

THE LAW OF CIVIL AVIATION IN PAKISTAN

A study in international air law dealing with the statutes and rules governing civil aviation in Pakistan.

A Thesis

presented to the Faculty of Graduate Studies and Research, McGill University, Montreal, Canada, in candidacy for the degree of Master of Laws,

by

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London, England.
1957.

PREFACE

In submitting this thesis to the Faculty of Graduate Studies and Research, McGill University, Montreal, I must, first of all, express my **deepest** gratitude to Professor John Cooper and to the Carnegie Corporation of New York for making it possible for me to study as a resident member at the Institute of International Air Law, during the 1954-55 session. During my stay in Montreal, and even before my arrival there, Professor Cooper has been a friend, philosopher and guide to me, without whose help this work would not have seen the light of day.

Thanks are also accorded to the authorities of the following institutions for the assistance given to me in the preparation of this thesis by providing factual information, documents and literature, available in their libraries:-

1. International Civil Aviation Organization, Montreal
2. Faculty of Law, University of Toronto;
3. United Kingdom Ministry of Transport and Civil Aviation, London;
4. London School of Economics;
5. Institute of Advanced Legal Studies, London.

As the thesis was prepared away from Montreal, I did not have the benefit of the advice and assistance of members of the staff and my fellow members of the Institute. However I must acknowledge the help and advice given to me during my stay in Montreal. It was a wonderful experience!

Footnotes have been relegated to the end of the text.

26 Primrose Gardens,
London, N.W.3.
March 17, 1957.

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CHAPTER I

A HISTORICAL SURVEY OF AVIATION LAW.

The first aviation law was promulgated in 1784, just one year after the first successful balloon flight was made by the Montgolfier Brothers in 1783. This was a decree by the Prefect of Police, Paris, forbidding balloon flights without police permits.¹ This indicates the prompt response of law to the new invention. The first regulation for safety in aerial navigation was made by the Prefect of Seine in 1819, which prohibited the flights of the Montgolfiers (named after the pioneer flyers), required all balloons to be equipped with parachutes and forbade ascents until after the harvest time.² The first reported case of tort in aviation was decided in 1822, in the United States of America.³ The facts of this case were that the defendant descended in a balloon into the plaintiff's garden, and being entangled and in a perilous position, called for help. A crowd of people broke through the fences into the garden and trod down the vegetables and flowers. It was held that although ascending in a balloon was not an unlawful act, yet as the defendant's descent under the circumstances would ordinarily and naturally draw the crowd into the garden, either from a desire to assist him or to gratify a curiosity which he had aroused, he was liable in trespass for all the damage done to the plaintiff's garden.

Flight in a heavier-than-air craft was first made in 1855 by de Bris in a glider constructed on the principle of the wings of an albatross.⁴ In 1865, the first Aerial Navigation Company was incorporated in New York by Dr. Solomon Andrews, who built and flew motor-less dirigibles.⁵ The first

International Conference on Air Law met in Paris in 1889, on the invitation of the French Government. In the same year, the first reported case of damage caused by aviation was litigated in the United Kingdom.⁶ The first treatises on Air Law were published in 1891, by Manduca (Italian) and Wilhelm (French). In 1899, the nations taking part in the first Hague Conference made a declaration prohibiting the discharge of projectiles from balloons "or other new methods of a similar nature". In 1902, the first Code of International Air Law was prepared in draft by the eminent French lawyer, Fauchille, at the instance of the Institute of International Law.⁷

On the 17th of December 1903, the first authenticated flight by man in a power-driven heavier-than-air machine was achieved by Wright Brothers, at Kitty Hawk, North Carolina, USA. It is no distraction from this epoch-making achievement to record the fact that at this time Professor Langley in Britain had already designed a practical aircraft capable of flight under its own power which in a sense was the embryonic prototype of all modern aeroplanes.⁸ The second Hague Peace Conference met in 1907, but many of the Powers refused to renew their pious resolution of 1899, although some had subsequently adhered to it. When the 1914-1918 war came, it was not binding upon, nor was it observed by, any of the belligerents.

On the morning of Sunday, the 25th July, 1909, Bleriot crossed the English Channel in an aeroplane from Les Barraques, near Calais, France, to Dover, England.

The event was hailed at the time by the Press under the heading "England No Longer An Island".⁹ Thirtytwo years later, after the Battle of Crete in 1941, Hitler made a somewhat similar declaration that there were "no longer any islands". However, in 1942-43, the German complaint was that England was an "unsinkable aircraft-carrier". This illustrates the revolutionary changes in the concepts of geography which were brought about by the advent of aviation.

Also in 1909, an independent group of international lawyers founded in Paris, the International Committee of Aviation Law. In 1910, the representatives of nineteen nations met in Paris for a conference on aerial navigation. They drew up, but could not finally agree upon, a code of International Air Law. According to one eminent authority, the causes of the break-down of the Conference were not legal but political.¹⁰ In the same year, the first periodical dealing with Air Law, entitled "The Air Law Review" was published. In 1911, the British Parliament passed an Aerial Navigation Act. The Minister responsible for the administration of this Act was the Home Secretary, which indicates that aviation was at that time regarded as more or less a "Law and Order" problem. In 1913, the United States aeronauts began preparations for a trans-Atlantic flight, an enterprise sponsored by Rodman Wanamaker "in the cause of science and the interest of world peace".

During the 1914-18 War, although immense progress was made on the technical side of aviation, which after the war contributed to the development of civil air transport, no progress on the legal side was possible in Europe while the

war lasted. Some progress in the legal field was however made in the Western Hemisphere, where in 1916, the Pan-American Aeronautical Conference met in Chile, and recommended to the American Republics to make their national aviation legislation uniform, with a view to forming an International Air Code.¹¹

On the 22nd March 1919, the first regular service for international transport by air was started between Paris and Brussels. On the 14th and 15th June of the same year, the Atlantic was crossed by an aeroplane for the first time by Alcock and Brown.¹² The outstanding achievement of 1919 in international air law was the signing of the Paris Convention. At the Paris Peace Conference an Aeronautical Commission was charged with the task of drafting an international convention to govern aerial navigation in time of peace. The Commission adopted the principle of sovereignty, carrying with it the right to exclude foreign aircraft from national airspace. The theory of international freedom of flight, either in the entire airspace or in some undefined upper zone, was definitely repudiated. The convention drafted by the Commission and accepted by the Supreme Council of the Peace Conference became the celebrated "Convention relating to the Regulation of Aerial Navigation dated 13 October 1919" usually referred to as the Paris Convention. Like the draft Convention of the abortive 1910 Paris Conference, which may be considered to be its predecessor, the main provisions of the Paris Convention were technical and executive in scope. Besides the recognition of the pre-existing doctrine of airspace sovereignty, each Contracting State undertook, in time of peace, to accord "freedom of innocent passage" above its territory to the

aircraft of other Contracting States, provided that the conditions imposed under the Convention were observed. Article 15 provided that every aircraft of a Contracting State had the right to cross the territory of another Contracting State without landing, following a route fixed by the State flown over and subject to a requirement of landing when commanded by that State. It added that "the establishment of international airways shall be subject to the consent of the States flown over". The Convention laid down elaborate rules governing the nationality and registration of aircraft, their fitness for flight, the sufficiency of their equipment, the competence of aircrews, and the flight, navigation, and landing of aircraft engaged in international navigation; and set up machinery for the enactment and administration of international air law on the subjects covered by the Convention. The existence of the Convention depended upon its ratification by the signatory states. Under Article 43, at least two ratifications were necessary, for the Convention only came into force for each signatory upon ratification by that Power, and then only in respect of other signatory Powers which had previously ratified. A sufficient number, including the whole of the British Empire, ratified the Convention. The most notable exception was of course the United States of America, which had signed the Convention. It may be of historical interest to record here that paragraph 1, Article 40 of the original 1919 Convention stated that "the British Dominions and India shall be deemed to be States for the purposes of the Convention". This paragraph was later deleted by Protocol of December 11, 1929. However, it is clear

that India (which at that time included the territories now constituted into Pakistan) was regarded as a State for the purposes of the Convention, and therefore a party in its own right.

The Paris Convention was intended ultimately to have world-wide application, and, although it failed to achieve this object, thirty-eight States became parties to it, including Great Britain, India and the Dominions, nineteen European States, eight South and Central American States, Japan, Iran, Iraq and Siam. Meanwhile, however, two rival Conventions, dealing generally with the same subjects, had been entered into by other groups of States. The Madrid (Ibero-American) Convention of 1926 was signed by Spain and twenty South American States, but was ratified by only seven of its signatories. The Havana (Pan-American) Convention of 1928 was signed as a result of the refusal of the United States and of some South American Republics to become parties to the Paris Convention, and by 1944 had been ratified by sixteen States. Both the Paris and the Havana Conventions were superseded in 1944 by the Chicago Convention. Several important States, e.g. U.S.S.R., Germany, Turkey and China were never parties to either of these Conventions.

Also in 1928, the first series of aviation law-reports "The United States Aviation Reports" commenced publication. In 1929, the principal nations of the world, including the U.S.A. and the U.S.S.R. adopted the Warsaw Convention. This Convention forms part of the national law of Pakistan and will be discussed in detail, later in this study. It contained rules governing international carriage of goods and passengers by air.

In 1933, the first Rome Convention was signed. It was designed to lay down international rules to govern and give uniformity to the laws relating to the damage caused by aircraft to persons and property on the surface, and to make insurance against risks of such damage compulsory. Together with the Paris and the Warsaw Conventions before it, the Rome Convention covered much of the whole field of air law. It was not, however, until 1942 that it was ratified by the required number (five) of States. A new Rome Convention was concluded in 1952. This is intended to replace the 1933 Convention. But it has not yet received the minimum number of five ratifications required to bring it into force. The old convention therefore remains in force, but only between the five states which have ratified it. The 1952 Convention incorporates certain provisions which differ materially from the principles of the 1933 Convention, or which are entirely new.

In 1935, anticipating the regular operation of trans-Atlantic commercial air traffic, the United Kingdom and the United States concluded a Treaty-Arrangement on Aerial Navigation, to regulate international flight throughout the British Empire (excluding the Dominions, but including India) and the United States territory. Similar arrangements were made between the United States and Eire, South Africa, and Canada respectively. An Agreement was also reached in Ottawa in November 1935, between U.K., Canada, Newfoundland and Eire that trans-Atlantic survey flights should be made as soon as possible and that a joint operating company should be formed. This was, however, interrupted by the outbreak of War in 1939.

The Chicago Convention.

In November 1944, while the War was still going on, Delegations from 52 States met in Chicago with a view to the regulation of Civil Aviation internationally on a world-wide basis. The most notable absentee from the Conference was the U.S.S.R. The Conference, after lengthy discussions, succeeded in drawing up a new Convention on International Civil Aviation, commonly called the Chicago Convention, 1944. In one sense this Convention had a more restrictive approach than the Paris Convention in that it made no reference to the "freedom of innocent passage". This was perhaps due to the failure of the Chicago Conference to reach agreement on the so-called Five Freedoms of the Air, especially the Fifth Freedom. The result was a return to the old concept of airspace sovereignty and Article 1 of the new Convention merely purported to "recognize" it anew. Article 2 included in the word "territory" for the purposes of the Convention, territorial waters and territories placed under the suzerainty, protection or mandate of States. Chapter II of the Convention, entitled "Flight over the Territory of Contracting States" dealt both with the operational and commercial rights, or more precisely, privileges, since the only "right" in the legal sense, recognized by the Convention was that of State sovereignty. Article 5 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 and to make stops for non-traffic purposes, without the necessity of obtaining prior permission,

but subjected the privilege of taking and discharging passengers, cargo or mail to authorization. Article 6 subjected the transit of scheduled services to special authorization, and Article 7 reserved the right of cabotage 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. To complete the picture of the sovereign rights of States, Article 68 expressly provided for the right of a State to designate the "route to be followed within its territory by an international air service and the airports which any such service may use".

While the Chicago Conference thus failed to reach a general multilateral agreement on commercial rights (the so-called "Omitted Articles" of the Chicago Convention), it did succeed in producing two independent Agreements, opened for signature at the same time as the Chicago Convention, viz. December 7, 1944. These were the "International Air Services Transit Agreement", incorporating the first two Freedoms; and the "International Air Transport Agreement", incorporating all the Five Freedoms. Most of the States, with the significant exception of the two "gateway" nations of Portugal and Ireland, (who have not done so to this day!) accepted the Two Freedoms Transit Agreement, but the Five Freedoms Transport Agreement was accepted only by the United States, Netherlands, Sweden and a few Latin American countries. Even the United States denounced the Transport Agreement shortly after the conclusion of the Bermuda Agreement, and for all practical purposes it is now a dead letter.

The Chicago Convention came into force on April 4, 1947, 30 days after the deposit of the 26th ratification, under Article 91. India, which was a signatory State, ratified the Convention on the 1st March 1947. Shortly after its emergence as a State on the 14th August 1947, Pakistan adhered to the Convention on the 6th November 1947, and under Article 91, the Convention came into force in Pakistan on the 5th December, 1947. The acceptance by India on May 2, 1945, of the Transit Agreement applied also to the territory, then a part of India, which later became Pakistan. In a communication to the United States Secretary of State, on the 24th March 1948, the Ambassador of Pakistan expressly declared that the Agreement continued to be binding on Pakistan.

In June 1948, a Convention on the International Recognition of Rights in Aircraft was signed in Geneva by twenty States. The object of the Convention is to safeguard the rights of property in aircraft validly acquired by third parties in accordance with the law of the State of Registry, while such aircraft are in any Contracting State. The Convention came into force between Pakistan and the United States on September 17, 1953. Since this Convention has the force of law in Pakistan, it is dealt with at some length in a later part of this study.

In September 1955, a diplomatic Conference was convened at the Hague to consider the draft of a Protocol to the Warsaw Convention of 1929, prepared by the Legal Committee of I.C.A.O. at Rio in September 1953. The Conference was attended by delegations from forty-four States and observers of eight international organizations. It adopted a Protocol

comprising several amendments and additions to the Convention, and during the Final Act, the Protocol was signed by twenty-seven States. These amendments and additions will be considered when making a detailed study of the Warsaw Convention.

The above are, very briefly, the chief landmarks in the history of air law. No science has been developed so quickly in its practical application to the activities of men as the science of aeronautics. No other activity has held such vast potentialities for the lives of peoples and the destinies of nations. No other activity so needs the law to come with it from one country to another and from one stage of its development to the next. "A new form of Law is of necessity being created overnight to take the place in the air that Admiralty has gradually developed through centuries upon the sea".¹³

The use of aircraft has destroyed all effective frontier barriers, even the barrier of the ocean. So the sovereign States of the world have been forced to try to replace their differing systems of national laws by one international system for the flow of international air traffic. If such a system still seems to be a long way ahead, it may be remembered that other systems, such as the International Merchant Shipping, Carriage of Goods by Sea, Copyright, and Postal Convention were only evolved after many years of practice in the activities to which they relate. And the development of Air Law has been interrupted by two world wars and the upheavels consequent upon them. Yet no other system of law has been so rapidly developed by sovereign States collaborating for national and international objects.

CHAPTER II.

INTRODUCTION TO PAKISTAN AVIATION LAW.

The State of Pakistan came into existence on the 14th August 1947, under the provisions of the Indian Independence Act, 1947¹⁴, a statute passed by the British Parliament, which was, prior to that date, the sovereign body exercising power over the whole of what was till then called the British India. Under this Act, two Independent Dominions were set up in India, known respectively as India and Pakistan. The territory of Pakistan included the Provinces of Sind, North-West Frontier Province, West Punjab and East Bengal¹⁵ and the Chief Commissioner's Province of British Baluchistan. Under the provisions of the Independence Act¹⁶ the existing laws of British India, so far as applicable and with the necessary adaptations, continued to be the laws of each of the new Dominions, until other provision was made by their Legislatures. So far as civil aviation is concerned, these laws included the Indian Aircraft Act, 1934¹⁷ by which effect was given to the Paris Convention and later to the Chicago Convention, and the Indian Carriage by Air Act, 1934¹⁸ by which the Warsaw Convention was made part of the municipal law. These laws therefore continued to be applicable to Pakistan.

On the 23rd March 1956, Pakistan became a Republic, under the new Constitution¹⁹, passed by the Constituent Assembly. Before the new Constitution was adopted on the 29th February 1956, all the Provinces and States comprising the whole territory of West Pakistan were integrated into a single Province under the Establishment of West Pakistan Act, 1955. The Province of East Bengal was re-named East Pakistan. So

that in effect, the territory of Pakistan now consisted of the two Provinces of West Pakistan and East Pakistan. The Indian Independence Act was repealed by Section 221 of the new Constitution, but Section 224 provided that notwithstanding this repeal, all laws and legal instruments in force in Pakistan immediately before the Constitution Day, shall, so far as applicable and with the necessary adaptations, continue in force until altered by legislature. Thus the laws relating to civil aviation mentioned above continued to be applicable, even after coming into force of the new Constitution. Under Section 106 of the Constitution, Parliament has the exclusive power to make laws with respect to any of the matters enumerated in the Federal List, which includes "airways; aerodromes; aircraft and air navigation, and all matters connected therewith..... and other provisions for the safety of aircraft".²⁰ There is thus no Federal-Provincial problem which has arisen in some jurisdictions.²¹

Pakistan is a party to the following International Convention and Agreements:¹/₂

1. The Warsaw Convention, 1929;
2. The International Sanitary Convention for Aerial Navigation, 1933, 1944 and 1946;
3. The Chicago Convention, 1944;
4. The International Air Services Transit Agreement, 1944.
5. The International Tele-communications Convention, (Atlantic City, 1947) in respect of radio apparatus carried in aircraft.
6. The Convention on the International Recognition of Rights in Aircraft, (Geneva 1948).

National Aviation Legislation.

The following Acts and Regulations, as adopted by the Pakistan (Adaptation of existing Laws) Order, 1947, are in force in Pakistan:-

1. The Aircraft Act, 1934; (XXII of 1934);
2. The Carriage by Air Act, 1934 (XX of 1934);
3. The Aircraft Rules, 1937, as adapted and amended in Pakistan;
4. The Pakistan Aircraft (Public Health) Rules, 1950;
5. Aircraft Rules, 1920 (Part IX).

Nos. 3-5 are subordinate legislation, i.e. rules and regulations made by the Executive under the authority and for the purposes of an Act of Legislature. It is comparable to the Administrative Law in civil law jurisdictions. This method of legislation of comparatively recent growth is used more extensively and in a more extreme form in air law than in any other branch of law. This is perhaps inevitable because of the rapid development in the practice of aviation. The powers of the Government to control, and the methods by which it does control, the use of aircraft are matters of highest importance in air law. These are therefore dealt with in the next Chapter before taking up other subjects. Probably no other activity is more under the direct supervision and control of Government than aviation.

There are other subjects which do not strictly belong to aviation, but with which air law is concerned, e.g. compulsory acquisition of land; the operation and control of air transport services by the State; agency and vicarious responsibility for wrongs; patent rights; immigration; sanitary

laws; Customs, double taxation; and business registration. These will be considered only incidentally.

With regard to the territorial jurisdiction, the general rule in International Private Law is that a Court has jurisdiction:-

(1) Over disputes in respect of which it can give an effective judgment.

(2) Over disputes which the parties thereto voluntarily submit to its jurisdiction.

The Warsaw Convention, incorporated into Pakistan national law by the Carriage by Air Act, 1934, contains special provisions as to jurisdiction, and so does the Rome Convention, which has not yet been given effect in Pakistan law. But the general rule stated above will, no doubt, apply.

As to the problems of choice of law, it is essential to distinguish the question whether the national Courts have jurisdiction over particular litigation from the question of the proper law to be applied to the decision of the dispute after it has been established that jurisdiction exists. No question of choice of law will normally arise in case of liability under the Carriage by Air Act, 1934, since the object and effect of the Act is to avoid such conflicts. But different plaintiffs may choose different Courts under Article 28 of the Warsaw Convention.

In an action brought in the Pakistan Courts all matters of procedure are governed by the law of Pakistan.

CHAPTER III.GOVERNMENT DEPARTMENTS CONCERNED WITH CIVIL AVIATION.

The Minister responsible for the administration of civil aviation policy in Pakistan is the Minister of Defence. Prior to 1948, civil aviation was the responsibility of the Minister of Communications, who was also responsible for the Departments of Railways, Posts and Telegraphs, Broadcasting and Meteorology. In that year, civil aviation and meteorology were transferred to the Minister of Defence, mainly with a view to bring about a closer co-ordination and to avoid overlapping between the civil and military sides of the aviation policy of the Government. While the Minister is responsible to the Federal Legislature for the civil aviation policy of the Government, the execution of that policy and the day-to-day administration is carried out by the Director General of Civil Aviation, who is a Civil Servant, and official Head of the Department. Other Government Departments which are concerned with some aspect or other of civil aviation are:-

(1) Ministry of Finance, who deal with the revenue and expenditure of the Government as a whole, and whom no Government Department can ignore because it controls the purse strings. The Ministry is also responsible for the administration of Customs at Airports.

(2) Ministry of Health, who are responsible for the administration of Pakistan Aircraft (Public Health) Rules, the appointment of Health Officers and taking health measures

at Airports, and the implementation of the International Sanitary Convention for Aerial Navigation in Pakistan.

(3) Posts and Telegraphs Department for Air Mail;

(4) Ministry of Public Works, who are in charge of the construction and maintenance of Government Airports;

(5) Ministry of Commerce, in connection with the import and export of Aircraft, Aero-engines and spare parts;

(6) Ministry of Interior, who administer Immigration laws and take security measures at Airports;

(7) Ministry of Foreign Affairs, regarding International Relations in the field of Civil Aviation.

(8) Air Force Headquarters; There is always consultation and close collaboration between the Pakistan Air Force and the Department of Civil Aviation in respect of the air traffic control and flight information systems. Search and Rescue in Pakistan is provided under a joint Air Force-Civil Organization which is based on the application of service and civil facilities under the co-ordinating direction of the Rescue Co-ordination Centres at Karachi and Dacca.²²

DEPARTMENT OF CIVIL AVIATION.

The Department of Civil Aviation is headed by the Director General of Civil Aviation, who is assisted in the performance of his duties by a number of technical personnel. The Department consists of various Divisions, each dealing with some particular aspect of civil aviation, e.g. Air Transport, Aerodromes and Air Traffic Control, Personnel Licensing, Aircraft Registration and Airworthiness, Communications and Aircraft Accident Investigation. The functions of the Department are described below:-

FUNCTIONS, POWERS AND DUTIES OF THE
DEPARTMENT OF CIVIL AVIATION.

The functions, powers and duties of the Department of Civil Aviation may be divided into those of a legislative, administrative and judicial nature, and are considered below under this classification.

(A) LEGISLATIVE FUNCTIONS.

The main functions and powers under this heading are derived from the provisions of the Aircraft Act, 1934, which is reproduced as Appendix 1, and the Carriage by Air Act, 1934, which is reproduced as Appendix 2. They may be summarised as follows:-

(1) Power to exempt aircraft from the provisions of the Act. Section 3 of the Aircraft Act provides that the Central Government may by notification in the official Gazette, exempt from all or any provisions of this Act, any aircraft or class of aircraft and any person or class of persons, or may direct that such provisions shall apply to such aircraft or persons subject to such modifications as may be specified in the notification.

(2) Power to give effect to Conventions. Section 4 of the Aircraft Act provides that the Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary for carrying out the provisions of the Convention on International Civil Aviation, signed at Chicago on December 7, 1944, with the Additional Protocol signed at Montreal, May 27, 1947, and any amendments which may be made thereto under the provisions of Article 94 thereof.

This Section gives the executive Government power to make rules to implement the provisions of the Chicago Convention, including any amendments that may be made in future.

The Warsaw Convention was implemented by direct statutory enactment, viz. Carriage by Air Act, which by incorporating the Convention itself in the body of the Statute as the First Schedule, in effect made the Convention the national law of Pakistan. Section 4 of the Act also gives the power to the Central Government to apply the rules of the Convention, to carriage by air which may not be international carriage as defined by the Convention. Under Section 2 (2), the Central Government has the power to certify who are the High Contracting Parties to the Convention, and such certification is conclusive evidence of the matters certified therein.

(3) Power to make Rules; Under Section 5 of the Aircraft Act, the Central Government has the power to make rules regulating the manufacture, possession, use, operation, sale or import of any aircraft or class of aircraft. It is in exercise of this power that the Central Government has made the Aircraft Rules, 1937, which constitute the principal aviation legislation in Pakistan. The rules made by the Central Government in exercise of this power, must, however, be laid before the Legislature as soon as possible after they are made, for its approval. Under Section 14, this rule-making power is also subject to the condition of the rules being made after previous publication for a period of not less than three weeks.

(4) Power to make orders in emergency. Under Section 6 of the Aircraft Act, the Central Government has the power, where it thinks it is expedient to do so in the interests of the public safety or tranquility, to (a) cancel or suspend any licences or certificates issued under the Act; (b) prohibit or regulate the flight of all aircraft over the territory of Pakistan; (c) prohibit or regulate the use of any aerodrome, aircraft factory, flying school or club; and (d) requisition aircraft for the public service, subject to compensation.

(5) Power to make rules for investigation of accidents. Under Section 7, the Central Government has the power to make rules providing for the investigation of any accident arising out of or in the course of navigation of any aircraft in Pakistan, and of aircraft registered in Pakistan wherever they may be.

(6) Power to make rules for the detention of aircraft. Under Section 8, the Central Government has the power to make rules regulating the detention of aircraft by a competent authority, where the flight of such aircraft involves danger to persons or property, or where such detention is necessary to secure compliance with the provisions of the Act or Rules applicable to such aircraft.

(7) Power to make rules for protecting public health. Under Section 8A, the Central Government has the power to make rules for the prevention of danger arising to the public health by the introduction or spread of any infectious or contagious disease from arriving or departing aircraft. Section 8B provides that in an emergency, when an outbreak of any dangerous epidemic disease is threatened and the ordinary

provisions of the law are insufficient for the prevention of danger arising to the public health through the introduction or the spread of the disease by the agency of the aircraft, the Central Government has the power to make such temporary rules with respect to aircraft or persons travelling thereon as it deems necessary in the circumstances. This power is not subject to the condition of the rules being made only after previous publication. Such rules, however, remain in force only for three months.

(8) Power to make rules regarding wreck and salvage.

Section 9 of the Act provides that the provisions of Part VII of the Merchant Shipping Act, 1923 (XXI of 1923), relating to Wreck and Salvage shall apply to aircraft on or over the sea or tidal waters as they apply to ships, and the owner of an aircraft shall be entitled to a reasonable reward for salvage services, rendered by the aircraft in like manner as the owner of a ship. However, the Central Government has the power to make such modifications of the said provisions in their application to aircraft as appear necessary or expedient.

(9) Power to provide penalties. In making any rule under Sections 5, 7, 8, 8A or 8B, described above, the Central Government has the power to direct that a breach of it shall be punishable with imprisonment for any term not exceeding three months, or with fine of any amount not exceeding one thousand rupees, or both. This is provided by Section 10.

(10) Power to apply Customs procedure. Under Section 16 the Central Government has the power to declare that the provisions of the Sea Customs Act, 1878 (VIII of 1878) shall, with such modifications and adaptations as may be specified,

apply to the import and export of goods by air.

The above are the main legislative powers of the Central Government in the field of civil aviation. The bulk of the subordinate legislation, viz. the Aircraft Rules, 1937, has been made in exercise of the power conferred by Section 5 of the Aircraft Act, 1934. These Rules will be dealt with under the particular topics to which they relate. In some cases, subordinate legislation in exercise of the powers conferred by the Aircraft Act is enacted by a Government Department other than Civil Aviation, as for example, the Pakistan Aircraft (Public Health) Rules, 1950, though made under the powers given by Section 8 of the Act, were enacted by the Ministry of Health. In such cases, the Departments concerned invariably consult the Department of Civil Aviation before promulgating such legislation.

(B) ADMINISTRATIVE FUNCTIONS.

Delegation of Powers: A number of administrative powers under the Aircraft Act and the Rules have been delegated by the Central Government to the Director General of Civil Aviation and his subordinate officials. A complete list of such powers is given in Appendix 4. As a rule, the Director General acts in his administrative capacity, and performs his administrative functions, through the agency of his subordinate officials. This rule is based on the practical consideration that no one person could otherwise perform so many multifarious functions and duties. It does not rest upon any specific enactment, but on a long-established practice and

its practicability. Against this rule of practice is the legal maxim "a delegate cannot delegate", and while in practice the Director General deposes the performance of many of his functions and duties to officials acting under his direction, normally he does not so delegate the exercise of any special power which he is required by law to exercise himself, nor delegate the exercise of any power, duty or function to persons who are not in his service and directly under his control.

Method of exercising Administrative Functions. As a general rule, the Director General performs his administrative duties and functions and exercises his administrative powers by means of the ordinary routine of official practice - that is to say by oral and written instructions of an informal nature, though often, in the case of written instructions, an official form is used. Where a particular form is prescribed by statute, it must be used.

The administrative functions of the Director General of Civil Aviation may be described under the following heads:

(1) Registration of Aircraft: The Director General is the registration authority for all civil aircraft registered in Pakistan. He issues a Certificate of Registration in respect of each aircraft registered and assigns registration marks to it.

(2) Certificates of Airworthiness: The Director General grants, issues, suspends and revokes airworthiness certificates of civil aircraft, and lays down the procedure, routine and forms in regard to them. He prescribes the minimum requirements in regard to construction, workmanship, and materials which must be satisfied by an aircraft in

respect of which a certificate is to be issued.

(3) Licensing of Personnel: The Director General is the licensing authority for all licences issued to pilots and other members of the operating crew of aircraft registered in Pakistan, and to aircraft maintenance engineers. He issues, cancels, revokes or suspends such licences in accordance with the powers given him to do so.

(4) Log Books: The Director General prescribes or approves the forms and contents of log books.

(5) Investigation of Accidents: The investigation of accidents is a judicial function and is not performed by the Director General himself, unless authorized to do so by the Central Government. But he has certain administrative powers in connection with the investigation of accidents, including the power to appoint an Inspector of Accidents to carry out an investigation. The accident investigation procedure is fully described under the heading of "Judicial Functions".

(6) Aerodromes: The Director General issues, cancels and suspends aerodrome licences. He also approves tariff of charges for landing and housing at licenced public aerodromes, alterations to the landing areas, buildings or other structures, and the maintenance and marking of aerodromes. He can also require the inspection of an aerodrome before the grant or renewal of a licence, and he determines the extent and conditions subject to which Government aerodromes may be opened to public use.

(7) Air Transport Services: The Director General has the power to permit the establishment and operation of scheduled and non-scheduled air transport services and to prescribe rules and regulations regarding their operation. These functions will be fully considered under the chapter dealing with the law relating to the operation of air transport services.

The following functions, though relating to civil aviation, are performed by other Government Departments:

(8) Public Health: All the public health functions, in connection with the sanitary control at aerodromes are performed by officials of the Ministry of Health. The public health rules at aerodromes are dealt with elsewhere.

(9) Acquisition of land for aerodromes: The general law relating to the acquisition of land for a public purpose is contained in the Land Acquisition Act. Where land is required for the construction or extension of an aerodrome, it is acquired in accordance with the provisions of the Act. The Director General of Civil Aviation has no powers in this respect, but he can ask the proper authority to acquire the land for the public purpose required, and to place it at his disposal. The acquisition of land may be compulsory or by agreement with the owner; in either case, fair and just compensation must be paid to the owner of the land.

(C) JUDICIAL FUNCTIONS.

Investigation of Accidents: The most important of what may be conveniently described as the judicial functions of the Department of Civil Aviation is the investigation of accidents. The power to do so has been delegated to the Director General by the Central Government,²³ and is exercised in accordance with the rules relating to the investigation of accidents, framed by the Central Government, under Section 7 of the Aircraft Act, 1934. These Rules form Part X of the Aircraft Rules, 1937, (Rules Nos. 68-77).²⁴ They were revised and amplified in February 1956, in order to bring them in conformity with Annex 13 to the Chicago Convention relating to Aircraft Accident Inquiry.²⁵ In accordance with the resolution adopted by the Council on 13 April 1948, urging Contracting States to use in their own regulations, as far as practicable, the precise language of those ICAO Standards that are of a regulatory character²⁶ the text of Annex 13 has been introduced into the national regulations, as nearly as possible, in the wording and arrangement employed by ICAO. The revised Rules introduce new arrangements for Public Inquiries. It is considered that this is a convenient place to summarize them. The following are the salient features of these new rules:-

(1) Notification of Accidents: If an accident involves death or serious injury to any person, or the aircraft receives substantial damage, a notice containing certain specified particulars must at once be sent to the Director General of Civil Aviation by the person in command of the aircraft.²⁷

If the pilot is killed or incapacitated in the accident, the duty of notifying the D.G.C.A. rests upon the owner, operator, hirer or other person on whose behalf he was in command of the aircraft. The following particulars must be stated in the notice "as far as possible":-

- (a) Type of the aircraft, registration markings, service number or flight number (where applicable);
- (b) Captain's name, number of crew and passengers, name of owner, operator or hirer;
- (c) date and time of accident in Greenwich Mean Time;
- (d) exact location with reference to some easily defined geographical point and points of departure and destination;
- (e) brief details of the nature of accident;
- (f) the number of persons involved, and whether uninjured, injured or killed;
- (g) brief description of the damage to the aircraft; and
- (h) whether or not fire occurred.

Although the word "Aircraft Accident" has not been defined in the Rules, the wording used in describing what accidents are to be notified, viz. "if, between the time when any person boards an aircraft with the intention of flight and the time he disembarks therefrom, - (a) any person suffers death or serious injury while in or upon the aircraft or by direct contact with the aircraft or anything attached thereto; or (b) the aircraft receives substantial damage" is bodily taken from the definition of an "Aircraft Accident" in Annex 13. "Substantial damage" includes any damage which necessitates the replacement or extensive repair of any major component of the aircraft involved.

(2) Report on Accidents: The owner, operator or

hirer of an aircraft involved in an accident, whether in Pakistan or elsewhere, must furnish such information to the D.G.C.A. as he may require in writing. If the accident occurs to a foreign aircraft in Pakistan, the D.G.C.A. must notify the State of Registry of its occurrence, giving the particulars specified above.

(3) Removal of damaged aircraft: When the accident is one which involves death or serious injury to any person or substantial damage to the aircraft, the machine must not be removed or otherwise interfered with, except under the authority of the D.G.C.A., and no person may have access to the aircraft involved in the accident, unless authorized by him. The idea behind this rule is the protection of evidence for subsequent inquiry. It is also a fulfilment of the obligation under the provision of Annex 13 (3.3.1), which states that "the State in which an aircraft accident occurs shall take all reasonable measures to ensure the protection of evidence, including the safe custody of the aircraft and its contents for such period as may be necessary for the purposes of an accident inquiry." An exception to the rule regarding non-interference with the aircraft is made in so far as it may be necessary for the purpose of extricating persons or animals involved, who are still alive, preventing destruction by fire or other cause or preventing any danger or obstruction to the public or to air navigation or to other transport. Goods and passengers' baggage may be removed from the aircraft only under the supervision of the Inspector of Accidents, but if the aircraft has come from a place outside Pakistan, they may only be removed from the vicinity of the aircraft with the consent of the

Customs authorities. If the accident occurs on water, the aircraft or any contents may be removed to such extent as may be necessary for bringing them to safety.

(4) Inspector's Investigation: For the purpose of carrying out investigation into the causes and circumstances of the accidents, the D.G.C.A. is required to appoint a person or persons as Inspector or Inspectors of Accidents, who commence the investigation as soon as possible after an accident has occurred. The word "investigation" may be distinguished from "inquiry" (to be described presently) of which it is a part, but relates solely to the procurement of evidence for the inquiry. If it appears to the Inspector that any degree of responsibility for the accident may be attributed to any person, such person must be given notice that blame may be attributed to him. He is entitled to make a statement or give evidence, and to produce witnesses, and to examine witnesses from whose evidence it appears that he may be blame-worthy. The D.G.C.A. can intervene at any stage of the investigation in order to make representations or to examine witnesses, if he considers it expedient to do so in the public interest. If the accident involves a foreign aircraft in Pakistan, the D.G.C.A. may authorize an investigator, appointed by the State of Registry, to carry out an investigation. The D.G.C.A. may instruct any other person to assist the Inspector of Accidents in his investigation.

(5) Powers of Inspector of Accidents: Where it appears to the Inspector of Accidents that in order to resolve any conflicting evidence, or for any other reason, it is **expedient** to do so, he may permit any person to appear before him and call evidence and examine witnesses. He has the power to summon any person to answer questions. Such answers are not on oath, but the Inspector may require any such person to make and sign a declaration of the truth of the statement made by him. He may require the production of all documents and material objects which he considers relevant to the investigation, and may retain them until the completion of the investigation. He has a right of access to the aircraft involved in the accident, and the place where it occurred. For the purpose of examination, he may require any such aircraft or any part or equipment to be preserved unaltered. He has the power to remove, test, take measures for the preservation of, or otherwise deal with the aircraft or any part or its contents. He can enter and inspect any place or building, if it appears to him to be requisite for the purposes of the investigation, and he can take all measures for the preservation of evidence.

(6) Results of Inspector's Investigation: Upon the completion of his investigation, the Inspector must make a report to the D.G.C.A. He should state the circumstances of the case and his conclusions as to the cause of the accident, adding any observations and recommendations which he thinks fit to make with a view to the preservation of life and the avoidance of similar accidents in future. The D.G.C.A. has

the discretion to make the Inspector's report public.

(7) Public Inquiries: Whether an Inspector's Investigation has been made as to the cause of the accident or not, the Central Government may direct a public inquiry to be held into the causes and circumstances of an accident. In such an event, the Inspector's investigation, if any, must be discontinued. The Public Inquiry must be held as soon as possible after the accident has occurred. At this point it may be emphasized that the Central Government or the D.G.C.A. perform no judicial functions by means of this Public Inquiry which is conducted by a "Court", an entirely independent tribunal. But as it is an ad hoc Inquiry, and is brought into being, as occasion arises, by the Central Government, its constitution, procedure and functions may conveniently be described here.

(a) Constitution of the Court: The Court is constituted of a "competent person", appointed by the Central Government. The term "competent person" means a person who is or has been a judge of a High Court, or an Advocate or a Barrister of not less than ten years' standing. The Court is assisted by not less than two assessors possessing aeronautical, engineering or other special skill or knowledge, one of whom must be the Inspector of Accidents. The assessors are also appointed by the Central Government. The Court has, for the purpose of the inquiry, all the powers of a Civil Court under the Code of Civil Procedure, 1908 when acting as a Court in the exercise of its ordinary jurisdiction.

(b) Procedure of the Court: When the Central Government decides to hold a Public Inquiry into an air accident, it remits the whole case to the Attorney-General of Pakistan, and thereafter the preparation and presentation of the case is conducted under his direction. The Inspector of Accidents must render such assistance to the Court and the Attorney-General as is in his power, and for that purpose he may exercise any of the powers conferred upon him by the Aircraft Rules. A Public Inquiry must be conducted in such a manner that if a charge is made against any person, that person must have an opportunity of making a defence. The Attorney-General may cause a notice, to be called a "notice of inquiry" to be served upon the owner, operator, hirer and person in command of any aircraft involved in the accident, or any other person. This notice must contain a statement of the questions which, on the information then in his possession, he intends to raise during the inquiry. All the persons upon whom a notice of inquiry has been served, are deemed to be parties to the proceedings. Any other person, including the D.G.C.A. may, by leave of the Court, appear before the Court, and any such person thereupon becomes a party to the proceedings. The Court as well as the assessors have the power of entry and inspection of any place or building if this is considered requisite for purposes of the inquiry. The Court has the power to summon any person as a witness, to examine him, and to require him to answer any questions, or furnish any information or produce any documents. Every such person is legally bound to do so. The Court has also the power to administer the oath to any such witness or to require him to make and sign a declaration of the truth of the

statements made by him in his examination. Affidavits and statutory declarations may, by permission of the Court and saving all just exceptions, be used as evidence at the hearing. The proceedings of the Inquiry are held in public, save to the extent to which the Court is of the opinion that in the interest of justice or in the public interest, any part of the evidence or any argument relating thereto, should be held in camera. The proceedings of the inquiry commence with the production and examination of witnesses on behalf of the Attorney-General. These witnesses, after being examined on behalf of the Attorney-General, may be cross-examined by the parties, and may then be re-examined on behalf of the Attorney-General. Questions asked and documents tendered as evidence in the course of the examination of these witnesses are not open to objection merely on the ground that they were not contained in the notice of inquiry. Upon the conclusion of this examination, the Attorney-General states the questions in reference to the accident and the conduct of persons connected with the accident, upon which the opinion of the Court is desired. The Court then proceeds to hear the parties to the proceedings, each of whom is entitled to address the Court and produce witnesses or recall any of the witnesses who have already been examined, for further examination and generally adduce evidence. The parties are heard and their witnesses examined, cross-examined and re-examined in such order as the Court may direct. Further witnesses may also be produced and examined on behalf of the Attorney-General, cross-examined by the parties and re-examined on behalf of the Attorney-General. When the

whole of the evidence in relation to the questions for the opinion of the Court has been concluded, any of the parties, who desire to do so, may address the Court upon the evidence, and the Court may be addressed in reply upon the whole case on behalf of the Attorney-General.

(c) Report of the Inquiry: The Court must make a report to the Central Government, stating fully the circumstances of the case and the opinion of the Court touching the causes of the accident and adding any observations and recommendations it may care to make, with a view to the preservation of life and the avoidance of similar accidents in future, including any recommendation for the cancellation, suspension or endorsement of any licence, certificate or other document. Each assessor must either sign the report with or without reservation, or state in writing his dissent and the reasons upon which it is based. Such reservation or dissent and the reasons if any, must also be forwarded to the Central Government with the report, who are bound to make all of them public, unless there are good reasons to the contrary.

(d) Costs and Expenses: Every person attending as a witness before the Court is allowed such expenses as would be allowed to a witness attending before a Court of Justice. The Court, in its discretion, may disallow any such expenses in case of a party to the proceedings, or to any person in his employment. The Court may order the costs of the inquiry, or any part of it, to be paid by any party, if it finds that the accident was due to the act or default or negligence of that party or his employees; and any such order shall, on the application of any

person entitled to the benefit thereof, be enforced by a Civil Court as if the costs and expenses were a penalty imposed by that Court. Subject to any such order, the costs of the inquiry are borne on the Central exchequer.

(e) Rehearing of Public Inquiries: A rehearing of a public inquiry may be ordered by the Central Government in any case; but such rehearing is obligatory if (a) new and important evidence, which could not be produced at the original inquiry, has been discovered, or (b) for any other reason there is ground for suspecting that a miscarriage of justice has occurred. The rehearing may be done either by the same Court which heard the original inquiry, or by some other competent person appointed by the Central Government to hold the rehearing. Any rehearing is conducted under the same procedure as the original public inquiry.

(f) Accidents to Foreign Aircraft: Where an Inspector's Investigation or a Public Inquiry relates to an accident which has occurred in or over Pakistan to a foreign aircraft, an "accredited representative" of the State of Registry or of any country which has, on request, furnished information in connection with the accident, may take part in the Investigation or Inquiry, and he may be accompanied by such technical and other "advisers" as may be considered necessary by the authorities of the country by which he is appointed. It may be observed here that under Article 26 of the Chicago Convention, the State of Registry is given the opportunity to appoint "observers" to be present at the accident inquiry.

However, Annex 13 to the Convention goes further in this matter by stating in paragraphs 5.3 and 5.4 that both the State of Registry as well as the Contracting State furnishing the relevant information are entitled to appoint an "accredited representative and advisers" to assist him and to be present at the Inquiry. Paragraph 5.6 further provides that an "accredited representative" shall be permitted to participate in the inquiry. The "accredited representative and advisers", referred to in Annex 13, together constitute the "observers", referred to in Article 26 of the Chicago Convention, and the new definition was used in order that States should have some control over those persons attending the inquiry from another State and that representatives should be able to participate in the inquiry.²⁸ The new definition has accordingly been incorporated in the national legislation of Pakistan.

CHAPTER IV

THE RIGHT TO FLY.

Theories as to State sovereignty in Airspace: There have been several theories regarding the existence and extent of sovereignty in the airspace above the territory of a State. The period before the First World War was specially full of discussion and speculation on the subject. Subsequently no doubt as a result of what happened during that War, the trend of national thinking veered round to the theory of "complete and exclusive" sovereignty, which is now settled law. It would be, nevertheless, historically interesting to refer briefly to the various theories that were advanced at one time or another before the complete sovereignty theory came to be finally accepted.

(1) The "Free Air" Theory: This theory was first propounded by Professor Nys and according to it the air is free and the subjacent State cannot interfere with the rights of other States to use the airspace above its territory. The most famous exponent of this theory was Fauchille and according to him the air is free, subject only to the right of self-preservation for the subjacent State. This theory was adopted by the Institute of International Law in 1906. It rests mainly on the argument that the air is physically incapable of appropriation because it cannot be actually and continually occupied. This is substantially the same as one of the arguments of Grotius in favour of the freedom of the sea. Sovereignty implies the possibility of occupation, and it was

argued that since occupation of air is impossible there can be no sovereignty in the air. The answer to this argument is that sovereignty does not involve continual possession any more than possession does in private law. A State can exercise sovereignty over a huge desert, or the summit of an uninhabitable mountain, if it is in de facto control and is in a position to suppress internal disorder and repel external attack. In that sense a State does control airspace above its territory.²⁹

(2) The "Territorial Air" or "Navigable Airspace"

Theory: The second theory was that upon the analogy of the maritime belt there is over the land and water of each state a lower zone of territorial airspace, and a higher and unlimited zone of free airspace. According to this theory, every State has absolute sovereignty in the airspace upto a certain height, but beyond such height the air is free to all alike. The extent of the height is determined by use of the airspace for purposes of air navigation. The principle of this theory finds favour in the national law of the United States, and is embodied in a Federal statute³⁰ which states that "There is recognized and declared to exist in behalf of any citizen of the United States, a public right of freedom of transit in air commerce through the navigable airspace of the United States". The theory was also accepted by Peru prior to 1930, when it declared freedom of the air above 3,000 meters.³¹ Inclination towards this theory could also be discerned in the United States - British Treaty Arrangements made before the Chicago Convention.³² This theory has recently come to the

forefront again as a result of the projected satellite flights, and in this connection, reference must be made to an address delivered by Professor John C. Cooper on the "Legal Problems of Upper Space" before the annual meeting of the American Society of International Law, on April 26, 1956.³³ The Address referred to the fact that in July 1955, the United States announced that it would support a series of satellite flights, as part of the wide scientific investigation of the 1957-58 International Geophysical Year, "to circle the earth in 90 minutes at a height of 300 miles". The question arises - what is the legal status of the space beyond the atmosphere where rockets and satellites can be operated without undue atmospheric interference? A subsidiary question involves the status of the intermediate area between the upper level of the atmosphere used by aircraft and the lowest height at which a rocket or satellite may freely be operated.

The word "airspace" used both in the Paris and the Chicago Conventions, although not defined, obviously means "atmospheric space", since in the French and the Italian versions of the Paris Convention, the words used are "espace atmospherique" and "spazio atmosferico" respectively. In other words, both the Conventions deal with no areas of space other than those parts of the atmosphere where the gaseous air is sufficiently dense to support balloons and airplanes. The highest flight by an unmanned balloon up to the present time is 140,000 feet; by a manned balloon 72,395 ft. and the highest airplane flight is 90,000 feet. From the recent experiments it appears that there is an area

between the highest possible balloon flight -- say 30 miles above the surface of the earth -- and 200 to 300 miles above the surface of the earth, in which continuous or extended satellite flights may be extremely difficult due to the presence of sufficient atmosphere to create serious "drag" or heating. This means that the future satellite flight will be most practical for long distances only if conducted not less than 200 or 300 miles above the surface of the earth.

In 1951, Professor Cooper suggested, in the earliest present-day discussion of the question of the legal status of space at high altitudes, that the time had come when "we must agree that there is an upper boundary in space to the territory of the subjacent State," and he added:³⁴

"Certain jurists have insisted that the territory of a State is limited by the ability of that State to make its law effective. This is a harsh rule when applied to sovereignty in space. The richest and most powerful States now have means through high altitude rockets to control more or less effectively the "airspace" over their surface territories. But the weaker States have no such power. Can we be said to live in such a world where the physical power at any one time of any particular State determines its international right to consider the region above its surface territories as part of its national territory? I may say here that my own belief is and has always been that if the rule of effectiveness is to be applied to determine the limit of State territory in space, then the rule should be that every State, no matter how small or how weak, as a State of equal sovereignty with every other State, has and should be admitted to have territorial rights upwards above its surface territories as high as the rights of every other State no matter how powerful".

However, in his address in 1956, he admitted that long and careful consideration during the past five years had convinced him of the existence of almost insuperable difficulties in applying the rule which he suggested in 1951. The only

practical way to solve the questions as to the legal status of areas above those covered by a strict construction of Article 1 of the Chicago Convention will, in his opinion, be the adoption of some form of international agreement. Such a new convention might include these solutions:

(a) Reaffirm Article 1 of the Chicago Convention, giving the full sovereignty to the subjacent State in the areas of atmospheric space above its territory, up to the height where "aircraft" as now defined, may be operated, such areas to be designated "territorial space".

(b) Extend the sovereignty of the subjacent State upward to 300 miles above the earth's surface, designating this second area as "contiguous space", and provide for a right of transit through this zone for all non-military flight instrumentalities when ascending or descending.

(c) Accept the principle that all space above "contiguous space" is free for the passage of all instrumentalities.

If such a new Convention comes into being, it would naturally mean the acceptance of "Territorial Air" theory. Today neither lawyers nor governments are prepared to state the legal flight rules applicable to presently operating rockets and planned satellites. For the second time in the present century, science and engineers have far outstripped the law. Such delay may be normal where legal rules must depend on known and accepted factual situations, but the gap between technological and legal progress must never be permitted to become too wide.

(3) The "Complete Sovereignty" Theory: The third theory was that a State has complete sovereignty in its superincumbent airspace to an unlimited height, thus implying "Cujus ³⁵ et Solum" in its crude form. The corollary of this was that no State had any rights in the airspace over the territory of another State. This theory was actually a "response" to the "challenge" of Fauchille's doctrine of freedom of the air, by the British lawyer, Professor Westlake, in 1906, and he was supported by Lycklama, Guibe, Richards and Hazeltine.³⁶ This school of thought opposed the theory of the freedom of air, although at that time it commanded the greater weight of expert opinion, and a majority of continental lawyers and jurists were in agreement with the Fauchille thesis. A remarkable fact which is observable on studying the legal writings on the subject of airspace sovereignty is that, contrary to the history of the evolution of the freedom of the seas, the idea of freedom prevailed from the very beginning as regards the airspace, and that it was only later that the doctrine of State sovereignty in the air was defended.³⁶ The supporters of this doctrine brought forward strong practical arguments for the contention that State sovereignty extended into the air, and emphasized the point that the other view was based on a confusion between the air as an element, and the air as a space.³⁷ The International Law Association approved the principle of State sovereignty in the airspace, in its session at Madrid in 1913, although it added a proviso, that "liberty of passage of aircraft ought to be accorded freely to the aircraft of every nation."³⁸ But the

International Law Association was the only one among the learned expert bodies to accept the principle of State sovereignty in airspace. The Institute of International Law had always favoured the principle of freedom of air. In fact it was at the instigation of the Institute that Fauchille prepared his draft Code on Air Law, embodying the principle. The Institute formally accepted the principle of freedom in air at its Madrid session in 1911. So did Comité juridique Internationale de l'Aviation at its Paris session the same year. The majority of representatives of the European States, who met at the 1910 Air Navigation Conference in Paris, were in favour of the same principle. In fact, it might have prevailed there; it was trembling in the balance when the British representative sent the sword of security clanging into the scale. Thereafter the freedom of the air became a lost cause.³⁹ The complete sovereignty theory was recognized in the Paris Convention, and again in the Chicago Convention.

(4) The "Innocent Passage" Theory: This theory was really the complete sovereignty theory, with the addition of a servitude of innocent passage for foreign non-military aircraft. It was based upon the analogy of the "Right of Innocent Passage" in Maritime Law, which permits merchant ships to pass through the territorial waters of a State.

A close examination of the four theories described above reveals the interesting point that the "territorial air" or "Zone" theory is really a restriction upon the "free air"

theory, while the "Innocent Passage" theory is a concession on the "Complete Sovereignty" theory. As Babey observed,⁴⁰ "Applying the principle of sovereignty with concessions, or that of free passage with restrictions, the results are the same". There is no doubt, however, that the juridical system of concessions to be granted to air navigation by the State, having sovereignty over the airspace, has a more restrictive effect than the system of limitations of the principle of freedom. The principle of complete sovereignty is now settled in International Law, and it is from this principle that States derive their authority to control the right to fly.

CHAPTER V.

LAW REGULATING THE RIGHT TO FLY.

Introductory.

Statute and Sub-Statute Law: One of the objects of passing the Aircraft Act, 1934, the main statute law relating to civil aviation, was to give power to the Central Government to make rules for the implementation of the provisions of the Paris Convention, and later of the Chicago Convention. The method adopted was not to enact the provisions of the Conventions directly as was done in the case of the Warsaw Convention, but to give statutory power to enact them by notification in the official Gazette.

The sub-statute law is contained in the Aircraft Rules, 1937, which were enacted under the powers given by the Aircraft Act.

Scope and Application: The Act as well as the Rules extend to the whole of Pakistan. They apply, unless the contrary intention appears, to all aircraft for the time being in or over Pakistan, and they enable extra-territorial effect to be given to their provisions in relation to aircraft registered in Pakistan. Certain classes of aircraft are excluded from their application. These are (i) aircraft belonging to or exclusively employed by Naval, Military or Air Forces of Pakistan; (ii) all State aircraft; and (iii) any aircraft which may be exempted from their application.

The basic distinction between aircraft is whether they are registered in Pakistan or elsewhere. Any aircraft registered outside Pakistan is a "foreign" aircraft, and a large proportion of the Aircraft Rules, viz. Parts IV, V, VI and IX, relating to registration, licensing of personnel, airworthiness and log books, do not apply to these aircraft. In these matters, the Rules merely require foreign aircraft, when in Pakistan, to comply with the regulations of their State of Registry. Compliance with the law of the aircraft's home State is accepted in these matters, because most of the foreign aircraft flying through Pakistan are registered in the States which are parties to the Chicago Convention, and the law of their home States can therefore be assumed to embody the provisions of the Convention, which are considered adequate to cover the above matters.⁴¹

Nationality of Aircraft: An aircraft is deemed to possess the nationality of the State on the register of which it is entered.⁴² This language is taken from Article 6 of the Paris Convention. The corresponding Article 17 of the Chicago Convention states: "Aircraft have the nationality of the State in which they are registered." The basic idea is the same, namely, that aircraft, like vessels, possess nationality. "Aircraft" is defined in Section 2 of the Aircraft Act, 1934, as "any machine which can derive support in the atmosphere from reactions of the air." This is the same definition which was adopted in the annexes to the Paris Convention, and has subsequently been adopted in Annex 7 to the Chicago Convention.

GENERAL CONDITIONS OF FLYING.

The provisions relating to the general conditions of flying are contained in Part II of the Aircraft Rules, 1937, and lay down general rules governing the use and flight of aircraft. They are dealt with, according to their subject-matter, in the following paragraphs:-

Registration and Markings.

Registration: No aircraft may fly unless (a) it is registered; and (b) it bears its nationality and registration marks, as well as the name and residence of the owner affixed or painted on it, in accordance with the regulations of the State in which it is registered. This prohibition does not, however, apply to aircraft flown with the special permission of the Government.

The registration of aircraft in Pakistan is done by the D.G.C.A. subject to the conditions and in accordance with the procedure laid down in Part IV of the Aircraft Rules, 1937. An aircraft can only be registered in Pakistan if it is owned wholly by a person who is qualified to be owner of an aircraft registered in Pakistan, namely, a citizen of Pakistan or a corporate body established under the laws of Pakistan. An aircraft cannot be registered in Pakistan if it is already registered in any other State. This provision is in accordance with Article 18 of the Paris and Chicago Conventions, which states that an aircraft cannot be validly registered in more than one State. Registration may be refused in case the

usual station of an aircraft and its ordinary area of operation are not in Pakistan, and the owner of the aircraft is neither a resident nor has his principal place of business in Pakistan. An aircraft registered in Pakistan can be let on hire or chartered outside Pakistan only with the permission of the DGCA. His permission is also required for any change of ownership or transfer of possession or use of an aircraft. Any transaction in contravention of this rule is null and void. Aircraft registered in Pakistan, with the exception of those engaged in scheduled airline operation, cannot be taken out of the country without the permission of the D.G.C.A. An aircraft which, although not registered in Pakistan, has been based there may be prevented from leaving the country at the discretion of the Government.

The registration of an aircraft may be cancelled if its actual ownership is different from that shown in the certificate of registration, or is not in conformity with the Rules.

Markings: An aircraft registered in Pakistan cannot fly anywhere without bearing the nationality and registration marks allotted to it by the D.G.C.A. A foreign aircraft cannot fly within Pakistan unless it bears the nationality and registration marks required by the law of the country in which it is registered. No aircraft may bear any mark, purporting to indicate that it is registered in a country in which it is not in fact registered.

The nationality mark of aircraft registered in Pakistan is AP, and the registration marks are a group of three letters to be assigned to each aircraft by the D.G.C.A. The nationality and registration marks must be painted on the aircraft or be affixed to it by any other means ensuring a similar degree of permanence. They should be displayed to the best advantage, taking into consideration the constructional features of the aircraft. The aircraft must also carry, affixed to the fuselage, in a permanent position, a metal plate of stainless steel, inscribed with the name and residence of the registered owner and the marks of nationality and registration.

Certificates of Airworthiness & Licences.

Certificates of Airworthiness: Rules relating to the airworthiness of aircraft are contained in Part VI of the Aircraft Rules, 1937. Every aircraft registered in Pakistan must have a Certificate of Airworthiness issued by the D.G.C.A. before it can engage in any kind of flying. Foreign aircraft flying within Pakistan must possess such a certificate issued by the State of Registry. This is in accordance with Article 31 of the Chicago Convention.

In Pakistan, certificates of airworthiness are issued by the D.G.C.A., on application, in respect of any flying machine which complies with the minimum standards of airworthiness prescribed by him in respect of design, materials, methods of construction and equipment. The owner must produce such evidence and submit to such inspection and tests of the flying machine as may be required by the D.G.C.A.

The D.G.C.A. may, in respect of any flying machine, accept as evidence of compliance with the Aircraft Rules, a valid Certificate of Airworthiness issued by the competent authorities of a foreign country, if he is satisfied that the conditions on which such certificate was issued are substantially equivalent to those in force in Pakistan. Generally speaking, gliders and kites are exempt from the airworthiness requirements.

Licensing of Operating Crew: Before a person can fly as a member of the operating crew of an aircraft registered in Pakistan, he must hold a licence which entitles him to act in the capacity in which he intends to fly; and such an aircraft can only fly if every member of the operating crew is the holder of such a licence. In case of foreign aircraft, all the members of the operating crew must be holders of appropriate licences issued or rendered valid by the State in which the aircraft is registered. This is in accordance with Article 32 of the Chicago Convention. Under the same Article, Pakistan, as a contracting State, reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to any of its nationals by another contracting State.

The requirement of all the operating crew of an aircraft registered in Pakistan being licenced is waived in case of an aircraft which is flown by a person under instruction, or by a person who is undergoing tests for the purpose of obtaining or renewing a pilot's licence, provided that (a) the aircraft is flown within three miles of a licensed or a

Government aerodrome, (b) the aircraft carries no passengers, and (c) prior notice of the flight and its purpose is given to the person in charge of the aerodrome from which the flight is made.

The regulations governing the grant of licences to the operating crew are contained in Part V of the Aircraft Rules, 1937. The main categories of these licences, in accordance with the provisions of Annex 1 to the Chicago Convention, relating to "Personnel Licensing", are private pilot's, commercial pilot's, senior commercial pilot's, airline transport pilot's, flight navigator's, flight engineer's and flight radio operator's. Licences of pilots, flight engineers and flight radio operators include "ratings", which is defined as "an authorization entered on a licence and forming part thereof, stating special conditions, privileges or limitations pertaining to such licences". The ratings specify the particular classes and types of aircraft or equipment to which they relate, and the circumstances in which their holders may fly. Ratings specifying the classes and types of flying machines which a pilot may fly or in which a flight engineer may act as such are called "aircraft ratings". Examples of ratings other than aircraft ratings are instrument ratings, night ratings, instruction ratings and towing ratings. The Aircraft Rules specify the "privileges" which are conferred by each type of licence and rating.⁴³

The D.G.C.A. may issue and renew "validations" of licences granted by a State other than Pakistan, conferring on such licences the same validity as if such licences had been

granted under the law of Pakistan. This validation may, however, be refused if the holder of a licence is not a fit and proper person to hold such a validation, or if in any particular case, it is inexpedient in the public interest to do so. It is only fair to add that the same restrictions apply to the grant or renewal of a licence in Pakistan, and therefore no discrimination against the holders of foreign licences is involved.

Licensing of Aircraft Maintenance Engineers: Certain certificates relating to aircraft required under the Aircraft Rules, as for example, certificates of periodical overhaul, modifications and daily inspection, can only be issued by persons licensed to act as "Aircraft Maintenance Engineers". They were formerly called "Ground Engineers", which in my opinion was a better name, because it gave you an idea of their functions and indicated that their relationship with the aircraft lasted only so long as it was on the ground. Actually the term is still retained in the Aircraft Rules (at least in the copy available to me) and their licences are divided into the following categories:-

- Category A. - Inspection of aircraft before flight.
- Category B. - Inspection of aircraft during construction or overhaul.
- Category C. - Inspection of aero-engines before flight.
- Category D. - Inspection of aero-engines during construction or overhaul.
- Category X. - Inspection, construction, installation and repair of aircraft instruments, accessories and equipment.

The Ground Engineers' Licences are granted by the D.G.C.A. on fulfilment of conditions and requirements laid down in Rule No. 61 of the Aircraft Rules, 1937. A person holding such a licence cannot certify anything which he is not authorized to do under the terms and conditions of his licence. A licence may be cancelled, suspended or endorsed if, after investigation, it is found that (a) the holder has performed his work, or granted a certificate in respect of work which has not been performed, in a careful or competent manner; or (b) the holder has granted a certificate which he is not competent to do; or (c) it is undesirable for any other reason that the holder should continue to exercise the functions of a Ground Engineer.

Licensing of Wireless Operators: No person can operate radio-transmitting apparatus in any aircraft registered in Pakistan unless he holds a licence of the type required by the provisions of Part V of the Aircraft Rules, in respect of aircraft required to carry radio-telegraph or radio-telephone apparatus. Radio-transmitting apparatus carried in aircraft must be operated under the conditions defined by the International Tele-communications Convention (Atlantic City, 1947), to which Pakistan is a party. The Wireless Operators' Licences are divided into the following categories:-

- A. - Flight Radio Operator's Licence.
- B. - Flight Radio Telephone Operator's Licence.

Personnel, Equipment and Documents to be carried: Notices to be exhibited.

Operating Crew: No aircraft registered in Pakistan may fly or attempt to fly anywhere unless the members of its operating crew are of the numbers and description prescribed in Part V of the Aircraft Rules, 1937, with respect to the class, type or description of aircraft and the circumstances of the flight in which it is engaged, and unless the arrangements made as to their duties are in accordance with the prescribed requirements. No foreign aircraft may fly or attempt to fly within Pakistan unless the members of its operating crew are of the number and description required by the law of the country in which the aircraft is registered. "Operating crew" includes pilots, flight navigators, flight engineers and flight radio operators. All aircraft must carry the minimum operating crew specified in their certificate of airworthiness; where the certificate of airworthiness requires a flight engineer to be carried and a separate place of duty is provided for such engineer in the aircraft, the engineer so carried must be a separate person from any other member of the operating crew, and he may not carry out any duties in the aircraft other than those of a flight engineer. Where an aircraft carries two or more pilots as members of the operating crew, the operator of the aircraft must, before the commencement of the flight, designate one of them as the pilot-in-command of the aircraft, and other pilots must act only under his directions. A public transport flying machine

carrying out a flight of a great circle distance of more than one thousand nautical miles over water, or of more than one thousand and five hundred nautical miles without landing, must carry on board a flight navigator duly licensed.

Normally he must be a separate person from other members of the operating crew and should only carry out navigational duties. If, however, a pilot or co-pilot are carried then either of them, whoever is licensed as a flight navigator, may also be made responsible for the navigation of the flying machine, provided he holds a Commercial, Senior Commercial or an Airline Transport Pilot's Licence, having an aircraft rating in respect of the particular type of flying machine.

Instruments, Equipment and Safety devices to be carried in aircraft: All aircraft registered in Pakistan, when flying or about to fly, must comply with the requirements prescribed in the Aircraft Rules,⁴⁴ relating to (i) the instruments and equipment to be carried; (ii) the installation or stowage of such instruments or equipment; (iii) the persons by whom and the manner in which the instruments and equipment may be used; (iv) the measures to be taken with respect to the fastening of any equipment provided for the purpose of securing the safety of the passengers; and (v) the devices to be used and the precautionary measures to be taken for the purpose of securing the safety of the aircraft. The instruments and equipment referred to above must be of types approved by the D.G.C.A. and must be installed in a manner approved by him, and must be maintained in working order.

Aircraft Radio Equipment: All public transport aircraft registered in Pakistan, and all other Pakistan-registered aircraft with a carrying capacity of five or more persons including the crew, when carrying out a flight under Visual Flight Rules,⁴⁵ over routes on which navigation is possible by visual reference to landmarks, must carry such radio equipment as is necessary to accomplish the following:-

(a) maintain two-way communication with the appropriate Aeronautical Station for the purpose of Aerodrome Control or Approach Control,⁴⁶ using the frequencies and the type of emissions notified for this purpose;

(b) maintain two-way communication on designated frequencies and using the approved type of emission, with at least one Aeronautical Ground Station, from any point on the route for the purpose of exchanging air traffic control, meteorological and other information required by procedures in force.

Over the routes where such navigation cannot be accomplished by visual reference to landmarks, and in case of night operations and any operations under Instrument Flight Rules,⁴⁷ all aircraft registered in Pakistan must carry such radio equipment as is necessary to accomplish the two objectives (a) and (b) above, and in addition to enable the aircraft to be navigated with the help of available radio navigation aids in accordance with the flight plan submitted to the appropriate Air Traffic Control and with any instructions received from Control.

Radio equipment carried in accordance with the above

requirements must be of the type approved by the D.G.C.A. as being suitable for the purpose for which it is intended to be used and under conditions obtaining on the route to be flown. The equipment must be installed, bonded and screened in a manner approved by the D.G.C.A. Before commencing any flight, the person-in-command of the aircraft must satisfy himself that the aircraft is fitted with radio equipment capable of fulfilling the requirements for the flight, in accordance with the prevailing procedures and that the equipment is in proper working order. The application of the rules relating to radio equipment in aircraft may be suspended, wholly or in part, in appropriate cases and in exceptional circumstances, especially where, owing to the absence of radio facilities available for communication and/or air navigation in a particular region, the employment of radio equipment on board the aircraft would serve no useful purpose. If any of the radio equipment required for a flight becomes defective during the course of that flight, the aircraft must comply with such existing procedures as may be appropriate in the circumstances of the case; but nothing in the rules shall be deemed to prevent such an aircraft from exceptionally undertaking or continuing a flight to the nearest convenient point at which the defect can be remedied if the person in command of the aircraft is satisfied that such a flight can safely be performed, having regard to the circumstances and exigencies of the case.

Foreign aircraft flying in or over the territory of Pakistan may carry radio transmitting apparatus only if a licence to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered, and such apparatus may be used only by members of the flight crew who are provided with a special licence for the purpose. However, the use of radio transmitting apparatus in the territory of Pakistan is subject to the national regulations. This is in accordance with Article 30 of the Chicago Convention.

Documents to be carried in aircraft: Every public transport aircraft registered in Pakistan must carry on board the following documents before it can fly:-

- (i) the certificate of registration;
- (ii) the licences of the personnel;
- (iii) the certificate of airworthiness;
- (iv) the journey log book in cases where the keeping of a journey log book is prescribed;
- (v) working copies of the aircraft and engine log books whenever the aircraft leaves its normal station;
- (vi) where radio-telegraph apparatus is carried in the aircraft, the permit or licence issued by the Director General of Posts and Telegraphs under which such apparatus is carried.

Where a licence or other document has been submitted to a competent authority for renewal or other action that fact shall be deemed a valid excuse for its not being carried on board the aircraft.

Every foreign aircraft engaged in international navigation must carry the following documents, issued by the State of Registry, before it can fly within Pakistan:-

- (i) the certificate of registration;
- (ii) the licences of the personnel;
- (iii) the certificate of airworthiness;
- (iv) the journey log book;
- (v) the aircraft and engine log books;
- (vi) where radio-telegraph apparatus is carried in the aircraft, the permit or licence for such apparatus;
- (vii) a list showing the name, permanent address, nationality and place of origin of each member of the crew;
- (viii) a stores list showing the nature and quantity of all stores carried;
- (ix) where the aircraft carries passengers, a list showing the name, permanent address, nationality place of origin, immediate destination and ultimate destination of every passenger;
- (x) where the aircraft carries goods, air consignment notes and manifests in respect thereof, showing a description of the goods, the nature of the contract of carriage, the names and addresses of the consignor and the consignee, and the immediate and ultimate destination of the goods.

It may be observed that this list of documents is slightly larger than that prescribed under Article 29 of the Chicago Convention, which does not include items (v), (vii) and (viii) above. However, by an amendment made in February 1956,⁴⁸ items (v), (ix) and (x) are not required in case of aircraft engaged in international navigation for purposes other than public transport.

Aircraft registered in Pakistan which are not engaged in public transport or international navigation and which leave the vicinity of their starting place and return after landing elsewhere, must carry on board the following documents:-

- (i) a copy of the certificate of airworthiness in lieu of the original;
- (ii) working copies of the aircraft and engine log books in lieu of the originals.

If such aircraft do not leave the vicinity of their starting place and return without landing elsewhere, they

have to carry on board the following documents only:-

- (i) a copy of the certificate of registration;
- (ii) a copy of the certificate of airworthiness.

Log Books to be kept: The following log books are required to be kept in respect of aircraft registered in Pakistan:-

- (a) An aircraft log book and an engine log book for every aircraft. If the aircraft is multi-engined, a separate engine log book for each engine;
- (b) A journey log book for every public transport aircraft and every aircraft engaged in international navigation;
- (c) A propeller log book for every public transport aircraft fitted with a variable pitch propeller; if the aircraft is fitted with more than one such propeller, a separate log book for each propeller;
- (d) A telecommunication log book for every aircraft equipped with radio apparatus.

Personal flying log book: Every member of the operating crew of an aircraft registered in Pakistan and every person flying for the purpose of becoming qualified for the grant or renewal of a licence or undergoing tests or receiving instruction in flying required for admission into the Pakistan Air Force, must keep a personal flying log book.

It may be observed that in respect of the documents to be carried in aircraft registered in Pakistan, the Aircraft Rules lay down differing requirements according to whether the aircraft is or is not (i) a public transport aircraft; (ii) engaged in international navigation; and (iii) engaged in international navigation for purposes other than public transport. Only two documents are required in case of

private aircraft, the differing requirements depending upon whether they leave the vicinity of the starting place and land elsewhere or not.

Notices to be exhibited in aircraft: The following notices must be exhibited in or on an aircraft registered in Pakistan:-

- (i) the name and residence of the registered owner, and the marks of nationality and registration, inscribed on a metal plate of stainless steel, affixed to the fuselage in a permanent position;
- (ii) a "Weight Schedule" giving various specified items of information exhibited in a prominent position inside the aircraft;
- (iii) the "weight empty" of the aircraft and the maximum total weight authorized by its certificate of airworthiness, clearly painted on the outside of the aircraft in a prominent position;
- (iv) A notice exhibited in a prominent position inside the aircraft stating where and to what extent smoking is permitted or prohibited.
- (v) in aircraft carrying passengers for hire or reward (or, in a case where the carriage is effected by an air transport undertaking, whether for hire or reward or not) "Emergency Exits" must be clearly marked and the method of their operation indicated.

For the purposes of all the requirements relating to personnel, equipment and documents to be carried in aircraft, such unregistered aircraft as may be permitted to fly are deemed to be registered in Pakistan. Any of the documents required to be held or carried by an aircraft or its crew, or of the log books referred to above must be produced on demand by an "authorized" person.

Pre-Flight Action.

Precautionary action to be taken by the person in command of aircraft. Before an aircraft registered in Pakistan can fly the person in command of the aircraft must satisfy himself that the following conditions have been fulfilled:-

(1) The aircraft is equipped with, and has in working order such instruments and equipment as are prescribed by the Aircraft Rules for an aircraft of that class or description;⁴⁹

(2) The load carried by the aircraft is of such weight and so distributed and secured that it may safely be carried on the proposed flight;

(3) The view of the pilot is not interfered with by any obstruction nor obscured by the condition of windows or windscreens of the aircraft and the pilot must "take all such steps as are practicable to secure" that the windows, windscreens or the side screens through which he obtains his view, are maintained in such condition as not to obscure his view;

(4) sufficient fuel and oil are carried for the proposed flight and a sufficient output of electricity will be available;

(5) having regard to the performance of the aircraft in the conditions to be expected on the proposed flight, it is capable of clearing, by a safe margin, the edge of the aerodrome of departure, of reaching and maintaining a safe height thereafter along the route of the proposed flight, and of making a safe landing at the aerodrome of destination.

Information to be obtained before flight: Before commencing a flight the person in command of an aircraft must familiarize himself with information necessary for the proper operation of the aircraft en route and on the aerodromes which may be used. For flights other than "flights in the immediate vicinity of an aerodrome", he must, in the light of this information, determine whether the flight can be made with safety, taking into full consideration fuel requirements and an alternative course of action in case the flight cannot be completed as planned. He must also determine whether I.F.R. weather conditions prevail along any part of the flight.

Flight Plans and Air Traffic Control Clearance: In various circumstances laid down in the "Rules of the Air and Air Traffic Control" aircraft must, before flight, submit a "Flight Plan" to the appropriate Air Traffic Control, or obtain Air Traffic Control "clearance" for the flight.

Requirements to be observed in Flight.

Rules of the Air and Air Traffic Control: Every pilot and navigator must observe the Rules of the Air contained in Part XII of the Aircraft Rules. These rules are very elaborate and cover the requirements concerning lights and visual signals to be displayed by aircraft in flight; sound signals; ground markings, lights and signals on and in the vicinity of aerodromes open to public use; distress, urgency and safety signals; general rules for air traffic; special rules for air traffic in the vicinity of public aerodromes;

rules for flight over or in the vicinity of the Landing Area; rules for the take-off and landing of aircraft; rules for manoeuvres on the ground and rules relating to aircraft on or near the surface of the water. The person in command of the aircraft must, as soon as possible, report to the appropriate Air Traffic Control, any hazardous flight condition encountered by him in the course of his flight with such details as may be pertinent to the safety of other aircraft.

GENERAL SAFETY CONDITIONS.

Dangerous flying: No aircraft may be flown in such circumstances as, by reason of low altitude or proximity to persons or property or for any other reason, to cause "unnecessary" danger to any person or property. It is submitted that any danger is "unnecessary" which can be avoided by the exercise of reasonable care and caution in the circumstances of the case.

Flying over cities, crowds, etc. In addition to the general provision as to dangerous flying stated in the preceding paragraph, the following restrictions apply to flying over towns and crowds:-

(1) No aircraft may be flown over any city, town, village site or other populous area except at such altitude (which in no case should be less than one thousand feet) as will enable the aircraft to land outside such crowded place in the event of an emergency. An exception to this rule is made in case of aircraft departing from or about to land at a licensed Government aerodrome within a distance of one mile.

(2) No aircraft may be used for acrobatics when flying over any city, town, village site or populous area.

Acrobatics: An aircraft may be used for acrobatics when flying over any meeting for public games or sports or other public assembly only if a request for such flying has been made in writing by the promoters of such meeting or assembly. When an aircraft is used for acrobatics the following conditions must be observed:-

(a) it must be flown by a licensed pilot, or if it is flown by a person for the purpose of qualifying for a licence under the Aircraft Rules, such person must be accompanied by a licensed pilot instructor;

(b) if passengers are carried, whether the carriage is public transport or not, their previous consent to the performance of acrobatics must be obtained in writing;

(c) the pilot or person incharge of the aircraft must satisfy himself before commencing the flight that every person carried in the aircraft, is properly secured by safety belts; and

(d) the acrobatics must come to an end at a height of at least two thousand feet.

Dangerous conduct by persons onboard aircraft.

(1) Drunkenness: No member of the operating crew of an aircraft registered in Pakistan may take any form of alcohol during the twelve hours prior to the commencement of the flight. During the flight he should not be in a state of intoxication, or in a state in which, by reason of

his having taken any sedative, narcotic or stimulant drug or preparation, his capacity to act as a member of the operating crew is impaired. No other person may enter or be in an aircraft while in a state of intoxication.

(2) Smoking: A notice permitting smoking in an aircraft may only be exhibited if smoking in the aircraft is permitted by its certificate of airworthiness and then only in accordance with the conditions contained in the certificate. No person is allowed to smoke unless he complies with all the terms of such notice.

(3) Carriage of persons on wings, undercarriage etc. No person may be carried at any time on the wings or undercarriage of an aircraft or any other part which is not designed for the accommodation of the crew or passengers, or any thing attached externally to the aircraft. The exception to this rule is the temporary access to any part of the aircraft for the purpose of executing repairs to the aircraft, or adjusting its machinery or equipment, or doing anything which may be necessary for the safety of the aircraft.

(4) Dropping of articles from aircraft: No objects may be dropped from an aircraft in flight, except the following:-

- (a) ballast in the form of fine sand and water;
- (b) message bags, smoke-producing or other apparatus or materials dropped for the purpose of navigating an aircraft, or communicating messages from an aircraft, subject to the observance of such precautions as to the nature of the articles dropped and the place of dropping as will avoid risk of injuring persons or property on the ground;

- (c) separate sheets of paper containing printed matter in any place with the permission of the appropriate authority.

(5) Parachute descents: Except in case of emergency, no person may descend from an aircraft by means of a parachute, without the special permission of the Government.

Acts likely to imperil the safety of aircraft. No person may interfere with the pilot or with a member of the operating crew of an aircraft, or tamper with the aircraft or its equipment, or conduct himself in a disorderly manner in an aircraft, or commit any act likely to imperil the safety of an aircraft or its passengers or crew.

Control of aircraft by young persons: No person under the age of seventeen can have sole control of an aircraft in motion, and no person may cause or permit a person under that age to have sole control of such an aircraft.

Carriage of explosives and arms: No aircraft may carry any explosives, articles of a highly inflammable nature, arms, ammunition or military stores, with the exception of the following:-

(a) such explosives or other articles as may be required for the sole purpose of working or handling of the aircraft;

(b) such explosives or other articles as may be carried by air for, or on the instructions of the Government;

(c) such arms and ammunition as may reasonably be required for the private use of any person, either as personal luggage or as freight.

Travel documents: All persons on board an aircraft entering Pakistan from abroad must be in possession of valid travel documents as required under the Passport Act, 1920, or the Pakistan (Control of Entry) Act, 1952.

Mails: No mails may be carried in any aircraft without the permission of the Director General of Posts and Telegraphs, Government of Pakistan.

Prohibited areas: No aircraft may fly over any of the "prohibited areas"⁵⁰ in Pakistan. If a pilot finds himself flying over a prohibited area, then directly he becomes aware of the fact he should give a signal of distress and land the aircraft as soon as possible outside the prohibited area at one of the nearest aerodromes in Pakistan. He should not fly further into the prohibited area, nor commence to descend while still above such area, unless compelled to do so by stress of weather or other unavoidable cause.

Photography: No photograph of any area of the territories of Pakistan may be taken from any aircraft, other than an aircraft owned by the Pakistan Government. All loaded cameras in possession of the passengers at the time of embarkation must be unloaded and handed over ^{to} the pilot-in-command of the aircraft who will keep it for the duration of the flight.

Aerial work and public transport: A foreign aircraft may not be used for aerial work or public transport in Pakistan territory without special permission from D.G.C.A.

RULES RELATING TO THE ARRIVAL & DEPARTURE
OF AIRCRAFT IN PAKISTAN.

The rules governing the arrival and departure of aircraft in Pakistan are still contained in the old Aircraft Rules, 1920. These Rules were superseded by the Aircraft Rules, 1937, with the exception of Part IX, relating to the above topic, which therefore is still the law.⁵¹

Customs Aerodromes: Every aircraft entering Pakistan from abroad must make the first landing at a "Customs Aerodrome", and every aircraft leaving Pakistan must depart from a Customs Aerodrome. A "Customs Aerodrome" is any aerodrome which may be so declared by the Central Government by notification in the Official Gazette. An exception to the above rule is made in case of an aircraft which is compelled to land elsewhere by accident, stress of weather or other unavoidable cause.

Customs Laws: Every aircraft arriving in or departing from Pakistan must observe the Customs laws and regulations of Pakistan, and comply with the provisions of the Sea Customs Act, 1878, as if any reference in that Act to ships or vessels included aircraft, and any reference to port or quay included a Customs Aerodrome.

The following rules relating to Customs procedure are laid down in the unrepealed Chapter IX of the Aircraft Rules, 1920.

(1) Arrival: The person in charge of an aircraft, on arrival at a Customs Aerodrome in Pakistan, must take the aircraft to the examination station at that aerodrome. He must deliver, to the customs collector, his journey log book and a manifest, list of passengers and their baggage and declaration of the goods and stores on board the aircraft signed by the proper officer of customs at the aerodrome from which he took off for Pakistan. He should land all passengers and their baggage carried in the aircraft at the aerodrome for examination, and produce, and if required to do so, unload all goods in the aircraft for examination by the customs.

(2) Departure: The person in charge of an aircraft proceeding to any place outside Pakistan must deliver to the customs collector at the Customs aerodrome of departure, his journey log book; and if the aircraft carries any goods, a manifest and declaration of the goods and stores on the aircraft. The journey log book and one copy of the manifest and declaration is signed by the customs collector and returned to the person in charge of the aircraft. These documents constitute the necessary authority for the aircraft to proceed to its destination.

(3) Import and Export of goods: No person in any aircraft entering or departing from Pakistan may carry any goods the import or export of which by sea or by land is prohibited under the law of Pakistan, and no such person entering Pakistan may break or ~~alter~~ alter any seal placed upon any part of the aircraft or upon any goods by a customs officer at the aerodrome from which the aircraft departed for Pakistan.

Goods imported into Pakistan must be brought into and unloaded at the examination station at a Customs aerodrome. The person importing the goods must deliver to the customs collector a bill of entry of such goods giving the required particulars, and pay the prescribed customs duties to him. For the purpose of this rule, the word "goods" is deemed to include aircraft imported by flight in so far as the provisions of the rule are applicable to them. Corresponding provisions apply to the export of goods by air. The exporter must deliver to the customs collector at the customs aerodrome of departure, a shipping bill giving all the required particulars, and pay the necessary customs duties. The shipping bill, when signed by the customs collector constitutes the clearance and authority for the exportation of goods by air. The goods once cleared and loaded in the aircraft may not be unloaded without the permission of the customs collector.

(4) Exemption from customs duty: No customs duty is levied on an aircraft not registered in Pakistan which is brought into the country for the purpose of a flight to or across Pakistan, if it is not to be registered in Pakistan and is to be removed from the country within six months, provided that the person in charge of the aircraft makes a written declaration to that effect to the customs collector on arrival at the customs aerodrome. Under Article 24 of the Chicago Convention, the provisions of which are also incorporated in almost all the bilateral air transport agreements made by Pakistan with other countries,

aircraft on a flight to, from or across the territory of another contracting State are admitted temporarily free of duty, subject to the customs regulations of Pakistan. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of Pakistan and retained on board on leaving, are exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption does not apply to any quantities or articles unloaded except in accordance with the customs regulations of Pakistan, which require that they must be kept under customs supervision. Spare parts and equipment imported into Pakistan for incorporation in or use on an aircraft of another contracting State engaged in international air navigation are also admitted free of customs duty, subject to the compliance with the national regulations which require that the articles must be kept under customs supervision and control.

DEPARTMENT OF CIVIL AVIATION PUBLICATIONS.

The Department of Civil Aviation issues the following publications for the information and guidance of the persons engaged in various activities relating to flying:-

- (1) Notices to Airmen;
- (2) Notices to Aircraft Owners and Aircraft Maintenance Engineers;
- (3) Aeronautical Information Publication;
- (4) Communications Standing Orders;
- (5) Air Transport Circulars;
- (6) Quarterly Newsletter.

CHAPTER VI.

LAW GOVERNING AIR TRANSPORT SERVICES.

International.

The Chicago System: Extent of right to fly. The mutual right of flight over each other's territory granted by the States which are parties to the Chicago Convention, only applied to "aircraft not engaged in scheduled international air services" (Article 5). This right of "non-scheduled flight" does, however, extend to the commercial transport of passengers and cargo, subject to the reservation in favour of each State of the right to impose regulations, conditions or limitations. It is of course possible for a State under this reserved right to impose such onerous restrictions as to render the privilege nugatory. But in actual practice, a State will be reluctant to impose such heavy restrictions. It might therefore be said that under the Chicago Convention, aircraft engaged on non-scheduled flight are entitled to the rights and privileges conferred by the Convention, e.g. exemption from customs duty under Article 24, discussed in the previous Chapter, and exemption from seizure or detention on patent claims under Article 27, provided that they comply with the conditions and limitations laid down by the Convention or imposed by the State concerned under its reserved rights. The first paragraph of Article 5 seems to

imply that the contracting States impose upon themselves a limitation upon the exercise of their sovereignty, which is recognized by Article 1. On the other hand, the term "privilege" in the second paragraph of the same Article is something less than the term "right" in the first paragraph, and may be described as a kind of qualified right. Generally speaking States require prior permission for all non-scheduled commercial flights, but not for non-commercial flights, e.g. flying across the territory of a State non-stop, or making a non-traffic landing. This is so in Pakistan.

Scheduled air services: Article 6 of the Chicago Convention states that "No scheduled international air service may be operated over or into the territory of a contracting State except with the special permission or authorization of the State, and in accordance with the terms of such permission or authorization". Article 96 defines an "Air Service" as "any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo" and an "international air service" as "an air service which passes through the air space over the territory of more than one State". The term "scheduled" is not defined in the Convention, but on the 25th March 1952, the Council of I.C.A.O. pursuant to a resolution of the Second session of the Assembly, (Resolution No. A2-18) adopted, for the guidance of the contracting States, the following definition of a "scheduled international air service":-⁵¹

Definition.

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

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

As between the States belonging to the "Chicago System", "permission or authorization" referred to in Article 6, in favour of scheduled air services may be granted by one or more of the following methods:-

- (1) By the International Air Services Transit Agreement; (The "Two Freedoms" Agreement);
- (2) By the International Air Transport Agreement (The "Five Freedoms" Agreement);
- (3) By bilateral treaties between pairs of States concerned;

The method generally adopted in Pakistan is a combination of (1) and (3) above; it is not a party to (2).

Repeated attempts have been made since the failure at the Chicago Conference in 1944, to reach a multilateral agreement, providing for the reciprocal exchange of commercial rights in scheduled international air services,⁵² but without success. There has, however, been a limited success in a limited European area, and in November-December, 1955,

a "Multilateral Agreement on Commercial Rights in Non-scheduled Air Services in Europe" was reached at the first meeting of the European Civil Aviation Conference in Strasbourg⁵³ While the scope of the Agreement and the geographical area to which it is applicable, are limited, it provides for the commercial entry of certain specified aircraft of the contracting States "without the imposition of the regulations, conditions or limitations, provided for in the second para. of Article 5 of the Chicago Convention"⁵⁴ It thus marks the first time since the Chicago Conference that States sat down together and worked out any grant whatever of commercial rights. The Agreement does in fact represent the first time that a completely self-sufficient system for granting commercial rights on any basis whatsoever has been worked out rationally.⁵⁵

(1) The "Two Freedoms" or "Transit" Agreement:

Thirty-two of the States represented at the Chicago Conference signed the International Air Services Transit Agreement, which is generally known as the "Two Freedoms" Agreement. It has since been largely accepted by other contracting States, with the notable exception of the "gateway" nations like Portugal⁵⁶ and Ireland. In fact second only to the Chicago Convention itself, this is the most widely-accepted agreement which emerged out of the Chicago Conference. Its main provisions are as follows:-

(i) Each contracting State grants to the other

contracting States the following freedoms of the air in respect of scheduled international air services:- (Article 1, Sec.1)

(1) the privilege to fly across its territory without landing;

(2) the privilege to land for non-traffic purposes.

(ii) The exercise of the foregoing privileges shall be in accordance with the provisions of the Chicago Convention. (Article 1, Sec. 2).

It might be of interest to recall at this point that, upon a request from the Government of Pakistan for an interpretation of Article 6 of the Chicago Convention, and its relation to Article 1, Section 1 of the Transit Agreement, the Council of I.C.A.O. gave, in March 1951, the following Advisory Opinion:-

"(i) The Convention of International Civil Aviation, and in particular Article 6 thereof, does not override the provisions of Section 1, Article 1 of the International Air Services Transit Agreement.

(ii) A State, by becoming party to the Air Transit Agreement, grants the privilege of transit and landing for non-traffic purposes - subject to the requirements of other provisions of the agreement - to other States party to the same Agreement with respect to their scheduled international services." 57

The remaining provisions of the Agreement are:-

(iii) Subject to certain safeguards, "a contracting State granting to the airlines of another contracting State, the privilege to stop for non-traffic purposes, may require such airlines to offer reasonable commercial service at the points at which such stops are made"(Article 1, Section 3)

(iv) Each contracting State may "designate" the

routes and airports to be used within its territory, and may impose "just and reasonable" charges, which must not be higher than those paid by its national aircraft on similar international services for the use of airports and other facilities.(Article 1, Section 4).

(v) Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates or to perform its obligations under this Agreement. (Article 1, Section 5).

(vi) Disputes are to be settled by I.C.A.O. (Art.II).

(vii) The Agreement to remain in force as long as the Chicago Convention, subject to the right of any contracting State to denounce the Agreement on one year's notice.(Art.III).

(2) The "Five Freedoms" or "Transport" Agreement.

Only twenty of the States represented at the Chicago Conference, consisting mainly of the United States of America, Scandinavian States and the South American States, signed the International Air Transport Agreement, known as the "Five Freedoms" Agreement. In addition to the two "Freedoms", granted by the Transit Agreement, which were also included in the "Transport" Agreement, the latter granted the following three remaining "Freedoms" of the air:-

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

(i) With respect to the privileges specified under (3), (4) and (5) above, the undertaking of each contracting State related only to through services on a route constituting a reasonably direct line out from and back to the homeland of the State whose nationality the aircraft possesses. (Art.1.S.1)

(ii) Each contracting State "undertakes that in the establishment and operation of through services due consideration shall be given to the interests of the other contracting States so as not to interfere unduly with their regional services or to hamper the development of their through services". (Article III)

(iii) The contracting States accept the Agreement as "abrogating all obligations and understandings between them, which are inconsistent with its terms. (Article II).

(iv) Any contracting State may at any time elect not to grant or receive the "Fifth Freedom" privilege, and may reverse such election. (Article IV, Section 1).

(v) Other provisions were similar to those of the "Transit" Agreement. (Articles I, IV and IV).

(vi) The Agreement also contained express provisions as to cabotage, which were identical with those of Article 7

of the Chicago Convention. (Article 1, Section 4).

The denunciation on 25th July 1946 of the "Transport Agreement" by the U.S.A., its chief sponsor at Chicago in 1944, heralded the failure of the efforts to exchange commercial rights in air transportation on a multilateral basis. This inevitably led to the device of **bilateralism**. In fact the denunciation followed the conclusion of the epoch-making Bermuda Agreement in February 1946 between the United States and the United Kingdom, the two chief adversaries at Chicago in 1944. The Air Transport Agreement is now practically a dead letter, and has been discounted by one writer as being "a product of immediate post-War enthusiasm".⁵⁸

(3) Bilateral Treaties: As between States which are parties to the Chicago Convention, but are not parties to the Two Freedoms or the Five Freedoms Agreements, the method of granting the "permission or authorization", required for scheduled air services by Article 6 of the Convention, is by a bilateral treaty. This method is also used between States which are parties to the Two Freedoms Agreement, and wish to make a mutual grant of additional rights, though not prepared to accept the entire Five Freedoms Agreement. Pakistan belongs to this category of States, since she is a party to the Two Freedoms Agreement, but not to the Five Freedoms Agreement. The Two Freedoms Agreement, of course, does not confer any rights of commercial entry, i.e. to pick up or set down passengers or cargo; hence the necessity for a bilateral exchange of commercial rights. As between States which are not both parties to the Chicago Convention, a

bilateral treaty is at present the only practicable method of granting rights of either scheduled or non-scheduled flights. The States represented at the Chicago Conference seem to have contemplated a wide use of the bilateral treaties, since the Final Act of the Conference included an agreed form of standard agreement to be used in such treaties.⁵⁹ Under this Standard Form, "the contracting parties grant the rights specified in the Annex hereto necessary for establishing the international civil air routes and services therein described". The Annex "will include a description of the routes and of the rights granted whether of transit only, of non-traffic stops or of commercial entry, as the case may be, and the conditions incidental to the granting of the rights. Where rights of non-traffic stops or commercial rights are granted, the Annex will include a designation of the ports of call at which stops can be made or at which commercial rights for the embarkation and disembarkation of passengers, cargo and mail are authorized....." Each State~~is~~ is entitled to "designate" the carrier by which the rights granted are to be exercised and the other State is bound to give "the appropriate operating permission" to the designated carrier, subject to the proviso that the carrier "may be required to qualify before the competent aeronautical authorities of the contracting party granting the rights, under the laws and regulations normally applied by those authorities". In the United States, a foreign air carrier must still obtain a permit from the Civil Aeronautics Board,⁶⁰ even though the carrier's country is a party to the Two Freedoms Agreement,

or to a bilateral treaty with the United States.

The Standard Form contains provisions similar to those of the Chicago Convention as to non-discrimination in airport charges and in customs duties on petrol; exemption from customs duty of aircraft fuel, equipment and stores, retained on board; mutual recognition of certificates of airworthiness and licences; and compliance with the national laws and regulations of the State flown over.

Since the Chicago Conference, a large number of bilateral air transport agreements of the above general type have been made between various States. A list of such agreements made by Pakistan with other States is given in Appendix 5. Most of these agreements are based on what has been described as the "Bermuda Plan",⁶¹ namely, the Two Freedoms Agreement plus the Bermuda Agreement. Its general effect is as follows:-

(i) Each nation grants to the air carriers of the other transit privileges (First and Second Freedoms), i.e. the right to operate through the air space of the other and to land for non-traffic purposes on routes anywhere in the world, subject to the provisions of the Transit Agreement, including the right of the nation flown over to designate the transit route and the airports to be used.

(ii) Each nation also grants to the other commercial privileges of entry and departure to discharge and pick up traffic (Third, Fourth and Fifth Freedoms), but these privileges are valid only at airports named and on routes indicated, and in accordance with certain other traffic

principles and limitations. The rates to be charged between points are subject to the approval of Governments within their respective powers. The operation of frequencies and capacities must be conducted on certain agreed principles. If a dispute arises and is not settled by consultation, each nation has the right to insist on an **advisory** opinion of the I.C.A.O. There is, however, no machinery for enforcing such an opinion.

The Bermuda Agreement: Since the Bermuda Agreement has played such an important role in setting the pattern for the exchange of commercial rights in international air transport, and has greatly influenced all the subsequent bilateral treaties,⁶² (including those made by Pakistan), it seems useful to take a look at the agreement at this stage.

The Agreement consists of three parts; a "Final Act", an "Agreement" and an "Annex". This arrangement has not been strictly followed in the bilateral agreements made by Pakistan, which generally consist of only two parts, namely, Agreement proper and an Annex. The general principles embodied in the Final Act of the Bermuda Conference, are included in the body of the agreement, and the Annex consists of routes only.

(1) General Principles: The most important provisions of the Bermuda Agreement are the general principles laid down in the Final Act, and are set out below:-

(i) "The air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport". (Final Act, para 3)

(ii) There "shall be a fair and equal opportunity for the carriers of the two nations to operate on any route .. covered by the Agreement". (Final Act, para. 4).

(iii) "In the operation by the aircarriers of either Government of the trunk services described in the Annex the interests of the aircarriers of the other Government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes". (Final Act, para. 5).

(iv) "Services provided by a designated aircarrier under the Agreement, shall retain as their primary objective, the provision of capacity adequate to the traffic demands between the country of which ~~such~~ aircarrier is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified shall be applied in accordance with the general principles of orderly development to which both Governments subscribe, and shall be subject to the general principle that capacity should be related to (a) traffic requirements between the country of origin and the countries of destination; (b) the requirements of through airline operations; and (c) the traffic requirements of the area through which the airline passes after taking account of local and regional services". (Final Act, para. 6).

(v) In so far as the air carrier or carriers of one Government may be temporarily prevented, through difficulties arising from the War, from taking immediate

advantage of the opportunity to operate on any of the routes covered by the Agreement, the situation shall be reviewed between the Governments, with the object of facilitating the necessary development as soon as the air carrier or carriers of the first Government is or are in a position increasingly to make their proper contribution to the service". (F.Act p.7)

(2). Apart from the above general principles, the main body of the Agreement was by and large based on the Chicago Standard Draft, which has already been examined.

Bilateral Agreements made by Pakistan: In the bilateral air transport agreements made by Pakistan with other countries, while they generally follow the Bermuda principles, there have been slight modifications to the Bermuda provisions. These are briefly examined below:-

(1) Use of Airports: The Bermuda Agreement permitted the use of airports and other air navigation facilities of the other contracting party for international air services, and specifically provided that charges for such use shall not be higher than those paid by the national aircraft of the State. The Agreements concluded by Pakistan with France, Iraq, Sweden, Norway, Denmark, Ceylon, Philippines, the United Kingdom and Australia, grant the right to use for traffic purposes, only airports at specified points; and for non-traffic purposes, all airports under normal conditions.

(2) Traffic Rights: In addition to granting Third and Fourth Freedom privileges to the airlines of other contracting party, the Bermuda Agreement contained the most

clear-cut Fifth Freedom provision, stating that the privileges granted related to "embarking and disembarking of international traffic coming from and destined for third countries". A majority of the Pakistan agreements follow this provision, but the one with Iraq grants "the right to carry traffic to and across the territory of the other contracting party, and to embark and disembark international traffic", under the conditions of the Agreement. Presumably the wording is meant to refer to the granting of the Fifth Freedom rights, although the words "destined for and coming from third countries", after the words "international traffic" used in the Bermuda Agreement have been omitted.

(3) Capacity Clause: The Agreement between Iraq and Pakistan, besides requiring that agreed services retain as their primary objective the general principle that capacity shall be related to the traffic requirements between the country of origin and the destinations of the traffic (as in the Bermuda Agreement) also provides that "capacity shall be related also to the air transport needs of the area through which the airline passes, and to the adequacy of other air transport services established by the airlines of the States concerned between their respective territories".

The agreements made by Pakistan with Philippines, the United Kingdom, and the three Scandinavian countries are substantially different, in their capacity provisions from the Bermuda capacity clauses, although the main principles involved are essentially the same. These provide

that "capacity should be related to:-

- (a) the requirements of traffic between the country of origin and the destinations on the specified routes;
- (b) the requirements of through airline operation;
- (c) the air transport needs of the area through which the airline passes;
- (d) the adequacy of other transport services established by the airlines of the States concerned between their respective territories".

In the bilateral agreements with Ceylon, France and India, the capacity provisions consist of sub-paragraphs (a), (c) and (d) above, but do not include sub-paragraph (b). In as much as "the requirements of through airline operation" constitute one of the main principles underlying the capacity clauses of the Bermuda Agreement, its exclusion from these agreements can be taken to mean that greater emphasis is placed on the importance of Third and Fourth Freedom traffic requirements, though not necessarily to the extent of according them primary importance or of constituting a primary right for the States concerned. It may be observed that, with slightly different wording, the same capacity provisions find their way in the agreement between Pakistan and Iraq, referred to earlier.

The Agreement between Pakistan and Australia states that "each contracting Party may provide additional capacity for the carriage of Fifth Freedom traffic between the territory of the other contracting Party and that of third countries, to the extent that the designated airline or

airlines of that other contracting Party is or are not able to handle such traffic. It is recognized that the Party to which such traffic is Third and Fourth Freedom has the primary right to the carriage of such traffic and shall be free to provide additional capacity for that purpose. The capacities to be provided for Third and Fourth Freedom traffic shall be agreed upon from time to time between the aeronautical authorities. For traffic which is to both Parties Fifth Freedom traffic, the capacity shall be related to:-

(a) the air transport needs of the area, after taking account of the local and regional services of the other contracting Party;

(b) the economy of through airline operation in so far as the interests of local and regional services are not adversely affected".

(4) Settlement of Disputes: The Bermuda Agreement provided that any dispute between the parties relating to the interpretation or application of the Agreement, which cannot be settled through consultation, shall be referred for an advisory report to the Council of I.C.A.O. Most of the agreements made by Pakistan specify the requirement of negotiations in the first instance for the settlement of disputes. If they do not succeed, the matter is to be referred to the Council of I.C.A.O. for an advisory opinion; and, as a last resort, the dispute may be referred to the International Court of Justice, whose decision will be final and binding on the parties.

The Chicago Convention: Miscellaneous
Provisions affecting Air Transport Services.

Information to the I.C.A.O.: Under Article 67 of the Chicago Convention, each contracting State "undertakes that its international airlines shall, in accordance with requirements laid down by the Council, file with the Council traffic reports, cost statistics and financial statements, showing, among other things, all receipts and the sources thereof". One effect of the definitions given in Article 96 is that "airline" only includes airlines operating "scheduled" services. The information is to be filed with the Council by the airlines, though the contracting States undertake that it shall be done. The Council may publish such information. (Article 54(i)). Since all flights between East Pakistan and West Pakistan are "international air services" under the definition of Article 96, in as much as they pass through the air space over the territory of more than one State, the information to be filed with I.C.A.O. by a Pakistan airline would practically include its entire operations, excluding only its intra-zone services.

Other provisions: Various provisions of the Convention applicable to all aircraft are of particular importance to aircraft engaged in air transport services - e.g. those relating to customs, (Articles 10, 13, 16 and 22-24); prohibited or restricted carriage, (Articles 5, 7 and 35); non-discrimination, (Article 9, 7, 11, 15 and 35); documents to be carried in aircraft, (Article 29); exemption from

seizure or detention on patent claims, (Article 27); equality of charges payable for airports and facilities, (Art. 15) and provision of airports and air navigation facilities, (Articles 28 and 69-76).

The International Sanitary Convention.

The International Sanitary Convention for Aerial Navigation, concluded at the Hague in 1933, to which Pakistan is a party, applies to all aircraft, and to internal as well as international flights, i.e. to privately-owned and other aircraft not engaged in public transport; and to flights between the different parts of the same country, (Article 1). It consists of over sixty Articles, containing detailed Rules for the regulation of aerial navigation in regard to its potentialities for spreading infectious diseases. Each State undertakes to provide sanitary equipment and staff at its authorized aerodromes, (i.e. aerodromes at which landing and departure is compulsory for international traffic, such aerodromes, if so equipped, being called "Sanitary Aerodromes") entries of relevant facts are to be made in aircraft documents; inspection may be made of passengers and crew, (Art. 9 & 12); suspected cases may be detained and sick persons isolated in the course of a journey, (Art. 13 & 16); and there are numerous special regulations consisting of measures to prevent the spread of Plague, Cholera, Yellow Fever, Typhus and Small Pox, (Part III of the Convention). The provisions of the Convention have been enacted in the national law of Pakistan, and will be examined later in this Chapter.

National Law governing Air Transport Services.

Entry Formalities: Aircraft and aircrew engaged on non-scheduled flights to Pakistan must comply with the requirements of the Chicago Convention and the national regulations in force in Pakistan. For such flights by aircraft of States which are signatories of the Convention, it is not necessary to obtain prior permission of the Pakistan Government for non-traffic landings, but notification at least six hours in advance of the estimated time of arrival of the aircraft, with all necessary details, must be made to the Airport Manager, Karachi Airport, for West Pakistan and the Regional Controller of Civil Aviation, Dacca, for East Pakistan. The notification should indicate the purpose of the flight, type of aircraft, aircraft identification, place of the origin of the flight, destination of flight and details of passengers and cargo. In the case of a traffic stop, prior permission of the Government of Pakistan, as distinct from mere notification, is necessary. The request for permission, giving full details of flight, should reach "CIVIL AIR" Karachi, seventy-two hours before the commencement of flight.

No aircraft, other than aircraft engaged on a scheduled air transport service, may make flights into or in transit across the territory of Pakistan except in accordance with the following conditions, which must be observed by every pilot-in-command of such aircraft:-

(1) Every such aircraft must, immediately upon entry into Pakistan, be flown to and landed at:-

- (i) Karachi Airport or Marine Airport (Karachi), if the entry is from the West;
- (ii) Dacca Airport or Chittagong Airport, if the entry is from the East;
- (iii) Lahore Airport or Karachi Airport, if the aircraft is flying from India to West Pakistan;
- (iv) Lahore Airport or Karachi Airport, if the aircraft is flying from India to Afghanistan or vice versa;
- (v) Dacca Airport, if the entry is from India to East Pakistan;
- (vi) Karachi Airport, if the entry is from Ceylon to West Pakistan;
- (vii) Chittagong Airport, if the entry is from Ceylon to East Pakistan.

(2) The aircraft, after such landing, may not proceed further unless the pilot has cleared the necessary customs and other formalities and has obtained a clearance certificate in writing from an officer duly authorized by the Central Government in this behalf.

(3) In the event of an aircraft being compelled to land at a place other than an international airport, the pilot-in-command must immediately communicate with the nearest customs or police official.

Charter Flights by Foreign Operators exercising Traffic Rights in Pakistan: Besides considerations of bona fide charter operations within the sphere of interest of Pakistan, the following conditions are essential:-

(1) No advertisement either in respect of any such flight or soliciting booking of traffic or purporting to notify availability of space on aircraft should be made in any manner whatsoever, either by the person or airline owning or operating the aircraft or by any other person;

(2) Particulars must be furnished to the Airport Manager on arrival at the airport of entry, and at the airport of exit, prior to departure, of all passengers and cargo carried, their origin and destination, and the rates paid for transport.

Cabotage Carriage: No passenger or freight originating at a point in Pakistan and destined for another point in Pakistan, may be picked up by a foreign operator, without the consent of the D.G.C.A. Before such permission is granted, the applicant must provide satisfactory evidence that no Pakistan-registered operator is in a position to carry the passengers or freight available between the two points in Pakistan where such charter flight is intended to be operated.

Other Commercial Flights: In case of other commercial flights, e.g. Owner's Business, survey and spraying flights, the grant of permission is governed by the merits of the individual cases, in consultation with any other department of the Government of Pakistan that may be concerned. The same principle applies for the grant of permission to flights by non-military State aircraft.

Licensing of Air Transport Services.

An air transport service can be established or operated within Pakistan only under the authority of, and in accordance with, a licence issued by the Central Government, who may, however, permit the operation of air transport services to or across Pakistan by foreign aircraft, on such terms and conditions as it may think fit.⁶³ This permission, in case of scheduled operations by foreign airlines, usually takes the form of bilateral air transport agreements, which have been discussed in an earlier part of this chapter. The following provisions, therefore, apply only to the national air transport services.

Applications for Licences: Applications for a licence to operate an air transport service should be made to the D.G.C.A. at least forty-five days before the date on which it is desired to commence the service. The application must be in the prescribed form, duly signed by the applicant, and in case of a corporate body, by a duly authorized person.

Particulars and conditions of licence: A licence to operate an air transport service must contain, among others, the following particulars:-

- (a) Name and address of licensee;
- (b) Number and date of licence;
- (c) Nature of licence granted whether for scheduled or non-scheduled operation;
- (d) The places at which aircraft may and shall land for traffic or other purposes;
- (e) The period of validity of the licence;
- (f) Frequency of service to be operated;
- (g) The type of aircraft normally to be used.

A licence to operate air transport services, whether scheduled or non-scheduled, is subject to the following conditions, and to such other rules and regulations as may, from time to time, be made by the Central Government:-

(1) A company desiring a licence to operate air transport services in Pakistan must be registered in accordance with the provisions of the Companies Act, 1913, have its registered head office in Pakistan, and be subject to the provisions of the Companies Act and the rules made thereunder. A copy of the Articles of Association of the company should be forwarded to the D.G.C.A. along with the application for licence;

(2) The company must conduct its business in accordance with the Companies Act; comply with the orders which the D.G.C.A. may, from time to time, issue, and supply such information as may be required by the Government. This requirement covers the undertaking of a contracting State under Article 67 of the Chicago Convention, to supply information regarding international air services to I.C.A.O.

(3) The company must conduct its air transport operations in such a way as not to involve the breach of any obligation imposed upon the Government of Pakistan under any agreement with another Government. This provision covers such international agreements as the Chicago Convention, the Warsaw Convention, the Sanitary Convention, the Geneva Convention, the International Air Services Transit Agreement, the various bilateral air transport agreements and any other agreements to which Pakistan is a party.

(4) Before the commencement of actual operation, the detailed schedule of each route to be operated showing points of call, frequency to be operated on the route, the proposed time-tables, full details pertaining to aircraft to be used, equipment available, flying personnel, maintenance and other ground organization, must be submitted to the D.G.C.A. for his approval.

(5) The company must also submit to the D.G.C.A. all proposals for fares to be charged for the carriage of passengers and freight on each route to be operated by it. The rules and regulations made by the company for the carriage of passengers and freight may not be published without the prior approval of the D.G.C.A.

(6) Any alteration in the route or routes to be operated, or in the frequency, or in the time and fare table, must be approved by the D.G.C.A. before it is put into effect.

(7) The company must confine its operations to the routes allocated to it under the terms of the licence.

(8) Generally speaking, a second licence is not given to a company for the operation of a route which is already being operated by another Pakistan operator. This provision is designed to prevent wasteful economic competition.

(9) The D.G.C.A. and his authorized officers have the right of access, in the normal course of discharge of their duties, to the company's workshop, stores and offices.

(10) The accounts of the company must be properly maintained and duly audited every year by Registered Accountants. A copy of the annual accounts and the Auditor's

Report must be sent to the D.G.C.A.

(11) All appointments to high executive posts in the company, requiring technical or flying experience are to be made with the approval of the D.G.C.A.

(12) The purchase or sale of any aircraft or aero-engine by the company must be authorized by the D.G.C.A.

(13) The company must take out adequate insurance cover, to be approved by the Government, to ensure against claims on the company, as provided in the Warsaw Convention, 1929, and the Carriage by Air Act, 1934. The company must also, at all times, effect adequate insurance against "Third Party" risks, to cover claims arising out of damage to persons or property, resulting from a crash or "improper operation of its aircraft".

(14) The company is liable for any expenses incurred by Government in connection with Air-Sea Rescue or Search operations resulting from "improper or negligent operation" of a company's aircraft.

(15) The company must pay all the landing and housing charges relating to aircraft operating in Pakistan, according to the rates prescribed by the Government.

(16) The company shall not, as of right, be entitled to the extension of the period of the licence if, as a result of war, riots, strikes or any other disturbance of the like nature, the company ceases to operate its services.

(17) The Government has the right to nationalize, at any stage, any air transport operation, whether scheduled or non-scheduled, and the company holding licence for the operation taken over by the Government must surrender its

licence and the claims under it to the Government. This right has actually been exercised by the Government, and at present all scheduled air transport operation in Pakistan is done by Pakistan International Airlines Corporation, which is a statutory body with a majority of shares owned by the Government. Its constitution and functions will be discussed a little later in this Chapter.

(18) The Government may frame such rules and regulations and prescribe such conditions of operation as may be necessary for the safety of the public.

(19) All aircraft of the company must be operated by the crew who are in the "regular employment" of the licensee; for this purpose, crew employed on hourly, daily or part-time basis are not considered to be in the "regular" employment. The D.G.C.A. may, however, grant an exemption from the observance of this rule, in appropriate cases

Obligation to comply with the Aircraft Act, 1934.

The grant of a licence does not absolve the licensee company from complying with the provisions of the Aircraft Act, 1934, the Carriage by Air Act, 1934, the Rules made thereunder, or with any other statutory provisions governing aviation, which must, therefore, be strictly complied with.

Amendment of the licence: The terms of the licence may be amended by the Government, after giving the holder a reasonable opportunity of showing cause against the proposed amendment, where it appears to be necessary for securing the more effective development of air transport or otherwise in the public interest. The licence may also be amended

at the request of the holder, if it appears to the Government to be unobjectionable.

Revocation and suspension of licence: The Central Government may revoke, or suspend for a specified period, a licence, if it is satisfied that any of the conditions has not been complied with or that the failure to comply is due to any wilful act or omission on the part of the holder, or has been so frequent, or is due to such negligence on his part that the licence should, in the public interest, be revoked or suspended. The decision of the Government in this respect is final and binding on the holder. Before, however, any action under the above provision is taken by the Government, the holder must be given at least thirty days' notice in writing, specifying the grounds upon which it is proposed to revoke or suspend the licence, and an opportunity of showing cause against the proposed action. If the licence is revoked, the Government must record in writing the reason for its decision, and the holder is entitled to a copy thereof, showing the date on which revocation is to take effect. But if the licence is suspended, the holder must submit it to the D.G.C.A. who shall make an endorsement on it, showing the period of suspension, and the reasons for it. If the Central Government has reason to believe on information in its possession, that it is expedient to do so in the interests of public safety, it may summarily suspend a licence, with a view to further enquiry and action in accordance with the provisions detailed above.

Transfer of licence: A licence granted to a company to operate air transport service is not transferable. But if the licensee has amalgamated or agreed to amalgamate his services with the service of another licensed transport company, a fresh licence is issued to that licensee by the D.G.C.A. In the event of death, incapacity, bankruptcy, sequestration or liquidation of the licensee, or of the appointment of a receiver, manager or trustee in relation to the business of the licensee, the person for the time being carrying on that business is entitled to continue the operation of the licensed air transport service, until such time as his application for a new licence, which must be made within fourteen days of the occurrence of the event, is disposed of by the Central Government.

Continuance of Rights: On the expiry of the licence the licensee is not entitled, as of right, to the issue of a new licence for the operation of a service on the same route, nor to the continuance of any other benefits arising from the terms of the expired licence.

Custody, Production and Surrender of licences: A licence must be kept at the principal office of the licensee, and produced for inspection on demand by any person authorized by the Government. An extract from the licence, giving all the necessary particulars should be displayed in a place accessible to the public in the principal traffic office of the licensee. On the expiry of the licence, whether by efflux of time or in consequence of a decision of the

Central Government to revoke or suspend it, the licence must be surrendered to the D.G.C.A. by the licensee.

Carriage of Mails: A licensee must perform all such reasonable services connected with the carriage of mails, as the Director General of Posts and Telegraphs, Government of Pakistan, may, from time to time, require. The remuneration for such carriage is determined by the D.G.C.A. The carriage of mails has priority over the carriage of passengers and freight, and such carriage must be performed in conformity with the provisions of any international agreement made by Pakistan, e.g. the Universal Postal Convention. Any dispute arising out of the carriage of mails by a licensee is settled by the D.G.C.A.

Information to be furnished by the licensee:

Besides the information which the licensed airline may be asked to furnish to I.C.A.O. under Article 67 of the Chicago Convention, the licensee is required to supply the following periodical information to the D.G.C.A.:-

(a) monthly statements regarding the operation of the licensed air transport services and other air transport operations undertaken by the licensee;

(b) annual statements regarding the financial results of the undertaking during each calendar year.

The information furnished under (a) and (b) above is treated as privileged, and cannot be published or disclosed without the consent of the licensee. This restriction does not, however, apply to the publication or

disclosure, by an authorized person, of collective information relating to licensed air transport services, nor to the publication or disclosure of any such information for the purposes of any legal proceedings or for the report of such proceedings.

Special Rules for the operation of
scheduled air transport services.

For Day Operations.

(a) Single-engined aircraft: Single-engined aircraft may not be operated in passenger air service over water at a greater distance from land than will permit the aircraft to reach land suitable for safe landing in the event of failure of the power plant; nor on any route which, in the opinion of the D.G.C.A., does not permit the aircraft to be flown with safety by visual contact method. This rule may be relaxed by the D.G.C.A. in the case of air services carrying mails or goods only.

(b) Multi-engined aircraft: Multi-engined aircraft, when loaded to the maximum gross weight permitted by its certificate of airworthiness, must be capable of maintaining level flight with one engine inoperative at an altitude of at least one thousand feet above the valley level at the highest point on the air route; or if flown over water, at an altitude of at least three thousand feet above the water.

(c) Equipment for flights over water: If the air route crosses water at a distance from land greater than will permit the aircraft to reach land in the event of complete

failure of power, the aircraft must be equipped with retractable landing gear, one or more emergency exits, life-belts for each person on board and necessary apparatus for making distress signals.

(d) Radio equipment: When operating at aerodromes equipped with radio telephone communication apparatus, the aircraft must be equipped with suitable radio telephone apparatus for communication between the pilot and the aerodrome control. It must also be equipped with radio apparatus suitable for the transmission and reception of all radio signals to and from the radio stations established on the air route, except on air services approved for visual contact flying. In addition, it must be equipped with approved direction-finding apparatus suitable for operating with the radio aids to air navigation established on the route.

(e) Passenger equipment: A sufficient supply of drinking water must be provided, and, except on aircraft carrying less than six passengers, an approved lavatory.

Rules for Night Operations.

(a) Single-engined aircraft: No single-engined aircraft are permitted to operate a passenger air service by night.

(b) Multi-engined aircraft: The same conditions apply to the operation of passenger air services by multi-engined aircraft during the night as during the day.

Conditions to be fulfilled by aircrew.

All aircraft engaged on a licensed air transport service must carry the full number of members of the crew required for its safe operation as prescribed in the licence. Each member of the crew must be in possession of the appropriate licence. In addition, all pilots on such services must have a minimum of flying experience, prescribed by the Aircraft Rules, which differs according the weight of the aircraft being operated.⁶⁴ All pilots must demonstrate to a check pilot or inspector approved by the D.G.C.A. that they are familiar with the aircraft, its instruments, equipment, fuel and other installations and its loading and operation in the conditions peculiar to the air route. Similarly they must demonstrate to an approved examiner that they are familiar with all air navigation facilities and procedures, air traffic control system, airway lighting systems and aircraft distress procedures currently in use. The First Pilot must have made at least two previous flights either as first pilot without passengers or as second pilot along the route over which he is required to fly in conditions permitting visual contact flying, and he must himself have landed and taken off at each of the scheduled aerodromes on the route. All pilots while engaged on a licensed air transport service must, every six months, undergo a check in instrument flying in actual flight, under the supervision of a Check Pilot approved by the D.G.C.A.⁶⁵

PAKISTAN INTERNATIONAL AIRLINES CORPORATION.

History: Although the Pakistan International Airlines was organized by the Government of Pakistan in 1951, it did not begin scheduled services until June 1954, after receiving the first of its fleet of Lockheed Super-Constellations in 1952. It was formed initially to operate projected routes to Europe and countries in the Middle East. However, it inaugurated its first operations with a non-stop service between Karachi and Dacca, as a result of its merger with Orient Airways Ltd.

Orient Airways was formed at Calcutta in 1946, prior to the partition of India. Besides charter and survey work, it opened regular routes between Calcutta and Rangoon. The following year it was registered as a privately-owned company with headquarters in Karachi. New services were established between widely-separated East and West Pakistan. Another route was opened from Karachi to Lahore and Peshawar. Except for a brief period of operation by Pak Air Ltd. during the second half of 1948, Orient Airways was the only scheduled airline in Pakistan until its absorption by P.I.A. In exchange for equipment and other assets, Orient Airways shareholders received an interest of about 40 % in P.I.A.

Starting in 1952, Orient Airways suffered a decline in traffic as a result of increased foreign flag competition on the Karachi-Calcutta and Karachi-Dacca routes. B.O.A.C's introduction of Comet Jet service from Karachi to Calcutta, as part of certain of its through flights was important to the extent of allowable capacity. The decline was

accentuated in 1953, particularly after the loss of its three Convair 240s in March. This loss forced the company to reduce operations between East and West Pakistan. Operations were later suspended at Delhi also. It also meant that the maintenance of the remaining Convair schedules became increasingly difficult.

With the inauguration of P.I.A's direct Karachi-Dacca Super-Constellation service, it is expected that some of the former traffic will be regained. After P.I.A. received its full fleet of three Super-Constellations, the company inaugurated one-stop service from Karachi to London, via Cairo, in February 1955.⁶⁶

Constitution and Functions: The Pakistan International Airlines Corporation was established under an Act passed by the National Assembly in April 1956,⁶⁷ which is reproduced as Appendix 3. It is a body corporate, having perpetual succession and a common seal with power to acquire and hold property, and to carry out its functions and duties under the Act. It can sue and be sued in its own name.

Board of Directors: The general direction and the administration of the affairs of the Corporation vests in the Board of Directors, who may exercise all powers and do all acts which may be exercised or done by the Corporation. The Board consists of eleven Directors, of whom seven, including the Chairman, are appointed by the Central Government, and four are elected by other shareholders. When the Board was constituted for the first time, after the amalgamation of Orient Airways with the Corporation,

these four Directors were elected by the Directors of the Orient Airways. Each Director must perform any special duties assigned to him by the Board. His remuneration is determined by the Government. The term of office of a Director is three years, but this may be extended for a further period by the Government in case of its nominees, and by re-election in case of those who are elected by the other shareholders. The Government can remove its nominees at any time; the elected Directors continue in office on the expiry of their term until their successors are elected or they themselves are re-elected. No act or proceeding of the Board is invalid merely on the ground of the existence of any vacancy in the Board. A person who has been convicted of an offence involving moral turpitude, or becomes bankrupt, or is a lunatic or of unsound mind or is a minor, is not eligible to become a Director. A Director cannot at the same time be a member of the salaried staff of the Corporation, but if he is not a Government employee, he must be paid such fees for attending the meetings of the Board, or of any executive committee as may be prescribed by the Board. Each Director is indemnified by the Corporation against all losses and expenses incurred by him in the discharge of his duties, except those which are caused by his own wilful act or default. A Director is not personally responsible for the acts of any other Director, or of any employee of the Corporation for any loss or expense resulting to the Corporation by reason of the insufficiency or deficiency in value of or title to any property or security

acquired by the Corporation; nor is he responsible for any such loss caused by the wrongful act of any person under a liability to the Corporation, or by anything done by him in good faith in the discharge of his duties..The meetings of the Board are held at such time and places as may be prescribed. A meeting may also be otherwise convened by the Chairman at his discretion; but it must be convened if two or more Directors request the Chairman in writing to do so. To constitute a quorum at a meeting of the Board, at least five Directors must be present. Each Director, including the Chairman has one vote, but in case of a tie the Chairman has a casting vote. If the Chairman is unable to be present at a meeting, the Directors choose one from among themselves to be the Chairman of the meeting.

General Meetings: An annual general meeting must be held at the head office of the Corporation in Karachi, within six months from the date on which the annual accounts of the Corporation are closed. A general meeting may also be convened by the Board of Directors at any other time. The shareholders present at the meeting are entitled to discuss the annual accounts, the annual report of the Board on the working of the Corporation, and the auditor's report on the annual balance sheets and accounts. Every shareholder holding a share of Rupees ten is entitled to a vote, and to an additional vote for every additional share of rupees ten.

Appointment of officers: The Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions.

Functions, Powers and Duties of the Corporation.

General Powers: It is the general function of the Corporation, subject to the provisions of the Aircraft Act, 1934, to provide and further develop safe, efficient, adequate, economical and properly co-ordinated air transport services, domestic as well as international. It must so exercise its powers as to secure that air transport services are developed to the greatest possible advantage in the interests of the country.

Specific Powers: Without prejudice to its general powers, the Corporation has the following specific powers:-

(a) to operate any air transport service or any flight by aircraft for a commercial or other purpose, and to carry out all forms of aerial work;

(b) to provide for the instruction and training in matters connected with aircraft or flight by aircraft of persons employed or desirous of being employed either by the Corporation or by any other person;

(c) with the prior approval of the Central Government, to promote any organization outside Pakistan for the purpose of engaging in any activity of a kind which the Corporation has power to carry on;

(d) to acquire, hold or dispose of any property, whether movable or immovable, or any air transport undertaking;

(e) to repair, overhaul, reconstruct, assemble or recondition aircraft, vehicles or other machines and parts, accessories and instruments; and also to manufacture such parts, accessories and instruments;

In discharging its functions the Corporation must have careful regard to business principles. As already stated, the general direction and the administration of the Corporation and its affairs vests in the Board of Directors. But the Central Government has the power, when it considers necessary, to issue directives to the Corporation on matters of policy, and such directives are binding on the Corporation. If a question arises whether any matter is a matter of policy or not, the decision of the Central Government is final. The Central Government has also the power to make rules for the purpose of giving effect to the provisions of the Pakistan International Airlines Corporation Act. The Board of Directors has the power to make regulations for the same purpose. Where there is any inconsistency between the "rules" made by the Government, and the "regulations" made by the Board of Directors, the former prevail to the extent of inconsistency.

The Corporation is exempt from the applicability of the provisions of any law relating to the winding up or liquidation of companies or corporations, e.g. Companies Act, and can only be wound up or liquidated by an order of the Central Government. But for purposes of the Income-tax Act, 1922, the Corporation is deemed to be a company within the meaning of that Act, and is liable to income-tax and super-tax on its income, profits and gains.

Financial Provisions: The Corporation may open an account in the National Bank of Pakistan or in any scheduled bank in Pakistan. It may also open an account outside Pakistan in any bank which may be a scheduled bank according to the law of the country in which the account is opened. It may invest its funds in any securities of the Central or a Provincial Government. The Corporation may borrow in Pakistan or a foreign currency, but this only with the sanction of the Central Government, and on such terms and conditions as may be approved by the Government. The authorized share capital of the Corporation is five crores (fifty millions) of rupees.⁶⁸ The subscribed capital is allotted and subscribed to as follows:-

(a) Shares of the value of two crores and seventy-five lakhs (27.5 millions) of rupees are allotted to the Central Government;

(b) Shares of the value of half a crore (5 millions) of rupees are offered to the public for subscription;

(c) Shares of the value of one crore (10 millions) of rupees are allotted to the shareholders of the Orient Airways Ltd. in consideration of the acquisition of that company as fully paid-up shares.

The Corporation may increase its capital with the approval of the Central Government. The Central Government must, at any time, hold at least fifty-one per cent of the value of the shares issued by the Corporation; it thus has a controlling interest in the affairs of the Corporation.

Audit of accounts: The accounts of the Corporation must be audited by at least two Auditors holding certificates under section 144 of the Companies Act, 1913. These auditors are appointed by the Central Government, in consultation with the Comptroller and Auditor General of Pakistan, and their salary, though paid by the Corporation, is fixed by the Government. The Auditor General has the power to give directions to the auditors in regard to the extent and method of their audit, subject to the provisions of the Companies Act, and to prescribe the forms of accounts to be maintained by the Corporation consistent with the requirements of the Act. The Auditor General has also the power to undertake such audit of the Corporation accounts himself; he is bound to do so when the Central Government is required to make good any losses sustained by the Corporation. The auditors must report to the shareholders upon the annual balance sheet and accounts, and in their report they must state whether, in their opinion, the balance sheet is a full and fair one, containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Corporation, and in case they have called for any explanation or information from the Board of Directors, whether it was given and if so whether it was satisfactory. The Board has the power to issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Corporation for the protection of its shareholders and creditors, or upon the sufficiency of the information and other means placed at the disposal of the auditors in auditing the affairs of the

Corporation. A statement of its accounts, audited by the auditors under the above provisions and a report by the Directors must be furnished to the Central Government by the Corporation after the end of every financial year.

Miscellaneous provisions: There are detailed provisions in the Act relating to the transfer of the undertaking of Orient Airways Ltd. to the Corporation, the continuation of certain existing arrangements entered before the merger, the winding up and dissolution of Orient Airways Ltd., the valuation of its assets and allotment of shares to its shareholders. Since these provisions were primarily designed to cover a period of transition, and are no longer of any practical importance, it is not deemed advisable to discuss them in detail. Reference to them may be made in Appendix 5 if desired.

As a tribute to Orient Airways, it may be stated that the company rendered pioneer service to the nation in the matter of air transport during the critical days following the partition of the Indian Sub-Continent, when all surface transport between the two parts of Pakistan, separated by more than one thousand miles of Indian territory, was interrupted as a result of the events accompanying and following the partition. It also rendered yeoman service during the floods, which are a perennial feature of the rainy season in Pakistan, by dropping supplies to the affected areas which had become inaccessible by surface means of transport.

Health Regulations governing Air Transport.

The Health Regulations, the main purpose of which is the prevention of the spread of infectious diseases by air traffic, are contained in the Pakistan Aircraft (Public Health) Rules, 1950.⁶⁹ These Rules, although enacted in exercise of the powers conferred by Section 8A of the Aircraft Act, 1934, are administered and applied not by the Department of Civil Aviation, but by the Ministry of Health, although of course the two work in close co-operation. The Health rules apply to all aircraft arriving in or departing from Pakistan, and the duty of enforcing them is laid upon the Health Officers, who are posted at all Customs Aerodromes.

It is the duty of the Commander of an aircraft arriving from abroad (which is normally visited by a Health Officer immediately on landing at the Airport) to deliver an "Aircraft Declaration of Health". Even before his arrival, he must send to the airport authorities a "health report", giving information of any case of suspected infectious disease during the flight. The Health Officer has the power to take all such measures as appear to him to be necessary, to prevent the spread of any infectious disease, including the detention, inspection and cleansing of aircraft; and in case of certain diseases, to put into effect the measures laid down by the regulations, which are similar to those laid down in the International Sanitary Convention on Aerial Navigation, in regard to the detention, isolation and surveillance of passengers and crew if the aircraft arrives

from an infected area or contains a suspected case.

Passengers in arriving aircraft must complete a "Declaration of origin and health", and give any information reasonably required by the Health Officer.

The Health Officer at the airport must examine medically all persons leaving Pakistan by air. He must prohibit the embarkation of any person showing symptoms of any infectious disease, or whom he considers likely to transmit infection because of his or her close relation with a person showing symptoms of an infectious disease. An exception to this rule is made in the case of a person suffering from an infectious disease, who is to be transported in an aircraft specially allocated for the purpose. The Health Officer has also the power to prohibit the taking on board of any cargo or personal effects which are infected with any infectious disease, and to take such measures as he considers necessary to ensure that the aircraft and all cargo and personal effects in the aircraft are not infected. These measures include cleansing, disinfectization, disinsectization and deratization of aircraft.

There are special health rules relating to yellow fever, plague, cholera, small pox and typhus. An aircraft infected with yellow fever may even be refused entry into Pakistan. There are also special provisions relating to pilgrim aircraft proceeding to Hedjaz on the occasion of the annual pilgrimage to the holy cities of Mecca and Medina in Saudi Arabia.

Except as expressly provided in the Health rules, as for example in case of an aircraft infected with yellow fever, no aircraft may be detained for reasons of health. In applying sanitary measures, the Health Officer must take into consideration the need for detaining the aircraft for the shortest possible period.

Finally, the Health Officer has the power to refuse entry into the airport to any person or to remove him from the premises of the airport, if he is, in his opinion, likely to spread any infectious disease. Non-compliance or contravention of any provision of the Health rules is a penal offence. This includes throwing or letting fall, from an aircraft, any matter capable of producing an outbreak of infectious disease.

CHAPTER VII

LAW RELATING TO CARRIAGE BY AIR.

The provisions of the Chicago Convention, other Conventions and bilateral treaties, granting rights of international air traffic, and imposing conditions and restrictions on their exercise, have been considered in the previous chapter. Different rules apply to private flying, non-scheduled commercial flying and scheduled air services. This Chapter deals only with private law, i.e. law affecting the rights and obligations as between carriers and passengers or cargo-owners.

The Warsaw Convention.

Introductory: The Convention for the unification of certain rules relating to international carriage by air, to give the convention its full name, was signed at Warsaw, on the 12th October, 1929. It is the best practical example of what is meant by the expression "International Private Law". It establishes, in regard to the international carriage by air of passengers and goods, uniform rules governing the rights and liabilities of carriers on the one hand, and passengers and consignors and consignees of goods on the other, in those countries which are parties to the Convention. Before the Warsaw Convention, there were no uniform rules of law governing the rights of a passenger or of the owner of goods in air transport, or defining the corresponding liability of the air carrier. These rights and liabilities therefore depended, in case of international carriage, upon

the laws of the countries between and over which the carriage took place, and upon the law of the contract in particular places. The laws differed; so did the contracts, and the result was uncertainty and confusion. How this could arise is best illustrated by the following example:-⁷⁰

A German passenger travelling in an English aeroplane is killed in Belgium. The ticket under which he was travelling was purchased in Poland, for a journey from Poland to Scotland, via Germany. His widow brings an action in the English courts against the owner of the aircraft, claiming damages for his death. Without the Warsaw Convention, there might be a conflict between the different laws of Germany, Poland, Belgium, Scotland and England, resulting in almost hopeless confusion.

The operative provisions of the Warsaw Convention form part of the national law of Pakistan, as they have been incorporated as First Schedule to Carriage by Air Act, 1934, which is an English translation of the first thirty-six Articles of the Convention. These provisions are therefore considered in the following paragraphs as part of the national law. The adherence to the Convention on November 20, 1934, by India also applied to the territory, then a part of India, which later on August 14, 1947, became Pakistan. Pakistan has also taken advantage of the Additional Protocol to make a reservation regarding international carriage by air, performed directly by the State or territory under its sovereignty, suzerainty or authority.⁷¹

The Hague Protocol: In September 1955, a Diplomatic Conference met at the Hague to consider the draft of a Protocol, prepared by the Legal Committee of I.C.A.O. to revise the Warsaw Convention. The Conference adopted a Protocol, the principal effect of which will be:-

(a) the elimination of all detailed particulars in all traffic documents;

(b) doubling of the limit of liability in the case of death or injury of a passenger; and

(c) new wording for the expression "wilful misconduct", which has caused such a headache to the Courts in different countries.

These and other amendments suggested by the Hague Protocol will be considered in their appropriate places.

Carriage by Air Act, 1934.

Object of the Act: The object of the Carriage by Air Act, 1934, which is reproduced as Appendix 2, is to give effect to the provisions of the Warsaw Convention in the national law of Pakistan. Section 2 accordingly states that "the rules contained in the First Schedule, being the provisions of the (Warsaw) Convention, relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons shall, subject to the provisions of this Act, have the force of law in Pakistan, in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage". Under Section 4, the Government has the

power to apply the provisions of the Convention to carriage which is not "international" as defined in the Convention, subject to any modifications which may be prescribed. This power has not been exercised so far.

Scope and Application: Since the First Schedule of the Act is a translation of the Warsaw Convention, references hereafter made to Articles of the Convention apply equally to Articles of the First Schedule. The Convention only applies to certain limited categories of air carriage, the most important limitation being the special definition of "international carriage", which is much more limited than the ordinary definition of international carriage as being carriage from one State to another. The object of the Convention is to avoid, in connection with carriage to which it applies, the difficulties caused by the conflict of laws in actions arising from contracts of through carriage covering several countries, and to substitute a uniform code of rules. The Convention tries to ensure that these rules shall be applied to all actions arising from carriage covered by the Convention, by providing:-

(1) that actions for damages must be brought in the territory of one of the High Contracting Parties to the Convention, (Article 28(1)), and that any clause contained in the contract, and all special agreements entered into before the damage occurred, by which the parties purport to infringe the rules laid down by the Convention, whether by deciding the law to be applied or by altering the rules as to jurisdiction, shall be null and void; (Article 32);

(2) that actions in respect of the death or injury of passengers, or for loss or damage to goods, or for delay, however founded, can only be brought subject to the conditions and limits set out in the Convention, (Article 24, (1) & (2);

(3) that any provisions tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in the Convention, shall be null and void, (Art.23). It is provided, however, that nothing contained in the Convention shall prevent the carrier from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of the Convention, (Article 33). The Convention applies to all "international carriage" of persons, luggage or goods performed by aircraft for reward. It also applies to gratuitous carriage performed by an air transport undertaking, (Article 1 (1)). It was pointed out at the Hague Conference that this paragraph refers to "persons" instead of "passengers" as used elsewhere in the Convention, and to "luggage or goods", whereas the Hague Protocol refers to "baggage" and "cargo", but the Conference decided to make no change so as to assimilate the expressions, partly no doubt because in the French text of both documents, the words "bagages" and "marchandises" are used.⁷²

Combined Carriage: In the case of combined carriage, performed partly by air and partly by any other mode of transport, the Convention applies only to the carriage by air, provided it falls within the terms of Article 1 of the Convention. Nothing in the Convention

precludes the contract of air carriage from containing conditions relating to other modes of carriage, provided that the provisions of the Convention are observed as regards the carriage by air, (Article 31).

The expression "for reward" used in Article 1 would seem to mean for reward paid by any one and not necessarily for reward paid by the passenger or the owner of the goods himself, e.g. the carriage of a guest or servant, whose ticket had been paid for by his host or master, would still be carriage for reward. In an American case,⁷³ where an Army officer was travelling on a journey on which he would have been entitled to have his fare paid by the Army, it was held that the officer was a "fare-paying passenger" within life policy, although in fact travelling without payment in aircraft operated by U.S. Army. An "air transport undertaking" is not defined either in the Act or in the Convention, but it is submitted that a company, corporation or an individual would be an "air transport undertaking" if the carriage of passengers or goods by air was part of its regular business, even though it also carried on other forms of business and even though air transport was only a small or subordinate part of the whole business.

Definition of "International Carriage": For the purposes of the Convention, the expression "international carriage" means "any carriage in which, according to the contract made by parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated, either within the territories of two High Contracting Parties, or within the

territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to the Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention". (Article 1(2). It is clear from this definition that "the contract made by the parties" is the decisive factor in determining whether the carriage is international or not. This paragraph has been redrafted in the Hague Protocol, substituting the word "agreement" for "contract", eliminating reference to "sovereignty, suzerainty, mandate or authority", and substituting the word "State" for "Power". (Hague Protocol, Article I).

The Convention further provides that "a carriage to be performed by several successive air carriers is deemed, for the purposes of the Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party, (Article 1 (3). Here again, it seems that the governing factor in every case is the intention of the parties to the carriage, as gathered from the contract. This factor,

however, gives rise to certain difficulties which may be illustrated by the following examples:-

(1) Suppose that A charters an aircraft to B for a flight from Lahore (Pakistan) to Bombay (India) via Karachi (Pakistan), which is "international carriage" under the Convention. B sub-charters part of the aircraft to C for the stage Lahore-Karachi, which is non-international; and there is no contract between A and C. As between A and C, does "the contract" mean the contract between A and B, or the contract between B and C? The answer would be the contract between B and C, and the Convention would not apply between A and C. In practice, however, a direct contract may be presumed between A and C by the delivery of a ticket before the flight starts. But the matter is not free from doubt.

(2) In case of a gratuitous carriage, there is often no contract in the strict sense at all, e.g. if A charters for reward an aircraft to B for a flight from Karachi (Pakistan) to Delhi (India), and B invites C to come in the aircraft as his guest. Although this is "international carriage" between A and B, C has no contract, in the legal sense, with any one, and therefore the Convention would not apply to him. Here again, in practice, A will usually make a direct contract with C by means of a ticket.

It was no doubt with a view to removing some of the difficulties arising from the present definition of "international carriage", that the Hague Protocol has substituted the word "agreement" for the "contract", which,

it is submitted, carries a wider meaning. The Protocol also introduces a new Article 4DA into the Convention, by which the word "High Contracting Party" shall mean a State, whose ratification or adherence to the Convention has become effective; and the word "territory" means not only the metropolitan territory of a State, but also all other territories for the foreign relations of which a State is responsible. (Article XVII). This latter expression is in replacement of the words "subject to the sovereignty, suzerainty, mandate or authority" in the present Convention.

Under Section 2 (2) of the Carriage by Air Act, the Central Government may, by notification in the official Gazette, certify who are the High Contracting Parties to the Convention, in respect of what territory they are parties, and to what extent they have availed themselves of the Additional Protocol to the Convention. Any such notification is conclusive evidence of the matters certified therein. Any reference in the Convention to the territory of any High Contracting Party is to be construed as a reference to all the territories in respect of which he is a party.

Application to State Aircraft: As already noted, by virtue of the reservation made by Pakistan under the Additional Protocol, the Convention does not apply to carriage performed directly by the State or by legally constituted bodies. It is doubtful whether this reservation will apply to carriage performed by the Pakistan International Airlines Corporation, even though it is a legally constituted body.⁷⁴

Liability of the carrier.

In order to ensure that the carrier's liability shall be governed exclusively by the terms of the Convention, it is provided in Article 23 that any provision tending to relieve the carrier of liability, or to fix a lower limit than that laid down in the Convention is null and void; but the nullity of such provision does not nullify the whole contract, which remains subject to the provisions of the Convention. The Hague Protocol, by its Article XII has added a new paragraph so as to render the existing Article 23 inapplicable when the damage results from inherent defect, quality or vice of the cargo carried, thereby applying the principle of the Brussels Maritime Convention of 1924.

Liability for death or injury to passengers: The carrier is liable for damage sustained in the event of the death or wounding of a passenger, or any other bodily injury suffered by him, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking, (Art.17) Under Section 2 (4) of the Carriage by Air Act, this liability imposed by the Convention, is in substitution of any liability of the carrier under the Fatal Accidents Act, 1855, or any other enactment or rule of law in force in any part of Pakistan. The Act has a Second Schedule which contains the rules for determining the persons by whom and for whose benefit the liability is enforceable, and the manner in which it may be enforced. The limitation of liability applies

per passenger irrespective of the number of claimants, (Art.22). Conversely where a dependent claims in respect of two passengers, e.g. a child both of whose parents have been killed in the same accident, damages can be recovered up to the limit in respect of each passenger. The Second Schedule of the Carriage by Air Act provides that the liability is enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death; and the amount recovered is to be divided between the persons in such proportion as the Court may direct, (Sections 1 & 3). The expression "member of a family" is defined as meaning wife or husband, parent, step-parent, grand-parent, brother, sister, half-brother, half-sister, child, step-child, and grandchild, provided that in deducing any such relationship, any illegitimate person and any adopted person is to be treated as being the legitimate child of his mother and reputed father or of his adopters. An action to enforce the liability may be brought by the personal representative of the passenger, or by any person for whose benefit the liability is enforceable; but only one action may be brought in Pakistan in respect of the death of any one passenger, and every such action must be for the benefit of all such persons as are either domiciled in Pakistan or not being domiciled there wish to partake in its benefits, (Sec. 2). The court before which any such action is brought, may make such order as seems just and equitable in view of the provisions limiting the liability of a carrier and of any proceedings which have been or likely to be commenced outside Pakistan, in respect of the death of the passenger in question.

The liability of the carrier in respect of injury to passengers is subject to similar provisions.

Article 17 of the Convention was not altered by the Hague Protocol, although the expression "wounding of a passenger or any other bodily injury suffered by a passenger" has been subject to considerable criticism. It has been pointed out that, in addition to mental injuries, there are possible in air travel injuries which cannot be called bodily injuries. Also the word "accident" might not cover such occurrences as loss of pressure or bumps. Consequently some delegates at the Hague Conference would have preferred to change the paragraph to read "in the event of the death of or injury to a passenger, if the occurrence which caused the damage etc." It may be noted that the word "occurrence" is used in Article 18(1) and the word "event" in Article 18(3); also that Article 18(1) makes reference only to registered baggage or goods, omitting reference to hand baggage.⁷⁵

Liability in respect of luggage or goods: Under Article 18(1) of the Convention, the carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to any registered luggage or any goods if the occurrence which caused the damage so sustained, took place during the carriage by air. Under sub-paragraph (2), the carriage by air means the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft or in the case of a landing outside an aerodrome, in any place whatsoever.

The period of the carriage by air does not extend to any carriage by land, sea or river, performed outside an aerodrome. If however such a carriage takes place in performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to the proof to the contrary, to have occurred during the carriage by air, (Article 18(3)). The person to whom a carrier is liable for loss or damage to goods is, generally speaking, the owner of such goods. The person with whom the contract of carriage is made is usually the owner or someone who is to be regarded as his agent, but the owner can sue for damage caused by negligence on the part of the carrier, even if he is not a party to the contract. Where the person making the contract does so merely as agent for the owner, he cannot, in general, maintain an action against the carrier; but where he has himself an interest in the goods, he can do so. Where goods which are the subject of a contract of sale, are delivered by the seller to a carrier, for the purpose of transmission to the buyer, the property in the goods generally passes to the buyer on delivery to the carrier, and therefore the buyer can sue the carrier in case of loss or damage. Under Article 26(1) of the Convention, receipt by the person entitled without complaint is *prima facie* evidence that the luggage or goods have been delivered in good condition and in accordance with the documents of carriage. In case of damage, the person entitled to delivery must complain to the carrier immediately after the discovery of the damage, and at the latest, within three days in case of luggage, and within seven days in case of

goods, from the date of receipt. In the case of delay, the complaint must be made within fourteen days from the date on which the luggage or goods have been placed at his disposal. Failing complaint within these time limits, no action lies against the carrier, except in the case of fraud on his part.

According to Major K.M. Beaumont,⁷⁶ he made a determined effort to persuade the Hague Conference to adopt an entirely new Article 26, pointing out the deficiencies of the present Article, including omission of the notice of claim to be given in the case of death or personal injury, and that no period is mentioned for lodging claims when baggage (registered or hand) or cargo is lost or destroyed, or cannot be found. Paragraph (2) refers only to the date of receipt when it is placed at the disposal of the passenger or consignee. However, the Conference would not agree to make any change, except to alter paragraph (2), changing three, seven and fourteen days mentioned therein to seven, fourteen and twenty-one days respectively, (Hague Protocol, Art.XV).

Liability for delay: Under Article 19 of the Convention, the carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods. The Act and Schedule do not compel the carrier to complete the carriage within any fixed time and in the absence of express contract, it may be presumed that "delay" in this Article means a failure to complete the carriage within a reasonable time, having regard to all the circumstances of a particular case. In almost all the reported cases on claims for delay, the rights and obligations of the parties depended on the terms of special contracts. In the absence of such

special contract, there is no obligation on the part of the carrier to carry the passenger or to deliver the goods at any particular time. The carrier's only obligation is to use reasonable care to carry the passenger or goods without unreasonable delay. In the absence of negligence, he is not, as a rule, liable for a mere failure to carry passengers or goods within a reasonable time. Cases may occur, however, where, owing to the carrier's inadequate organization or arrangements, a passenger is prevented from using other transport (air or surface). In such cases the carrier may be held liable for delay. Unsuccessful claims for delay in carriage by air have been made in the United States.⁷⁷

On the other hand, the carrier will be liable for delay caused by his deliberate act. Thus when the servants of an air carrier eject a passenger from the aircraft at an intermediate stopping place, or wrongfully refuse to allow him to enter or re-enter the aircraft, the carrier will be liable for the delay caused, for any incidental loss or expense, and in the United States possibly for exemplary damages for the humiliation and indignity suffered.⁷⁸

It is doubtful how far under the Act, stipulation in the carrier's condition of carriage or time-tables to the effect that the scheduled times and stopping places are not guaranteed, will protect the carrier from claims for delay. Such stipulation might cover short delays due to weather or other ordinary operational incidents, but obviously they could not be held to exclude all liability for delay, as such exclusion would contravene Articles 19 and 23 of the Convention. Most charter agreements contain conditions to

exclude liability for delay. It is not clear how far these can be effective when the carriage is "international" under the Convention, but it is quite possible that the terms of the charter as to the times and dates of the flight may be drawn up in such a way that delay in relation to them would not be likely to occur in practice.

Article 19 was not altered at the Hague Conference although its meaning is obscure, since there is no definition as to what constitutes delay, and consequently this must be left to the Courts, which in different countries may apply conflicting definitions.

Liability of successive carriers: Under Article 30 of the Convention, in the case of carriage to be performed by various successive carriers and falling within the definition set out in Article 1(3), each carrier who accepts passengers, luggage or goods is subjected to the rules of the Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, except in the case where, by express agreement, the first carrier has assumed liability for the whole journey. As regards luggage or goods, the passenger or consignor has a right of action against the first carrier, and the passenger or consignee who is entitled to delivery, against the last. Each may also take action against the carrier who performed the carriage

during which the destruction, loss, damage or delay took place. These carriers are jointly and severally liable to the passenger or to the consignor or consignee.

Defences of the carrier: The following defences are open to the carrier under the provisions of the Convention, and he is not liable if he can establish any of them, the burden of proof being on the carrier:-

(1) That he and his agents have taken all necessary measures to avoid damage or that it was impossible to take such measures; (Article 20(1)). No change is made to this Article by the Hague Protocol, although it is obvious that if all "necessary" measures are proved to have been taken, the damage could not have occurred. Suggestions were made at the Hague Conference that "reasonable" or "proper" or "practicable" should be substituted for "necessary" and that "impracticable" should be substituted for "impossible", but these were not accepted;

(2) That in the carriage of goods and luggage, the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage; (Article 20(2)). By Article X of the Hague Protocol, it is proposed to delete this paragraph, so that the same rule for disproving liability shall prevail for baggage and cargo as for passengers, because most aircraft carry baggage or cargo, as well as passengers;

(3) That the damage was caused or contributed to by the negligence of the injured person, in which case the Court may exonerate the carrier wholly or partly from his liability; (Article 21). This is the rule of contributory negligence.

(4) That in the case of damage or delay, the complaint was not made within time limits, or was not made in the required form. This defence is not available to the carrier if he is guilty of fraud; (Article 26 (3) and (4)).

(5) That action was not brought within two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped; (Article 29).

Limits of liability: The carrier's liability is limited as follows:-

(1) in the carriage of passengers to a sum of 125,000 francs for each passenger; but a higher sum may be agreed to by special contract between the passenger and the carrier; (Article 22(1));

(2) in the carriage of registered luggage and goods, to a sum of 250 francs per kilogram; but if the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery, and has paid a supplementary charge if required, then the carrier is liable to pay a sum not exceeding the declared sum, unless he proves that the declared value is greater than the actual value to the consignor at delivery; (Article 22(2));

(3) in case of objects of which the passenger takes charge himself, the liability of the carrier is limited to 5,000 francs per passenger; (Article 22(3)).

By Article XI of the Hague Protocol, the carrier's limit of liability in the case of a passenger's death or injury has been doubled, i.e. increased to the figure of two hundred and fifty thousand francs for each passenger. It is proposed to replace Article 22 of the Convention by a new Article, which will not only have the effect of doubling the limit of liability towards passengers, but also deal with cases of partial loss of registered luggage and cargo, and the award of certain costs and other expenses of litigation, which, however, may not be awarded if an offer for settlement, in a sum not less than that awarded by the Court has been made to the plaintiff within a certain time. In paragraph (2) of Article 22 of the Convention, the expression "special declaration of value at delivery" has been changed to read "special declaration of interest in delivery at destination"; and the words "passenger or" have been added before the word "consignor".

Loss of carrier's protection: The carrier is not entitled to avail himself of the provisions of the Convention which exclude or limit his liability if:-

(1) the damage is caused by his wilful misconduct, or by such default on his part as is, in the opinion of the Court, equivalent to wilful misconduct; (Article 25(1));

(2) the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment; (2);

(3) he accepts a passenger without a passenger ticket having been delivered; (Article 3 (2));

(4) he accepts the luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain all the required particulars; (Article 4 (4));

(5) he accepts goods without an Air Consignment Note having been made out, or if it does not contain all the required particulars; (Article 9).

"Wilful misconduct": The expression "wilful misconduct" used in Article 25 of the Convention has given rise to considerable difficulty as to its precise meaning. In the original and the only authentic text of the Convention, which is in French, the expression translated in the Carriage by Air Act as "wilful misconduct" is "dol". It is reported that at the Conference which produced the final draft of the Warsaw Convention, the British delegate said as to "dol":-
 "We have in England the expression "wilful misconduct" - it covers not only acts accomplished with deliberation, but also acts of carelessness without regard for consequences." 79
 The expression "dol" in the national law of some of the contracting States includes or is considered as equivalent to "faute lourde" (i.e. roughly speaking "gross negligence").
 "Dol" usually has an element of fraud or deceit, and there is no English legal term which exactly translates it. On the other hand, the expression "wilful misconduct" was well-known in English law before the Carriage by Air Act was passed, and it was well-established that "wilful misconduct" and "negligence" (however "gross") were mutually exclusive conceptions.⁸⁰ There is no such thing as "gross" negligence

in English law, though the degree of care in fact required by the law in the operation of aircraft may be higher than in, say, the operation of a railway.⁸¹ In English law, "wilful misconduct" means a deliberate act or omission which the person doing or omitting (i) knows is a breach of his duty in the circumstances; or (ii) knows is likely to cause damage to third parties; or (iii) with reckless indifference does not know or care whether it is or is not a breach of his duty or is likely to cause damage. Thus if a pilot gives the ground control a wrong indication of his position, it may be negligent, but it is not wilful misconduct, unless he knows that he is giving a wrong indication. But if a pilot deliberately disregards the directions of ground control, (for example, by landing when told that visibility was nil, or that the runway was unserviceable) or deliberately does or omits something in breach of regulations or of generally-recognized standards of reasonable care (such as taking off with a load which he knows substantially exceeds the permissible weight), he would normally be guilty of wilful misconduct.

The following reported cases dealing with the meaning of "wilful misconduct" may be of interest:-

(1) In Ulen v. American Air Lines Inc.⁸² the aircraft flew into a mountain, and the main evidence of wilful misconduct appeared to have been failure to comply with a regulation of the Civil Aeronautics Board, that no scheduled air carrier aircraft shall be flown at an altitude of less than 1,000 feet above the highest obstacle located within a horizontal distance of 5 miles from the centre of

the course intended to be flown. In the lower court, the judge directed the jury as follows:-

"Now, wilful misconduct is not, as I have said, merely misconduct but wilful misconduct. So if the carrier, or its employees or agents wilfully performed an act with the knowledge that the performance of that act was likely to result in injury to a passenger, or performed that act with reckless and wanton disregard of its probable consequences, then that would constitute wilful misconduct..... There has been evidence which, the plaintiff contends, tends to show violation of certain regulations or rules which have been promulgated for the safety of air travel, and the plaintiff claims that some of these regulations or rules were violated by the defendant or its agents or employees. Now the mere violation of one or more of those rules or regulations would not necessarily constitute wilful misconduct, but if the violation was intentional with knowledge that the violation was likely to cause injury to a passenger, then that would be wilful misconduct; and likewise, if it was done with a wanton and reckless disregard of the consequences."

This direction was approved by the Court of Appeal.

(2) In Ritts v. American Overseas Airlines Inc.⁸³ where the aircraft collided with a hill at 1,600 feet, about seven miles from the end of the runway, on a straight course after taking off at night, the judge's direction to the jury was as follows:-

"I instruct you that (the plaintiffs) do not have to prove that this pilot deliberately went into that hill,

with the intent to commit suicide and probably murdering everybody in the plane, because that is what it would amount to. So wilful misconduct although it may mean intentional, is not limited to that. It covers, in the Court's opinion, not only acts done deliberately, but also acts of carelessness, without regard to consequences. It has been defined as that degree of neglect or conduct arising where there is a reckless indifference to the safety of human life, or an intentional failure to perform a manifest duty to the public, in the performance of which the public and the party injured had an interest. To constitute wilful injury, the act which produces it must have been intentional or must have been done under such circumstances as to evince a reckless disregard for the safety of others and a willingness to inflict the injury complained of because of that wilful disregard."

(3) In a case in Belgium,⁸⁴ arising out of the crash of a SABENA aircraft at Gander Airport, in which the plaintiff relied on Article 25 of the Convention, a Brussels Court held that "for the unlimited responsibility of the carrier to be involved, one of the company's officers must have committed an error with the intention of causing damage to a passenger or have acted with such carelessness or such negligence that such damage became almost certain." This was based on the French text of the Convention, which refers to "preposes", which normally means "officials" or "officials in charge", but which has been translated as "agents" in the Carriage by Air Act.⁸⁵

(4) In Nordisk Transport v. Air France,⁸⁶ a French case, there occurred a loss of part of consignment of watches from France to Saigon. There was no evidence to show as to how the loss occurred. The court of first instance held that, as the carrier could give no explanation as to how the loss occurred, "faute lourde", equivalent to wilful misconduct must be presumed against him, so that liability was unlimited under Article 25 of the Warsaw Convention. The court of appeal reversed this judgment on the ground that, in order that Article 25 shall apply, it is necessary to prove wilful misconduct on the part of the carrier, his servants or agents, and that this had not been proved and consequently the Convention limit applied.

(5) In Broche-Hennessy v. Air France,⁸⁷ another French case, the plaintiff claimed unlimited damages under Article 25 of the Warsaw Convention, alleging wilful misconduct when aircraft crashed in attempting to land at the wrong airport in the Azores, owing to misunderstanding of position and radio messages. It was held that neither "dol" nor "faute lourde" existed in circumstances which might have been borderline, and the limit imposed by Article 22 of the Convention applied. This judgment was upheld on appeal in 1954.

(6) In Rotterdamsche Bank N.V. v. British Overseas Airways Corporation,⁸⁸ it was suggested that "overcarriage" or "miscarriage" might constitute "wilful misconduct" (Pilcher J.)

(7) In Young (W) & Sons (Wholesale Fish Merchants) v. British Transport Commission,⁸⁹ refusal of carrier's servants to handle goods, in sympathy with other workers' strike-action was held to be "wilful misconduct".

(8) In Pekelis v. Trans-World Airlines, Inc.,⁹⁰ a new trial was ordered, the jury having acquitted defendants against whom the wilful misconduct alleged was that a mechanic had deliberately omitted to test a faulty altimeter after repairs.

Article XIII of the Hague Protocol replaces the existing Article 25 of the Convention by an entirely new Article 25, which eliminates the difficulties experienced by the use of the word "dol" (wilful misconduct) or its equivalent, which has been held in certain Courts to mean "faute lourde" (gross negligence). The new formula follows closely the definition of "wilful misconduct", as laid down by Courts applying English law, and includes the notion of recklessness with knowledge that damage would probably result. In order to make the carrier liable without limit for the act or omission of his servant or agent, it must also be proved that he was acting within the scope of his employment, but not "within the scope of his authority" as prescribed by Article 12 of the Rome Convention, 1952. The Protocol thus makes much clearer an important legal principle. The new Article 25 also refers only to the limits of liability specified in Article 22 of the Convention, whereas the existing Article 25 refers to "the provisions of this Convention which exclude or limit" the liability of the

carrier, presumably including such provisions as those appearing in Articles 26 and 29 of the Convention.

Article XIV of the Hague Protocol contains an entirely new Article 25A, which has the effect of enabling a servant or agent of the carrier, acting within the scope of his employment to avail himself of the same limits of liability as those applicable to a carrier. Some experts have considered that the limits of liability in Article 22 of the Convention are already applicable to servants and agents, although the carrier alone is mentioned therein. Others contend that these limits are not applicable to servants or agents, who consequently can be sued separately in tort or delict without limit. In some cases, servants and agents are indemnified against such claims in their employment agreements. In such cases the carrier, though himself not liable, might have to pay unlimited compensation on behalf of a servant or agent. The proposed new Article 25A sets at rest doubts on this point, and regularizes the position.⁹¹

Death of party liable: In the case of the death of the person liable, an action for damages lies in accordance with the terms of the Convention against those legally representing his estate. (Article 27).

Jurisdiction: An action for damages must be brought, at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made, or before the Court having jurisdiction at the place of destination. (Art. 28)

Documents of Carriage.

(1) The Passenger Ticket: Under Article 3(1) of the Convention, it is the duty of the carrier to deliver a passenger ticket for the carriage of each passenger, which must contain the following particulars:-

- (a) the place and date of issue;
- (b) the place of departure and of destination;
- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the carrier or carriers;
- (e) a statement that the carriage is subject to the rules relating to liability contained in the Convention.

The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which nevertheless remains subject to the provisions of the Convention. If, however, the carrier accepts a passenger without a passenger ticket having been delivered, he is not entitled to avail himself of those provisions of the Convention which exclude or limit his liability. (Article 3(2)).

Article III of the Hague Protocol substitutes a completely new Article 3 for the existing one. The new paragraph (1) requires only the places of departure and destination and, if necessary, an agreed stopping place, to be mentioned, in order to establish whether or not the carriage is "international" as defined by the Convention. In addition a notice must be included in the ticket to the effect that the Convention may apply and that the carrier's liability may be limited. The new paragraph (2) clears up

anamolies and obscurities in the existing Article 3(2); under it the passenger ticket shall constitute prima facie evidence of the conclusion and the conditions of the contract of carriage. The carrier loses the benefit of the limited liability under Article 22 only (not ^{of} ~~all~~ "the provisions of this Convention which exclude or limit" his liability), if he allows a passenger to embark without a ticket, or if the ticket does not include the notice above referred to. He remains entitled to his defences under the Convention.

(2) The Luggage Ticket: Under Article 4 of the Convention, for the carriage of luggage other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket, which must contain the following particulars:-

- (a) the place and date of issue;
- (b) the place of departure and of destination;
- (c) the name and address of carrier or carriers;
- (d) the number of passenger ticket;
- (e) a statement that delivery of the luggage will be made to the bearer of luggage ticket;
- (f) the number and weight of the packages;
- (g) the amount of the value declared in accordance with Article 22(2);
- (h) a statement that the carriage is subject to the rules relating to liability established by the Convention.

The absence, irregularity or loss of luggage ticket does not affect the existence or the validity of the contract of carriage, which is nonetheless subject to the rules of the Convention. Nevertheless if the carrier accepts luggage, without a luggage ticket having been delivered, or if it does not contain the particulars set out at (d), (f) and (h) above, he is not entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

Article IV of the Hague Protocol substitutes provisions concerning the luggage ticket (baggage check in the Protocol) exactly similar to those referred to above in connection with the passenger ticket.

(3) Air Consignment Note: Under Article 5 of the Convention, every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note"; every consignor has the right to require the carrier to accept this document. The air consignment note is prima facie evidence of the conclusion of the contract, of the receipt of the goods, and of the conditions of the carriage. (Article 11(1)). The absence, irregularity or loss of the air consignment note does not affect the existence or the validity of the contract of carriage, which is nonetheless subject to the rules of the Convention. (Article 5(2)). But if the carrier accepts goods without an air consignment note having been made out, he is not entitled to avail himself of the provisions of the Convention which exclude or limit his liability. (Article 9). The air consignment note must contain the following particulars:- (Article 8).

- (a) the place and date of its execution;
- (b) the place of departure and of destination;
- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the consignor;
- (e) the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of the goods;

- (h) the number of the packages, the method of packing and the particular marks or numbers upon them;
- (i) the weight, the quantity and the volume or dimensions of the goods;
- (j) the apparent condition of the goods and of the packing;
- (k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;
- (l) if the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;
- (m) the amount of the value declared in accordance with Article 22(2).
- (n) the number of parts of the air consignment note;
- (o) the documents handed to the carrier to accompany the air consignment note;
- (p) the time fixed for the completion of the carriage, and a brief note of the route to be followed, if these matters have been agreed upon;
- (q) a statement that the carriage is subject to the rules relating to liability contained in the Convention.

The omission of any one of the particulars set out in (a) to (i) inclusive and (q) above will prevent the carrier from excluding or limiting his liability under the Convention. (Article 9). The statement in the air consignment note relating to the weight, dimensions and packing of the goods as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier, except so far as they have been and are stated in the air consignment note, to have been checked by him in the presence of the consignor, or relate to the apparent condition of the goods. (Art.11(2)). The consignor is responsible for the correctness of the particulars and statements relating to the goods, which he inserts in the air consignment note, and will be liable for

all damage suffered by the carrier or any other person, by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements. (Article 10). If, at the request of the consignor, the carrier makes out the air consignment note, he is deemed, subject to proof to the contrary, to have done so on behalf of the consignor. (Art.6(5)) The carrier must sign an acceptance of the goods. (Art. 6 (3)).

The Hague Protocol makes no change in Article 5 of the Convention, although the English text of the Convention makes specific reference to an "air consignment note" being required, and the Protocol refers throughout to an "air waybill". This Article also appears to involve a certain conflict with Article 33, when the former talks about the consignor having a right to require the carrier to accept the document, whereas the latter entitles the carrier to refuse to enter into any contract of carriage. Presumably the intention is that the consignor can only require the carrier to accept the document when a contract of carriage is agreed with the carrier.

Paragraph 3 of Article 6, requiring the carrier to sign an acceptance of the goods, has been replaced by a new paragraph, under Article V of the Hague Protocol, which requires the carrier merely to sign before the cargo is loaded on the aircraft. The new paragraph clears up a practical difficulty, as the carrier is no longer required to sign on acceptance of the cargo, which is often impossible when this is collected by an agent.

Article 8 of the Convention, with its numerous obligatory and other particulars, has been substituted in the Protocol (Article VI) by simple provisions corresponding exactly with those applicable to the passenger ticket and baggage check.

Article 9 has been amended by the Protocol in a manner corresponding with Articles 3 and 4, and the amendment in Article 6 (3). (Article VII of the Protocol).

Paragraph 2 of Article 10 has been redrafted by Article VIII of the Protocol, under which the consignor is required to indemnify the carrier against damages suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

Rights of consignor and consignee to possession of the goods: Articles 12 and 13 of the Convention deal with the rights of the consignor and the consignee to demand possession of the goods from the carrier, during or at the end of the carriage. Under Article 12, the consignor has the following rights of disposition of the goods:-

(1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them, at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He should

not exercise this right in such a way as to prejudice the carrier or other consignors, and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor, the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor, for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with the next paragraph. Nevertheless, if the consignee declines to accept the consignment note or goods, or if he cannot be communicated with, the consignor resumes his right of disposition. In addition to his right of disposition under the Convention, a consignor who is an unpaid seller of goods will have the right, under the Sale of Goods Act, to stop the goods in transit in case of bankruptcy of the buyer.

Consignee's rights at destination: Under Article 13, the consignee has the following rights:-

(1) The consignee is entitled, unless the consignor has exercised his right of disposition before such right ceases, on arrival of the goods at the place of destination, to require the carrier to hand over the air consignment note,

and deliver the goods to him on payment of the charges due, and on complying with the conditions of the carriage set out in the air consignment note. This presumably entitles the carrier to refuse to deliver the goods until all charges are paid, and so in effect gives him a right of lien on the goods.

(2) Unless otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of goods, or if they do not arrive within seven days after the date on which they ought to have arrived, the consignee is entitled to put into force his rights against the carrier.

Under Article 14, both the consignor and the consignee can enforce all the rights given to them under Articles 12 and 13 respectively, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other, or the mutual relations of third parties, whose rights are derived either from the consignor or from the consignee; and the provisions of these Articles can only be varied by express provision in the air consignment note. (A.15)

It is the duty of the consignor to furnish such information, and to attach such documents to the air consignment note as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of

any such information or documents, unless the damage is due to the fault of the carrier or his agents. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents. (Article 16).

The Hague Protocol does not make any changes in Articles 11 to 14. At one time it was thought that the right of stoppage in transit comprised in Article 12 constituted an obstacle to making the air waybill negotiable, because of the use of the word "varied" in Article 15 (2). But when the matter was considered by the Sub-Committee on Negotiability of Air Waybill, of the I.C.A.O. Legal Committee, it was pointed out that the word used in the French text was "derogant", which would cover complete derogation of Articles 12 to 14. The Hague Conference accepted the opinion of the Sub-Committee that there is in fact nothing in the Convention which precludes the air waybill being made negotiable. This was expressly given effect to in the Hague Protocol (Article IX) by adding a new paragraph (3) to Article 15 of the Convention, which affirms that nothing in the Convention prevents the issue of a negotiable air waybill.

CHAPTER VIII.

LAW RELATING TO TRESPASS AND NUISANCE BY AIRCRAFT.

Although the complete sovereignty of a State in the airspace above its territory is generally recognized, there is no such recognition of the proprietary rights of the private owner in the airspace above his land. Section 17 of the Aircraft Act, 1934 provides that "no suit shall be brought in any Civil Court in respect of trespass or in respect of nuisance by reason only of the flight of aircraft, over any property at a height above the ground which, having regard to wind, weather and all the circumstances of the case, is reasonable, or by reason only of the ordinary incidents of such flight."

The first point to be observed in this Section is that the aircraft owner's exemption from liability for trespass or nuisance is conditional upon the height of the machine, which must be "reasonable", which means reasonable having regard to wind, weather and all the circumstances. What is reasonable is a question of fact, and each case must, therefore, depend upon its own particular facts. In an American case⁹² it was held that flight at 100 feet was unreasonable and therefore trespass, when the regulations provided or indicated that such flight was not reasonably necessary. In another case⁹³ it was held that flight by aircraft at a height of less than 500 feet may constitute nuisance but not trespass. Moreover, the standard of

what is reasonable height will vary as the performance of aircraft varies. For example, what may be an unreasonable height for normal aircraft would not be so for a helicopter, which cannot at present attain great height though it makes more noise.

Secondly, the exemption applies only to flight and "the ordinary incidents of flight". It is not clear what the latter phrase means. For example, if an aircraft, flying at a great height, goes out of control, and spins towards the ground for a considerable distance before control is regained and normal flight resumed, it would seem that the operator could not rely upon the Section as a defence to a suit for trespass brought by the occupier of land over which the incident occurred. This example is perhaps an extreme case, but a more common occurrence is that of a pilot indulging in stunting or aerobatics. This would not be an "ordinary incident" of flight, unless it is a duly authorized air display. In the United States, it is held⁹⁴ that harmless flight in a proper manner in the exercise of the "public right of air navigation",⁹⁵ interfering with no existing use, through the "navigable airspace" reasonably established by the Aeronautics Commission, is not trespass upon the land of the owner below.

Thirdly, the Section does no more than give a "right of innocent passage" analogous to the right which any member of the public has to pass over land, the surface of which has been dedicated by the owner for use as a public highway. Thus the operator of an aircraft,

flown over land for the purpose of taking unauthorized photographs or of watching nudists sunbathing,⁹⁶ or racehorses being galloped,⁹⁷ might not be able to claim the protection of the Section. The trespass complained of in such cases would not be "by reason only of the flight of aircraft or the ordinary incidents of such flight".

The next point which arises in relation to this Section is whether it abolishes the right to sue for nuisance. It is clear that no suit in respect of nuisance can be brought against an aircraft owner, by reason only of the flight of his machine over property. But such a suit may be brought up even though the aircraft in question has not flown over the property of the person complaining of the nuisance. For example, the owner of land can bring a suit against an aircraft owner, who hovers or flies to and fro all day near that land (whether immediately above it or not), for the purpose of advertising, or of intentionally annoying the landowner. Such a case might occur where photographers or pressmen had been refused admission to an open air sporting event, and they hired an aircraft to fly round but not over the field where it took place.⁹⁸ Similarly the owner of a house can sue an aircraft operator who sends a continuing stream of machines past but not over the house, thereby causing disturbance of the ordinary enjoyment of the dwelling by noise.⁹⁹ In both cases the right to sue remains for both trespass and nuisance if the flight is over the land of the plaintiff, and for nuisance only if it is near

but not over that land. Thus in an English case,¹⁰⁰ where a school complained of trespass and nuisance by an aviation company in causing frequent flights at low heights over and near the school playing-field, a perpetual injunction in wide terms was granted against the company.

At one time there was much doubt and controversy as to whether the flight of aircraft over private land constituted a trespass or a nuisance or both. The controversy centred round the question whether the owner of land owns the airspace above it, and inevitably the ancient maxim "*Cujus est solum ejus est usque ad coelum*" was brought in to support the view that the landowner had rights in the airspace above his land to an unlimited extent.¹⁰¹ The question is no longer of much practical importance.

CHAPTER IX

INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT.

There is no definition of or regulation concerning ownership as such in International Air Law. As long ago as 1931, however, the C.I.T.E.J.A. adopted draft Conventions dealing with (1) the ownership of aircraft and an aeronautic register, and (2) mortgages and other securities in aircraft, but no Convention had been concluded up to the time of the Chicago Conference in 1944. The Final Act of that Conference recommended the conclusion of a Convention "dealing with the transfer of title to aircraft", to be based, among other things, on the two C.I.T.E.J.A. drafts. ¹⁰²

The Geneva Convention: As a result of subsequent consideration by the P.I.C.A.O., the I.C.A.O. and the Legal Committee of the I.C.A.O., a draft Convention on the International Recognition of Rights in Aircraft was prepared, which was signed by twenty States at the 1948 meeting of the Assembly of the I.C.A.O. held at Geneva. The Convention was subsequently signed by Pakistan on the 21st August 1951. ¹⁰³

In accordance with Article XX of the Convention, it was to come into force 90 days after the second ratification, as soon as two signatory States had ratified the Convention. The United States was the first signatory State to ratify the Convention on September 7, 1949. Mexico ratified the Convention on April 4, 1950, and Chile did so on November 20, 1951. But both these States made reservations ¹⁰⁴

with their ratifications, and the United States formally declared that these reservations were not acceptable to her.¹⁰⁵ The Convention therefore did not come into force between these countries. Pakistan ratified the Convention, without any reservation on June 19, 1953, and in accordance with Article XX, the Convention came into force between the United States and Pakistan on September 17, 1953, i.e. 90 days after the ratification by Pakistan.¹⁰⁶

Object of the Convention: The object of the Convention is to safeguard, while the aircraft are in "foreign" contracting States, rights of property, possession or security in the aircraft validly acquired by third parties, in accordance with the law of the "home" State of the aircraft, (i.e. the State in which it is registered as to nationality). The Convention defines "aircraft" as including "the airframes, engines, propellers, radio apparatus and all other articles intended for use in the aircraft whether installed therein or temporarily separated therefrom". (Article XVI). The Convention does not, however, apply to "aircraft used in military, customs or police services". (Article XIII)

The main provisions of the Convention may be summarized as follows:-

- (1) Rights recognized. By Article I(1) of the Convention, the contracting States undertake to recognize:
- (a) rights of property in aircraft;
 - (b) rights to acquire aircraft by purchase coupled with possession of the aircraft;
 - (c) rights to possession of aircraft under leases of six months or more;

- (d) mortgages, hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness;

Provided that such rights

- (i) have been constituted in accordance with the law of the contracting State in which the aircraft was registered as to nationality at the time of their constitution, and
- (ii) are regularly recorded in a public record of the contracting State in which the aircraft is registered as to nationality.

It may be observed that the only obligation of a contracting State is to "recognize" the rights specified above if they are recorded as provided. There is no obligation to provide a public record, as contemplated by the last sub-paragraph of the Article. Quite obviously the provision of such record is essential to effect recognition.

The Convention further provides that

(i) nothing in this Convention shall prevent the recognition of any rights in aircraft under the law of any contracting State; but contracting States shall not admit or recognize any right as taking priority over the rights mentioned in paragraph (1) of Article I. (Article I (2)).

(ii) except as otherwise provided in this Convention, the effects of the recording of any right mentioned above, with regard to third parties, shall be determined according to the law of the contracting State where it is recorded. (Article II (2)).

(iii) a contracting State may prohibit the recording of any right which cannot validly be constituted according to its national law. (Article II (3)).

The "law of a contracting State" in the above provisions presumably means the whole of such law, including the rules as to Conflict of Laws, so that the relevant law governing a particular transaction might not be the national law of the contracting State in question. For example, if an aircraft registered in Pakistan was sold in Egypt, the Pakistan courts might well hold that the validity and effect of the sale must be decided in accordance with Egyptian law.

With respect to public record, the Convention provides that all recordings relating to a given aircraft must appear in the same record. (Article II (1)). The address of the authority responsible for maintaining the record must be shown on every aircraft's certificate of registration as to nationality. (Article III (1)). Any person is entitled to receive from the authority duly certified copies or extracts of the particulars recorded. Such copies or extracts shall constitute prima facie evidence of the contents of the record. (Article III (2)).

Except in the case of a sale in execution in conformity with the provisions of the Convention, no transfer of an aircraft from the nationality register or the record of a contracting State to that of another contracting State can be made unless all holders of recorded rights have been satisfied or consent to the transfer. (Article IX).

(2) Claims for Salvage: By Article IV (1), in the event that any claims in respect of (a) compensation due for the salvage of the aircraft, or (b) extraordinary expenses indispensable for the preservation of the aircraft, give rise, under the law of the contracting State where the operations of salvage or preservation were terminated, to a right conferring a charge against the aircraft, such rights are recognized by the contracting States, and take priority over all other rights in the aircraft. Under Article IV (3), any of the said rights may, within three months from the date of the termination of the salvage or preservation operations, be noted on the record. The said rights shall not be recognized in other contracting States after expiration of three months, unless, within this period, (a) the right has been noted on the record, and (b) the amount has been agreed upon, or judicial action on the right has been commenced. In the latter case the period of three months may be extended by contingencies in accordance with the law of the forum. (Article IV (4)). These rights shall be satisfied in the inverse order of the dates of the incidents in connection with which they have arisen. (Article IV (2)).

(3) Attachment or sale of aircraft in execution:

(i) In case of attachment or sale of an aircraft in execution or of any right therein, the contracting States are not obliged to recognize, as against the attaching or executing creditor or against the purchaser, any right mentioned in Article I(1) or the transfer of any such right,

if constituted or effected with knowledge of the sale or execution proceedings by the person against whom the proceedings are directed. (Article VI)

(ii) No sale in execution can be effected unless all rights having priority over the claim of the executing creditor in accordance with the Convention which are established before the competent authority, are covered by the proceeds of sale or assumed by the purchaser. (Art.VII(4)). The law of a contracting State may provide that this provision shall not apply where injury or damage is caused by an aircraft to persons or property on the surface, in the territory of the contracting State where the execution sale takes place, and the person injured or the property damaged is an executing creditor. (Article VII (5)(a)).

(iii) When injury or damage is caused to persons or property on the surface of the contracting State where the execution sale takes place by an aircraft which is subject, by way of security for any indebtedness, to any of the rights referred to in Article I(1) then, unless adequate and effective insurance has been provided by or on behalf of the operator to cover such injury or damage, the national law of such state may provide, in case of seizure of such aircraft, that any such right held as security may not be set up against any person suffering such injury or damage in excess of an amount equal to 80 per cent of the sale price.(Art.VII5b). The insurance is considered "adequate", within the meaning of this paragraph, if the amount of the insurance corresponds to the value, when new, of the aircraft seized in execution.

This measure of adequacy applies, however, only in the absence of other limit established by the law of the contracting State where the execution sale takes place.(Art.VII)

(iv) The proceedings for sale of an aircraft in execution are to be determined by the law of the contracting State where the sale takes place; (Article VII (1). But the following provisions must be observed:-

(a) The date and place of the sale must be fixed at least six weeks in advance;

(b) The executing creditor must supply to the Court or other competent authority a certified extract of the recordings concerning the aircraft;

(c) He must also give public notice of the sale at least one month before the day fixed at the place where the aircraft is registered in accordance with the law applicable there;

(d) He must also "concurrently" notify the recorded owner and the holders of the recorded rights;

(e) Costs incurred in the common interest of creditors in the course of execution proceedings are to be paid out of the proceeds of sale before any other claims.

(v) The sale of an aircraft in conformity with the provisions (ii), (iii) and (iv) above, transfers the property in the aircraft free from all rights which are not assumed by the purchaser. (Article VIII).

(4) Obligations of the Contracting States to apply the Convention: The contracting States agree:-

(i) to take such measures as are necessary for the fulfilment of the provisions of the Convention, and to inform the Secretary General of the I.C.A.O. of these measures; (Article XV). But nothing in the Convention shall prejudice the right of any contracting State to enforce, against an aircraft, its national laws relating to immigration, customs or air navigation. (Article XII).

(ii) that the provisions of the Convention shall, in each contracting State, apply to all aircraft registered as to nationality in another contracting State. (Art.XI (1)).

(iii) that each contracting State shall also apply to aircraft there registered as to nationality the provisions of Articles II ("all recordings relating to a given aircraft must appear in the same record"); III ("the address of the authority responsible for maintaining the record must be shown on every aircraft's certificate of registration as to nationality"; right to obtain certified copies of the record); IX (prohibition of transfer of aircraft from nationality register or record of one contracting State to another without satisfaction or consent of all holders of recorded rights); and IV (salvage etc unless the operations in question have been terminated in its own territory). (Article XI (2)).

As already mentioned, the Convention does not expressly require the contracting States to keep a "record" which, however, is essential for the effective recognition

of the rights concerned. This obligation is, therefore, implied in the provisions set out above, and if any contracting State failed to maintain a "record", the benefits of the Convention would not be available to holders of rights which must be recorded as a condition of recognition. The Convention does not apply, except to the limited extent set out in sub-paragraph (4) (iii) above, to aircraft in their "home" state, e.g. it does not apply to a "foreign" creditor seeking to enforce rights against an aircraft in its "home" state. The contracting States may apply the Convention only to a part of their "territories" for the foreign relations of which they are responsible. (Article XXIII). The Convention also provides for its application when a separate nationality register is maintained in any such territory. (Article XVII).

Seizure and Arrest - Chicago Convention: Under Article 27 of the Chicago Convention, every aircraft of a contracting State engaged in international air navigation passing through the territory of another contracting State in accordance with the Convention is exempt from seizure or detention in that territory on the ground of infringement of patent, provided that this benefit only applies to States which are either parties to the International Convention for the Protection of Industrial Property, or have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of other States parties to the Chicago Convention.

CHAPTER X

LAW RELATING TO AERODROMES AND AIR NAVIGATION FACILITIES.

International Use of Aerodromes.

The Chicago Convention provides that, subject to the right of a State to "designate" the airports within its territory which an international air service may use, "every airport in a contracting State which is open to public use by its national aircraft shall likewise be open under uniform conditions to the aircraft of all other contracting States. The like uniform conditions shall apply to the use by aircraft of every contracting State of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation". (Articles 15 and 68). The Convention specifically provides for equality of charges, and also lays down that all such charges shall be published and communicated to the I.C.A.O.; "upon representation by an interested contracting State" charges are subject to review by the Council of the I.C.A.O., which is to report and make recommendations thereon for the consideration of the State or States concerned. (Article 15).

Right of Search: The parties to the Chicago Convention have agreed that, upon the departure or landing of a foreign aircraft from or in the territory of a contracting State, the authorities of that State have the

right to search the aircraft and to inspect all the documents with which it is provided; (Article 16).

Designation of routes and airports: Each contracting State may designate the route to be followed within its territory by any international air service, and the airports which any such service may use. (Article 68). Except in a case where, under the terms of the Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing, every contracting State may require aircraft entering and leaving its territory to land at or depart from an airport designated by that State for the purpose of customs and other examination. All aircraft are bound to comply with such requirements. (Article 10). Annex 9 to the Chicago Convention (Facilitation of International Air Transport) recommends to the contracting States to establish (a) customs-free airports, and (b) customs-free trade zones in connection with international airports. No such customs-free airport has so far been established in Pakistan. The International Airports which have been so designated by the Government of Pakistan are situated at Karachi, Lahore, Dacca and Chittagong.

Improvement of airports and facilities: The Chicago Convention contains provisions of a kind not included in any earlier Convention, designed to secure that airports and air navigation facilities of the standards laid down in the Convention shall eventually be available for international air traffic in the territories of all contracting States. By Article 28 of the Convention, each contracting State

undertakes, so far as it may find practicable, to (a) provide in its territory airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation in accordance with the standards and practices recommended or established from time to time pursuant to the Convention; (b) adopt and put into operation the appropriate standard systems of communications and procedures, codes, markings, signals, lighting and other operational practices and rules which may be recommended or established under the Convention; (c) collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with such standards. If the Council of the I.C.A.O. is of the opinion that airports or other air navigation facilities of a contracting State are not reasonably adequate for the safe, regular, efficient and economical operation of international air services present or contemplated, the Council must consult with the State directly concerned and the other States affected, with a view to finding means by which the situation may be remedied, and the Council may make recommendations for that purpose. (Article 69). A contracting State may conclude an arrangement with the Council for giving effect to such recommendations, (Article 70) But a State is not "guilty of an infraction of this Convention" if it fails to carry out such a recommendation. (Article 69).

The Council may give help to a contracting State in the matter of provision, maintenance and operation of airports and air navigation facilities in the following ways:-

(i) The Council may, at the request of the State concerned, agree to provide for all or a portion of the cost of an "arrangement" concluded to give effect to a recommendation of the Council for the improvement of the facilities; (Article 70).

(ii) If a contracting State so requests, the Council may itself provide, man, maintain and administer any or all of the airports and other air navigation facilities required in the territory of that State; (Article 71).

(iii) Where the Council takes action under (i) and (ii) above, the arrangement may provide with the consent of the State concerned, for technical assistance in the supervision and operation of the airports and other facilities, and for the payment, from the revenues derived from the operation of the airports and other facilities, of the operating expenses of the airports and the other facilities, and of interest and amortization charges; (Art.74).

Where land is needed for facilities financed in whole or in part by the Council at the request of a contracting State, that State is bound either to provide the land itself or to facilitate the use of the land by the Council on just and reasonable terms. (Article 72).

A contracting State may at any time discharge any obligation into which it has entered, and take over airports and other facilities which the Council has provided in its territory by paying to the Council an amount which in the opinion of the Council is reasonable in the circumstances. (A75)

National law relating to Aerodromes.

Definition of "Aerodrome": For the purposes of the Aircraft Act, 1934, and the Aircraft Rules, 1937, made thereunder, the word "aerodrome" means, under Section 2 (2) of the Act, "any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers, and other structures thereon or appertaining thereto". It is not always clear how far the "area" of the "aerodrome" extends, especially in case of water. The term "airport" is in more common use than "aerodrome", as signifying the whole undertaking involved in the use of an organized, permanent place for the landing and departure of aircraft, and the embarking and disembarking of passengers, rather than the piece of land used for the purpose, which is more aptly described as "airfield". Nevertheless it seems more appropriate, in a legal study, to keep to the word "aerodrome", which is used in all Pakistan Statutes and Rules.

Licensing of Aerodromes: The rules relating to the establishment and operation of "Aerodromes" are contained in Part XI of the Aircraft Rules, 1937. Under its provisions, no aircraft carrying passengers for hire or reward may use an aerodrome as a regular place of landing or departure, unless it is either a Government aerodrome, or has been licensed for the purpose by the Central Government. In actual practice, almost all the aerodromes used by scheduled air services in Pakistan are Government aerodromes.

Classes of Licensed Aerodromes: An aerodrome may be licensed by the Central Government in one of the following categories:-

- (a) for public use;
- (b) for private use; that is to say for use by the licensee and by individuals specially authorized by the licensee.

An aerodrome may be licensed for all types of aircraft or for certain specified types or classes of aircraft and the licence may specify the conditions on which the aerodrome may be used.

Public Aerodromes: Charges. All public aerodromes - that is to say aerodromes which are licensed for public use, or which are open to public use by aircraft registered in Pakistan upon payment of charges - must to the same extent and upon the same conditions be open to use by aircraft possessing the nationality of a contracting State. This non-discrimination between national and foreign aircraft is in accordance with Article 15 of the Chicago Convention. At every such public aerodrome, a single tariff of charges, including charges for landing and length of stay must be exhibited in a conspicuous place, and such tariff must be applicable alike to all aircraft whether registered in Pakistan or in any other contracting State. The Tariff of Landing and Housing Charges at Government Aerodromes in Pakistan is reproduced as Appendix 6. They also apply to non-Government licensed public aerodromes, who can charge higher rates only with the approval of the Government.

Inspection of Aerodromes: Every licensed aerodrome, whether public or private, is open to inspection at all reasonable times by any person authorized by the D.G.C.A.

Customs Aerodromes: A Customs Aerodrome is one which may be so declared by the Central Government. As already stated in a previous Chapter, all aircraft entering and departing from Pakistan must land at or depart from a customs aerodrome, unless prevented from doing so by accident, stress of weather or other unavoidable cause.

Flying in the vicinity of Aerodromes: There are special rules for air traffic on and in the vicinity of aerodromes, which are contained in Part XII, Sections IV-VI of the Aircraft Rules, 1937. Most of these rules apply to both land and water aerodromes, but every aircraft manoeuvring under its own power on the water must conform to the Regulations for Preventing Collisions at Sea, and for the purpose of these Regulations, such aircraft are deemed to be steam vessels.

Aeronautical Beacons: Annex 14 to the Chicago Convention defines an "aeronautical beacon" as an aeronautical ground light visible at all azimuths, either continuously or intermittently, to designate a particular point on the surface of the earth". In Pakistan such aeronautical beacons are located at Chittagong, Dacca, Hyderabad, Jiwani, Karachi, Lahore, Mauripur, Nawabshah and Peshawar.

Air Navigation Facilities.

Air Traffic Control Service: Part XII of the Aircraft Rules, 1937, contains provisions relating to the Rules of the Air and Air Traffic Control. These are in accordance with Annex 2 (Rules of the Air) and Annex 11 (Air Traffic Services) to the Chicago Convention, which are in force in Pakistan. The objectives of the air traffic control services, as stated in Annex 11 are:-

- (1) to prevent collisions between aircraft;
- (2) to prevent collisions on the manoeuvring area between aircraft and obstructions;
- (3) to expedite and maintain an orderly flow of air traffic;
- (4) to provide advice and information useful for the safe and efficient conduct of flight;
- (5) to notify appropriate organizations regarding aircraft in need of search and rescue, and to assist such organizations as required.

The Annex states that Air Traffic Control clearances shall be related solely to fulfilling the above objectives.

It is universally agreed that the ultimate responsibility for the safety of an aircraft rests with its captain or pilot; but in discharging his responsibility he must often rely completely on those who provide or operate air navigation facilities - e.g. the air traffic controller, who tells him that it is safe to descend, or the meteorological officer, who gives him a forecast of the weather at his destination. It is obvious that carelessness or inaccuracy on the part of those on whom the pilot so relies, and on whom he is, by the general practice of the air, entitled and often obliged to rely, may have disastrous

results for an aircraft and its crew, passengers and cargo. The avoidance by an aircraft of collision with high ground or other obstructions depends upon a number of factors including:

(a) the true track actually followed by an aircraft and any subsequently intended alterations;

(b) Altitude; and

(c) knowledge of the ground over which the flight will proceed.

A control service is largely dependent on information supplied to it by others, including the pilot of the aircraft concerned, and cannot therefore be held responsible for instructions based upon false information. It is however responsible for control not dependent on such factors, as for example, giving clearance in conditions of bad visibility to a pilot known to be unfamiliar with the terrain of the approach.

A.T.C. Definitions: The following definitions are of importance in connection with the air traffic control services:-

"Flight Information Region" means an airspace of defined dimensions within which flight information service are provided;

"Approach Control" means a service established to provide air traffic control for those parts of an I.F.R. flight when an aircraft is arriving at, departing from and operating in the vicinity of an aerodrome;

"Aerodrome Control" means a service established to provide air traffic control at aerodromes.

Control zones in Pakistan: For the purposes of air traffic control services, the whole of the airspace over West Pakistan is included in the Karachi Flight Information Region, with the unit providing flight information service being located at the Karachi Flight Information Centre. All aircraft when flying within the Karachi Flight Information Region must report their position at half-hourly intervals. Within this Region is situated the Karachi Control Area, whose lateral limit extends to a circle of 100 miles (nautical) radius centred on Karachi Airport. The unit providing control in this area is the Karachi Approach Control Office. Prior to entry in this area, the pilot-in-command must give a position report to the Karachi Flight Information Centre, and on arrival at the control area boundary, he must contact Karachi Approach Control Office.

The whole of the airspace over the territory of East Pakistan is, for the purposes of air traffic control services, under the jurisdiction of the Calcutta Flight Information Region, with its Flight Information Centre located at Calcutta in India. There is, however, established a Dacca Control Area, which operates within a radius of 100 nautical miles from the Dacca Airport. The pilot must report his position to the Dacca Approach Control Office before entering the Dacca Control Area.

The third tier of air traffic control is the Aerodrome Control Zone, which extends in a radius of 25 nautical miles round a controlled aerodrome. These are located at Karachi, Lahore, Dacca and Chittagong.

Rules of the Air: In addition to the provisions relating to rules of the air contained in Annex 2 to the Chicago Convention, which are applicable in Pakistan, the following rules are in force:-

(1) All aircraft operated at night must be flown in accordance with the Instrument Flight Rules. "Night" here means the hours between the end of evening civil twilight and the beginning of morning civil twilight.

(2) Flight over "Prohibited Areas", described in Schedule I to the Aircraft Rules, 1937, is forbidden.

(3) Pilots should, as far as possible, avoid flying over the President's House, towers of silence, temples, mosques, palaces and prisons; and in particular to avoid flying low over these places.

(4) No aircraft may fly over Karachi City at an altitude lower than 3,000 feet by night and 2,000 feet by day.

Air Traffic Advisory Routes: In accordance with the recommendations of the South-East Asia/Pacific Ocean Regional Air Navigation Meeting, 1953, Air Traffic Advisory Routes were established in the Karachi Flight Information Region with effect from November 15, 1955. Within these routes, air traffic advisory service is provided to I.F.R. flights. This service comprises, in addition to ordinary flight information service, continuous separation service based on flight plans and position reports from aircraft in flight. This separation service takes the form of suggested action to pilots-in-command of aircraft whenever information is available to the Air Traffic Service unit, indicating that a collision hazard may be developing. In addition,

essential traffic information is passed to aircraft as considered necessary. It may be observed that these Advisory routes are not controlled airspaces and it is not, therefore, compulsory for I.F.R. flights to avail themselves of the air traffic advisory service; nor are they required to comply with suggestions or advice offered. It is essential however, that pilots-in-command advise the Air Traffic Service of intended non-compliance.¹⁰⁷

Altimeter Setting Procedures: The altimeter setting procedures in Pakistan are in accordance with the provisions contained in the I.C.A.O. Document 7030 - Regional Supplementary Procedures, and the transition altitudes and transition levels prescribed for civil aerodromes in Pakistan are in accordance with the standards laid down therein.¹⁰⁸

Communications services: These services include radio aids to navigation, time signals and weather broadcasts. The Communications procedures in Pakistan are in accordance with the standards laid down by I.C.A.O.¹⁰⁹ Radio communication and navigation facilities are available at all civil aerodromes in Pakistan. Such facilities at Air Force airfields are also available to civil aircraft on request, with the permission of Air Force authorities. The unsatisfactory performance of any radio communication or navigation facility should be reported by means of a "De-briefing" report, which must be delivered to the Pre-flight Information Unit immediately on landing.

Meteorological services: The meteorological facilities for civil aviation are provided in collaboration with the Director of Meteorological Services, Government of Pakistan. The Main Meteorological Office at Karachi Airport is responsible for the provision of information for advance meteorological planning, area watch within the Karachi Flight Information Region, collection of aircraft reports within the Region and their inclusion in National Synoptic Meteorological Broadcasts made from Karachi station, and the issue of warnings. Meteorological Summaries are prepared for the upper temperature observing stations at Karachi and Quetta; and for the surface stations at Chittagong, Dacca, Jiwani, Sylhet, Lahore, Multan and Peshawar.¹¹⁰

Search and Rescue services: Search and Rescue facilities are provided in Pakistan under a joint Air Force/Civil Organization, which is based on the application of both Air Force and Civil Aviation facilities, under the co-ordinating direction of the Rescue Co-ordination Centres at Karachi for West Pakistan and Dacca for East Pakistan. The Karachi Flight Information Centre and the Dacca Approach Control Office serve as the central points for collecting all information relative to a state of emergency of an aircraft operating within search and rescue areas of Pakistan.¹¹¹

CONCLUSION.

Revision of the Aircraft Act: The revision of the Aircraft Act, 1934 is under contemplation by the Government of Pakistan. It is proposed to replace the Act with a new Civil Aviation Act the draft of which is still under consideration. There are no fundamental changes from the provisions of the existing Act in the new draft, but the following points may be mentioned.

(1) The draft adds "the control and regulation of air transport services, and the control and development of aerodromes in Pakistan" as the objectives of the Act, in addition to the "control of the manufacture, possession, use, operation, sale, import and export of aircraft" occurring in the preamble of the existing Act. This is only a clarification and amplification, since the present legislation includes provisions covering these subjects.

(2) The draft eliminates reference to "British subjects" and "servants of the Crown" in view of the declaration of Pakistan as a republic with effect from the 23rd March 1956. Consequential changes are made throughout the draft. It may be mentioned that when the Aircraft Act, 1934 was enacted, India which then included Pakistan was still a part of the British Empire, and subject to the sovereignty of the British crown. The draft states that the Act "extends to the whole of Pakistan, and applies to all citizens of Pakistan and persons on any aircraft registered in Pakistan, wherever such citizens or persons may be, and to all persons

on any aircraft while in Pakistan". But nothing in the Act "shall apply to or in respect of any aircraft belonging to or exclusively employed in the naval, military or air forces of Pakistan, or persons employed in connection with any such aircraft".

(3) The draft defines an "aerodrome" as "any area or land or water designed, equipped, set apart or commonly used or intended to be used, either wholly or in part, for affording facilities for the landing and departure of aircraft". This is only an amplification of the existing definition referred to in the previous Chapter. "Air transport service" means a service of aircraft for the purpose of affecting public transport of passengers, goods, mails and other things. The existing definition of the word "aircraft" is retained. "Purposes of civil aviation" include all purposes connected with air navigation except purposes of defence by air.

(4) In connection with the rule-making powers of the Government to implement the provisions of the Chicago Convention, specific mention is made in the draft of the Convention on International Recognition of Rights in Aircraft, which has been described in a previous chapter. Although the Government has very wide general powers in this respect even under the existing Act, Section 5, it was considered desirable to make a specific reference to the Convention to which Pakistan is a party. The draft Act has a provision, under which the Central Government may make rules for carrying out the purposes of the Act.

(5) With regard to dangerous flying, the draft states that "where an aircraft is flown in such a manner as may cause unnecessary danger to any person or property on land or water, the pilot or the person in charge of the aircraft, and, unless he proves to the satisfaction of the Court that the aircraft was flown without his actual fault or privity, the owner thereof shall be punishable with imprisonment... " "Owner" in relation to aircraft includes any person by whom the aircraft is chartered at the time the offence is committed.

(6) Rules made under the Act may provide that a breach of any of them shall be punishable with imprisonment and for the purpose of securing compliance with a rule prohibiting flight by aircraft over a specified area, may also provide for the taking of such steps, including firing on the aircraft, as may be prescribed. The power to make rules conferred by the Act is subject to the condition of previous publication, and a period of three weeks must elapse between such publication and the making of the rules. The rules must be laid before the National Assembly of Pakistan as soon as may be after they are made.

F O O T N O T E S.

1. See Hotchkiss, "The Law of Aviation", 2nd Ed.(1938),p.4,n, citing Tombs, "International Organization in European Air Transport, 1936, and Colegrave, "International Control of Aviation, 1930.
2. Hotchkiss, op.cit., p. 4, n.
3. Guille v. Swan (1928), U.S. Av.R. 53.
4. Shawcross and Beaumont on "Air Law", 2nd Ed.(1951),p.3, note (f).
5. See 1942 U.S.Av.R.page (ii)
6. Scott's Trustees v. Moss (1889), 17 R.(Ct. of Sess.) 32.
7. Hotchkiss, op.cit., p.1.
8. Shawcross and Beaumont, op.cit. p.3, note (o).
9. See "Observer", 25 July, 1909, Special Edition.
10. John C. Cooper, "The International Air Navigation Conference, Paris 1910", Journal of Air Law and Commerce, Vol. 19, No. 2, Spring 1952, page 139.
11. See "Resolution of Inter-American Technical Conference", 1937, Preamble; U.S.Av.R.(1938) 229.
12. Wallace Graham, "The Flight of Alcock and Brown", Putnam, 1955, p. 14-5.
13. U.S. Federal Aviation Commission, 1935, quoted in "International Air Transport" by Osborne Mance, 1943.
14. 10 and 11 Geo. 6, Ch. 30.
15. The Provinces of Punjab and Bengal of the British India were divided into East and West on the basis of population, the Muslim majority parts (West Punjab and East Bengal), going to Pakistan and the Hindu majority parts (West Bengal and East Punjab) going to India.
16. See Section 18(3).
17. Act XXII of 1934. For text see Appendix 1.
18. Act XX of 1934. For text see Appendix 2.
19. Constitution of the Islamic Republic of Pakistan, The West Pakistan Constitutional Manual, Volume I, 1955, Printed by the Superintendent, Government Printing, West Pakistan, Lahore, 1956, Part I, pages 1-117.
20. Constitution, op. cit. Fifth Schedule, para. 11.

21. Especially in Canada and the United States.
22. Government of Pakistan, Department of Civil Aviation, "AERONAUTICAL INFORMATION PUBLICATION", First Edition, 1955, The Manager, Government of Pakistan Press, Karachi, 1956, page 79.
23. See Appendix 4, Delegation of Powers, under "Investigation of Accidents".
24. Aircraft Rules, 1937 are contained in the Pakistan Government official publication "AIRCRAFT MANUAL", A compilation of the legislation and rules governing civil aviation in Pakistan, published by the Manager of Publications, Karachi. Rules relating to the Investigation of Accidents (Part X, Rules Nos. 68-77) appear on pages 42-44. The revised Rules were issued under the Government of Pakistan, Ministry of Defence (Aviation Division), Notification No. AV-20(9)/53, dated the 7th February 1956, and published in the official Gazette of Pakistan.
25. Standards and Recommended Practices, "AIRCRAFT ACCIDENT INQUIRY", Annex 13 to the Convention on International Civil Aviation, 1st Edition, Effective 1 September 1951, I.C.A.O.
26. Ibid, page 6, Implementation of Annex.
27. In the Aircraft Rules (rule 68) before revision, the word used was "serious structural damage", which in relation to aircraft, meant the following:
 - (i) the telescoping or breaking apart of the fuselage;
 - (ii) the breaking of a main spar; or
 - (iii) the breaking of any part of the controls; or
 - (iv) damage by fire to any part of the aircraft.The word used both in Annex 13 and the revised legislation is "substantial damage".
28. Lecture on Accident Investigation and Inquiry, in particular, its relationship to Article 26 and Annex 13 of the ICAO Convention, delivered by Group Captain J.A. Newton to the Institute of International Air Law, McGill University, Montreal, during the 1954-55 session, p.5
29. McNair, Law of the Air, 2nd Edition, pp. 6-7. See generally John C. Cooper, The Right to Fly, pp. 17-36; Slotemaker, Freedom of Passage for International Air Services; Lupton, Civil Aviation Law, p.3, and Hotchkiss, Law of Aviation, 2nd Ed. pp.5 et seq.
30. The Civil Aeronautics Act, 1938, s.3 (1938)U.S.Av.R.340.

FOOTNOTES.

31. See McNair, Law of the Air, p.5, note (1) and Slotemaker, op. cit. p. 4, Note 2 - Decree of November 15th 1921.
32. Treaty Series No. 35 (1935) (Cmd. 5006).
33. in Washington D.C. A copy of this Address was obtained from the Institute of International Air Law, Montreal in June, 1956. There is no citation.
34. "High Altitude Flight and National Sovereignty", Vol. 4 (1951) International and Comparative Law Quarterly, pp. 411-418.
35. On the maxim of "Cujus Est Solum" generally, see John C. Cooper, Roman Law and the Maxim "Cujus est Solum" in International Air Law, Institute of International Air Law, McGill University, Montreal, 1952, (I.I.A.L. - No. 1).
36. Lycklama, Air Sovereignty, Martinus Nijhoff, The Hague; 1910
Sir H. Earle Richards, SOVEREIGNTY OVER THE AIR - A Lecture delivered before the University of Oxford on October 26, 1912, Clarendon Press, Oxford;
Harold D. Hazeltine, The Rights of States in the Airspace, First of the three Lectures delivered at King's College, University of London, on December 7, 1910, University of London Press, 1911. See also John C. Cooper, "Some Historic Phases of British International Civil Aviation Policy", an Address delivered at the Royal Institute of International Affairs, Chatham House, London, and printed in the April 1947 issue of "International Affairs". See Slotemaker, op. cit. p.9.
37. J.M.Spaight, Aircraft in Peace and the Law, 1919, p.5.
38. Report of the 28th Conference of International Law Association, 1914.
39. Spaight, op. cit. p.5.
40. Slotemaker, op. cit. p.5
41. See Aircraft Rules, 1937, Rule 1, Sub-rule (2).
42. Ibid. Rule 2.
43. For details see Schedule II to Part V of the Aircraft Rules, 1937, as issued in the Ministry of Defence, Aviation Division, Notification No. Av-20(10)/53, dated 2nd November 1954.
44. Details specified in Schedule III to the Aircraft Rules, 1937, and Rule 52.

FOOTNOTES.

45. "Visual Flight Rules" are the I.C.A.O. rules explained in Rules of the Air, Annex 2 to the Chicago Convention, 2nd Edition, p.17.
46. "Aerodrome Control" means a service established to provide Air Traffic Control for aerodromes;
"Approach Control" means a service established to provide Air Traffic Control for those parts of an I.F.R. (see 47 below) flight when an aircraft is arriving at, departing from and operating in the vicinity of an aerodrome.
47. "Instrument Flight Rules" or "I.F.R." (see 46 above) are the I.C.A.O. rules explained in Annex 2, 2nd Edn. pp. 17 and 18. They apply when visibility is below specified minima.
48. See Ministry of Defence, Aviation Division, Notification No. AV-20(4)55, dated the 24th February 1956.
49. For details see Part VI of the Aircraft Rules, 1937.
50. "Prohibited area" in Pakistan are specified in Schedule I of the Aircraft Rules, 1937. In connection with the dispute between Pakistan and India, relating in part to the extent of prohibited areas in the former and the restriction of flight over them, see the study made by three members of the Institute of International Air Law, entitled "Prohibited Areas in International Civil Aviation - Notes on Article 9 of the Chicago Convention and the recently settled disagreement between India and Pakistan" published in the U.S.&C.A.V.R.(1953)pp.109-134.
51. See "Definition of a Scheduled International Air Service", I.C.A.O. Doc. 7278-C/841, p.3.
52. Section X of the Final Act of the Chicago Convention recorded that it had not been possible to reach agreement on this matter, and recommended further study by the PICA0. A special meeting of the ICAO was held in Geneva in November 1947, and discussed a draft Convention which followed the general lines of the Chicago "Five Freedoms" agreement and the Bermuda Agreement between U.K. and the U.S.A. Agreement of a final draft was not found possible, and the Second Assembly of the I.C.A.O. (1948) referred the problem back to contracting States for further study and comment (ICAO Document 5692-A2-P/37, Resolution A2-16, p. 13). Although the replies of contracting States to this Resolution reflected a continuing desire for a multilateral agreement, they have been insufficient in number and, in most cases, inadequate in substance for the Council of the I.C.A.O. to take action. See I.C.A.O. monthly Bulletin, April, 1950. See also John C. Cooper, "Proposed Multilateral Agreement on Commercial Rights in International Civil Air Transport", Journal of Air Law and Commerce, Vol. XIV and R.J.G. McClurkin, "The Geneva Commission on a Multilateral

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52. (Continued from previous page) Air Transport Agreement", *ibid.*, Vol. XV, pp. 39-46. A Conference on Co-ordination of Air Transport in Europe was convened in April, 1954, pursuant to a Resolution of the Council of the I.C.A.O. Adopted on 15th December 1953, in response to a Resolution of the Committee of Ministers of the Council of Europe adopted on 19th March 1953. The items discussed included the possibility of securing closer co-operation by the exchange of commercial rights between these European countries. For details see I.C.A.O. Bulletin, December 1953, pp. 7 and 19; April, 1954, pp. 4-6; June/July, 1954, pp. 20-22.
53. See I.C.A.O. Doc. 7695, opened for signature on April 30, 1956 at Paris, and I.C.A.O. Document 7676, ECAC/1 "Report of the First Session of the European Conference on Civil Aviation, paragraphs 34-36.
54. Article II, para. 1 of the Agreement (ICAO Doc.7695).
55. See "Some Notes on the Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe" by Edward M. Weld, J.A.L. & C. Vol.23, No. 2, p. 187.
56. As of 16 June 1954, forty-three States, including Pakistan, were parties to the Agreement; See I.C.A.O. Document 7500.
57. See I.C.A.O. Document 7107-12, C/823-12 and also 55.
58. Edward M. Weld, *op. cit.* p. 187.
59. See Proceedings of the International Civil Aviation Conference, Chicago, Illinois, November 1 - December 7, 1944, Vol. I, Department of State ~~Publication~~ Publication 2820, U.S. Government Printing Office, Washington, 1948, Final Act, Section VIII, pp. 127-129.
60. See the Civil Aeronautics Act, 1938, Section 402, (1938) U.S.AV.R.340.
61. See John C. Cooper, *The Right to Fly*, Henry Holt & Co. New York, 1947, pp. 178 et seq.
62. For a study on the influence of the Bermuda Agreement on subsequent bilateral air agreements, see the author's Research Paper on "The Bermuda Agreement and its influence on subsequent bilateral air agreements", prepared at the Institute of International Air Law, McGill University, Montreal, during the 1954-55 session. See also I.C.A.O. Doc. A7-WP/8, EC/3, Analysis of Economic and other Substantive Provisions in Bilateral Commercial Air Transport Agreements, filed with I.C.A.O.

FOOTNOTES.

63. The rules relating to the licensing of air transport services are contained in Part XIII of the Aircraft Rules, 1937. Aircraft Manual, pp.63-67. The special rules for the operation of Scheduled Air Transport services are contained in Part XIII-A, see pp. 68-72.
64. For details of the flying experience required, see rule 150 of the Aircraft Rules, 1937; Aircraft Manual, pp. 69-70.
65. For details of the flying check, see rule 154, p.71.
66. See World Airline Record, 5th Edition, 1955, Roadcap & Associates, Chicago, Ill. pp.77-8
67. The date 1956 of the Act is misleading. The original Act was passed in 1953, along with a number of other Acts, by the Constituent Assembly of Pakistan, but did not receive the assent of the Governor-General. In 1955, the Federal Court of Pakistan declared all these Acts invalid on the ground of non-assent by the Governor-General. Thereupon the G.G. issued the Pakistan International Airlines Corporation Ordinance, 1955, which was repealed by Section 32 of the P.I.A.C. Act, passed by the National Assembly and received the assent of the President on the 18th April, 1956.
68. One dollar is equal to about $4\frac{3}{4}$ rupees.
69. Issued under the Ministry of Health Notification No. F.15-1/50-P.H., dated the 28th October, 1950. Aircraft Manual, pp. 128-147.
70. cf. Grein v. Imperial Airways, (1936)U.S.Av.R.211.
71. see (1948)U.S.Av.R.p.iii note (10).
72. K.M.Beaumont, The Warsaw Convention of 1929, as amended by the Hague Protocol of 1955, Journal of Air Law and Commerce, Vol. 22, No. 4, p.415.
73. Quinones v. Life and Casualty Insurance Co. (1946) U.S.Av.R.1
74. The Supreme Court of Hong Kong has held that civil aircraft owned by a company in which a Government owns 80% of the shares are not "State Aircraft" within Art.3 of the Chicago Convention; C.A.T. v. Chennault et al. (1950)U.S.Av.R.193.
75. K.M.Beaumont, op. cit. p.417 (J.A.L. & C.Vol.22, No.4).
76. Ibid, pp.419-20.

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77. See Adler v. Chicago and Southern Airlines; (1942) U.S. Av.R.18; Jones v. Northwest Airlines Inc. (1945)U.S.A.R.57
78. Contrast Delta Air Corporation v. Porter (1943)USAR.113 with Allsopp v. National Airlines (1950)U.S.Av.R.261.
79. See (1951)U.S.Av.R.5 (note).
80. See e.g. Salmond on Torts, 11th Edn.1953, pp. 36-7.
81. Shawcross & Beaumont on Air Law, 2nd Edn.p.346
82. (1948)U.S.AV.R.161 and (1949) ibid 338.
83. (1949) U.S.Av.R.65.
84. The case of the crash of a SABENA aircraft at Gander Airport; (1950) U.S.Av.R. 367 (Pauwels et al. v. SABENA).
85. see Shawcross & Beaumont on Air Law, 2nd Edn. p.367.
86. Court of Appeal, Paris, 5th Chamber, 28th February 1953).
87. Tribunal Civil de la Seine, 1st Chamber, 24th April 1952.
88. (1953) 1 All E.R.675
89. (1955) 2 All E.R. 98
90. (1951) U.S. Av. R. 1. See also Goepp v. American Overseas Airlines (1952) U.S. & C.Av.R.486 and (1953) U.S.& C. Av.R.503 in which passage from text cited; Froman v. Pan-American Airways Inc. (1953) ibid1 and Grey v. American Airlines Inc. (1955) ibid 64, 65. For an English authority on "wilful misconduct", see Horabin v. B.O.A.C. (1952) 2 All E.R.1016 (direction of Barry J., to Jury). And see generally H. Drion, Limitation of Liabilities in International Air Law, Martinus Nijhoff, 1954. See also Alan Goodfellow, "Wilful Misconduct and the Warsaw Convention", Interavia Vol. V, p. 58.
91. K.M.Beaumont, op. cit. p. 419
92. Smith v. New England Aircraft Co.(1930)U.S.Av.R.1
93. Swetland v. Curtiss Airports Corporation (1930) U.S.Av.R21 and (1932) U.S.Av.R.1
94. See Burnham v. Beverley Airways (1942) U.S.Av.R.1 at p.8 and Hotchkiss, Law of Aviation, 2nd Edn. p.32
95. conferred by the Civil Aeronautics Act, 1938, S. 3.
96. Cory v. Physical Culture Hotel (1936) U.S.Av.R.16

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97. Hickman v. Maisey (1900) 1 Q.B.D.752.
98. See Corey v. Physical Culture Hotel, (1936)U.S.Av.R.16
99. Cf. Thrasher v. City of Atlanta (1934) U.S.Av.R.166 and Swetland v. Curtiss Airports Corporation, op. cit.
100. Roedean School Ltd. v. Cornwall Aviation Co. Ltd., (1926) Times, July 3rd.
101. For an exhaustive discussion of the maxim see "Roman Law and the Maxim "Cujus est solum" in International Air Law" by John C. Cooper, Institute of International Air Law, McGill University, Montreal, 1952. I.I.A.L. - No. 1. For a summary of the English Common Law relating to private rights in airspace, see the judgment of Mr. Justice Hahn in the United States District Court in the case of Swetland v. Curtiss Airports Corporation, op. cit. where it was held that flights above a certain height would not ordinarily constitute trespass. For a summary of U.S. legal opinion, see Hotchkiss, Law of Aviation, 2nd Edn., pp.12 et seq., and Lupton, Civil Aviation Law, pp. 36 et seq.
102. Proceedings, op. cit. Final Act, Section V.
103. (1955) U.S.& C. Av. R. Treaty Data, p. xiii
104. Mexico ratified the Convention with a reservation to the effect that the priorities referred to in the Convention should be subject, within Mexican territory, to the priorities accorded by Mexican laws to fiscal claims and claims arising out of work contracts.(1951)U.S.Av.R.131 Chile ratified with a reservation as to the right in connection with Article IV(1) of the Convention, to recognize as rights having priority according to the order of priority established in the national law, fiscal claims for taxes, charges and other fees due by the owner or holder of the rights in aircraft, and arising out of the service of aircraft and the claims for salaries and wages of the crew during the period prescribed by the national law; (1952) U.S.Av.R.434.
105. (1954) U.S.& C.Av.R. Treaty Data, p.xiii
106. (1955) U.S.& C.Av.R. Treaty Data, p.xiii
107. See Government of Pakistan Notice to Airmen No. 7 of 1955.
108. Government of Pakistan, Aeronautical Information Publication, 1955, p.49.
109. Ibid. p.28.
110. Ibid. p.42.
111. Ibid. p.79.

APPENDIX 1.THE AIRCRAFT ACT, 1934.

(Act No. XXII of 1934)

--

An Act to make better provision for the control of the manufacture, possession, use, operation, sale, import and export of aircraft.

WHEREAS it is expedient to make better provision for the control of the manufacture, possession, use, operation, sale, import and export of aircraft;

It is hereby enacted as follows:-

1. Short title and extent. (1) This Act may be called the Aircraft Act, 1934.

(2) It extends to all the Provinces including Baluchistan and the Capital of the Federation and applies also to:-

- (a) British subjects and servants of the Crown in any part of the Provinces and the Capital of the Federation;
- (b) British subjects who are domiciled in any part of the Provinces and the Capital of the Federation; wherever they may be;
- (c) aircraft and to persons on aircraft registered in any Province or the Capital of the Federation wherever they may be

2. Definitions: In this Act, unless there is anything repugnant in the subject or context:-

(1) "aircraft" means any machine which can derive support in the atmosphere from reactions of the air, and includes balloons whether fixed or free, airships, kites, gliders and flying machines;

(2) "aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers, and other structures thereon or appertaining thereto;

(3) "import" means bringing into the Provinces and the Capital of the Federation; and

(4) "export" means taking out of the Provinces and the Capital of the Federation.

3. Power of Central Government to exempt certain aircraft:

The Central Government may, by notification in the Official Gazette, exempt from all or any of the provisions of this Act, any aircraft or class of aircraft and any person or class of persons, or may direct that such provisions shall apply to such aircraft or persons subject to such modifications as may be specified in the notification.

4. Power of the Central Government to make Rules to Implement the Convention of 1944. The Central Government may, by notification in the Official Gazette, make such rules as appear to it to be necessary for carrying out the provisions of the Convention on International Civil Aviation, signed in Chicago, December 7, 1944, with Additional Protocol signed at Montreal, May 27, 1947 and any amendment which may be made thereto under the provisions of Article 94 thereof;

5. Power of Central Government to make rules: (1) The Central Government may, by notification in the Official Gazette, make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for:-

(a) the authorities by which any of the powers conferred by or under this Act are to be exercised;

(aa) the regulation of air transport services, and the prohibition of the use of aircraft in such services, except under the authority of and in accordance with a licence authorising the establishment of the service;

(ab) the information to be furnished by an applicant for, or the holder of, a licence authorising the establishment of an air transport service to such authorities as may be specified in the rule;

(b) the licensing, inspection and regulation of aerodromes, the conditions under which aerodromes may be maintained and the fees which may be charged thereat, and the prohibition or regulation of the use of unlicensed aerodromes;

(c) the inspection and control of the manufacture, repair and maintenance of aircraft and of places where aircraft are being manufactured, repaired or kept;

(d) the registration and marking of aircraft;

(e) the conditions under which aircraft may be flown, or may carry passengers, mails or goods, or may be used for industrial purposes, and the certificates, licences or documents to be carried by aircraft.

(f) the inspection of aircraft for the purpose of enforcing the provisions of this Act and the rules thereunder, and the facilities to be provided for such inspection;

(g) the licensing of persons employed in the operation, manufacture, repair or maintenance of aircraft;

(h) the air routes by which and the conditions under which aircraft may enter or leave the Provinces and the Capital of the Federation, or may fly over the Provinces and the Capital of the Federation, and the places at which aircraft shall land;

(i) the prohibition of flight by aircraft over any specified area, either absolutely or at specified times, or subject to specified conditions and exceptions;

(j) the supply, supervision and control of air-route beacons, aerodrome lights, and lights at or in the neighbourhood of aerodromes or on or in the neighbourhood of air-routes;

(jj) the installation and maintenance of lights on private property in the neighbourhood of aerodromes or on or in the neighbourhood of air-routes, by the owners or occupiers of such property, the payment by the Central Government for such installation and maintenance, and the supervision and control of such installation and maintenance, including the right of access to the property for such purposes;

(k) the signals to be used for purposes of communication by or to aircraft and the apparatus to be employed in signalling;

(l) the prohibition and regulation of the carriage in aircraft of any specified article or substance;

(m) the measures to be taken and the equipment to be carried for the purpose of ensuring the safety of life;

(n) the issue and maintenance of log-books;

(o) the manner and conditions of the issue or renewal of any licence or certificate under the Act or the rules, the examinations and tests to be undergone in connection therewith, the form, custody, production, endorsement, cancellation, suspension or surrender of such licence or certificate, or of any log-book;

(p) the fees to be charged in connection with any inspection, examination, test, certificate or licence, made, issued or renewed under this Act;

(q) the recognition for the purposes of this Act of licences and certificates issued elsewhere than in Pakistan relating to aircraft or to the qualifications of persons employed in the operation, manufacture, repair or maintenance of aircraft; and

(r) any matter subsidiary or incidental to the matters referred to in this sub-section.

(3) Rules to be laid before both Chambers: Every rule made under this section shall be laid as soon as may be after it is made, before the Central Legislature, while it is in session, for a total period of one month which may be comprised in one session or in two or more sessions, and if before the expiry of that period, the Legislature modifies the rule or directs that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be.

6. Power of Central Government to make orders in emergency:

(1) If the Central Government is of opinion that in the interests of the public safety or tranquility the issue of all or any of the following orders is expedient, it may, by notification in the Official Gazette,

(a) cancel or suspend, either absolutely or subject to such conditions as it may think fit to specify in the order, all or any licences or certificates issued under this Act;

(b) prohibit, either absolutely or subject to such conditions as it may think fit to specify in the order, or regulate in such manner as may be contained in the order, the flight of all or any aircraft or class of aircraft over all the Provinces and the Capital of the Federation;

(c) prohibit, either absolutely or conditionally, or regulate the erection, maintenance, or use of any aerodrome, aircraft factory, flying school or club, or place where aircraft are manufactured, repaired or kept, or any class or description thereof; and

(d) direct that any aircraft or class of aircraft or any aerodrome, aircraft factory, flying school or club, or place where aircraft are manufactured, repaired or kept, together with any machinery, plant, material or things used for the operation, manufacture, repair or maintenance of aircraft shall be delivered, either forthwith or within a specified time, to such authority and in such manner as it may specify in the order to be at the disposal of His Majesty for the public service.

(2) Any person who suffers direct injury or loss by reason of any order made under clause (c) or clause (d) of sub-section (1) shall be paid such compensation as may be determined by such authority as the Central Government may appoint in this behalf.

(3) The Central Government may authorise such steps to be taken to secure compliance with any order made under sub-section (1) as appear to it to be necessary.

(4) Whoever knowingly disobeys, or fails to comply with, or does any act in contravention of, an order made under sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and the Court by which he is convicted may direct that the aircraft or thing (if any) in respect of which the offence has been committed, or any part of such thing, shall be forfeited to His Majesty.

7. Power of Central Government to make rules for investigation of accidents: (1) The Central Government may, by notification in the Official Gazette, make rules providing for the investigation of any accident arising out of or in the course of the navigation:-

(a) in or over the Provinces and the Capital of the Federation of any aircraft, or;

(b) anywhere of aircraft registered in the Provinces and the Capital of the Federation.

(2) Without prejudice to the generality of the foregoing power, such rules may:-

(a) require notice to be given of any accident in such manner and by such persons as may be prescribed;

(b) apply for the purposes of such investigation, either with or without modification, the provisions of any law for the time being in force relating to the investigation of accidents;

(c) prohibit, pending investigation, access to or interference with aircraft to which an accident has occurred, and authorise any person so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with any such aircraft; and

(d) authorise or require the cancellation, suspension, endorsement or surrender of any licence or certificate granted or recognised under this Act, when it appears on an investigation that the licence ought to be so dealt with, and provide for the production of any such licence for such purposes

8. Power to detain aircraft: (1) Any authority authorised in this behalf by the Central Government, may detain any aircraft, if in the opinion of such authority:-

(a) having regard to the nature of an intended flight, the flight of such aircraft would involve danger to persons in the aircraft or to any other persons or property; or

(b) such detention is necessary to secure compliance with any of the provisions of this Act or the rules applicable

to such aircraft; or such detention is necessary to prevent a contravention of any rule made under clause (h) or clause (i) of sub-section (2) of section 5.

(2) The Central Government may, by notification in the Official Gazette, make rules regulating all matters, incidental or subsidiary to the exercise of this power.

8A. Power of Central Government to make rules for protecting the public health: - The Central Government may, by notification in the Official Gazette, make rules for the prevention of danger arising to the public health by the introduction or spread of any infectious or contagious disease from aircraft, arriving at or being at any aerodrome and for the prevention of the conveyance of infection or contagion by means of any aircraft leaving an aerodrome and in particular and without prejudice to the generality of this provision, may make, with respect to aircraft and aerodrome or any specified aerodrome, rules providing for any of the matters for which rules under sub-clauses (i) to (viii) of clause (p) of sub-section (1) of section 6 of the Ports Act, 1908, may be made with respect to vessels and ports.

8B. Emergency powers for protecting the public health:
(1) If the Central Government is satisfied that the Provinces and the Capital of the Federation or any part thereof is visited by or threatened with an outbreak of any dangerous epidemic disease, and that the ordinary provisions of the law for the time being in force are insufficient for the prevention of danger arising to the public health through the introduction or spread of the disease by the agency of aircraft, the Central Government may take such measures as it deems necessary to prevent such danger.

(2) In any such case the Central Government may, without prejudice to the powers conferred by section 8A, by notification in the Official Gazette, make such temporary rules with respect to aircraft and persons travelling or things carried therein and aerodromes as it deems necessary in the circumstances.

(3) Notwithstanding anything contained in section 14, the power to make rules under sub-section (2) shall not be subject to the condition of the rules being made after previous publication, but such rules shall not remain in force for more than three months from the date of notification.

Provided that the Central Government may, by special order, continue them in force for a further period of not more than three months in all.

9. Wreck and salvage: (1) The provisions of Part VII of the Merchant Shipping Act, 1923 (XXI of 1923), relating to Wreck and Salvage, shall apply to aircraft on or over the sea or tidal waters as they apply to ships, and the owner of an aircraft shall be entitled to a reasonable reward for salvage services, rendered by the aircraft in like manner as the owner of a ship.

(2) The Central Government may, by notification in the Official Gazette, make such modifications of the said provisions in their application to aircraft as appear necessary or expedient.

10. Penalty for act in contravention of rule made under this Act: In making any rule under section 5, section 8, section 8A, or section 8B, the Central Government may direct that a breach of it shall be punishable with imprisonment for any term not exceeding three months or with fine of any amount not exceeding one thousand rupees, or with both.

11. Penalty for flying so as to cause danger: Whoever wilfully flies any aircraft in such a manner as to cause danger to any person or to any property on land or water or in the air, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

12. Penalty for abetment of offences and attempted offences: Whoever abets the commission of any offence under this Act or the rules, or attempts to commit such offence, and in such attempt does any act towards the commission of the offence, shall be liable to the punishment provided for the offence.

13. Power of Court to order forfeiture: Where any person is convicted of an offence punishable under any rule made under clause (i) or clause (1) of sub-section (2) of section 5, the Court by which he is convicted may direct that the aircraft or article or substance, as the case may be, in respect of which the offence has been committed, shall be forfeited to His Majesty.

14. Rules to be made after Publication: Any power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication for a period of not less than three weeks.

15. Use of patented invention on aircraft not required in the provinces and the Capital of the Federation: The provisions of section 42 of the Patents and Designs Act, 1911, (II of 1911) shall apply to the use of an invention on any aircraft not registered in the Provinces and the Capital of the Federation in like manner as they apply to the use of an invention in a foreign vessel.

16. Power to apply customs procedure: The Central Government may, by notification in the Official Gazette, declare that any or all of the provisions of the Sea Customs Act, 1878 (VIII of 1878) shall, with such modifications and adaptations as may be specified in the notification, apply to the import and export of goods by air.

17. Bar of certain Suits: No suit shall be brought in any Civil Court in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which, having regard to wind, weather and all the circumstances of the case, is reasonable, or by reason only of the ordinary incidents of such flight.

18. Saving for acts done in good faith under the Act: No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

19. Saving of application of Act: (1) Nothing in this Act or in any order or rule made thereunder, shall apply to or in respect of any aircraft belonging to or exclusively employed in His Majesty's naval, military or air forces, or to any person in such forces employed in connection with such aircraft

(2) Nothing in this Act or in any order or rule made thereunder shall apply to or in respect of any lighthouse to which the Lighthouse Act, 1927 (XVII of 1927) applies or prejudice or affect any right or power exercisable by any authority under that Act.

20. Repeals. The Aircraft Act 1911 (XVII of 1911) the entry relating thereto in the First Schedule to the Repealing and Amending Act, 1914 (X of 1914) and the Aircraft (Amendment) Act, 1914 (XVI of 1914) are hereby repealed.

(Passed by the Legislature)

Received the assent of the Governor General on 19.8.34

(Corrected upto the October 1950)

APPENDIX 2THE CARRIAGE BY AIR ACT, 1934.

(Act No. XX of 1934)

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An Act to give effect in Pakistan to a Convention for the unification of certain rules relating to international carriage by air.

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WHEREAS a Convention for the unification of certain rules relating to international carriage by air (hereinafter referred to as the Convention) was, on the 12th day of October 1929, signed at Warsaw;

AND WHEREAS it is expedient that Pakistan should accede to the Convention and should make provision for giving effect to the said Convention in Pakistan;

AND WHEREAS it is also expedient to make provision for applying the rules in the Convention (subject to exceptions, adaptations and modifications) to carriage by air in Pakistan which is not international carriage within the meaning of the Convention;

It is hereby enacted as follows:-

1. Short title, extent and commencement. (1) This Act may be called the Carriage by Air Act, 1934.

(2) It extends to all the provinces including Baluchistan and the Capital of the Federation.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Application of the Convention to Pakistan: (1) The rules contained in the First Schedule, being the provisions of the Convention, relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in Pakistan, in relation to any carriage by air to which these rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The Central Government may, by notification in the Official Gazette, certify who are the High Contracting Parties to the Convention, in respect of what territories they are parties, and to what extent they have availed themselves of the Additional Protocol to the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

(3) Any reference in the First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.

(4) Notwithstanding anything contained in the Fatal Accidents Act, 1855 (XIII of 1855) or any other enactment or rule of law in force in any part of Pakistan, the rules contained in the First Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Second Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.

(5) Any sum in francs mentioned in rule 22 of the First Schedule shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

3. Provisions regarding suits against High Contracting Parties who undertake carriage by air: (1) Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto, shall, for the purposes of any suit brought in a Court in Pakistan, in accordance with the provisions of rule 28 of the First Schedule, to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court, and to be a person for the purposes of the Code of Civil Procedure, 1908 (V of 1908).

(2) The High Court may make rules of procedure, providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorise any Court to attach or sell any property of a High Contracting Party to the Convention.

4. Application of Act to carriage by air which is not international: The Central Government may, by notification in the Official Gazette, apply the rules contained in the First Schedule and any provision of section 2 to such carriage by air, not being international carriage by air as defined in the First Schedule, as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.

FIRST SCHEDULE.

(This is a reproduction of the first thirty-five Articles of the Warsaw Convention - the operative provisions).

SECOND SCHEDULE.

(See section 2)

Provisions as to liability of carriers in the event of the death of a passenger.

1. The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

In this rule the expression "members of a family" means wife or husband, parent, step-parent, grandparent, brother, sister, half-brother, half-sister, child, step-child grandchild: Provided that in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate

child of his mother and reputed father or, as the case may be, of his adopters.

2. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under the last preceding rule enforceable, but only one action shall be brought in Pakistan in respect of the death of any one passenger, and every such action by whomsoever brought, shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in Pakistan or, not being domiciled there, express a desire to take the benefit of the action.

3. Subject to the provisions of the next succeeding rule, the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportions as the Court may direct.

4. The Court before which any such action is brought may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of the provisions of the First Schedule to this Act limiting the liability of a carrier and of any proceedings which have been, or are likely to be, commenced outside Pakistan in respect of the death of the passenger in question.

(Passed by the Indian Legislature)

(Received the assent of the Governor General on Aug. 19, 1934).

APPENDIX 3.THE PAKISTAN INTERNATIONAL AIRLINES CORPORATION ACT, 1956.

(Act No. XIX of 1956)

An Act to establish the Pakistan International
Airlines Corporation.

WHEREAS it is necessary to provide for the establishment of a Corporation to facilitate the acquisition of the air-transport undertaking of the Orient Airways Limited, and to make further and better provision for the operation and development of air-transport services and purposes connected therewith;

It is hereby enacted as follows:-

1. Short title, extent and commencement. (1) This Act may be called the Pakistan International Airlines Corporation Act, 1956.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Interpretation: In this Act, unless there is anything repugnant in the subject or context, -

(a) "Board" means the Board of Directors of the Corporation;

(b) "Corporation" means the Pakistan International Airlines Corporation established under this Act; and

(c) "prescribed" means prescribed by rules or regulations made under this Act.

3. Establishment and incorporation: (1) As soon as may be after the commencement of this Act, the Central Government shall establish a Corporation to be called the Pakistan International Airlines Corporation.

(2) The Corporation shall be a body corporate by the name of the Pakistan International Airlines Corporation, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and hold

property both movable and immovable and to carry out the functions and duties of the Corporation under this Act, and shall by the said name sue and be sued.

4. Functions of the Corporation: (1) It shall be the function of the Corporation to take over the undertaking of the Orient Airways Limited hereinafter in this Act referred to as the "said company" and all such undertakings of the Central Government as were undertaken for the purposes of the Corporation and, subject to the provisions of the Aircraft Act, 1934 (XXII of 1934), to provide and further develop safe, efficient, adequate, economical and properly co-ordinated air-transport services, internal as well as international; and the Corporation shall so exercise its powers as to secure that air transport services are developed to the greatest possible advantage in the interests of the country.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the Corporation shall, in particular, have power,-

- (a) to operate any air transport service or any flight by aircraft for a commercial or other purpose, and to carry out all forms of aerial work;
- (b) to provide for the instruction and training in matters connected with aircraft or flight by aircraft of persons employed or desirous of being employed, either by the Corporation or by any other person;
- (c) with the previous approval of the Central Government, to promote any organisation outside Pakistan for the purpose of engaging in any activity of a kind which the Corporation has power to carry on;
- (d) to acquire, hold or dispose of any property, whether movable or immovable, or any air transport undertaking;
- (e) to repair, overhaul, reconstruct, assemble or recondition aircraft, vehicles or other machines and parts, accessories and instruments thereof or therefor, and also to manufacture such parts, accessories and instruments, whether the aircraft, vehicles or other machines are owned by the Corporation or by any other person;

- (f) to do all things incidental to or connected with any of the matters referred to in sub-section (1) and in clauses (a) to (e).

(3) In discharging its functions the Corporation shall have careful regard to business principles.

5. Administration of the affairs of the Corporation: (1) The general direction and the administration of the Corporation and its affairs shall vest in the Board of Directors which may exercise all powers and do all acts which may be exercised or done by the Corporation.

(2) The Central Government may, as and when it considers necessary, issue directives to the Corporation on matters of policy, and such directives shall be binding on the Corporation. If a question arises whether any matter is a matter of policy or not, the decision of the Central Government shall be final.

6. The Board of Directors: (1) The Board of Directors shall, subject to the provisions of sub-section (2), consist of eleven Directors, of whom seven including the Chairman, shall be appointed by the Central Government, and four shall be elected by shareholders other than the Central Government: provided that when the Board is first constituted after the commencement of this Act, the four Directors to be elected as hereinbefore provided, shall be elected by the Directors of the said Company within one month of the date of the commencement of this Act, and shall be deemed to be the elected Directors of the Corporation under this sub-section.

(2) If the Central Government subscribe to not less than 51 per cent. of the value of shares referred to in clause (b) of sub-section (2) of section 25, the number of Directors to be appointed by the Central Government under sub-section (1) shall be increased from seven to eight and the number of Directors to be elected thereunder shall be reduced from four to three.

(3) Each Director shall -

- (a) perform any special duties as the Board by regulations may assign; and

(b) receive such remuneration, fees or allowances as the Central Government may determine.

7. Terms of office of Directors: (1) An appointed Director shall hold office for a term of three years, unless sooner removed by the Central Government, and may be appointed thereafter for a further term or terms of such duration as the Central Government may, in appointing him therefor, determine.

(2) An elected Director or a Director who is deemed to be elected, shall hold office for a term of three years, and continue in office after the expiry of his term until his successor is elected, and shall be eligible for re-election.

(3) A casual vacancy in the office of a Director shall be filled by appointment or election, as the case may be, and a Director elected to fill a vacancy shall hold office for the unexpired period of the term of his predecessor:

Provided that it shall not be necessary to elect a Director to fill a casual vacancy of an elected Director occurring within three months of the end of the term in which it occurs.

(4) Directors who are not servants of the Government shall be paid such fees for attending the meetings of the Board or of any executive committee appointed by the Board, of which they are members as may be prescribed by the Board.

(5) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of the Board.

8. Chairman: (1) The Central Government shall appoint one of Directors to be Chairman of the Board.

(2) Subject to his continuing to hold office as a Director, the Chairman shall hold office as Chairman for a period of three years.

9. Disqualification of Directors: (1) No person shall be appointed or elected or shall continue to be a Director who

(a) is or at any time has been convicted of an offence involving moral turpitude; or

(b) is or at any time has been adjudicated insolvent; or

(c) is found lunatic or becomes of unsound mind; or

(d) is a minor.

(2) No person shall be appointed or elected or shall continue to be a Director who is or who becomes a member of the salaried staff of the Corporation.

(3) No Director shall continue in office after absenting himself from three consecutive meetings of the Board without the leave of the Chairman or, in the case of the Chairman, of the Central Government.

10. Appointment of officers, etc. The Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions on such terms and conditions as it may see fit.

11. Meetings of the Board: (1) The meetings of the Board shall be held at such time and such places as may be prescribed:

Provided that a meeting may also be otherwise convened by the Chairman when he so thinks fit, and shall be convened if two or more Directors so request in writing addressed to the Chairman.

(2) Quorum: To constitute a quorum at a meeting of the Board not less than five Directors shall be present.

(3) Each Director, including the Chairman, shall have one vote, and in the event of an equality of votes the Chairman shall have a casting or a second vote.

(4) If for any reason the Chairman is unable to be present at a meeting, the Directors present shall choose one from among themselves to be the Chairman of the meeting.

12. Head office: The Corporation shall establish its head office in Karachi and may establish offices within Pakistan and abroad if the Board⁹⁰ thinks fit.

13. Deposit account: The Corporation may open an account in the National Bank of Pakistan or in any scheduled bank in Pakistan or, with the prior approval of the Central Government in any other bank in Pakistan. The Corporation may open an account outside Pakistan in any bank which may be a scheduled bank according to the law of the country in which the account has to be opened, or with the prior approval of the Central Government in any bank.

14. Investment of funds: The Corporation may invest its funds in any securities of the Central Government or a Provincial Government.

15. Borrowing powers: The Corporation may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by the Government, borrow in Pakistan currency or in foreign currency.

16. Audit: (1) The accounts of the Corporation shall be audited by not less than two auditors holding certificates under section 144 of the Companies Act, 1913 (VII of 1913), who shall be appointed by the Central Government, in consultation with the Comptroller and Auditor General of Pakistan hereinafter referred to as the Auditor General, on such remuneration, to be paid by the Corporation, as the Central Government may fix, and the Auditor General shall have the power to give directions to the auditors in regard to the extent and method of their audit subject to the provisions of the Companies Act, and to prescribe the forms of accounts to be maintained by the Corporation consistent with the requirements of that Act.

(2) Notwithstanding the provisions of the preceding sub-section, the Auditor General, where the Central Government is required, under section 26, to make good any losses

sustained by the Corporation shall, and in other cases may, either of his own motion or upon a request received in this behalf from the Central Government, undertake such audit of the accounts of the Corporation at such time as may be considered necessary, and the Corporation shall, at the time of such audit, produce the account books and connected documents at such place or places as the Auditor General may fix, and furnish such explanations and information as the ~~AN~~ Auditor General or an officer or officers authorized by him in this behalf may ask for.

(3) Every auditor appointed under sub-section (1) shall be given a copy of the annual balance sheet of the Corporation and shall examine it together with the accounts and vouchers relating thereto, and shall have a list delivered to him of all books kept by the Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Corporation, and may in relation to such accounts, examine any Director or officer of the Corporation.

(4) The auditors shall report to the shareholders upon the annual balance sheet and accounts and in their report they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Corporation's affairs, and in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(5) The Board may at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Corporation for the protection of its shareholders and creditors or upon the sufficiency of the information and other means placed at the disposal of the auditors in auditing the affairs of the Corporation.

17. Accounts: A statement of its accounts audited by the auditors referred to in the preceding section and a report by the Directors thereon shall be furnished to the Central Government by the Corporation as soon as possible after the end of every financial year.

18. General meetings: (1) A general meeting (hereinafter referred to as the annual general meeting) shall be held at the head office of the Corporation annually within six months from the date on which the annual accounts of the Corporation are closed, and a general meeting may be convened by the Board at any other time.

(2) The shareholders present at the annual general meeting shall be entitled to discuss the annual accounts, the annual report of the Board on the working of the Corporation, and the auditors' report on the annual balance sheets and accounts.

(3) Every shareholder holding a share of Rs. 10 shall be entitled to a vote, and to an additional vote for every additional share of rupees ten; and for this purpose two shares of rupees five each shall be reckoned to be the equivalent of a share of rupees ten.

19. Declaration of fidelity and secrecy: Every Director, auditor, officer or servant of the Corporation shall, before entering upon his duties make a declaration of fidelity and secrecy in the form set out in the Schedule to this Act.

20. Indemnity of Directors: (1) Every Director shall be indemnified by the Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A Director shall not be personally responsible for the acts of any other Director or of any officer or servant of the Corporation for any loss or expense resulting to the Corporation by reason of the insufficiency or deficiency in value of or title to any property or security acquired or taken on behalf of the Corporation, or by the wrongful act of any person under a liability to the Corporation, or by anything done by him in good faith in the execution of the duties of his office.

21. Transfer to the Corporation of the undertaking of the Orient Airways Limited: (1) On such date as the Central Government may, by notification in the official Gazette, appoint (hereinafter in this Act referred to as "the appointed date"), which shall be as soon as may be after the appointment of the first Board of Directors, under sub-section (1) of section 6, the entire undertaking of the said Company shall be transferred to and vested in the Corporation.

(2) The undertaking so transferred and vested shall include all assets, right, powers, authorities and privileges and all property, movable and immovable, including lands, works, workshops, aircraft, cash balance, reserve funds, investments and book debts and all other rights and interests arising out of such property as were immediately before the appointed date in the ownership, possession or power of the said Company in relation to the undertaking whether within or without Pakistan and all books of accounts and documents relating thereto, and all borrowings, liabilities and obligations of whatever kind then subsisting of the said Company in relation to the undertaking.

(3) Subject to the other provisions of this Act, all contracts and working arrangements subsisting immediately before the appointed date as affecting the said Company shall, in so far as they relate to the undertaking of the said Company, cease as from the appointed date to have effect or to be enforceable against the said Company or any person who was a surety or had guaranteed the performance thereof, and shall be enforceable and of effect against or in favour of the Corporation in which the undertaking has vested as if instead of the said Company the Corporation has been named therein.

(4) Subject to the other provisions of this Act, any proceeding or cause of action pending or existing immediately before the appointed date by or against the said Company in relation to its undertaking may, as from the appointed date, be continued or enforced by or against the Corporation in which it has vested by virtue of this Act as it might have been continued or enforced by or against the said Company

if this Act had not been passed, and shall cease to be continued or be enforceable by or against the said Company or its surety or guarantor.

22. Certain existing arrangements to continue: All contracts and working arrangements made and liabilities incurred by the Central Government before appointed date in connection with or for the purposes of Corporation, shall be deemed to be made or incurred by Corporation and have effect accordingly.

23. Winding up and dissolution of Orient Airways Ltd.:(1)
The said Company shall be wound up voluntarily in accordance with the provisions of the Companies Act, 1913 (VII of 1913), relating to members voluntarily winding up:

- (a) the winding up of the said Company shall commence on the appointed date without the passing by the said Company of any special or other resolution for winding up;
- (b) the Directors of the said Company shall not be under any obligation to make any such statutory declaration as is required by section 207 of the Companies Act, 1913; and
- (c) the winding up of the said Company shall be conducted by the Directors of the said Company in office at the appointed day who shall be deemed to be joint liquidators for the purposes of the said winding up with power to act by a majority of their number. In case of any of the joint liquidators ceasing to hold his office as joint liquidator by reason of his death, resignation or otherwise, the remaining joint liquidators shall continue to function as joint liquidators until the winding up of the affairs of the said Company is completed.

(2) For the purposes of the winding up and for any other purpose necessary for enabling it to give effect to the provisions of this Act, the said Company may after the appointed date, retain temporarily for its own use such offices, books, accounts and documents and the services of such officers and servants on such terms and conditions as may be agreed between the Corporation and the said Company, or failing agreement, as may be determined by the Central Government.

24. Valuation of assets of Orient Airways Ltd. and allotment of shares to the shareholders of Orient Airways Ltd.

(1) So soon as ~~may~~ be after the commencement of this Act, the Central Government shall through such persons and in such manner as it thinks fit, cause as expeditiously as may be, a valuation of the net value of the assets of the said Company (after taking into account all the liabilities of the said Company) as on the 30th September, 1953, to be completed, and the valuation so made shall, on being approved by the Central Government, be notified in the official Gazette and shall be final; and each shareholder of the said Company shall thereupon be entitled, subject to the provisions of section 25, to receive in exchange for his shares in the said Company, shares in the Corporation of a value which shall be in proportion to the valuation of the total net assets of the said Company, as approved by the Central Government under this section, to the aggregate amount subscribed on the existing shares of the said Company.

(2) No shareholder in the said Company shall be entitled to any other or further claim, in respect of the shares held by him in the said Company, in the winding up of the said Company or against the said Company or the Corporation.

25. Share Capital: (1) The authorised share capital of the Corporation shall in the first instance be five crores of rupees.

(2) The subscribed capital of the Corporation shall in the first instance be allotted and subscribed to as follows, that is to say, -

- (a) shares of the value of two crores and seventy-five lakhs of rupees or of the value of the assets resulting from the investments made by the Central Government for the purposes of the Corporation, as on the 30th September, 1953, and assessed on the basis agreed upon between the Central Government and the said Company, whichever is less, shall be allotted to the Central Government;

- (b) shares of the value of half a crore of rupees shall be offered to the public for subscription; if any shares so offered are not subscribed to by the public under this clause within six months of the date when the shares are so offered, the Central Government shall subscribe to them;
- (c) shares of the value of one crore of rupees or of the value of the net assets of the said Company as on 30th September 1953, as determined by the valuation made and approved under section 24, whichever is less, shall be allotted to the shareholders of the said Company, in consideration of the acquisition of the undertaking of the said Company as fully paid-up shares.

(3) The Corporation may increase its capital whenever it thinks fit with the previous sanction of the Central Government and the Central Government may impose such conditions as it considers necessary when sanctioning any increase.

(4) The Central Government shall not at any time hold shares of value less than 51 per cent. of the value of the shares issued by the Corporation.

(5) All transfers of the shares of the Corporation shall be subject to the provisions of this Act, and the rules made thereunder.

26. Limited guarantee against loss: The Central Government shall make good any losses sustained by the Corporation during the three years next after 30th September 1953, but not thereafter unless otherwise determined by the Central Government.

27. Liquidation of Corporation: No provision of law relating to the winding up of companies or corporations shall apply to the Corporation and the Corporation shall not be wound up save by order of the Central Government and in such manner as the Central Government may direct.

28. Provisions relating to income-tax and super-tax: For purposes of the Income-tax Act, 1922, the Corporation shall be deemed to be a company within the meaning of that Act, and shall be liable to income-tax and super-tax accordingly on its income, profits and gains.

29. Power of Central Government to make rules: The Central Government may make rules not inconsistent with this Act for the purpose of giving effect to the provisions of this Act, and where the rules made under this section are inconsistent with the regulations made under the next succeeding section, the rules shall prevail.

30. Power of Board to make regulations: The Board may, with the previous sanction of the Central Government, make regulations not inconsistent with this Act, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

31. Rules and regulations to be laid before the Legislature: All rules and regulations made under this Act shall be published in the official Gazette, and shall come into force upon such publication, and shall be laid thereafter as soon as may be before the National Assembly.

32. Repeal of Ordinances I of 1955 and XXVIII of 1955. The Pakistan International Airlines Corporation Ordinance, 1955, (I of 1955), and the Pakistan International Airlines Corporation (Amendment) Ordinance, 1955 (XXVIII of 1955) are hereby repealed.

(Passed by the National Assembly)

(Received the assent of the President on 18 April, 1956)

THE SCHEDULE.

(See sec.19)

Declaration of Fidelity and Secrecy.

I,..... hereby declare that I will faithfully, truly and to the best of my judgement, skill and ability, execute and perform the duties required of me as a Director, officer, employee or auditor (as the case may be) of the Pakistan International Airlines Corporation, and which properly relate to any office or position in the said Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Corporation nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Corporation and relating to its business.

APPENDIX 4.LIST OF ADMINISTRATIVE POWERS
DELEGATED TO THE D.G.C.A.

S.No.	Nature of power
1.	To detain aircraft under section 8 of the Aircraft Act, 1934.
2.	To demand production of licences, certificates, log-books or other documents.
3.	To enter any place to which access is necessary for the purpose of exercising his powers or carrying out his duties under the Aircraft Rules, 1937.
4.	To enter and inspect any place where aircraft are manufactured or repaired.
5.	To inspect any flying machine for the purpose of airworthiness.
6.	To enter, inspect and search any aircraft for the purpose of securing compliance with the Aircraft Rules, 1937.
7.	To exempt aircraft from the conditions to be complied with by aircraft in flight.
8.	To issue clearance certificates to aircraft engaged in non-scheduled air transport over Punjab and North-West Frontier Province.
9.	To detain aircraft not in possession of a clearance certificate.
10.	To cancel, suspend or endorse any certificate or licence.
11.	To cancel or vary any particulars in any licence, certificate or log book.
12.	To require the surrender of any licence, certificate or log book.
13.	To permit acrobatics below 2,000 feet.
14.	To permit smoking in aircraft.
15.	To permit parachute descents and the dropping of articles from aircraft.
16.	To permit persons to be carried on or in any part of aircraft or anything attached thereto.

S.No.Nature of power.Registration of Aircraft.

17. To register and grant certificates of registration.
18. To assign registration marks and to direct the manner of painting such marks.
19. To cancel certificates of registration.
20. To suspend certificates of registration.
21. To cancel or vary any particulars in certificates of registration.
22. To require the surrender of certificates of registration.

Airworthiness and Ground Engineers.

23. To issue certificates of airworthiness.
24. To call for evidence required and to decide on the inspections and tests necessary for the issue of certificates of airworthiness.
25. To prescribe modifications of the standards of airworthiness.
26. To accept foreign standards of airworthiness.
27. To decide the gauges necessary for aircraft.
28. To approve the types and the manner of their installation of instruments and equipment in aircraft.
29. To renew certificates of airworthiness and to require the flying machines to be overhauled, inspected or tested in flight.
30. To require modifications.
31. To approve modifications and the methods by which they are carried out.
32. To prescribe conditions for the technical operation maintenance and use of aircraft accessories or equipment.
33. To cancel any certificates relating to the airworthiness of aircraft.
34. To suspend certificates of airworthiness of aircraft.

<u>S.No.</u>	<u>Nature of power.</u>
35.	To vary the conditions attached to any certificate relating to airworthiness.
36.	To require the surrender of certificates of airworthiness or any documents relating thereto.
37.	To require aircraft to be weighed.
38.	To prescribe or approve modifications of designs and approve repair schemes.
39.	To approve methods of treatment of metals.
40.	To approve firms and companies dealing in aircraft parts.
41.	To require delivery of defective parts.
42.	To grant or renew ground engineers' licences.
43.	To vary entries in ground engineers' licences.
44.	To cancel ground engineers' licences.
45.	To suspend ground engineers' licences.
46.	To endorse ground engineer's licences.
47.	To withhold the grant or renewal of ground engineers' licences.
48.	To waive or reduce fees.
49.	To refund the fees paid in respect of certificates and licences.
50.	To require the surrender of ground engineers' licences.
51.	To appoint or approve examiners for ground engineers' licences.

Personnel of Aircraft.

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|-----|--|
| 52. | To vary or add or exempt any requirements regarding the number and description of the members of the operating crew, and the arrangements made as to their duties. |
| 53. | To grant licences to members of the operating crew. |
| 54. | To renew and vary conditions to licences granted to operating crew. |

<u>S.No.</u>	<u>Nature of power.</u>
55.	To include rating in a licence of the operating crew.
56.	To delete the rating from a licence of the operating crew.
57.	To impose conditions and limitations to privileges to each class of licence.
58.	To include other ratings in a licence.
59.	To impose and remove limitations on or in connection with the exercise of the privileges conferred by the licence.
60.	To withhold the grant or renewal of a licence of operating crew.
61.	To prescribe the manner for the submission of application for the grant or renewal of a licence or for a rating or for an extension of a rating.
62.	To validate foreign licences.
63.	To withhold, issue, renewal of a validation of foreign licences.
64.	To include, extend, renew or withhold rating in a commercial or higher class of pilot's licence.
65.	To prescribe the manner for the submission of application for the inclusion, extension or renewal of a rating for instruction in a licence.
66.	To make gradations of persons as instructors and assistant instructors.
67.	To permit to fly as pilot-in-command of a flying machine towing another aircraft other than a glider.
68.	To include towing rating in a licence.
69.	To prescribe the manner for the submission of application of towing rating.
70.	To refund fees.
71.	To authorise the holder of a pilot's licence to act as pilot-in-command of an aircraft carrying passengers or operated for remuneration.
72.	To permit the holder of private commercial or senior commercial pilot's licence to act as pilot-in-command of an aircraft under Instrument Flight Rules. (I.F.R.)

<u>S.No.</u>	<u>Nature of power.</u>
73.	To permit the holders of commercial, senior commercial or airline transport pilot's licence to carry out the flight instructions required for the issuance of pilot's licences.
74.	To exempt military pilots from all or any part of the practical flying tests and the technical examinations for the grant of a flying machine pilot's licence.
75.	To exempt from all or any part of the practical flying tests and the technical examinations for the grant of a flying machine pilot's licence.
76.	To prescribe practical flying tests and technical examination in lieu of any satisfactory evidence regarding flying for the renewal of private pilot's licence.
77.	To exempt from all or any part of the technical examination for the extension of the type rating in a licence.
78.	To prescribe practical flying tests and technical examination in lieu of satisfactory evidence regarding flying for the renewal of commercial pilot's licence.
79.	To satisfy as to the candidate's requirements regarding flying experience, practical flying tests and technical examination for the extension of licence.
80.	To exempt from all or any part of the requirements as to flying experience, practical flying tests and technical examinations to the holder of a commercial pilot's licence (flying machines) or a licence of a higher class.
81.	To exempt the holder of a senior commercial pilot's licence from the prescribed examinations.
82.	To exempt the holder of an Airline Transport Pilot's licence (flying machine) from all or any part of the requirements as to flying experience, practical flying tests and technical examination.
83.	To exempt an applicant who has qualified as an Instructor in flying machines from all or any of the prescribed requirements.
84.	To reckon one-half of experience upto a minimum of 100 hours towards the requirement of 200 hours flying to an applicant who has had flying experience as a pilot of public transport aircraft.

S.No.Nature of power.

- 85. To exempt from all or any of the requirements an applicant for a Flight Engineer's licence.
- 86. To modify medical requirements for issue or renewal of licences to members of the operating crew of an aircraft.
- 87. To appoint medical officer and prescribe form for medical examination for aircrew licences.
- 88. To cancel licences granted or renewed.

Investigation of Accidents.

- 89. To issue notice in writing to the owner, operator or hirer of the aircraft when an accident occurs.
- 90. To notify to the State of Registry of the occurrence of an accident to any of its aircraft.
- 91. To permit the removal of the aircraft involved in an accident.
- 92. To appoint a person or persons as Inspector or Inspectors of Accidents for the investigation of an accident.
- 93. To instruct the Inspector of Accidents to carry out an investigation of the accident.
- 94. To intervene at any stage of an investigation in order to make representation or to examine witnesses in the interests of the public.
- 95. To cause the whole or any part of an investigation report to be made public.
- 96. In case of an accident to an aircraft registered in any country other than Pakistan, to authorise an investigator appointed by the competent authority of that country to carry out an investigation.

Radio-telegraph Apparatus.

- 97. To approve radio-telegraph apparatus for use in aircraft and to approve the manner of its installations, bonding and screening of aircraft.
- 98. To approve the establishment, maintenance or change in character of air-route beacons.
- 99. To approve the establishment, maintenance or change in character of aerodrome lights.
- 100. To serve notices on the owners of false lights.

<u>S.No.</u>	<u>Nature of power.</u>
101.	To enter upon the place where there is a false light and to extinguish it forthwith.

XLog Books.

- 102. To decide the manner in which log books may be kept.
- 103. To issue journey log books.
- 104. To decide the form of log books.

Aerodromes.

- 105. To licence aerodromes.
- 106. To approve tariff charges for landing and housing at licenced public aerodromes (where such approval may be necessary).
- 107. To approve alterations to the landing areas, buildings or other structures or to withhold such approval.
- 108. To cancel or suspend aerodrome licences.
- 109. To approve the maintenance and marking of aerodromes.
- 110. To require the inspection of an aerodrome before the grant or renewal of a licence.
- 111. To determine the extent and conditions subject to which Government aerodromes may be opened to public use.

Rules of the Air.

- 112. To approve special conditions relative to the navigation of aircraft in the immediate vicinity of an aerodrome.
- 113. To permit operation of non-scheduled air transport services.
- 114. To prescribe rules and regulations regarding the operation of scheduled or non-scheduled air transport services.
- 115. To approve the insurance policy taken out against claims on the company as provided in the Warsaw Convention, 1929, and the Carriage by Air Act, 1934.

<u>S.No.</u>	<u>Nature of power.</u>
116.	To frame rules and regulations and to prescribe conditions of operation necessary for the safety of the public.
117.	To revoke, suspend or amend the terms of an air transport licence.
118.	To entitle a person to continue the operation of the licenced air transport service pending a final decision on his application.
119.	To direct a licensed operator to effect a landing at a place other than a scheduled stop on the route specified in his licence.
120.	To direct a licensed operator to accord priority in booking of persons or freight on any scheduled service.

(Source:- Government of Pakistan, Ministry of Defence,
(Aviation Division) Notifications No.AV-6(6)50,
dated the 28th February 1953.)

APPENDIX 5.LIST OF BILATERAL AGREEMENTS
CONCLUDED BY PAKISTAN.

<u>S.No.</u>	<u>Country.</u>	<u>Date of Agreement.</u>	<u>ICAO No.</u>
1.	Australia	3 June, 1949	708
2.	Burma	18 November 1947	611
3.	Ceylon	3 January 1949	691
4.	Denmark	9 November 1949	740
5.	Ethiopia	29 August 1952	960
6.	France (-India)	16 July 1947	465
	France	31 July 1950	831
7.	India	23 June 1948	650
8.	Iraq	20 June 1950	824
9.	Netherlands	17 July 1952	958
10.	Norway	23 June 1949	711
11.	Philippines	16 July 1949	714
12.	Sweden	6 May 1948	618
13.	Switzerland	17 March 1952	1015
14.	United Kingdom	27 July 1949	718
15.	United States (India)	14 November 1946	346
16.	Egypt	13 December 1954	1245

(Source: I.C.A.O. Aeronautical Agreements and Arrangements - Tables of Agreements and Arrangements registered with the Organization, (I.C.A.O. Doc. 7658-LGB/92, January 1955. First Annual Supplement, January 1956. Second Annual Supplement, January 1957. (I.C.A.O. Documents 7658-LGB/104 and 7757-LGB/115)).

APPENDIX 6.TARIFF OF LANDING AND HOUSING CHARGES AT GOVERNMENT AERODROMES.

(See rule 82)

1. The charges for landing and housing of aircraft, other than airships, at Government aerodromes shall be as follows:-

Type of Aircraft class.	Total weight.	Landing charge for single landing.	Housing charges (excluding landing charges)		
			Up to 24 hrs. rate	Monthly rate	Quarterly rate.
A	Up to 2500 lbs.	Rs. 1	Rs. 2	Rs. 40	Rs. 80
B	2501-7500 lbs.	5	10	200	400
C	7501-15000 lbs.	10	25	500	1,000
D	15001-25000 lbs.	25	40	800	1,600
E	25001-50000 lbs.	50	60	1,200	2,400
F	50001-100000 lbs.	150	100	2,000	4,000
G	100001-200000 lbs.	300	200	4,000	8,000
H	Above 200000 lbs.	750	300	6,000	12,000

2. For purposes of assessing landing and/or housing charges, the total weight of an aircraft shall be the maximum permissible weight as specified under the regulations of the State in which the aircraft is registered.

3. The payment of the landing charge shall entitle aircraft to (i) the use of the aerodrome for alighting and departure, (ii) the use of radio and night lighting installations at the aerodrome, (iii) the supply of all available information as to routes and weather conditions, and (iv) the services of the aerodrome personnel, if available, for manual assistance in guiding, housing or picketting the aircraft.

4. Any flight during the hours of daylight of which prior notice is given to the Aerodrome Officer and which is undertaken solely for the purposes of ascertaining the serviceability in the air of the aircraft and its equipment, shall be deemed to be a test flight and shall be exempt from the levy of a landing charge.

5. When an aerodrome is used during the hours of daylight for repeated landing a daily charge equivalent to five times the charge for a single landing for the class of aircraft concerned shall be levied in respect of each aircraft.

6. 50 per cent of the standard housing charges at daily, monthly or quarterly rates shall be charged for aircraft parked in the open. The daily parking charges will be levied for any period exceeding 12 hours up to 24 hours and thereafter for complete periods of 24 hours.

7. The charges will be due for payment at the times stated below:-

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|---|---|--------|
| (i) Landing charges .. | At the time of using the aerodrome, or, in the case of approved regular users, on demand at the end of each calendar month in respect of the charges accruing in the month. | |
| (ii) Charges for housing or parking at daily rates. | Ditto | Ditto. |
| (iii) Charges for housing or parking at monthly or quarterly rates. | In advance at the beginning of the month or quarter. If not so paid, charges will be recovered at daily rates. | |

8. When housing space which has been paid for in advance is not used, the space may be used for the housing of other aircraft and no refund shall be made to the lessee unless he is prevented by the housing of other aircraft from obtaining accommodation for his aircraft.

9. No housing charge shall be levied in respect of an aircraft housed in a Government hangar for the purpose of inspection by a Government Aircraft Inspector during the period certified as necessary for the inspection by the Aircraft Inspector, including such period not exceeding 3 days after the conclusion of the actual inspection as may be necessary for re-assembly consequent on the inspection.

(Source: Aircraft Rules, 1937, Schedule V Sec.B)

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