrier Operations Section, Chief Check Pilot, Chief of Office of Aviation Medicine, Chief Aeronautical Engineer, Aircraft Specialist, Aviation Safety Supervisor and the Press Relations Officer of the Administrator. CAA Office Order No. 47.

In the United States, with the establishment of the Department of Transportation on October 15, 1966, all the powers, functions, and duties of the USCAB, of its Chairman, members, officers and offices under Title IV-Safety Regulations of Civil Aeronautics (72 Stat. 775, 5 USC 1421, et seq.) and Title VII-Aircraft Accident Investigation (72 Stat. 781, 49 USC 1441 et. seq.) of the Federal Aviation Act, as amended, were transferred to the Secretary, these powers to be exercised by the National Transportation Board. Sec. 6(d) US Public Law 89-670, Oct. 15, 1966.

In the United Kingdom, regulations dealing with aircraft accident investigation was first indicated in the Air Navigation Act of 1920, and later clearly stated under Sec. 10, Civil Aviation Act of 1949. See: Joint Research Project, p. 36. The principal United Kingdom regulation on aircraft accident investigation are found in the Civil Aviation (Investigation of Accident) Regulation of 1951, as amended. Under the regulation, accidents may be investigated at the discretion of appropriate authority, which is the Accident Investigation Branch of the Ministry of Aviation. Civil Aviation (Investigation of Accident) Regulation 1951, Reg. 1(1)(c)(d).

- 402 The Philippines notified the ICAO that no difference exists between the national regulation and practices and the international standards and recommendations of the Annex 13.
- 403 See: Aircraft Accident Digest No. 14, Vol. II, ICAO Circular 71-AN/63, Vol. II, 1966.
- 404 Noel, A Survey of Accident Investigation in International Air Law, Thesis, IASL, Montreal (1967) p. 7.
- 405 Newton, E., "Aircraft Accident Investigation", Journal of Royal Aeronautical Society, March 1964, p. 156.
- 406 Paris Convention of 1919, Article 23.
- 407 Committee II (Technical Standards and Procedure, delegated to Sub-Committee 9 responsibility of making recommendation in regard of Accident Investigation, including search and salvage. ICAO Proceedings, Vol. II, App. 2, p. 1385.
- 408 This was based on the recommendation of the Accident Investigation Division at the first Session in February 1944. Annex 13, 2nd. Ed. March 1966.
- 409 ICAO Doc. cw/p 3924, p. 13.
- 410 Noel, op. cit. pp. 39-41.
- 411 Meeting of the Air Navigation Commission of ICAO held in Montreal from January 9 to February 11, 1965. ICAO Doc. 8486, AIG/111.
- 412 ICAO Doc. 8486, AIG/111, p. 1.
- 413 Annex 13, Chapter 3.3.
- 414 Ibid., Chapter 5.6.
- 415 Ibid., Chapter 5.7.
- 416 Ibid., 2nd. Ed. App. 2, Chapter 4.1 and Chapter 4.2.
- 417 Ibid., Chapter 5.1.
- 418 Ibid., Chapter 5.14.
- 419 Ibid., Chapter 5.3.
- 420 Ibid., Appendix 3.

421 Ibid., Chapter 6.1.

422 Ibid., Chapter 6.2.

423 Ibid., Chapters 6.3 to 6.5

424 The following States have notified ICAO of the differences which exist between their national regulations and practices and the International Standards and Recommendations of Annex: Afghanistan, Argentina, Canada, France, Germany, Greece, Italy, Lebanon, Mexico, Netherlands, Poland, Portugal, Spain, Thailand, Tunisia and Vietnam.

425 RA 776, Section 32(11).

In the United States, "no part of any report or reports of the Board relating to any accident or investigation thereof shall be admitted as evidence or used in any lawsuit or action for damage growing out of any matter mentioned in such report or reports." Public Law 85-726, 8th Congress, 2nd. Sess. 72 Stat. 731, 49 USC 141, as amended.

In the United Kingdom, there is no statutory provision that accident reports are not admissible as evidence.

In Canada, as to foreign aircraft accident, "evidence of any such proceeding or record whatsoever of, on or before any Court of Great Britain, Canada, or any British colony or possession or USA, or any State in USA, or any foreign country x x x may be made in any action or proceeding by an exemplification or certified copy thereof." RSC, 59 Revised Statutes of Canada, Vol. 5 p. 5627.

CHAPTER XVIII.

426 RA 776, Section 32(10).

427 Ibid., Section 32(23).

428 Ibid., Section 32(1).

429 Ibid., Section 10(F).

430 Puffer, op. cit. p. 592.

431 Civil Aeronautics Journal, July 15, 1949, Vol. I, p. 309.

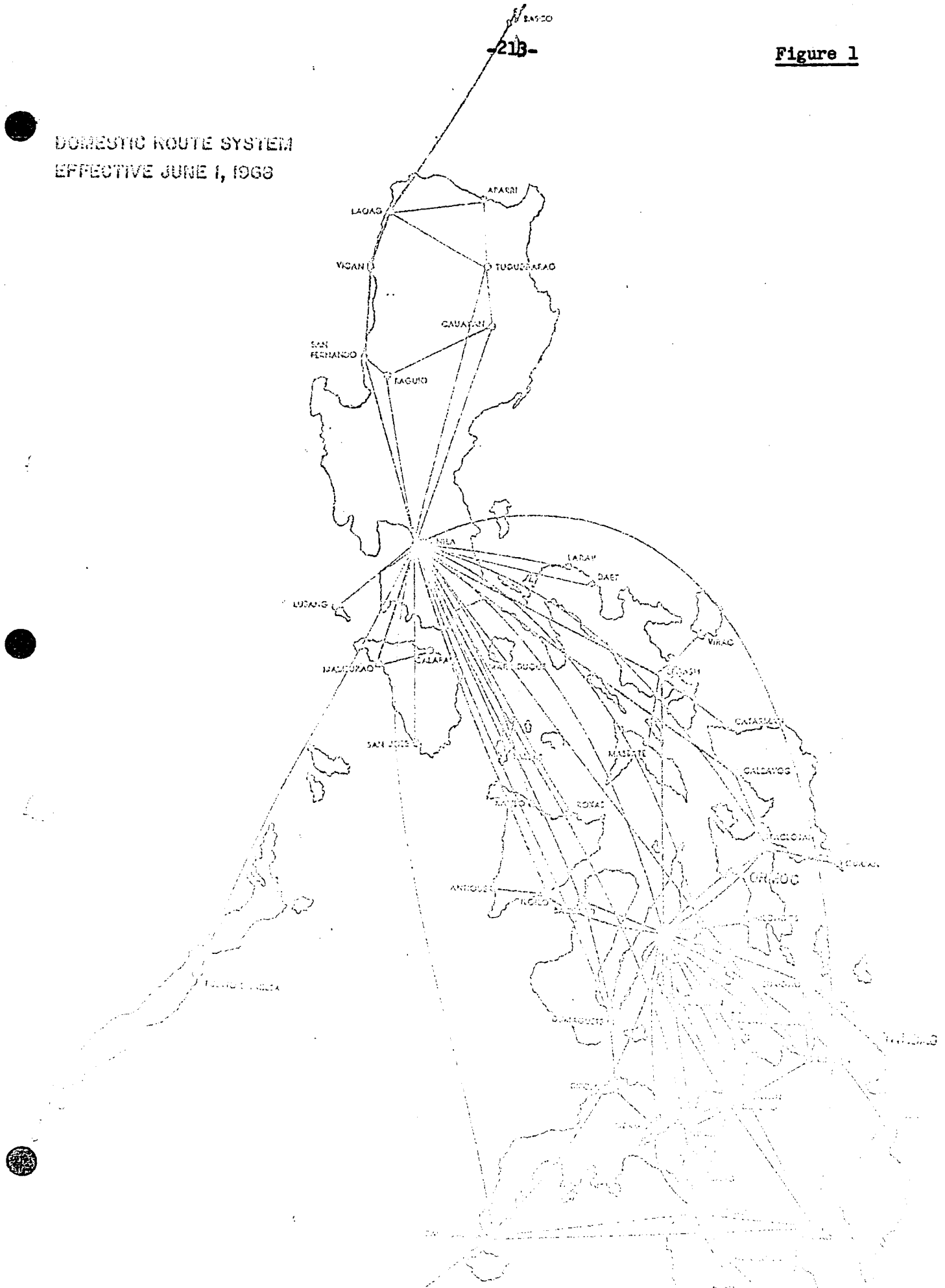
- 432 Civil Aeronautics Journal, op. cit.
- 433 Puffer, op. cit. p. 584-594.
- 434 United States Civil Aeronautics Board, Annual Report (1959)
p. 38.
- 435 72 Stat. 776, 49 USC 1422.

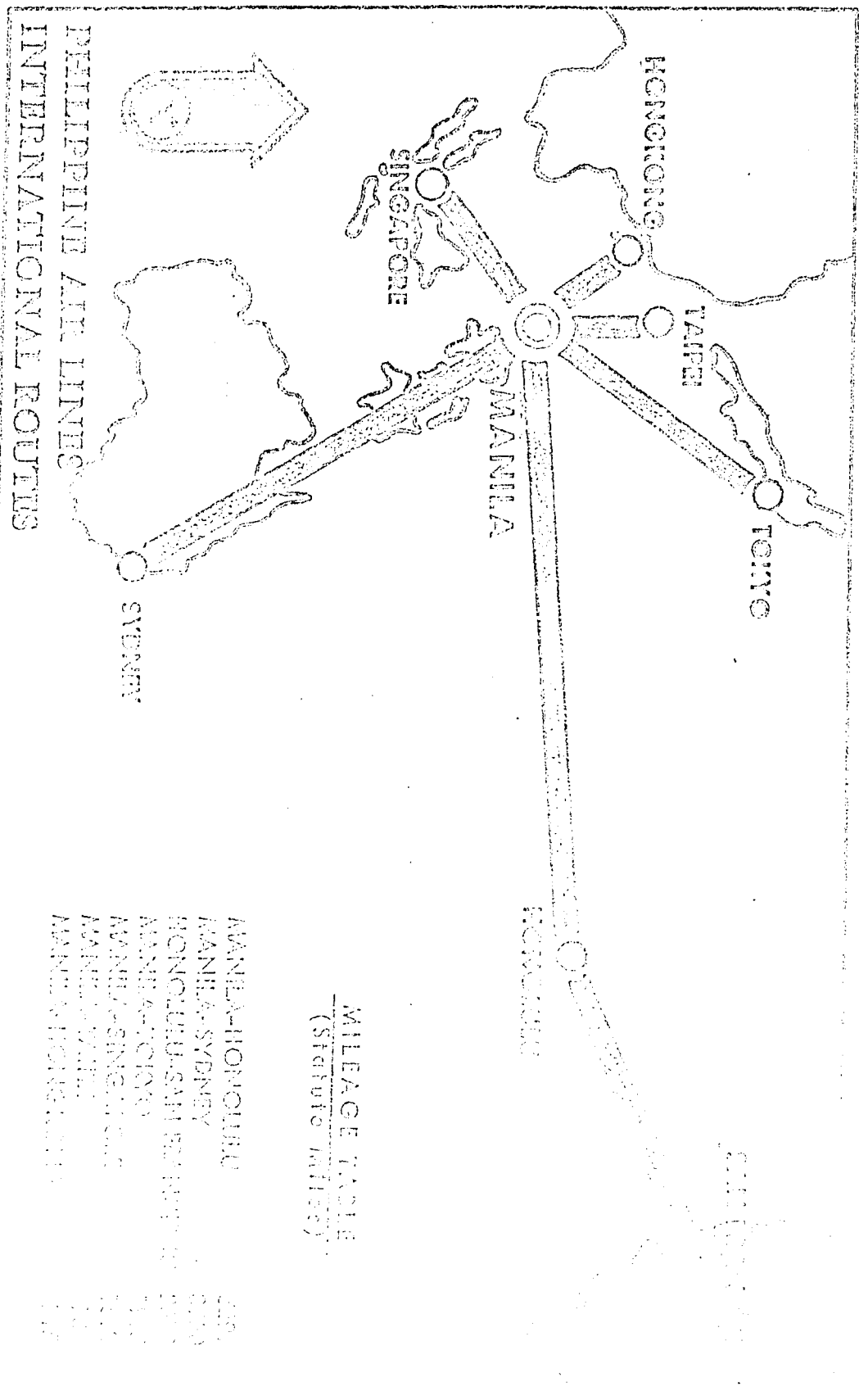
CHAPTER XIX

- 436 Jones, E. and Bingham, T.C., Principles of Public Utilities
(McMillan & Co., 1932) pp. 392-401.
- 437 RA 776, Sec. 10(F)(1, 2, 3)

Figure 1

DOMESTIC ROUTE SYSTEM
EFFECTIVE JUNE 1, 1968







Legaspi City with its monopoly on Mayon volcano, one of the most beautiful sights in the world, is only 50 minutes by jet-prop aircraft from Manila.

AIRPORT: <u>LEGASPI AIRPORT</u>		LOCATION: <u>Legaspi City</u>		CATEGORY: <u>Secondary</u>		STRENGTH: SW <u>55,000#</u> AWT <u>70,000#</u>					
ITEM	OPERATIONAL REQUIREMENTS	PRESENT AVAILABLE FACILITIES AND CONDITION	WHAT IS NEEDED TO MEET REQUIREMENTS	ESTIMATED AMOUNT P1000	UNRELEASED AUTHORIZED AMOUNT P1000	FOUR-YEAR PROGRAM				TOTAL 4-YEARS P1000	LATER YEARS P1000
						66-67	67-68	68-69	69-70		
LAND ACQUISITION	37 has.	1800 m x 110 m - Strip 40,000 sq.m. - Apron, etc.	1800 m x 40 m - Strip 6 has. - Apron, etc.	1,190			850	340		1,190	
RUNWAY	Cement 1500 m x 30 m w/turn around on each end	Macadam 1205 m x 50 m	Cement 1500 m x 30 m w/turn around on each end	750		600	150			750	
APRON	Cement 12,000 sq.m.	Asphalt (Superficial) 150 m x 60 m	Cement 12,000 sq.m.	200				200		200	
TAXIWAYS	Cement 2 - 70 m x 15 m	Asphalt (Superficial) 2 - 100 m x 15 m	Cement 2 - 70 m x 15 m	50				50		50	
FENCING	Barbed wire w/wooden posts	Barbed wire w/steel posts	Improvement	20				20		20	
LANDING LIGHTS	Runway, taxiway, approach floodlights and rotating beacon	None	Runway, taxiway, approach floodlights and rotating beacon	600				100		100	500
TERMINAL BUILDING	Semi-Conc.- 800 sq.m.	PAL Quonset Hut	Semi-Conc.- 800 sq.m.	80				80		80	
EQUIPMENT BUILDING	Semi-Conc.- 100 sq.m.	Fire Stn., Tool & Car staker's shed (adequ.)	Improvement	10				10		10	
DRAINAGE STRUCTURES	RC pipes w/headwalls	30" Ø RC pipes 60 lin. mts.	Improvement	30				30		30	
ROAD SYSTEM AND VEHICLE PARKING	Asphalt - 6,000 sq.m.	Macadam - 6,000 sq.m.	Asphalt - 6,000 sq.m.	60				60		60	
LANDSCAPING	3,000 sq.m.	None	3,000 sq.m.	10				10		10	
TOTAL				3,000	1,650	600	1,000	900	-	2,500	500

AIRPORT: <u>VIRAC AIRPORT</u>		LOCATION: <u>Virac, Catanduanes</u>		CATEGORY: <u>Secondary</u>		STRENGTH: SW <u>55,000#</u> AWT <u>70,000#</u>					
ITEM	OPERATIONAL REQUIREMENTS	PRESENT AVAILABLE FACILITIES AND CONDITION	WHAT IS NEEDED TO MEET REQUIREMENTS	ESTIMATED AMOUNT P1000	UNRELEASED AUTHORIZED AMOUNT P1000	FOUR-YEAR PROGRAM				TOTAL 4-YEARS P1000	LATER YEARS P1000
						66-67	67-68	68-69	69-70		
LAND ACQUISITION	37 has.	1500 m x 100 m - Strip 150 m x 120 m - Apron, etc.	12 has. - Strip 8.2 has. - Apron, etc.	40						40	40
RUNWAY	Cement 1500 m x 30 m w/turn around on each end	Macadam (Superficial) 1080 m x 30 m	Cement 1500 m x 30 m w/turn around on each end	230						230	230
APRON	Cement 12,000 sq.m.	Macadam (Superficial) 60 m x 50 m	Cement 12,000 sq.m.	85						85	85
TAXIWAYS	Cement 2 - 70 m x 15 m	Macadam (Superficial) 50 m x 15 m	Cement 2 - 70 m x 15 m	30						30	30
FENCING	Barbed wire w/wooden posts	None	Barbed wire w/wooden posts	20						20	20
LANDING LIGHTS	Runway, taxiway, approach floodlights and rotating beacon	None	Runway, taxiway, approach floodlights and rotating beacon	60						60	60
TERMINAL BUILDING	Semi-Conc.- 800 sq.m.	Available needs improvement	Improvement	10						10	10
EQUIPMENT BUILDING	Semi-Conc.- 100 sq.m.	Available needs improvement	Improvement	5						5	5
DRAINAGE STRUCTURES	RC pipes w/headwalls	None	RC pipes w/headwalls	50						50	50



Legaspi City with its monopoly on Mayon volcano, one of the most beautiful sights in the world, is only 50 minutes by jet-prop aircraft from Manila.

A. AIRPORT	LEGASPI AIRPORT	LOCATION	Legaspi City	CATEGORY	Secondary	STRENGTH	SW 6W	55,000# SW 70,000# SW			
ITEM	OPERATIONAL REQUIREMENTS	PRESENT AVAILABLE FACILITIES AND CONDITIONS	WHAT IS NEEDED TO MEET REQUIREMENTS	ESTIMATED AMOUNT REQUIRED	UNRELEASED AMOUNT AVAILABLE	FOUR YEAR PROGRAM				TOTAL 4 YEARS P1970	LATER YEARS P1970
						67-68	68-69	69-70	70-71		
LAND ACQUISITION	27 ha.	1400 m x 110 m - Strip 40,000 sq.m. - Apron, etc.	1400 m x 10 m - Strip 6 ha. - Apron, etc.	1,150			850	340		1,190	
RUNWAY	Cement 1500 m x 10 m w/turn around on each end	Macadam 1205 m x 30 m	Cement 1500 m x 10 m w/turn around on each end	750		600	150			750	
TAXIWAY	Cement 1,500 sq.m.	Asphalt (Superficial) 150 m x 60 m	Cement 15,000 sq.m.	400				200		200	
PARKING	Cement 2 - 75 m x 15 m	Asphalt (Superficial) 2 - 100 m x 15 m	Cement 2 - 75 m x 15 m	60				50		50	
FENCING	Barbed wire w/wooden posts	Barbed wire w/steel posts	Improvement	20				20		20	
LANDSCAPING	Runway, taxiway, approach floodlights and rotating beacon	None	Runway, taxiway, approach floodlights and rotating beacon	400				100		100	500
TERMINAL BUILDING	Semi-Conc. - 800 sq.m.	Full Concrete Hut	Semi-Conc. - 800 sq.m.	80				80		80	
FLIGHT INFORMATION	Semi-Conc. - 100 sq.m.	Full Conc. - 100 sq.m.	Improvement	10				10		10	
TRAINING BUILDING	Full Conc. - 100 sq.m.	Full Conc. - 100 sq.m.	Improvement	30				30		30	
WATER SUPPLY	Asphalt - 1,000 sq.m.	Macadam - 1,000 sq.m.	Asphalt - 1,000 sq.m.	60				60		60	
LANDSCAPING	None	None	1,000 sq.m.	10				10		10	
TOTAL				1,500	1,150	600	1,500	390	-	2,500	500

A. AIRPORT		LOCATION		CATEGORY		STRENGTH		SW		SW	
Virac Airport		Virac, Catanduanes		Secondary				15,000# SW		70,000# SW	
ITEM	OPERATIONAL REQUIREMENTS	PRESENT AVAILABLE FACILITIES AND CONDITIONS	WHAT IS NEEDED TO MEET REQUIREMENTS	ESTIMATED AMOUNT REQUIRED	UNRELEASED AMOUNT AVAILABLE	FOUR YEAR PROGRAM				TOTAL 4 YEARS P1970	LATER YEARS P1970
						P1967	P1968	P1969	P1970		
LAND ACQUISITION	27 ha.	1400 m x 110 m-Strip 150 m x 120 m-Apron, etc.	10 ha. - Strip 6.2 ha. - Apron, etc.	10						40	40
RUNWAY	Cement 1500 m x 10 m w/turn around on each end	Macadam (superficial) 1000 m x 30 m	Cement 1500 m x 10 m w/turn around on each end	750						240	240
TAXIWAY	Cement 1,500 sq. m.	Macadam (superficial) 150 m x 60 m	Cement 15,000 sq. m.	400						85	85
PARKING	Cement 2 - 75 m x 15 m	Macadam (superficial) 2 - 100 m x 15 m	Cement 2 - 75 m x 15 m	60						50	50
FENCING	Barbed wire w/wooden posts	None	Barbed wire w/steel posts	20						20	20
LANDSCAPING	Runway, taxiway, approach floodlights and rotating beacon	None	Runway, taxiway, approach floodlights and rotating beacon	400						100	100
TERMINAL BUILDING	Semi-Conc. - 800 sq. m.	Available needs improvement	Improvement	10						10	10
FLIGHT INFORMATION	Semi-Conc. - 100 sq. m.	Available needs improvement	Improvement	10						10	10
TRAINING BUILDING	Full Conc. - 100 sq. m.	None	Full Conc. - 100 sq. m.	30						30	30

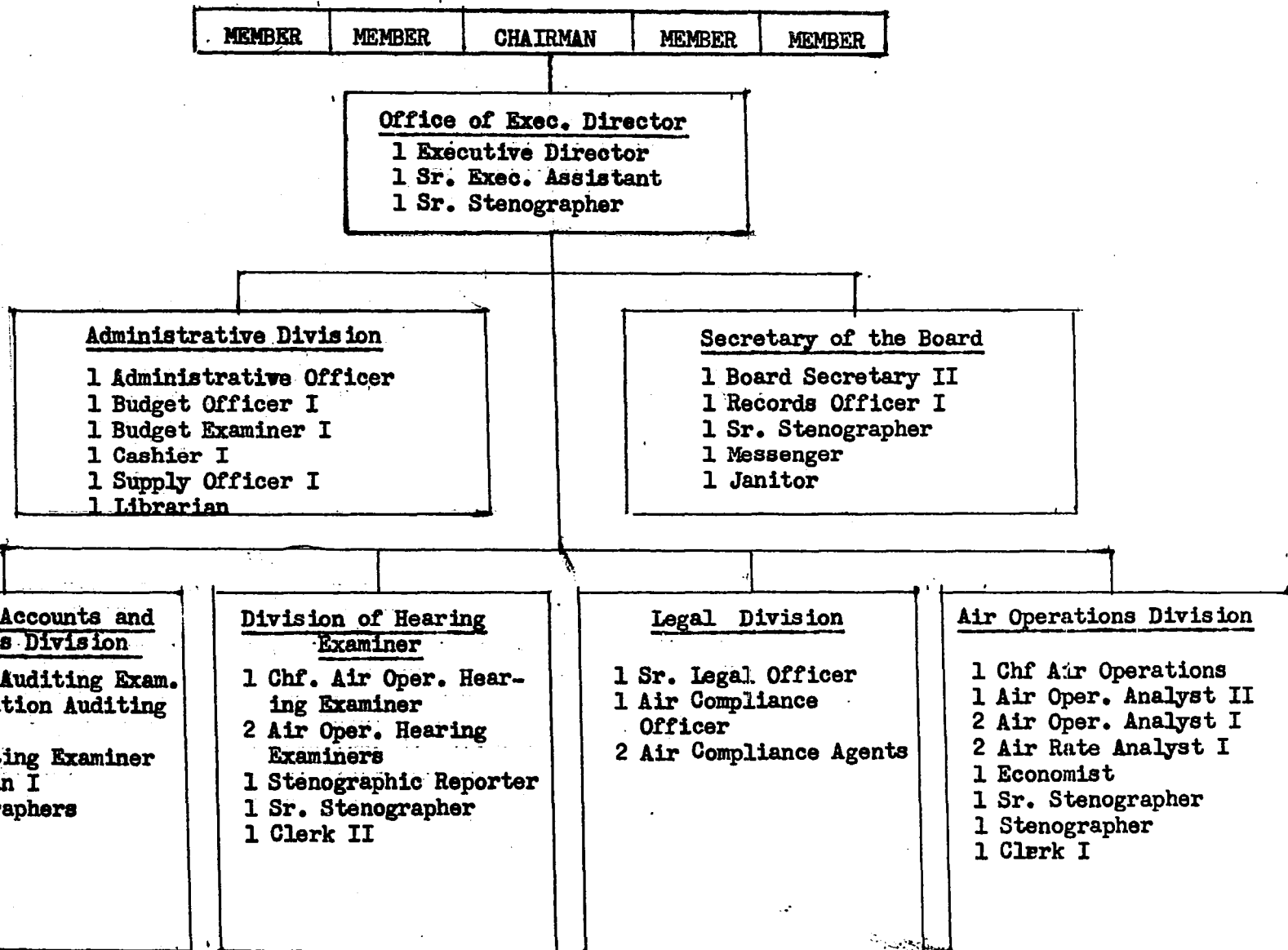


The wonders of the country are linked to centers of population and modern culture with the establishment of rural airports. Banawe rice terraces, for instance would be a few minutes from Baguio by air instead of almost full eight hours of land travel.



Republic of the Philippines
Department of Commerce and Industry
CIVIL AERONAUTICS BOARD
Manila

Figure 5

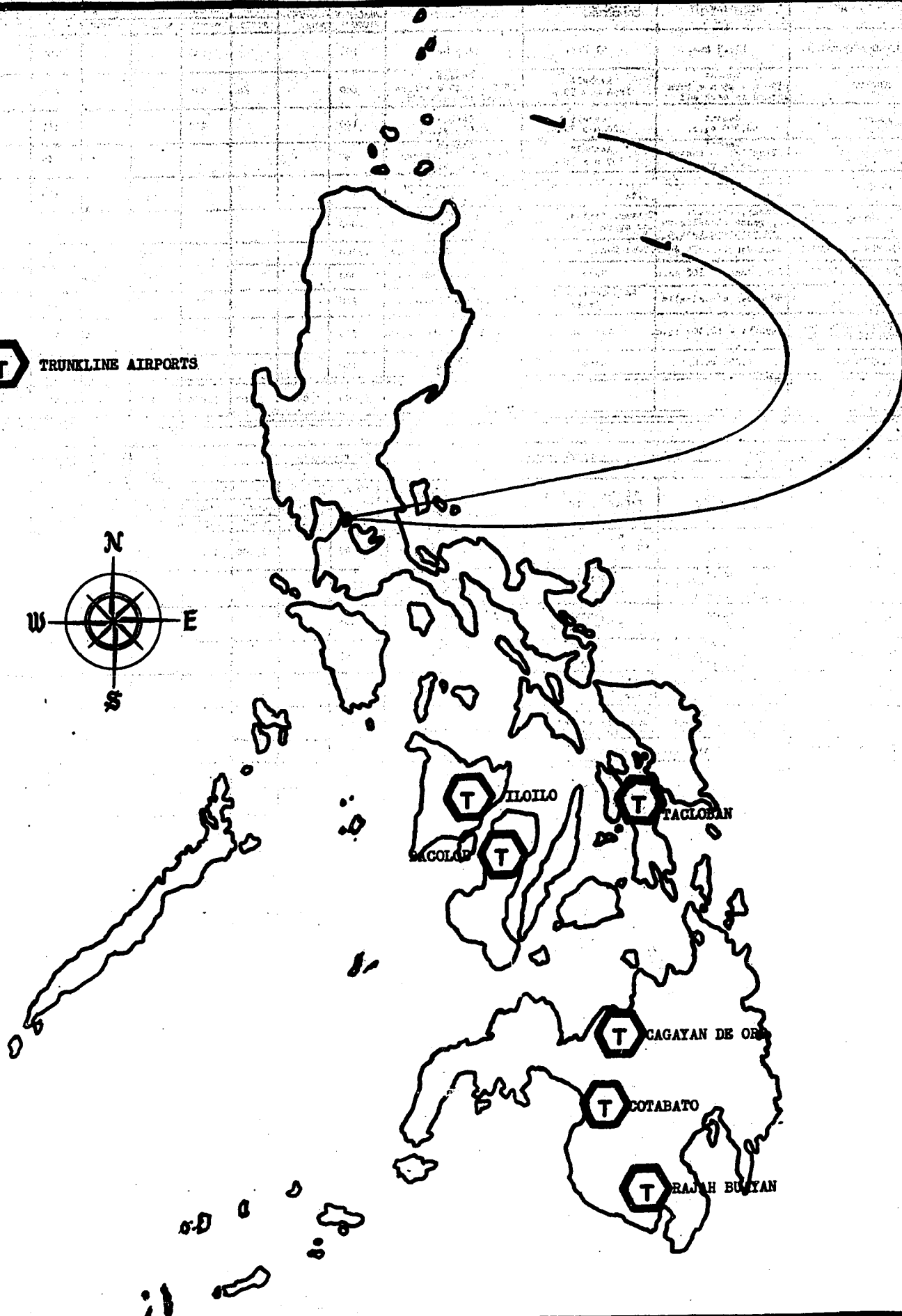
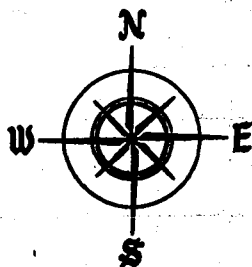


TRUNKLINE AIRPORTS

Figure 6

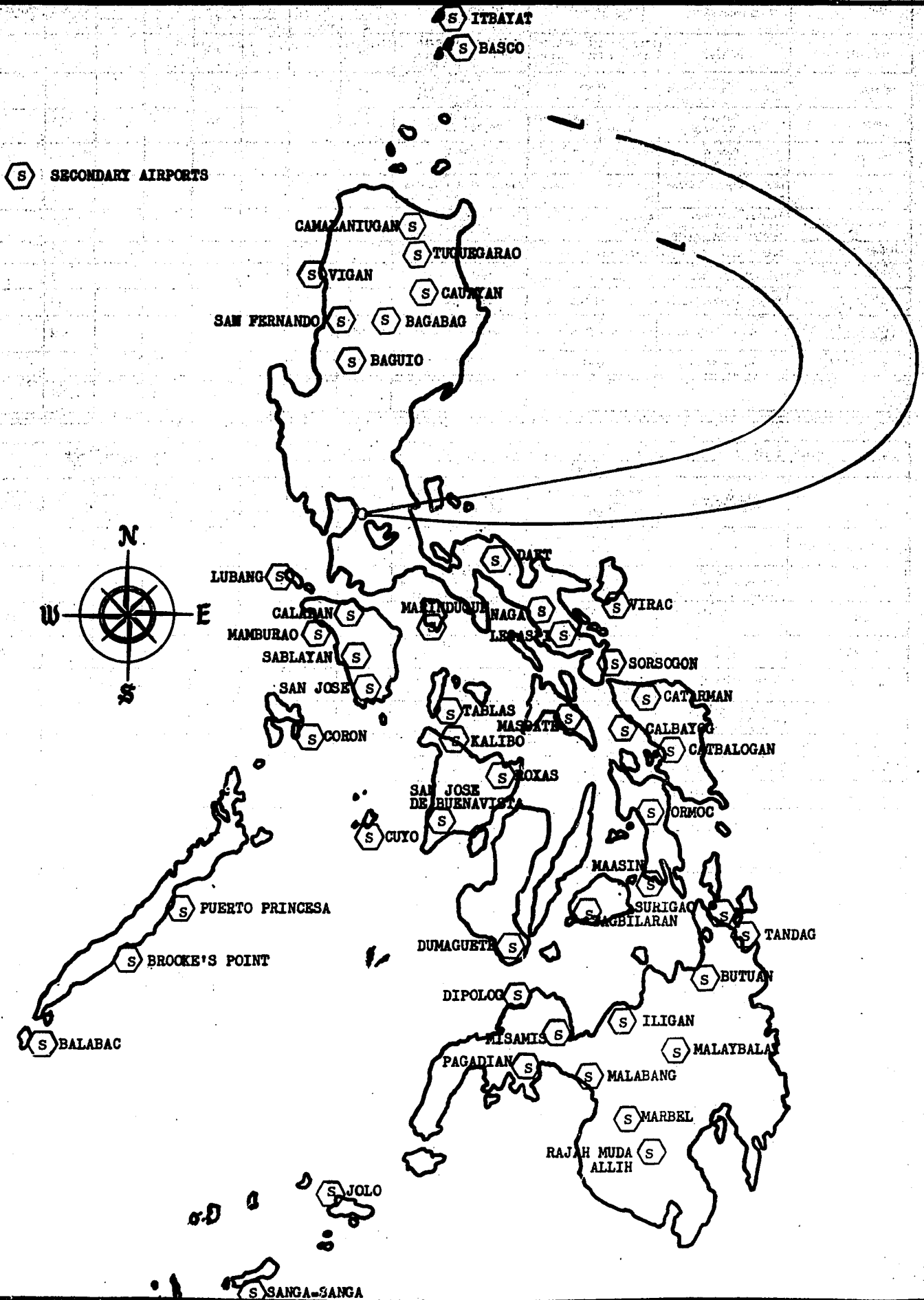


TRUNKLINE AIRPORTS



SECONDARY AIRPORTS

Figure 7



PHILIPPINE AIR LINES REVENUE PASSENGER RECORD

<u>Year</u>	<u>Domestic</u>	<u>Regional/Int'l</u>	<u>Total</u>	<u>Running Total For The Year</u>
1946	120,637	2,130	122,767	122,767
1947	257,435	8,294	265,729	388,496
1948	295,577	10,375	305,952	694,448
1949	232,678	19,621	252,299	946,747
1950	224,271	18,581	242,852	1,189,599
1951	272,033	18,652	290,685	1,480,284
1952	230,192	22,823	253,015	1,733,299
1953	233,637	27,872	261,509	1,994,808
1954	252,760	17,325 (x)	270,085	2,264,893
1955	298,943	15,833	314,776	2,579,669
1956	369,718	18,055	387,773	2,967,442
1957	423,024	25,731	448,755	3,416,197
1958	477,625	25,026	502,651	3,918,848
1959	615,297	27,407	642,704	4,561,552
1960	762,953	31,123	794,076	5,355,628
1961	752,609	37,231	789,840	6,145,468
1962	976,111	39,005	1,015,116	7,160,584
1963	1,137,854	48,291	1,186,145	8,346,729
1964	1,412,771	55,511	1,468,282	9,815,011
1965	1,604,508	65,829	1,670,337	11,485,348
1966	1,377,233	100,540	1,477,773	12,963,121
1967	1,500,376	114,649	1,615,025	14,578,146

Note: (x) - International operations suspended in March 1954.

ACT NO. 3909 (1931-1932)

ACT No. 3909- An Act concerning the licensing of airmen and aircraft and inspection of the same, concerning air traffic rules, concerning schedules and rates of aviation companies and concerning the enforcement of the law.

Chapter I. Definition of Terms

Sec. 1. - In this Act, "air commerce" means transportation in whole or in part by aircraft of persons or property for any purpose whatsoever or navigation of aircraft in the furtherance of business and pleasure. "Aircraft" means any contrivance used or designed for navigation facility or flight in the air except a parachute or other contrivance designed for such navigation. "Operating Aircraft" means the performance of an aircraft of a series of aircraft flights. "Airmen" means any individual including the person in command and any pilot, mechanic or member of the crew who engage in the navigation of the aircraft which may under an individual who is in charge of the inspection, overhauling or repairing of an aircraft. The term "person" means an individual, a partnership or two or more individuals having a joint or common interest in a corporation.

Chapter II. Promotion of Air Commerce

Sec. 2. It shall be the duty of the Secretary of Commerce and Communication to foster air commerce in conformity with the provisions of the Act and for such purpose, to :

- (a) Encourage the establishment of airports, civil airways and other navigational facilities;
- (b) Make recommendations to the Secretary of Agriculture and Natural Resources as to the necessary establishment of meteorological facilities;
- (c) Study the possibilities for the Director of Air Commerce and Aeronautical Industry and Trade in the Philippine Islands to collect and disseminate information relative to the Act;
- (d) Request the Bureau of Science, the Weather Bureau and other agencies in the Executive Branch of the Government to assist in carrying researches that tend to improve air navigation. The Secretary of Commerce and Communications is authorized to transfer funds available for carrying out the purpose of this subdivision to any such agency or agencies engaged in such research or division of work in cooperation with the Department of Commerce and Communication.
- (e) Investigate record and make public the causes of accident in civil air navigation in the Philippine Islands.

(f) Exchange with foreign government through existing governmental channels, information pertaining to civil air navigation.

Sec. 3. - To aid the Secretary of Commerce and Communication and to assist in the performance of the functions vested in him under this Act, there shall be employed an expert in aeronautics who shall be appointed by the Governor General with the consent of the Senate. The said expert shall receive a compensation or a per diem to be fixed by the Secretary of Commerce and Communication with the approval of the Governor General. To qualify for such appointment, this expert must:

(a) Have successfully passed the examination for aeronautical inspector or a higher officer under the Aeronautics Branch of the Department of Commerce of the United States;

(b) Hold or have held a commission as an officer in the aviation forces of the United States;

(c) He must be an aeronautical engineer who has successfully passed such examination immediately after the passage of this Act as prescribed by the Bureau of Civil Service of the Philippines.

Sec. 4. - Except otherwise specifically provided, the Secretary of Commerce and Communication shall administer and enforce the provision of this Act including air traffic rules promulgated hereinafter enacted and for such purpose is authorized.

Chapter III. Requirements for Aircraft and Airmen Operating in the Philippine Islands

Sec. 5. Aircraft, construction, design and airworthiness. - Public safety requires in the interest of aeronautical progress that aircraft operating within the Philippine Islands should conform with respect to design, construction and airworthiness to the standards prescribed by the United States Government with respect to navigation of civil aircraft subject to its jurisdiction. It shall be unlawful for purpose to navigate an aircraft within the Philippine Islands unless such an aircraft has an appropriate, effective license issued by the Department of Commerce and Communication provided, however, that this restriction shall not apply to military or licensed civil aircraft of the United States to aircraft licensed by a foreign country with which the United States or the Philippine Islands has a reciprocal agreement concerning the operation of such licensed aircraft.

Sec. 6. Qualification of Operations.- Federal License. Public safety requires in the interest of aeronautical progress that a person engaged within the Philippine Islands in navigating aircraft in any form of navigation shall ^{have} the qualification necessary for obtaining and having

a pilot license issued by the Department of Commerce and Communications.

It shall be unlawful for any person to operate any aircraft in the Philippine Islands unless such person is the holder of an appropriate and effective pilot license issued by the Department of Commerce and Communications, Provided, However, That the restriction shall not apply to licensed pilot of the United States and the Philippine Islands and pilots of other countries that have a reciprocal and other agreement governing the operation and, Provided, further, That upon application approved by the Governor General, a revocable license may be granted by the Secretary of Commerce and Communications for a period not to exceed one hundred and twenty days to persons not citizens of the United States, or the Philippine Islands to countries having reciprocal or other agreement covering the operation. By the action of the same authorities, such temporary license may be renewed from time to time for a life period.

Sec. 7. - Possession and Display of License. The pilot licensed herein is required that he shall keep in his personal possession the license of the aircraft which he is operating within the Philippine Islands and shall be presented for inspection upon demand of any passenger, any peace officer of the Philippine Islands and any official, manager or person in charge of any airport or landing field in the Philippine Islands upon which he shall land.

Chapter IV. Air Traffic Rules

Sec. 8. - All aircraft whether licensed or unlicensed must display a license or identification mark issued by the Department of Commerce and Communications. This applies to all flights, whether for hire or pleasure, test purposes, experimental purposes and whether the aircraft is licensed or unlicensed.

Sec. 9. - Flying Rules. The following rules pertaining to air traffic shall be conformed to at all times by aircraft operating in the Philippine Islands:

x x x x x x x x x x x x x x

Chapter V. Schedules, Rate Enforcement and Penalties.

Sec. 15.- Person or persons engaged in air commerce shall submit for approval of the Public Service Commission or its authorized representative uniform charges and rates applied to merchandize and passengers

per kilometer or over specified distances between given airports.

Sec. 16. - Except when other wise specified, the Secretary of Commerce and Communications shall administer the provisions of the Act and for such purposes is authorized to make such regulations as may be necessary to execute the functions vested in him by this Act including air traffic rules which regulation shall conform to and coincide with as far as possible with the provisions of the Air Commerce Act of nineteen hundred and twenty-six and amendments thereto passed by Congress of the United States and air commerce regulation and air traffic rules issued from time to time pursuant thereto. The Public Service Commission shall administer the next section preceding and for such purpose is authorized to make such regulations as may be necessary to ensure safety regulatory practices and relationships in air commerce.

Sec. 17.- Penalty for Violation. - Any person who acts or an airman for any aircraft when flown and operated in the Philippine Islands without holding an effective license issued by the Department of Commerce and Communications in accordance with the provisions of the Act or who flies or who causes to be flown in the Philippine Islands any aircraft without an effective license or identification issued by the Department of Commerce and Communications in accordance with the provisions of this Act, or who violates any provision of the Act or any rules or regulations promulgated hereunder shall be punished by a fine of not more ₱500 or six months imprisonment, or both.

Chapter VI. Appropriations

Sec. 18. - To carry out the purposes of this Act, there shall be appropriated the sum of ₱30,000 out of the funds in the Insular Treasury not otherwise appropriated, Provided, That, in subsequent years, the sum shall be included in the general appropriation act.

Sec. 19. This Act shall take effect upon its approval.

AN ACT PROVIDING FOR THE PROMOTION AND DEVELOPMENT OF CIVIL AVIATION IN THE PHILIPPINES, CREATING THE BUREAU OF AERONAUTICS AND DEFINING ITS POWERS, DUTIES AND FUNCTIONS.

Be it enacted by the National Assembly of the Philippines.

CHAPTER I. TITLE AND PURPOSE

Sec. 1. Title of Act. - The short title of this Act shall be the "Civil Aviation Law."

Sec. 2. Purpose and scope of Act. - The general purpose of this Act shall be the promotion, development, and control of air commerce, air communication, and all forms of civil aeronautics in the Philippines.

CHAPTER II. DEFINITION OF TERMS

Sec. 3. Words and Phrases defined. - The following definitions shall control in the application and construction of this Act.

(a) The term "air commerce" shall be taken to mean and include transportation in whole or in part by aircraft of persons or property for hire, the navigation of aircraft in furtherance of a business, or the navigation of aircraft from one place to another for operation in the conduct of a business.

(b) The term "aircraft" shall be taken to mean and include airplanes, seaplanes, airships, balloons, and/or any other vehicle or contrivance now known or hereafter invented, used, or designated for navigation or flight in the air without other support than the atmosphere, except parachutes or other safety contrivances designed for such navigation but used primarily as safety equipment.

(c) The term "airmen" shall be taken to mean and include any individual who engages or assists in the navigation or operation of aircraft while under way, and any individual who is in charge of the inspection, overhauling, or repairing of aircraft or of parachutes.

(d) The term "scheduled airline" shall be taken to mean an airline operating between specific points for the purposes of air commerce on a regular schedule in accordance with minimum requirements prescribed by this Act and/or regulations issued hereunder, except as prevented by an act of God, public enemy, weather conditions, strikes, or other causes beyond the control of such person.

(e) The term "airport" shall be taken to mean any locality, either on water or on land, which is adopted for the landing and taking off of aircraft and which provides facilities for shelter, supply, and repair of aircraft, or a place used regularly for receiving or discharging passengers or cargo by air.

(f) The term "person" where the context reasonably permits shall be taken to mean and include individuals, partnerships, joint enterprises, associations,

and/or corporations.

(g) The term "airworthiness" shall be taken to mean that an aircraft, its engines, propellers and other components and accessories, are of proper design and construction, and are safe for air navigation purposes; and such design and construction being consistent with accepted engineering practice and in accordance with aerodynamics laws and aircraft science.

(h) The term "airport of entry" shall be taken to mean any airport designated by the Secretary of Finance as an airport of entry for civil aircraft arriving in the Philippines from any place outside thereof and for passengers and merchandise carried on such aircraft.

(i) The term "emergency landing field" shall be taken to mean any locality, either on water or on land, which is adapted for landing and taking off of aircraft, is located along airway, and is intermediate to airport connected by the airway, but which is not equipped with facilities for shelter, supply, and repair of aircraft and is not used regularly for the receipt of discharge of passengers or cargo by air.

(j) The term "air navigation facility" shall include any airport, emergency, landing field, light or other signal structure, radio directional finding facility, radio or other electrical communication facility, and any other structure or facility used as an aid to air navigation.

(k) The term "Civil Airway" shall be taken to mean a route in the navigable airspace designated by the Director of Aeronautics as a route suitable for air commerce.

(l) The term "Secretary" shall mean the Secretary of Public Works and Communication and the term "Director" shall mean the Director of Aeronautics unless otherwise specified.

CHAPTER III. BUREAU OF AERONAUTICS

Sec. 4. Bureau of Aeronautics. - There is hereby created a Bureau of Aeronautics to be immediately organized under the Department of Public Works and Communications, and the Secretary is authorized, any provision of law to the contrary notwithstanding, to assign, either temporarily or permanently, any employee or employees and equipment from any of the Bureaus and offices under his Department, and to transfer any item of appropriation for salaries and wages from any such bureaus and offices to the Bureau of Aeronautics. He may also employ such personnel as may be necessary for the proper functioning of the Bureau from any funds pertaining to aviation which may be at his disposal.

The Secretary shall render to the President of the Philippines and the National Assembly, at the next regular session, a report of all assignment of employees, employment of personnel and transfer of appropriation made in accordance with the provisions of this section.

Sec. 5. Officials of the Bureau of Aeronautics. - The Bureau of Aeronautics shall be under the immediate executive control and supervision of the Director of Aeronautics who shall be appointed by the President of the Philippines with the consent of the Commission on Appointments of the National Assembly, and shall have the rank and salary of Director of a first class Bureau.

CHAPTER IV. POWERS AND DUTIES OF THE DIRECTOR

Sec. 6. General authority and responsibility. - Subject to the general control and supervision of the Secretary, the Director of Aeronautics is charged with the responsibility and vested with the authority to carry out the purposes and enforce the provisions of this Act, and the rules and regulations issued hereunder; and he shall have, among others, the following specific powers and duties:

(a) Designation and establishment of civil airways. - To designate and establish civil airways, acquire, construct, operate, and maintain along such airways all necessary emergency and intermediate landing fields and other air navigation facilities utilizing the equipment, supplies, materials and assistance of existing agencies of the Government, so far as practicable.

(b) Research and experimentation.- To conduct research and experimentation regarding the possibility of aircraft construction and the use of Philippine products in such construction.

(c) Public use of Government air navigation facilities.- Except as otherwise herein expressly provided, to make available for public use, under such conditions and to such extent as he may deem advisable, all civil air navigation facilities, owned or operated by the Philippine government, or any subdivision thereof: Provided, however, That not exclusive right shall be given for the use of any civil airway, airport, emergency landing field, or other air navigation facility under his jurisdiction.

(d) Publication of aeronautical bulletins. - To publish from time to time, whenever he may deem it advisable, a bulletin setting forth such matters relating to aeronautics including air navigation treaties and laws, and regulations and decisions thereunder.

(e) Acquisition of aircraft and air navigation facilities.- To acquire and operate such aircraft and air navigation facilities as may be necessary for executing the duties and functions prescribed by this Act.

(f) Exchanging aeronautical information with foreign government. - To foster the development of aviation by exchanging with foreign governments information pertaining to civil aviation, and by such other means as may be consistent with the provisions of this Act.

(g) Investigation of Accidents. - To investigate accidents in civil air navigation in the Philippines, including the attending facts, conditions and circumstances, and for that purpose the Director, or any officer or employee of the Bureau of Aeronautics designated by him in writing for the purpose, is

authorized to hold public hearings in such places or at such times he shall deem practical, and for the purpose of such hearings, administer oaths, examine witnesses, require the preservation of evidence and issue subpoenas for the attendance and testimony of witnesses or the production of books, papers, documents, exhibits or other evidence, or the taking of deposition before any designated individual competent to administer oaths. Witnesses summoned or whose depositions are taken shall receive the same fee and mileage as witnesses in the Court of First Instance. All evidence taken at the hearing shall be recorded and forwarded to the Director. At the conclusion of the investigation or hearing on any such accident, or as soon thereafter as circumstances permit, the Director shall make a complete report thereof to the Secretary, who shall, if he deems it in the public interest, make a statement of the probable cause or causes of the accident, except that when the accident has resulted in serious or fatal injury, it shall be the duty of the Secretary to make public such statement. Neither any such statement nor any report of such investigation or hearing, nor any part thereof shall be admitted as evidence or used for the purpose in any suit or action growing out of any matter referred to in any such statement, investigation, hearing or report thereto.

(h) Issuance of Permits and Licenses. - To issue permits and licenses to persons duly and legally qualified and entitled thereto, according to the provisions of this Act and the rules and regulations made and issued thereunder, provided that permit and licenses to engage in air commerce shall be issued only by the Secretary of Public Works and Communications with the approval of the President of the Philippines. (Amended by Comm. Act. No. 529.)

(i) Examination and rating of civilian aviation schools.- To provide for the examination and rating of civil aviation schools giving flying and ground instruction, as to the adequacy of the course of instruction, as to the suitability and airworthiness of the equipment, and as to the competency of instructors. The examinations and ratings provided for in this subsection shall only be made upon request of the owners or representatives of the air navigation facilities or schools. (Amended by Comm. Act No. 529).

(j) Promulgation of rules and regulations. - To issue such rules and regulations as may be necessary or proper to effectuate the purposes and enforce the provisions of this Act. Such rules and regulations shall have the same force and effect as though they were written herein, and shall pertain to, among other matters:

(1) The design, structural modification, repair and airworthiness of aircraft, aircraft power plant, and accessories and parachutes used in connection with such aircraft;

(2) The examination and rating of airmen;

(3) The examination and rating of airlines engaged in air commerce and the establishment of minimum safety standard for the operation thereof.

(4) The establishment of aircraft rules;

(5) The issuance, suspension, cancellation and revocation of licenses for aircraft and airmen. (Amended by Comm. Act No. 529.)

CHAPTER V. UNLAWFUL ACTS AND PENALTIES

Sec.7. - Unlawful acts. - It shall be unlawful for any persons to operate or navigate any aircraft in the Philippines in violation of any of the provisions of this Act, or any rules and regulations made and issued in pursuance thereof, or the terms and conditions of any permit or license granted hereunder, or in violation of any of the following ~~specific provisions and requirements~~:

(a) Flying over prohibited areas, carrying of photographic equipment in aircraft. - No aircraft shall be operated or navigated within the limits of prohibited areas defined in proclamations or executive orders from time to time issued by competent military and civil authorities, including the President of the United States, and the President of the Philippines; no airmen or passenger shall take any picture by photograph or sketching of said prohibited areas; and no aircraft other than those of the United States and Philippine Governments shall carry any apparatus which can be used for taking photographs, except as permitted by and in conformity with such proclamations or executive orders.

(b) Airworthiness of aircraft. - No aircraft shall be operated or navigated without a license duly issued in accordance with the provisions of this Act. No aircraft shall be licensed under this Act unless it shall be found to be airworthy in accordance with the rules and regulations issued thereunder.

(c) Licenses for airmen. - No person shall act as airmen without a license, and no person, who is not a citizen of the Philippines, shall act as airmen or engage in air commerce in the Philippines, except as herein expressly provided.

(d) Ownership of aircraft. - No person shall ~~engage~~ in air commerce and no aircraft shall be operated or navigated in air commerce, without having been granted a license or permit therefor issued in accordance with the provisions of this Act. Except as may be necessary in the operation of an international air service, no permit shall be issued for the operation of any aircraft in air commerce that is registered under the laws of any foreign country, or any aircraft that is not absolutely owned and exclusively controlled by:

(1) A Citizen or citizens of the Philippines;

(2) A partnership or other joint enterprise of which each member is a citizen of the Philippines, or

(3) A corporation organized under the laws of the Philippines, of which the directing head and at least two-thirds or of the Directors and managing officers are citizens of the Philippines; and of which at least

sixty-six and two-thirds per centum of the voting interest of the corporation is owned absolutely and controlled exclusively by citizens of the Philippines.

(4) The Government of the United States or of the Philippines or a political subdivision thereof.

Sec. 8. Penalties. - Any person who shall violate any provision of this Act, or any rules and regulations made and issued in accordance therewith shall be punished by a fine of not more than five thousand pesos or not more than six months imprisonment, or both.

CHAPTER VI. MISCELLANEOUS

Sec. 9. Act repealed. Act Numbered Three thousand nine hundred nine and three thousand nine hundred ninety six and such other acts or parts of acts as are in conflict with the provisions hereof are hereby repealed.

Sec. 10. Exemptions. The conditions and requirements of this Act, and the rules and regulations issued hereunder shall not apply to aircraft and airmen of the armed forces of the United States and the Philippine Governments.

CHAPTER VII. APPROPRIATIONS

Sec. 11. Annual appropriation for the Bureau of Aeronautics. - To effectively carry out the purposes of this Act, there is hereby appropriated the sum of one hundred thousand pesos, out of the funds in the Philippine treasury, not otherwise appropriated, Provided, That any unexpended balance of said sum on December thirty-first, nineteen hundred and thirty-seven, shall be reverted to the Philippine Treasury.

The Division of Aeronautics is hereby abolished and its activities, appropriations, properties, equipment, records, assets and liabilities are transferred to the Bureau of Aeronautics.

Sec. 12. Effective date of Act. - This Act shall take effect upon its approval.

APPROVED, November 12, 1936.

FIRST CONGRESS OF THE REPUBLIC OF THE)
PHILIPPINES)
Third Session)

H. No. 1767

REPUBLIC ACT NO. 224

AN ACT TO CREATE A PUBLIC CORPORATION TO BE KNOWN AS THE
"NATIONAL AIRPORTS CORPORATION," TO DEFINE ITS POWERS AND DUTIES,
TO APPROPRIATE THE NECESSARY FUNDS THEREFOR, AND FOR OTHER PUR-
POSES.

Be it enacted by the Senate and House of Representatives of the
Philippines in Congress assembled:

SECTION 1. There is hereby created a public corporation to be
known as the "National Airports Corporation," hereinafter called
and designated the Corporation, to serve as an agency of the Repub-
lic of the Philippines for the development, administration, opera-
tion and management of the government owned landing fields in the
Philippines.

The said Corporation shall exist for a term of fifty years
from the date of the approval of this Act, and shall have its prin-
cipal place of business at Nichols Field, Municipality of Paranaque,
Province of Rizal.

SECTION 2. The "National Airports Corporation" shall have the
following objects:

(a) To take over the use, management, operation, maintenance,
development, control, regulation and policing of Nichols Fields as a
public airport for national and international air traffic, and of
all other government airfields, except those controlled and/or ope-
rated by the Armed Forces of the Republic, and of any other air-
fields which it may acquire or construct;

(b) To plan, design, equip, expand, improve, repair, alter, or
construct these airports or any navigation facilities appurtenant
thereto with a view to providing the public with an efficient and mo-
dern air transportation service;

(c) To assist in the development and utilization of the other
air potentials of the Philippines, and in the encouragement and pro-
motion of civil aeronautics.

SECTION 3. The said Corporation shall be subject to the provi-
sions of the Corporation Law in so far as they are not inconsistent
with the provisions of this Act, or the purpose for which the Corpo-
ration is formed, and it shall enjoy the general powers mentioned
in said Corporation Law in addition to the following powers:

(a) To enter into, make and execute contracts of any kind as may be necessary or incidental to the attainment of its object with any person, firm, or public or private corporation or entity or subject to the approval of the President, with any foreign government;

(b) To acquire, hold, purchase, or lease any personal or real property, rights of way, and easements which may be proper or necessary for the furtherance of the purposes of the corpora of the corporation;

(c) To exercise the right of eminent domain for the purposes for which it was created, in the manner provided by law for condemnation proceedings by the national, provincial and municipal governments;

(d) To sell, pledge, mortgage, alienate or otherwise dispose of any property, or interest therein, or part thereof, whenever in the judgment of the Board of Directors said property, or interest therein, or part thereof, is no longer needed or required for the purpose for which the corporation is formed, or to lease the same when the lease thereof for any purpose shall not interfere with the main use of the airport, Provided, However, That no real property of whatever value, nor fixed installations of any kind having a book value of one hundred thousand pesos or over, may be sold or otherwise disposed of by the Corporation without the approval of the President of the Philippines;

(e) To contract loans, to issue bonds and other obligations as security therefor, Provided, however, That, at no time shall bonded indebtedness of the Corporation exceeds ten million pesos. In order that the corporation may validly issue bonds, the resolution of the Board of Directors authorizing the issuance thereof shall state the purpose and the terms and conditions of the bonds, which resolution shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance. All bonds issued by the Corporation shall be exempt from taxation by the Republic of the Philippines or by any political subdivision thereof, and shall be receivable as security in any transaction with the Government of the Republic of the Philippines, in which security is required. As security for any and all loans which it may contract, the Corporation is authorized to mortgage any and all airfields, installations and equipment which it has or may control.

(f) With the exception only of the amounts to be charged as landing fees, parking-space fees for transient aircraft, and royalties on sales or deliveries, direct or indirect, to an aircraft for its use of aviation gasoline, oil and lubricants, spare parts, accessories and supplies which shall be subject to the approval of the Civil Aeronautics Board, the Corporation shall have authority to determine, impose, collect and receive all charges, tolls, royalties, fees or rentals for the use of any of the property under the management and control and to prescribe the terms and conditions under which such property may be used. As used in this Section:

(1) Landing fees refer to all charges for the use of any landing strip or runway by any aircraft landing or taking off at the airport;

(2) "Terminal fees" refer to all charges for the use of any landing strip or parking at or near the ramp, terminal area or building for purposes of loading or unloading passengers and/or cargo;

(3) "Transient aircraft" refers to all those which do not have at the airport any fixed base, area, or parking space;

(4) "Royalties" refer to all charges based on gross business or sales, or gross or net profit.

(5) "Supplies" include any and all items of whatever nature or description which may be necessary for, or incidental to, the operation of an aircraft;

(g) To grant to any person, firm or company such concession or concession rights as may be necessary or convenient to the airports upon which such terms and conditions as the corporation may deem proper, Provided, however, That the exclusive use of any landing strip or runway within any airport shall not be granted to any persons, firm, or corporation.

(h) To determine the types of aircraft that may be allowed to use the airport and to limit their use to certain types of aircraft only, in the interest of public safety;

(i) To prescribe, adopt, establish and enforce such rules and regulations, as may be necessary for the safety, health, and welfare of the public within the airports;

(j) In general, to do everything, directly or indirectly, necessary or incidental to, or in the furtherance of, the purpose of the corporation, and the enumeration of the specific powers herein granted shall not be constructed as a limitation upon the general and incidental powers of the corporation;

(k) In the transaction of its business, to perform all acts which a co-partnership or natural person is authorized to perform upon the laws existing or which may be enacted hereafter.

SECTION 4. The governing body of the Corporation shall consist of a Board of Directors composed of five members to be appointed by the President of the Philippines, with the consent of the Commission on Appointments of Congress of the Philippines. The President of the Philippines shall designate from among the members of the Board a Chairman and a Vice-Chairman who shall act as Chairman during the absence or temporary disability of the former.

Of the directors first appointed as above prescribed, the President of the Philippines shall designate one to serve for five years, one to serve four years, one for three years, one for two years, and one for one year; and thereafter, each director appointed shall serve for four years. Whenever, a vacancy occurs among the directors, the person appointed director to fill such vacancy shall sit for the unexpired portion of the term of the member whose place he is selected to fill. Any director shall be subject to removal by the President of the Philippines. Three members of the Board of the Directors shall constitute a quorum for the transaction of business.

Before entering upon the discharge of their duties, each of the directors shall take the oath prescribed in section twenty-three of the Revised Administrative Code and in the Constitution of the Philippines.

The members of the Board shall each receive a per diem of not to exceed thirty pesos for each meeting actually attended by them.

SECTION 5. The Board shall submit its annual report and balance sheets to the President of the Philippines and to the Congress of the Philippines, as provided in Section five hundred and seventy-four to five hundred seventy-seven of the Revised Administrative Code.

SECTION 6. The direct and active management of the affairs and business of the Corporation shall be performed by the General Manager subject to the supervision and control of the Board of Directors. The General Manager shall be appointed by the President of the Philippines with the consent of the Commission on Appointments of the Congress of the Philippines; shall be entitled to a compensation to be fixed by the President of the Philippines and shall hold office at his pleasure.

The General Manager shall, with the approval of the Board of Directors, appoint and fix the number and salaries of such technical and other officers and employees as may be necessary for the performance of the functions and activities of the Corporation; shall sit at all meetings of the Board of Directors and may participate in its deliberations but shall have no right to vote, and shall render and submit such report or reports to the Board as may be required of him from time to time.

SECTION 7. The Office of the Administrator of the Manila International Airport established under the provisions of Executive Order Numbered One hundred, dated October twenty one, nineteen hundred and forty-seven, is hereby abolished, all personnel, records, properties, assets, rights, obligations, liabilities, appropriations and unexpended balances thereof are hereby transferred to, and assumed, by the National Airports Corporation. All works, constructions and improvements made by the Civil Aeronautics Administration or any agency of the National Government or upon government airfields, as well as the appropriations or the unexpended balances thereof shall belong to this Corporation.

SECTION 8. All laws, executive orders and rules and regulations governing the operation of aircraft in the Philippines shall be applicable to any aircraft using the landing fields of the National Airports Corporation.

SECTION 9. In order to enable the Corporation to carry out its purposes as set forth in this Act, there is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, the sum of one million pesos, which together with the appropriations and unexpended balances mentioned in section seven of this Act, shall constitute the capital of this Corporation and will be placed at the disposal of the Board of Directors for the attainment of the objective of the Corporation.

The funds herein appropriated shall not be released unless and until the Secretary of Finance and the Auditor General shall have certified to the President of the Philippines that there are existing and available funds in the National Treasury in excess of the sums appropriated in the General Appropriation Law for the Fiscal Year ending June thirtieth, nineteen hundred and forty-nine and the prior appropriations established by law.

SECTION 10. All acts or parts of acts and executive orders, administrative orders, or parts thereof which are inconsistent with the provisions of this Act are hereby repealed.

SECTION 11. This Act shall take effect on its approval.

APPROVED: June 5, 1948

SECOND CONGRESS

of the

REPUBLIC OF THE PHILIPPINES

Third Session

Begun and held in the City of Manila on Monday, the twenty-eighth day of January, nineteen hundred and fifty-two.

(REPUBLIC ACT NO. 776)

AN ACT TO REORGANIZE THE CIVIL AERONAUTICS BOARD AND THE CIVIL AERONAUTICS ADMINISTRATION TO PROVIDE FOR THE REGULATION OF CIVIL AERONAUTICS IN THE PHILIPPINES AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I - Title and Purpose

SECTION 1. Title of Act. - The title of this Act shall be "The Civil Aeronautics Act of the Philippines."

SECTION 2. Purpose and Scope of Act. - The general purposes of this Act is the reorganization of the Civil Aeronautics Board and the Civil Aeronautics Administration, defining their powers and duties and making certain adjustment of funds and personnel in connection therewith; and the regulation of civil aeronautics.

The provisions of this Act and the rules and regulations issued pursuant thereto shall not apply except with respect to air traffic rules, to military aircraft and airmen of the Philippines and of foreign countries and to foreign civil and public aircraft and airmen other than those covered by Chapters III and IV hereof.

CHAPTER II - General Provisions

SECTION 3. Words and Phrases defined. - The following definitions shall control in the application and construction of this Act, unless the context otherwise requires:

- (a) "Administrator" means the Civil Aeronautics Administrator.
- (b) "Aerodrome" means a defined area on land or water, including any building, installations and equipment intended to be used either wholly or in part for the arrival, departure and movement of aircraft.
- (c) "Aeronautics" means the science and art of flight.

(d) "Aeronautical telecommunication" means and includes any telegraph or telephone communication signs, signals, writings, images and sounds of any nature, by wire, radio or other systems or processes of signalling, used in the aeronautical service.

(e) "Aeronautical telecommunication station" means any station operated to provide telecommunication for aeronautical purposes.

(f) "Air Carrier" means a person who undertakes, whether directly or indirectly, or by a lease or any other arrangements, to engage in air transportation or air commerce.

(g) "Air commerce" means and includes air transportation for pay or hire, thenavigation of aircraft from one place to another for operation in the conduct of a business.

(h) "Air transportation" means service or carriage of persons, property or mail, in whole or in part, by aircraft.

(i) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of, or flight in the air.

(j) "Aircraft engine" means an engine used or intended to be used for propulsion of aircraft and includes all parts, appurtenances and accessories thereof other than propellers.

(k) "Aircraft radio station" means a radio station on board any aircraft.

(l) "Airmen" means any individual who engages, as the person in command or as pilot, mechanic, flight radio operator or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of inspection, maintenance, overhauling or repair of aircraft, aircraft engine, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air traffic control operator.

(m) "Air navigation facility" means any facility used in, available for use in or designed for use, in aid of air navigation, including areas, lights, any apparatus or equipment for disseminating weather information, for signalling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(n) "Airways" means a path thru the navigable air space identified by an area of specified width on the surface of the earth designated or approved by the Administrator as suitable for air commerce or air transportation.

(o) "Airworthiness" means that an aircraft, its engines, propellers, and other components and accessories, are of proper design and construction, and are safe for air navigation purposes, such design and construction being consistent with accepted engineering practice and in accordance with aerodynamic laws and aircraft science.

(p) "Appliances" means instruments, equipments, apparatus, parts, appurtenances, or accessories, of whatever description, which are used or are capable of being or intended to be used in the navigation,

operation, or control of aircraft in flight (including parachutes and communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not part or parts of aircraft, aircraft engines or propellers.

(q) "Board" means the Civil Aeronautics Board.

(r) "Citizen of the Philippines" means (a) an individual who is a citizen of the Philippines, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the Philippines, of which the directing head and two-thirds or more of the Board of Directors and other managing officers are citizens of the Philippines, and in which sixty per centum of the voting interest is owned or controlled by persons who are citizens of the Philippines.

(s) "Civil Aircraft" means any aircraft other than a public aircraft.

(t) "Domestic air carrier" means an air carrier who is a citizen of the Philippines: Provided, That an air carrier who is not a citizen of the Philippines but who may be allowed to engage in domestic and/or foreign air transportation, or domestic and/or foreign air commerce, in accordance with the provisions of Section twelve, Chapter IV of this Act, shall to all intents and purposes, be classified as a domestic air carrier.

(u) "Domestic air commerce" means and includes air commerce within the limits of the Philippine territory.

(v) "Domestic air transportation" means air transportation within the limits of the Philippine territory.

(w) "Flight radio operator" means and includes a member of the operating crew of aircraft who is granted radio operator's license by the Civil Aeronautics Administrator to operate aircraft radio stations.

(x) "Foreign air carrier" means an air carrier who is not a citizen of the Philippines, and/or an air carrier other than a domestic air carrier.

(y) "Foreign air commerce" means and includes air commerce between the Philippines and any place outside it, or wholly outside the Philippines.

(aa) "Landing field" means any locality either on water or on land, which is adapted for landing and taking-off of aircraft located along an airway and is intermediate to airports connected by the airway, whether or not facilities are provided for the shelter, servicing or repair of aircraft, or for receiving or discharging passengers or cargo.

(bb) "Mail" means Philippine mail or foreign transit mail.

(cc) "Navigation of aircraft" or navigate aircraft includes the piloting of aircraft.

(dd) "Navigable air space" means air space above the minimum altitudes of flight prescribed by regulations issued under this Act.

(ee) "Permit" means Certificate of Public Convenience and Necessity.

(ff) "Persons" means any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(gg) "Propeller" includes all parts, appurtenances and accessories thereof.

(hh) "Public Aircraft" means an aircraft used exclusively in the service of the National Government of the Republic of the Philippines or of any political subdivision or instrumentality thereof, but not including any government-owned aircraft engaged in air commerce.

(ii) "Reasonable Charges" are those which insure just and reasonable return on the capital invested, taking into consideration the cost of construction, operation and maintenance and non-aeronautical revenue of the air navigation facility affected, which shall be uniform.

SECTION 4. Declaration of Policies. - In the exercise and performance of the powers and duties under this Act, the Civil Aeronautics Board and the Civil Aeronautics Administrator shall consider the following among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The development and utilization of the airpotential of the Philippines:

(b) The encouragement and development of an air transportation system properly adapted to the present and future of foreign and domestic commerce of the Philippines, of the Postal Service, and of the National Defense;

(c) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in and foster sound economic conditions in such transportation, and to improve the relations between, and coordinate transportation by, air carrier;

(d) The promotion of adequate, economical and efficient service by air carriers at reasonable charges, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices;

(e) Competition between air carriers to the extent necessary to assure the sound development of an air transportation system properly adapted to the need of the foreign and domestic commerce of the Philippines, of the Postal Service, and of the National Defense.

(f) To promote safety of flight in air commerce in the Philippines;

(g) The encouragement and development of civil aeronautics.

CHAPTER III. CIVIL AERONAUTICS BOARD

SECTION 5. Composition of the Board. - The Civil Aeronautics Board shall be composed of the Secretary of Commerce and Industry as Chairman, the Civil Aeronautics Administrator, the Commanding Officer

of the Philippine Air Force, and two other members to be appointed by the President of the Philippines. They shall hold office at the pleasure of the President and shall be entitled to per diem for each meeting actually attended by them in such amount as may be fixed by the President. In case of absence or incapacity of the Secretary of Commerce and Industry, the Civil Aeronautics Administrator shall act as Chairman.

In case the Undersecretary of Commerce and Industry and/or Deputy Administrator act in the stead of the Secretary of Commerce and Industry and/or Administrator, respectively, they shall hold office and be entitled to per diem for each meeting actually attended by them in the Civil Aeronautics Board. No member of the Board shall have any pecuniary interest in, or own any stock or bond of, any civil aeronautics enterprise.

SECTION 6. Principal office and quorum.- The Board shall have its principal office in the City of Manila and may hold hearings on any proceedings at such time and places within the Philippines as it may provide by order in writing. The Chairman and two members of the Board shall constitute a quorum to transact business. A majority vote of the members constituting a quorum shall be necessary for a valid and enforceable decision or order by the Board. A tie vote shall be referred to the President of the Philippines for decision.

SECTION 7. Permanent personnel. - The Board shall have a permanent Secretary, who shall be a member of the Philippine bar, with compensation at five thousand one hundred pesos per annum. He shall record all proceedings of the Board, take charge of and keep all its papers, and perform such other duties as may be prescribed by the Board in connection with its proceedings or papers. The Board shall also have a permanent stenographer with compensation at two thousand four hundred pesos per annum and such other employees and personnel as the Board may deem necessary in exercising and performing its powers and duties.

SECTION 8. Temporary personnel. - The Board may, with the approval of the President of the Philippines, engage for temporary service such duly qualified consulting engineers and agencies or other qualified persons as are necessary, and fix the compensation of such engineers, agencies, or persons without regard to civil service rules and regulations.

SECTION 9. Annual Report.- The Board shall make an annual report to the President which shall contain such information and data collected by the Board as may be considered of value in the determination of questions connected with the development of civil aeronautics, together with such recommendations as to additional legislation relating thereto as the Board may deem necessary.

SECTION 10. Powers and Duties of the Board. - (A) Except as otherwise provided herein, the Board shall have the power to regulate the economic aspect of air transportation, and shall have the general supervision and regulation of, and jurisdiction and control over, air carriers and well as their property, property rights, equipment, facilities, and franchise, in so far as may be necessary for the purpose of carrying out the provisions of this Act.

(B) The Board may perform such acts, conduct such investigations, issue and amend such orders, and make and amend such general and special rules, regulations, and procedures as it shall deem necessary to carry out the provisions of this Act.

(C) The Board shall have the following specific powers and duties:

(1) In accordance with the provisions of Chapter 4 of this Act, to issue, deny, amend, revise, alter, modify, cancel, suspend, or revoke, in whole or in part, upon petition or complaint, or upon its own initiative, any temporary operating permit or Certificate of Public Convenience Necessity; Provided, however, That in the case of foreign air carriers, the permit shall be issued with the approval of the President of the Republic of the Philippines.

(2) To fix and determine reasonable individual, joint or special rates, charges or fares which an air carrier may demand, collect or receive for any service in connection with air commerce. The Board may adopt any original, amended, or new individual, joint or special rates, charges or fares proposed by an air carrier if the proposed individual, joint, or special rates, charges or fares are not unduly preferential or unduly discriminatory or unreasonable. The burden of proof to show that the proposed individual, joint or special rates, charges or fares are just and reasonable shall be upon the air carrier proposing the same.

In fixing rates, charges, or fares under the provisions of this Act, the Board shall take into consideration, among other factors:

- (a) The effect of such rates upon the movement of traffic;
- (b) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;
- (c) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;
- (d) The inherent advantages of transportation by aircraft; and
- (e) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

(3) To authorize ~~Charter~~ whether domestic or international and special air services or flight heretofore exercised by the Department of Commerce and Industry under Commonwealth Act No. 97 under such terms and conditions as in its judgment the public interest requires.

(4) To approve or disapprove increases of capital, sale of equipment of an air carrier engaged in air commerce, consolidation, merger, purchase, lease, operating contract or acquisition and control between domestic air carriers; or between domestic air carriers and foreign air carriers; or between domestic air carriers and any person engaged in any phase of aeronautics.

(5) To inquire into the management of the business of any air carrier and, to the extent reasonably necessary for such inquiry, to obtain from such carrier, and from any person controlling, or controlled by, or under common control with, such air carrier, full and complete reports and other information. Such reports shall be under oath whenever the Board so requires.

(6) To require annual, monthly, periodical, and special reports from any air carrier, to prescribe the manner and form in which such reports shall be made, and to require from any air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier to file with it any contract, agreement, understanding or arrangement, or a true copy thereof, between such air carrier and any other carrier or persons, in relation to any traffic affected by the provisions of this Act.

(7) To prescribe the forms of any and all accounts, records, and memoranda of the movement of traffic, as well as of the receipt and expenditures of money, and the length of time such accounts, records and memoranda shall be preserved; Provided, That any air carrier may keep additional accounts, records or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

(8) To require each officer and director of any air carrier to transmit a report describing the shares of stock or other interest held by such air carrier with any persons engaged in any phase of aeronautics, and the holding of the stock in and control of, other persons engaged in any phase of aeronautics.

(D) The Board may investigate, upon complaint or upon its own initiative whether any individual or air carrier, domestic or foreign is violating any provisions of this Act, or the rules and regulations issued thereunder, and shall take such actions consistent with the

provisions of this Act, as may be necessary to prevent further violation of such provision, or rules and regulations so issued.

(E) The Board may issue subpoena or supoena duces tecum, require the attendance and testimony of witnesses in any matter or inquiry pending before the Board or its duly authorized representative, and require the production of books, papers, tariffs, contracts, agreements and all other documents submitted for purposes of this section to be under oath and verified by the person in custody thereof as to the truth and correctness of data appearing in such books, papers, tariffs, contracts, agreement and all other documents.

(F) The Board may review, revise, reverse, modify or affirm on appeal any administrative decision or order of the Administrator on matters pertaining to:

- (1) Grounding of airmen and aircraft, or
- (2) Revocation of any certificate or the denial by the Administrator of issuance of any certificate; or
- (3) Imposition of civil penalty of fine in connection with the violation of any provision of this Act or rules and regulations issued thereunder.

(G) The Board shall have the power, either on its own initiative or upon review on appeal from an order or decision of the Administrator, to determine whether to impose, remit, mitigate, increase, or compromise such fines and civil penalties as the case may be.

(H) (1) The Civil Aeronautics Board shall be advised of, and shall consult with the Department of Foreign Affairs concerning the negotiation of any air agreement with foreign government for the promotion, establishment, or development of foreign air transportation.

(2) In exercising and performing its powers and duties under the provisions of this Act, the Civil Aeronautics Board shall take into consideration the obligation assumed by the Republic of the Philippines in any treaty, convention or agreement with foreign countries on matters affecting civil aviation.

CHAPTER IV. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SECTION 11. Nature, terms and conditions. - Certificate of Public Convenience and Necessity is a permit issued by the Board authorizing a person to engage in air commerce and/or air transportation, foreign and/or domestic.

Any permit may be altered, amended, modified, suspended, cancelled or revoked by the Board on whole or in part, upon complaint or petition or upon the Board's initiative as hereinafter provided, whenever the Board finds such action to be in the public interest.

There shall be attached to the exercise of the privileges granted by the permit, or amendment thereto, such reasonable terms, conditions, or limitations as, in the judgment of the Board, the public interest may require.

No permit shall confer any proprietary, property, or exclusive right in the use of any air space, civil airway, landing area or government air navigation facility.

The permit shall, among others, specify the terminal and intermediate points, if any, between which the air carrier is authorized to operate the service to be rendered, the time of arrival and departure at each point, the frequency of flights. Provided, That no change in routes, rates, schedules or frequency nor supplemental or additional flights to those covered by an air commerce permit or franchise shall be affected without prior approval of the Civil Aeronautics Board. In so far as the operation is to take place without the Philippines, the permit shall designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed.

No carrier shall abandon any route, or part thereof for which a permit has been issued, unless upon findings by the Civil Aeronautics Board that such an abandonment is uneconomical and is in the public interest.

SECTION 12. Citizenship requirement. - Except as otherwise provided, in the Constitution and existing treaty or treaties, permit authorizing a person to engage in domestic air commerce and/or air transportation shall be issued only to citizens of the Philippines.

SECTION 13. Conduct of Proceedings. The Board shall conduct its proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice. All hearings and investigations before the Civil Aeronautics Board shall be governed by the rules of procedure adopted by the Board, and in the conduct thereof the Board shall not be bound by the technical rules of evidence.

SECTION 14. Delegation of authority to conduct hearings. - The Board may designate in writing any of its members or any of its officer to conduct hearings and investigations on any matter pending before the Board and for that purpose the person so designated shall have authority to administer oaths, issue subpoena and subpoena duces tecum, require the attendance and testimony of witnesses, examine witnesses, make ocular inspection of or enter into any airline establishment, building, place or premise in the performance of its official business.

SECTION 15. Application for Permit. Application for permit shall be made to the Board in writing and shall be verified. Said application shall be in such form, shall contain such information, and shall be accompanied by such proof of service upon such interested persons as the Board shall by regulation require.

SECTION 16. Notice. Upon the filing of any such application, the Board shall give due notice thereof: (1) to the public, by posting a notice of such application in the Office of the Civil Aeronautics Board and by publication once a week for three consecutive weeks, at the expense of the applicant, in a newspaper of general circulation, and (2) to such other persons as the Board may require by regulation: Provided, however, That notice or publication may be dispensed with by the Board whenever, in its judgment, the public interest so requires. Any interested person may file with the Board memorandum in support of, or in opposition to, the issuance of the permit.

SECTION 17. Time and Place of Meeting. Within a week after the last publication of the application as provided in Section 16 of this Act, the Board or its duly designated representative shall set the time and place for the meeting of the parties interested in said application or their attorneys, and shall notify said parties or their attorneys in writing to appear; Provided, That, if publication has been dispensed with, the Board shall immediately set the time and place for the meeting of the parties.

SECTION 18. Non-Appearances. If a party interested in the application fails to appear or if no party appears at the designated time and place, the Board or its duly designated representative may proceed ex parte or, in his discretion adjourn the proceeding for a future date, giving notice to the absent party or parties of the adjournment.

SECTION 19. Depositions. The Board or its duly designated representative may, in any investigation or hearing, by order in writing, cause the deposition of witnesses residing within or without the Philippines to be taken in the manner prescribed by the Rules of Court.

Witnesses whose depositions are necessary shall be entitled to mileage fees at the same rates as those allowed in the Courts of First Instance.

SECTION 20. Hearings and Records of Proceedings. Hearings on all applications shall be open to the public unless the Board shall determine otherwise for reason of national security.

Proceedings shall be recorded in such form and manner as may be determined by the Board and the record of proceedings shall become part of the records of the application.

SECTION 21. Issuance of Permit. - The Board shall issue a permit authorizing the whole or any part of the service covered by the application, if it finds: (1) that the applicant is fit, willing and able to perform such service properly in conformity with the provisions of this Act and the rules, regulations, and requirement issued thereunder, and (2) that such service is required by the public convenience and necessity, otherwise the application shall be denied.

SECTION 22. Modification, suspension or revocation. - The Board, upon petition or complaint or upon its own initiative, may, by order entered after notice and opportunity for hearing, alter, amend, modify, or suspend any permit, in whole or in part, if public convenience and necessity so require, or may revoke any permit in whole or in part, for intentional failure to comply with any provision of this Act or any order, rule or regulation issued thereunder, or any term, condition or limitation of such permit: Provided, That the Board, for good cause, may by order without notice and hearing suspend, for a period not to exceed thirty days, any permit or the exercise of any privilege or authority issued or granted under this Act whenever such step shall, in the judgment of the Board, be necessary to avoid serious or irreparable damage or inconvenience to the public. Any interested person may file with the Board a protest or memorandum in support of or opposition to the alteration, amendment, modification, suspension, or revocation of any permit.

SECTION 23. Transfer of Permit. - No permit may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

SECTION 24. Effective date and duration of Permit. - Each permit shall be effective from the date specified therein and shall continue in effect until suspended or revoked or until the Board shall certify that operation thereunder has ceased: Provided, That if any service authorized by a permit is not inaugurated within a period of ninety days after the date of authorization as shall be fixed by the Board or after such other period as may be designated by the Board, the Board may by order direct that such permit shall thereupon cease to be effective to the extent of such service; Provided, further, That no permit shall be issued for a period of more than twenty-five years.

CHAPTER V. CIVIL AERONAUTICS ADMINISTRATION

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SECTION 38. Conveyance to be recorded.- No conveyance made or

executed, affects the title to, or interest in, any civil aircraft of Philippine registry, or any portion thereof shall be valid in respect to such aircraft or portion thereof against any person other than the person by whom the conveyance is made or executed, his heirs, assignees, executors, administrator, devisees, or successors in interest, and any person having actual notice thereof, until such conveyance is recorded in the office of the Civil Aeronautics Administration. Every such conveyance so recorded in the Civil Aeronautics Administration shall be valid as against all persons. Any instrument, recording of which is required by the provisions of this Act, shall take effect from the date of its record in the books of the Civil Aeronautics Administration, and not from the date of its execution.

SECTION 39. Form of conveyance. No conveyance may be recorded under the provisions of this Act unless it complies with the requirement for the registration of documents affecting land. The conveyance to be recorded shall also state: (1) the interest in the aircraft of the person by whom such conveyance is made or executed or, in the case of a contract of conditional sale, the interest of the vendor, and (2) the interest transferred by the conveyance.

SECTION 40. Method of Recording. - The Administrator shall record conveyances delivered to it in the order of their receipt, in files kept for the purpose, indexed to show:

- (a) The identifying description of the aircraft;
- (b) The names of the parties to the conveyance;
- (c) The date of the instrument and the date and time it is recorded;
- (d) The interest in the aircraft transferred by the conveyance;
- (e) If such conveyance is made as security for indebtedness, the amount and date of maturity of such indebtedness; and
- (f) All particular estates, mortgages, liens, leases, orders, and other encumbrances and all decree, instrument, attachments, or entries affecting aircraft and other matters properly determined under this Act.

SECTION 41. Previously unrecorded ownership. - Application for the issuance or renewal of an airworthiness certificate for aircraft whose ownership has not been recorded as provided in this Act shall contain such information with respect to the ownership of the aircraft as the Administrator shall deem necessary to show who have property interest in such aircraft and the nature and extent of such interest.

CHAPTER VII. VIOLATIONS AND PENALTIES

SECTION 42. Specific Penalties. - (A) Any person engaging in air commerce without a permit issued by the Board as provided in

air commerce without a permit issued by the Board as provided in this Act shall be punished by a fine not exceeding five-thousand pesos or by imprisonment for not more than one year, or both, in the discretion of the court: Provided, That a person engaging in air commerce on the date of the approval of this Act may continue so to engage until such time as the Board shall pass upon an application for a permit for such service, which application must be filed, as provided in Chapter IV of this Act, within one hundred and twenty days after the approval of this Act.

(B) Any air carrier violating any of the terms, conditions or limitations contained in any permit or amendment thereto shall be punished by a fine not exceeding one thousand pesos for each violation.

(C) Any air carrier violating any order, rule or regulation issued by the Board shall be punished by a fine not exceeding one thousand pesos for each violation.

(D) The following act shall subject any air carrier to a fine not exceeding one thousand pesos for each offense:

- (1) Discounts or rebates on authorized rates, fares and charges;
- (2) Adopting rates, fares and charges which have been found or determined by the Board to be unjust, unreasonable, unduly preferential or unjustly discriminatory in a final order; or which have not been previously approved and authorized by the Board.
- (3) Issuing any free pass, free tickets or free or reduced rates, fares or charges for passengers except to the following persons x x x x x x x.

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(F) Any person who, without the previous approval of the Civil Aeronautics Board, effects any consolidation, merger, purchase, lease, operating contract or acquisition and control between domestic air carriers, or between domestic air carriers and foreign air carriers or between domestic carrier and any person engaged in any phase of aeronautics shall be punished by a fine of five thousand pesos or by imprisonment for not more than one year, or both, in the discretion of the Court.

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(K) Any person who without previous approval and authorization of the Board shall adopt, establish, maintain, change, revise, abandon, alter, amend, deger, reject, discontinue, suspend, or restore, any classification, rule or regulation or practice affecting routes, itineraries, schedules, classifications, increase or decrease of frequency of flights, in any manner whatsoever, shall be punished by a fine of five thousand pesos. The repetition of such offense shall be sufficient cause for revocation of the permit.

(L) No person shall interfere, obstruct, hinder, or delay the Civil Aeronautics Board or any person duly delegated by the Board in the performance of its duties in the public interest. A fine not exceeding five thousand pesos shall be imposed upon anyone who:

(1) With intent to interfere with the performance of the duties of the Board or any person duly delegated by the Board shall knowingly or wilfully alter, falsify, mutilate any report, accounts, records, books, papers, contracts, agreements and all other documents, or

(2) Shall knowingly and wilfully fail or refuse: (a) to make and/or submit the books, contracts, tariffs, papers, agreements, reports and all other documents required to be submitted by him for consideration before the administrator or his duly authorized representative or before the Board; or (b) to keep or preserve accounts records, memoranda, books, reports, papers and all other documents required by the Administrator or his duly authorized representative, or by the Civil Aeronautics Board; or

(3) Is guilty of misconduct in the presence of the Board or so near the same as to obstruct or interrupt the hearing or session or any proceedings before the Board and/or the Administrator or any representative duly authorized by them; or shall conduct himself in a rude or disorderly manner before the Administrator or his duly authorized representative or any member of the Board engaged in the discharge of official duty; or shall orally or in writing disrespectfully offend or insult any of the above named bodies or persons on the occasion of or in the performance of their official duty or during any hearing, session, or investigation held by either the Board of Administrator or their duly designated representative; or

(4) Refuse to be sworn in as witness or to answer as such when lawfully required to do so; Provided, That, the Board or the Administrator or their duly authorized representative shall, if necessary, be entitled to the assistance of the municipal police for the execution of any order to compel a witness to be present or to testify; or

(5) Without lawful justification or excuse, hinders, obstruct, or delays the Civil Aeronautics Board, the Administrator or their duly designated representative in the inspection or examination of the books and/or accounts of an air carrier for the

purpose of ascertaining the correctness in any material particular of any report, papers, documents, books, contracts, agreements and/or other documents submitted by such air carrier, or for any other purpose deemed by the Board and/or the Civil Aeronautics Administration to be in accordance with the public interest; or

(6) Neglects or refuses to attend and/or testify and/or to answer any lawful inquiry or to produce books, papers, or documents, if in his power to do so, in obedience to the subpoena or lawful requirements of the Civil Aeronautics Board or the Civil Aeronautics Administration; or

(7) Testifies falsely or makes false affidavits or both before the Board or Civil Aeronautics Administration or any duly designated representative of either.

(M) No person shall interfere with air navigation. A fine not exceeding five thousand pesos or imprisonment for not more than one year, or both, in the discretion of the Court, shall be imposed upon any person who:

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(N) Any person, who shall knowingly, and wilfully, forge, counterfeit, alter, or falsely make any certificate authorized to be issued under this Act or knowingly use or attempts to use any fraudulent certificate shall be punished by a fine not exceeding five thousand pesos or imprisonment for not more than one year, or both, in the discretion of the Court.

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SECTION 43. General Penalty. - Any violation of the provisions of this Act, or any order, rules or regulations issued thereunder, or any term, condition or limitation of any certificate or permit issued under this Act for which no penalty is expressly provided shall be punished by a fine not exceeding five hundred pesos for each violation.

SECTION 44. Compromise regarding penalty. - The Civil Aeronautics Board may enter into a compromise with respect to any penalty or fine imposed by virtue of the provisions of this Act. Failure to comply with the order or decision of the Board respecting such compromise shall be deemed good and sufficient reason for the suspension of the permit or any certificate until compliance is made. Compliance may also be enforced by appropriate action brought in a Court of competent jurisdiction.

CHAPTER VIII. Orders and Judicial Review

SECTION 45. Enforcement of Orders. - The orders, decision, and regulations of the Board and the terms and conditions of any certificate issued by it may also be enforced by any of the civil remedies provided by existing law.

SECTION 46. Effective date of orders and decisions. - All orders, rules and regulations of the Civil Aeronautics Board shall take effect at such time as the Board may prescribe. Whenever the Board is of the opinion that an emergency requiring immediate action exists in respect to safety in air navigation, it may, upon complaint or upon its initiative, make such just and reasonable orders, rules and regulations as may be essential in the interest of safety in air navigation to meet such emergency without answer or other form of pleading by the interested person or persons, with or without notice, hearing or the making or filing of a report: Provided, That the Board shall immediately initiate proceedings relating to the matters embraced in any such order, rule or regulation and shall, insofar as practicable, give preference to such proceedings over all others under this Act.

SECTION 47. Reconsideration of Orders. - Any interested party may request the reconsideration of any order, ruling or decision of the Civil Aeronautics Board by petition filed within fifteen days from the date of the notice of the said order, ruling or decision made by the Board. The petition shall clearly and specifically state the grounds for reconsideration. Copies of said petition shall be served on all parties interested in the matter. It shall be the duty of the Board to call a hearing on said petition without delay; after notice to all parties concerned, and, after hearing, to decide the same as soon as practicable.

SECTION 48. Finality of decision, order or ruling. - Decisions, orders and/or rulings of the Board shall become final and conclusive after 15 days from the date thereof unless appealed within said period to the Supreme Court by certiorari.

SECTION 49. Judicial Review. The Supreme Court may review any order, ruling or decision of the Board and modify or set aside such order, ruling or decision when it clearly appears that there was no evidence before the Board to support reasonably such order, ruling, or decision, or that the same is contrary to law or that the Board has no or has exceeded its jurisdiction. The evidence presented the Board together with the record of proceedings before the Board shall be certified by the Secretary of the Board to the Supreme Court.

Any ruling, order, decision or award of the Civil Aeronautics Board, except such ruling, order, decision or award with respect to the issuance of a permit, may reviewed by the Supreme Court upon a writ of certiorari in proper cases. The procedure for review, except as herein provided, shall be prescribed by the Supreme Court.

Except as otherwise provided in the preceding paragraph, all

orders, rulings, or decisions of the Board may be reviewed on the application of any person affected thereby by certiorari in appropriate cases or by petition to be known as petition for review, which shall be filed within fifteen days from the notification of such order, ruling or decision, or, in case a petition for the reconsideration of such order is filed in accordance with the preceding section and the same is denied, within fifteen days after notice of the order denying the petition for reconsideration. Said petition shall be placed on file in the office of the Supreme Court, which shall furnish copies thereof to the Secretary of the Board and other parties interested.

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SECTION 56. Effectivity. - This Act shall make effect upon its approval.

APPROVED: June 20, 1952.

(x)

ORDINANCE APPENDED TO THE CONSTITUTION

"Notwithstanding the provisions of Section one, Article Thirteen, Section Eight, Article Fourteen of the Foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, exploitation and development utilization of all agricultural, timber and mineral lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions, imposed upon citizens of the Philippines or corporation or association owned or controlled by citizens of the Philippines."

(x) This ordinance is popularly known as the Parity Amendment.

AGREEMENT BETWEEN THE REPUBLIC OF THE PHILIPPINES AND
THE UNITED STATES OF AMERICA CONCERNING TRADE AND RE-
LATED MATTERS DURING A TRANSITIONAL PERIOD FOLLOWING
THE INSTITUTION OF PHILIPPINE INDEPENDENCE, SIGNED AT
MANILA ON JULY 5, 1946, AS REVISED

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ARTICLE VI

1. The disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces and sources of potential energy, and other natural resources of either Party, and the operation of public utilities, shall, if open to any person be open to citizens of the other Party and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of such other Party in the same manner as to and under the same conditions imposed upon citizens or corporations or associations owned or controlled by citizens of the Party granting the right.

2. The rights provided for in Paragraph 1 may be exercised, in the case of citizens of the Philippines with respect to natural resources in the United States which are subject to Federal Control or regulations, only through the medium of a corporation organized under the laws of the United States or one of the States thereof and likewise, in the case of citizens of the United States with respect to natural resources in the public domain in the Philippines, only through the medium of a corporation organized under the laws of the Philippines and at least 60 per cent of the capital stock of which is owned or controlled by citizens of the United States. This provision, however, does not affect the right of citizens of the United States to acquire or own private agricultural lands in the Philippines or citizens of the Philippines to acquire or own land in the United States which is subject to the jurisdiction of the United States and not within the jurisdiction of any State and which is not within the public domain. The Philippines reserves the right to dispose of its public lands in small quantities on especially favorable terms exclusively to actual settlers or other users who are its own citizens. The United States reserves the right to dispose of its public lands in small quantities on especially favorable terms exclusively to actual settlers or other users who are its own citizens or aliens who have declared their intention to become citizens. Each Party reserves the right to limit the extent to which aliens may engage in fishing or engage in enterprises which furnish communication services and air or water transport. The United States also reserve the right to limit the extent to which aliens may own land in its outlying territories and pos-

session, but the Philippines will extend to Americans who are residents of any of those outlying territories and possessions only the same rights, with respect to ownership of lands, which are granted therein to citizens of the Philippines. The rights provided for in this Paragraph shall not, however, be exercised by either Party so as to derogate from the rights previously acquired by citizens or corporations or associations owned or controlled by citizens of the other Party.

3. The United States of America reserves the rights of the several States of the United States to limit the extent to which citizens or corporations or associations owned or controlled by citizens of the Philippines may engage in the activities specified in this Article. The Republic of the Philippines reserves the power to deny any of the rights specified in this Article to citizens of the United States who are citizens of States, or to corporations or associations at least 60% of whose capital stock or capital is owned or controlled by citizens of States, which deny like rights to citizens of the Philippines, or to corporations or associations which are owned or controlled by citizens of the Philippines. The exercise of this reservation on the part of the Philippines shall not affect previously acquired rights, provided that in the event that any State of the United States of America should in the future impose restrictions which would deny to citizens or corporations or associations owned or controlled by citizens of the Philippines the right to continue to engage in activities in which were engaged therein at the time of the imposition of such restrictions, the Republic of the Philippines shall be free to apply like limitations to the citizens or corporations or associations owned or controlled by citizens of such States.

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IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Protocol and have affixed hereunto their seals.

DONE in duplicate in the English language at Washington this sixth day of September, one thousand nine hundred and fifty-five.

For the President of the Republic of
the Philippines:

(Sgd.) Carlos P. Romulo
Special and Personal Envoy of
the President of the Philippines.

For the President of the United States
of America:

(Sgd.) James M. Langley
Special Representative of the
President of the United States
of America.

ACT NO. 3996 - AN ACT
TO AMEND ACT NUMBERED THIRTY-NINE HUNDRED AND NINE CONCERNING
THE LICENSING OF AIRMEN AND AIRCRAFT, INSPECTION OF THE SAME,
AIR TRAFFIC RULES, SCHEDULES AND RATES OF AVIATION COMPANIES
AND THE ENFORCEMENT OF THE LAWS.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE
PHILIPPINES IN LEGISLATURE ASSEMBLED AND BY THE AUTHORITY OF THE SAME:

Section 1. The first paragraph of Section One, Chapter One
of Act Numbered Thirty-Nine Hundred and Nine, is hereby amended to
read as follows:

"Sec. 1. In this Act, "Air Commerce" means transportation in
whole or in part by aircraft of person or property for hire, naviga-
tion of aircraft in the furtherance of business, or navigation of air-
craft from one place to another for operation in the conduct of a bu-
siness."

Section 2. Section Five, Six and Seven of Chapter Three of
the same Act are hereby amended to read as follows:

"Sec. 5. Aircraft- Construction, design, and airworthiness;
United States licenses- the public safety requiring and the advantages
of uniform regulation making it desirable in the interest of aeronau-
tical progress that aircraft operating within the Philippine Islands
should conform with respect to design, construction, and airworthiness
to the standard prescribed by the United States government with respect
to navigation of civil aircraft. Subject to its jurisdiction, it shall
be unlawful for any person to navigate aircraft within the Philippine
Islands unless such an aircraft has an appropriate, effective license
issued by the Department of Commerce and Communications, Provided, How-
ever, That this restriction shall not apply to military or licensed
civil aircraft of the United States or to aircraft licensed by a foreign
country with which the United States or the Philippines has a reciproc-
al or other agreement covering the operation of such licensed air-
craft in the Philippines. Such aircraft shall be flown only subject to the
provision of such agreement."

Section 6. Qualification of Operators. - Federal license. The
public safety requiring and the advantages of uniform regulation
making it desirable in the interest of aeronautical progress that a
person engaged within the Philippine Islands in navigating aircraft
in any form of navigation, shall have the qualification necessary
for obtaining and holding a pilot's license by the Department of Com-
merce and Communication, it shall be unlawful for any person to operate
any aircraft in the Philippine Islands unless such person is the holder of an
appropriate, effective pilot's license issued by the Department of Com-
merce and Communications, Provided, however, That, this restriction shall

not apply to licensed pilot of the United States or to foreign pilots operating aircraft of foreign countries with which the United States or the Philippine Islands have reciprocal or other agreement covering commercial pilot privileges in the Philippine Islands. And, Provided Further, That those persons holding temporary revocable transport license on December first nineteen hundred and thirty-two, may upon application approved by the Governor General be granted renewal of such license not to exceed one hundred eighty days by the Secretary of Commerce and Communications.

Section 7. Possession and Display of License. The pilot's license herein required shall be kept in the personal possession of the licensee when he is operating aircraft within the Philippine Islands and must be presented for inspection upon the demand of any passenger, any peace officer of the Philippine Islands or any official manager or person in charge of any airport or landing field in the Philippines which he shall land or any inspector or other authorized representative of the Department of Commerce and Communications.

Section 3. Subsection (g) and (i), (2b and 2c), Section Nine, Chapter Four of same Act, are hereby amended to read as follows:

(g) Height over congested areas and other places. Exclusive of taking off from or landing on an established landing field, airport, or on property designated for that purpose by the owner and except as otherwise permitted by Section fourteen aircraft shall not be flown:

(1) Acrobatic flying.

(2) No person shall acrobatically fly an aircraft -

"(b) Over any open air assembly of person or below four thousand feet in height over any established civil airway, or within one thousand feet horizontally thereof."

"(c) Any acrobatic maneuvers performed over any other place shall be concluded at a height greater than one thousand five hundred feet."

Section 4. Subsection (d) and (e) of Section eleven, Chapter four, of the same Act, are hereby amended to read as follows:

"(d) Balloon Lights. A free balloon between sunset and sunrise, shall display one white light not less than twenty feet below the car, visible for at least two miles. A fixed balloon or

airship shall carry three lights - red, white and red - in a vertical line, one over the other visible at least four miles. The top red light shall be not less than twenty feet below the car and the light shall not be less than seven nor more than ten feet apart.

(e) light when stationary

(2) Balloon and airship, mooring cable between sunset and sunrise shall show group of three red light at interval of at least one hundred feet measured from the basket, the first light in the first group to be approximately twenty feet from the lower red balloon light. The subject to which the balloons is moored on the ground shall have a similar group of light to make its position.

Section 5. Subsection (a)(2) and (c) of Section Thirteen, Chapter Four, of the same Act, are hereby amended to read as follows:

(a) Distress. - The following signal, separately or together, shall where practicable, be used of distress -

(2) The International Code flag signal of distress NC.

(c) Fog Signal. - in fog, mist or heavy weather, an aircraft on the water in navigation lane when its engine are not running, shall signal its presence by a sound device, emitting a signal for about five seconds in two-minute interval."

Section 6. Sections fifteen and sixteen, Chapter Five of the same Act are hereby amended to read as follows:

"Sec. 15. - Person or persons engaged in air commerce shall submit for approval to the Public Service Commission or its authorized representatives uniform charges and rate applied to merchandize and passengers per kilometer or over specified distance between given airport. The Public Service Commission shall administer the provisions of this Section and for such purpose is authorized to make such regulation as may be necessary to insure regularity and reliability of air commerce.

"Sec. 16. Except when otherwise specified, the Secretary of Commerce and Communication shall administer the provisions of this Act and for such purpose, is authorized to make such regulations as may be necessary to execute the functions vested in him by the Act

including air traffic rules, which regulation shall conform to and coincide with as far as possible to the provisions of the Air Commerce Act of 1926 and amendments thereto passed by Congress of the United States and air commerce regulations and air traffic rules issued from time to time pursuant thereto.

Section 7. This Act shall take effect upon its approval.

APPROVED: December 5, 1932.

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