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AVIATION LAW IN ISRAEL

**By
Dan Moshe**

**A Thesis submitted to
the Faculty of Graduate studies and Research
in partial fulfillment of the requirements
for the degree of Master of Laws**

**Institute of Air and Space Law
Graduate Faculty of Law, McGill University
Montreal, Quebec, Canada
March 1995**

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This thesis is dedicated to my family.

Abstract

The Civil Aviation Laws in Israel began their development since the independence of the State in 1948. They comprise of five main Aviation Acts and various executive regulations which facilitate the conduct of the civil aviation industry.

The basic aviation act, although modified and supplemented by native Israeli aviation laws is the Air Navigation Act: It was drafted in the 1920's by Great Britain and was incorporated into the legal system of the newly born state.

A review of the development of civil aviation law in Israel has not yet been completed by a single study considering its fundamental provisions, namely providing analysis of international and domestic sources, aviation organizations and policies.

Historically, the political situation in the Middle East has exerted influence on Israel's civil aviation policies. Now that the region is on the verge of a new era of peace, Israeli policy in this field will further be affected. Undoubtedly, a new way of thinking will have to emerge in order to face the possibilities and challenges that peace will bring.

The purpose of this thesis is therefore to describe, analyze and evaluate the basic features of aviation law and aviation policies of Israel.

Résumé

Les lois concernant l'aviation civile en Israël ont été développées depuis l'indépendance de l'Etat en 1948. Elles comprennent les cinq principaux actes et divers règlements, facilitant ainsi la conduite de l'industrie de l'aviation civile. L'acte de base, modifiée et corrigée depuis sa création par le Royaume-Uni dans les années vingt, a été incorporé dans le code légal du nouvel Etat juif.

Un examen du développement des lois régissant l'aviation civile israélienne n'a jamais été effectué par une étude particulière, en tenant compte d'une analyse de sources internationales et domestiques ainsi que des organisation aériennes et de leurs politiques.

Historiquement, la situation politique au Moyen-Orient a exercé une influence sur la politique israélienne en matière d'aviation civile. A présent, alors que la région est sur le seuil d'une nouvelle ère de paix, la politique israélienne dans ce domaine sera encore plus affectée. Sans doute, une nouvelle façon de penser devra émerger de manière à faire face aux possibilités et aux défis que la paix apportera.

Le but de cette thèse est donc de décrire, analyser et évaluer les points majeurs des lois sur l'aviation civile et les politique de l'Etat d'Israël.

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Glossary of Israeli Legal Terms

Bagats - High Court of Justice cases.

Kitvei Amana - Israel's Treaty Series.

Kovez Takanot - Subsidiary Legislation.

Piskei Din (P.D) - Law reports of the Supreme Court of Israel.

Sefer HaHukim - Publication of Principal Legislation.

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Introduction

The State of Israel was established on May 14th 1948. Less than 24 hours later, the regular armies of five Arab States invaded the new born nation. With the war over, Israel focused its efforts on building the state for which it had struggled so long and so hard to regain.

One of first issues any newly born state usually deals with is the establishment of a basic legal system. The 1948 Law and Administration Ordinance provided that the law which had previously existed in Palestine before May 14th 1948, would remain in force insofar as there is nothing to contradict the said Ordinance or the other Laws which might be enacted by the State. Since Palestine was administered as a British mandate between the years 1922-1948, the English Common Law system greatly influenced the laws of Palestine, and eventually those of the newly-born state. Since the enactment of the Law and Administration Ordinance, many new native Israeli pieces of legislation have been introduced, replacing outdated British law which had been absorbed into the legal system. However, in air law, the British Air Navigation Act of 1920, although modified and supplemented during the past 45 years, is still in force and is the main aviation law act of Israel.

The Ministry responsible for the administration of civil aviation in Israel is the Ministry of Transportation, which also administers air and sea ports. While the overall policy regarding civil aviation matters is to be determined and guided by the Minister of

Transport, the execution of every day administration in the aviation field is carried out by the Civil Aviation Administration, a department within the Ministry of Transport.

The second body responsible for civil aviation is the Israeli Airports Authority, which under the Aerodrome Authority Act of 1977, was created as a body corporate, entrusted with the powers and obligations to maintain, operate, develop and manage the aerodromes of Israel.

One of the most important and vital functions of the State in regards to civil aviation, is to conclude international aviation agreements with other nations, facilitating, *inter alia*, international routes on which Israeli airlines may fly, together with services and rights which may be offered to foreign airlines.

Israel is a party to the 1944 Chicago Convention which defines generally the obligation to international air transport of participating states. However, the drafters of the Convention failed in their aim of including a multilateral agreement for the free exchange of the freedoms of the air. Thus, the states themselves had to facilitate the exchange of rights concerning aviation, by bilateral air transport agreement.

Israel signed its first bilateral air transport agreement with the United States in 1950, followed by other agreements with similar and different provisions with other states with whom Israel maintained diplomatic relations. Israel's principal aim in negotiating these bilateral agreements on air transport was to secure for the national airline, EL AL, a fair share of traffic on any international route in which they could fly. An evaluation and analysis of the basic features contained in these bilateral agreements are to be made by the thesis.

On May 11th 1949, Israel took its seat as the 59th member of the United Nations. As a state belonging to the international community, Israel took part in international conferences, signed international conventions and implemented them into Israeli law. As such, Israel ratified many aviation related conventions, including, *inter alia*, the 1944 Chicago Convention, the Convention on Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 1929, and its supplementary instruments. The Warsaw Convention was implemented into Israeli domestic law in 1962.

The belief that the Air Transport industry's inability to sustain more than one international and one domestic carriers was a popular one since the 1950's. It was followed by various regulations controlling the entry of new air companies into the aviation market. Since 1986, the domestic aviation policy of the Minister of Transport is undergoing a legal challenge in the Supreme Court of Israel, and it is under review today.

In 1993, an inter-ministerial Committee, reviewing the aviation policy of Israel, submitted its recommendations to the Minister of Transport, encouraging him to accept a change of policy which might significantly influence the aviation industry in the years to come.

Finally, Israel and her neighbors are on the doorstep to a new era of peace. Today's Middle East peace negotiations may be tomorrow's strong peace in the region, within which civil aviation would perform an important task.

The purpose of this thesis is to study the development of civil aviation law in Israel from its inception to the present. Chapter I sketches a brief and general

background on the State of Israel, including its history and the effect of international law on the law of the State. Chapter II analyses in detail the nature and different sources of Israeli aviation law, whether in the form of international aviation conventions or domestic sources originated in Israeli legislation. Chapter III scrutinizes the basic aviation law act of Israel, the Air Navigation Act, 1920, its provisions, amendments and implications for Israeli aviation. Chapter IV examines the different mechanism for creating and administrating aviation law in Israel and the main policy makers and their powers. Chapter V provides a brief review of the different aviation companies in the State of Israel. Chapter VI describes the development of international and domestic policy of Israel. Finally, Chapter VII deals with the prospects for the development of civil aviation in Israel. The thesis concludes with suggestions and recommendations reflecting the writer's own beliefs as to what are the appropriate ways to eliminate some of the shortcomings in Israeli civil aviation today.

PART 1

CHAPTER 1 - ISRAELI HISTORY AT A GLANCE.

1. The twentieth century and the emergence of the State of Israel.

In December 1917, British forces under the command of General Allenby entered Jerusalem, ending four centuries of Ottoman rule.

Under the League of Nations system of Mandates, Britain was entrusted with the Mandate for Palestine on July 24, 1922. While Britain's interest in Palestine was primarily strategic, its occupation and administration of the territory must be seen against the background of two sets of promises made by His Majesty's Government: one to the Arabs within the framework of McMahon-Hussein correspondence of 1915-1916, the other to the Jews in the Balfour Declaration of November 2, 1917. In the Balfour Declaration, Britain promised to view with favour the establishment in Palestine of a national home for the Jewish State in the whole of Palestine¹. The Declaration was included in the text of the Mandate, which also called for the development of self governing institutions.

Neither the Arabs nor the Jewish community in Palestine were formally represented in the Mandatory Government, which was administered directly by British

¹ For a survey of the evolution of the subject, see Friedman, I., *The question of Palestine 1914-1918: British, Jewish, Arab relations*, Schocken books, New-York, 1973.; Bentwich, "The Legal Administration of Palestine under the British Military Occupation 1920-1921", 1921, 1 *British Yearbook of International Law*, pp. 132-140.

officials from London. Consequently, the legal system in the Mandated territories was the English common law system.

Motivated by Zionism and encouraged by British sympathy for Jewish Zionist aspirations put forth by the Balfour Declaration, successive waves of Jewish immigrants arrived to Palestine between 1919 and 1939. The British authorities granted the Jewish and Arab communities the right to run their own internal affairs. Utilizing this right, the Jewish community elected in 1922 a self-governing body based on party representation.

The "Assembly of the Elected", as it was known, met yearly to review its activities and elect a National Council, which implemented its policies and programs. This body developed and maintained a country-wide network of educational, religious, health and other services for the Jewish population. The Jewish revival was strongly opposed from its outset by Arab nationalists. This strong resentment erupted in periods of intense violence in 1920, 1929 and 1936-1939. Until 1937 Britain believed that it could fulfill all of its obligations under the Mandate, and though a shift clearly occurred in its attitude regarding the Jewish national home, it allowed it to continue to develop (albeit with growing restrictions).

In 1937, the Peel Commission Report concluded that the Mandate was unworkable due to the contradictory demands and goals of the Jews and Arabs and the contradictory promises made by Great Britain. Nevertheless, Britain continued to struggle with the task for another eleven years.

The inability of Britain to reconcile the conflicting demands of the parties led the British Government in March 1947 to bring the Palestine issue to the United Nation to

be placed on the agenda of the United Nations General Assembly. Subsequently, a special committee was constituted to prepare proposals concerning the country's future. On 29 November 1947 the Assembly voted to adopt the UNSCOP Committee recommendations for the establishment of two States, one Arab, the other Jewish. The Arabs rejected it out of hand.

The Declaration of the State of Israel, signed on 14 May 1948 by members of the National Council representing the Jewish community in the country and the Zionist movement abroad, constituted the Nation's Credo; the historical imperatives of Israel's rebirth at that point of time; the framework of a democratic Jewish State built on liberty, justice and peace and the call for good neighborly relations with the surrounding Arab States, for the benefit of the entire region².

2. Political Structure

Israel is a parliamentary democracy which consists of three branches: the Legislature (The Knesset), the Executive (The Government) and the Judiciary (The Court System). It is based on the principle of separation of powers, with checks and balances built into the system. The Government is subject to the confidence of the Knesset, and the absolute independence of the Judiciary is guaranteed by law.

²On the Declaration of Independence see, Rubinstein, A., *Constitutional Law of Israel*, Tel Aviv, 1974, p.15.

A. Legislature - The Knesset.

The Knesset, Israel's parliament, sits in Jerusalem and consists of 120 members. It is the Legislature of Israel. The laws enacted by it are not subject to Judicial review, except with regard to points of procedure which the Supreme Court has on several occasions adjudicated. The Knesset's functions, *inter alia*, are to legislate and oversee the good functioning of the government. It operates in plenary sessions and through ten Standing Committees, each dealing with a specific aspect of the country's affairs.

In plenary sessions, general debates are conducted on government policy and activities, as well as on legislation submitted by the Government or individual members. To become an Act of Law, a Bill must pass three readings in the Knesset. In practice a great number of rules are established not by the Knesset itself, but by the government or its Ministers, by virtue of delegation of powers from the Knesset.

B. Executive - The Government.

Israel is a parliamentary democracy in which the government, which is the executive authority of the State, is subject to the Knesset's confidence and its supervision. The government's status, formation, composition and duties are regulated by the **Basic Law: The Government**, passed on August 6, 1968. According to Article 29 of the Basic Law, "The Government is competent to perform in the name of the State, subject to any law, any Act the performance of which is not assigned by law to another authority"³.

³*Sefer HaHukim*, 706 (1969).

In other words, under Israeli law the Government has absolutely unlimited powers, as long as it is not limited by the Knesset.

The Government is dependent on the Knesset for passage of all primary legislation, most of which is of government origin. Nevertheless, subsidiary legislation, unless involving expenditure, may be introduced by the government without Knesset approval.

C. Judiciary - The Court system.

The absolute independence of the Judiciary in Israel is guaranteed by law. The Supreme Court, located in Jerusalem, has nationwide jurisdiction. It is the highest Court of Appeal on rulings of lower Tribunals. Magistrates and District Courts exercise jurisdiction in civil and criminal cases. There is no trial by jury in Israel. In addition to constitutional and legislative development, a process of judicial interpretation of laws has evolved. It was significantly strengthened by the enactment of the **Foundations of Law Statute of 1980** which stipulated that when a legal question cannot be resolved through Statute, case law or analogy, the Court will decide it in the light of the principles of freedom, justice, equity and peace of Israel's heritage⁴.

⁴*Sefer HaHukim*, 1061 (1980).

3. The effect of English Law on the Law of Israel.

On July 24, 1922, the Mandate over Israel was entrusted to Britain and on August 10, 1922, the Palestine Order In Council was promulgated⁵. Article 46 of which opens as follows:

"The jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman law in force in Palestine on 1st November 1914, and such later Ottoman laws as have been or may be declared to be in force by public notice"⁶.

British rule over Palestine ended on May 15, 1948⁷. On the previous day, the National Council convened and decreed the establishment of the State of Israel, commencing with the relinquishment of the British Mandate.

On May 19, 1948, **The Law and Administration Ordinance** was enacted. Section eleven provides:

"The law which existed in Palestine on the 5th day of Iyar, 5708⁸ (14th May 1948) shall remain in force insofar as there is nothing therein repugnant to this ordinance or to the other laws which may be enacted by or on behalf of the provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities"⁹.

Accordingly, by Section eleven, Mandatory and Ottoman laws both have been absorbed into the laws of Israel and actually shaped the laws of the new State. Although

⁵For a survey of the evolution of the subject, see Malechi, *The history of Law in Israel*, Tel Aviv, 1953, (in Hebrew).

⁶*Laws of Palestine*, Vol.A, p.385.

⁷In the wake of the U.N. resolution 181 of November 29, 1947, which resolved an end to the British Mandate no later than August 1, 1948.

⁸According to the Jewish calendar.

⁹1 *Laws of the State of Israel*, P.9.

new and diverse Israeli legislation has been introduced that replaces English and Ottoman laws, in Air Law, the original English original legislation, namely the **Air Navigation Act of 1927¹⁰** is still in force in Israel law, although many modifications have been made to its original text to fit the needs of the new State.

¹⁰The act will be discussed at length in a later chapter.

CHAPTER 2 - THE NATURE, ORIGINS AND SCOPE OF ISRAELI AVIATION LAW

1. General.

Aviation today is a global, growing industry which has remained throughout its history at the cutting edge of technology. In the short period since 1945, air transportation has grown into an industry essential to tourism and economic development. Civil aircraft carried 1.17 billion passengers in 1993, up from a mere nine million in 1945. Passenger traffic is forecast at 1.8 billion by 2001. Today the industry generates 230\$ billion in annual revenues and employs 1.5 million people worldwide. At any given hour of the day, some 10,000 civil aircraft are in flight around the globe¹.

With the growth of the industry, the world faced many potential problems, namely air congestion as a result of the growing number of aircraft. There are currently 10,000 turbo jet, 2000 turbo prop and 600 piston engine airplanes on register files as well as 320,000 general aviation aircraft. Beyond the technological cooperation, aviation creates many social relationships between individuals, States and organizations. Aviation is by nature an international field which crosses a wide spectrum of different systems related to subjects as diverse as criminal law, contract law, tort law, etc. All those areas are subject to potential problems and conflicts which explain the need for rules of conduct which gives the participants the ability to solve conflicts when needed.

¹*Aviation Week and Space Technology*, October 31, 1994, p.46.

2. Sources of Israeli Air Law.

A. International Air Law.

Definition and nature of international air law.

J.C.Cooper indicated that air law is largely a development of the 20th Century, and in general it may be said that air law concerned with certain areas in space above the earth's surface, with certain human activities in those areas. Cooper suggested that the scope of air law can be seen to include man-made and man-controlled movement of any flight instrument in all space above the surface of the Earth. He also suggested a definition to air law:

"Air law comprises the body of legal principles and rules, from time to time effectively, which govern and regulate:

first-(a) flight-space; (b) its relationship to land and water areas on the surface of the Earth; (c) the extent and character of the right of individuals and State to use or control such space for flight or other purposes.

Second-(a) flight; (b) the instrumentalities with which flight is effected, including their nationality, ownership, use or control; (c) the surface facilities used in connection with flight, such as airports and airways.

Third - (a) the relationship of every kind affecting or between individuals, communities or States arising from the existence or use of the area of flight (flight-space), or the instrumentalities or facilities used in connection therewith or to make flight effective"².

International air law "presents in a microcosm all the fundamental problems of international law as a whole: sovereignty, jurisdiction, territory, the relationship of State and other international legal entities, nationality, unification of private laws, many problems of conflict of laws, and so on"³. Finally, Shawcross and Beaumont suggested

²Cooper, J.C., *Exploration in Aerospace Law*, (Edited by Vlasic, I.A., 1968), pp. 14-15.

³Jennings, R. Y., "Some aspects of the international law of the air", *Recueil des Cours de l'Académie de droit international de La Haye*, (1949), Vol. 75, p.513.

that "International air law is a combination of public and private international law which purposes are to provide a system of international regulation of international civil aviation, and to eliminate conflicts of inconsistencies in municipal air law"⁴.

Aviation creates legal relationships with several foreign elements. For instance, an Israeli citizen living in Canada purchases a flight ticket in Paris, a Paris - South Africa route to be performed by SAA. If he wants to put forward a claim for an injury he sustained during the flight, which laws prevail?. International Air Law contributes to solve such potential problems associated with aviation.

Air Law - Origins.

Sand indicated that it is generally agreed that the first air law promulgated was an ordinance in Paris, prohibiting hot air balloons flight over Paris without permits as of April 23, 1784, and that the first regulation for safety in air navigation was made in 1819, requiring balloons to be equipped with parachutes⁵.

The main international decision on air law took place in the Institute of International Law, where in 1902, the theory of the 'Freedom of the Air' was introduced. The first diplomatic correspondence concerning international aviation law dates back to 1870 when a letter addressed by Bismarck to the French Government, declared sovereign rights in the airspace above Germany. The increase in the number of aircraft and their

⁴Shawcross & Beaumont, *Air Law*, 3th ed., Butterworths, London, 1966, p.23.

⁵Sand, P. H., *An historical survey of the Law of flight*, 4nd ed., New York, 1961, p. 5.

ability to cross borders urged the international community in the beginning of the 20th century to create some kind of international regulation of air navigation.

On the invitation of the French Government, a Conference was held in Paris attended by 38 States. As a result of this Conference an International Convention was signed: "**The Convention On The Regulation Of Air Navigation 1919**". The convention established basic principles of air law which are still in force today.

B. Conventional International Air Law.

General.

International Law underwent major developments after the Second World War. After the Second World War many States wanted to move toward the codification of customary international law. Before the war only 20% of the norms of international law were codified as opposed to 80% today. International Conventions, or Treaties, are the main method by which a State can create international law. Treaties may be bilateral (between two States) or multilateral (between many States, as the UN Charter, 1945 and the Vienna Convention on the Law of Treaties, (1969). "International agreement" can be defined as an agreement between two or more States or International Organization that is intended to be legally binding and is governed by International Law.

The terminology used for "International Agreement" is varied. Among the terms used are treaty, convention, protocol, covenant, charter, statute, act, declaration, memorandum of agreement.

A treaty is, in essence, an understanding between legal equals and it may cover any aspect of the international relations between the parties. Treaties are the means by which States can create certain and specific obligations, and because they are the result of a conscious and deliberate act, they are more likely to be respected. Treaties are now the most important source of International Law.

International Treaties within the Israeli Legal System.

Feinberg made a distinction between a Declaratory and Constitutive Treaties in international law. The former includes those treaties which are based on international custom and codify them. These indirectly form part of Israeli law by virtue of the custom which underlies them.⁶ This principle was established in *Sylvester vs Attorney General*⁷. On the other hand, constitutive treaties lay down new rules of international law, to which there is a need for specific transformation into Israeli law. Lapidoth pointed out that the Supreme Court of Israel has stated several times that a Constitutive Treaty is not incorporated automatically into Israel law⁸. The best example is in *Custodian of Absentee Property vs Sumarah Et Al* where the Court ruled that:

"The Rhodes Agreement is a treaty between the State of Israel and another State. Whatever may be the effect and validity of such a Treaty from the point of view of international law, it does not constitute a law to which our Courts will have recourse or which they will enforce. The rights it

⁶Feinberg, N., "Declaratory and Constitutive Treaties In International Law", (1967), 24 *Hapraklit*, P.433.

⁷1 *Pesakim* 513.

⁸Lapidoth, R., "International Law within the Israeli Legal System", *Israel Law Review*, Vol. 24, 1980, p.420.

confers and the duties it imposes are those of the States which concludes the agreement, and only those States can realize these rights and duties through the special means available for the implementation of international treaties. Such a treaty is in no way within the Jurisdiction of the Courts in the State, unless and to the extent that the Treaty or the rights and obligation it entails have gone through the melting pot of the legislation of the State and have assumed the form of binding law"⁹.

This basic principle has been reiterated by the Supreme Court in other cases such as **Reitzok vs. Attorney General**¹⁰, **Maccabi vs. State of Israel**¹¹ and **Abu Aita vs. Commander of the Judea and Samaria**¹².

Transformation of an international treaty into the Israeli legal system.

A treaty becomes a law in Israel by an adoption of a specific piece of legislation by the Israeli Parliament - The Knesset, which adopts a law transforming the provisions of a particular international treaty into national law. Thus the **Carriage by Air Law 1962**¹³, has brought into Israel's legal system the **Convention for the Unification of Certain Rules Relating to International Carriage by Air** signed on 12 October 1929. **Lapidoth** pointed that in fact, "the government refrains from ratifying any treaty on the international plane until the Knesset has passed the legislation required for its

⁹1956, 10 P.D., 1829.

¹⁰1959, 13 P.D., 859.

¹¹1977, 31(1) P.D., 770.

¹²1983, 37(2) P.D., 197.

¹³*Sefer HaHukim*, 75 (1962).

implementation into Municipal Law"¹⁴. This is to prevent, any conflict between municipal law and the international legal commitments of the State.

In other cases, treaties are transformed into Israeli law by means of regulations or orders which are published in *Reshumot*¹⁵. In many cases the Ministerial Act requires approval by the government or by one or more of the Knesset Committees. Even after the provisions of a treaty have received the effect of Municipal law, their international origin is still discernible. Thus the courts tend to interpret the transforming laws in accordance with the interpretation given in international law to the provisions of the treaty. This issue was discussed in detail in an important case: **Teichner and Dadon vs Air France**¹⁶. The petitioners were amongst the passengers of the Air France flight which was hijacked to Entebbe in 1976. The Warsaw Convention, adopted in Israel by the **Carriage by Air Law 1962**, applies to the action for damages which was submitted. Section 29 of the Convention establishes a period of two years within which one can submit his claim, but the petitioners argued that it could be extended in this case. The Supreme Court dismissed the argument, and held that the period of two years stipulated in article 29(1) is absolute and exhaustive.

¹⁴Lapidot, *supra*, note 8 at 461.

¹⁵*Reshumot* - The Official publication of The Knesset.

¹⁶1987, 41(1) *P.D.*, 589.

Air Law Conventions and Their Implementation Into Israeli Law.

Private International Air Law Instruments.

The Warsaw System.

Shawcross and Beaumont pointed out that the object of the International Air Law embodied in Conventions is to put an end to the conflict of laws which can arise in the international system¹⁷. Milde indicated that the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, "has been justly hailed as the most successful unification of private law and has achieved almost universal international application"¹⁸. The system represents an international legal regime governing the liability of air carriers for injury or death of their passengers, for damage to or loss of baggage and cargo, and any losses caused by delays in international carriage of passengers, baggage or cargo. The Warsaw regime is set out in a number of International Instruments, collectively known as the "Warsaw System". This system consists of the original Warsaw Convention of 1929 and a series of Protocols for its amendment. The Convention has been amended or supplemented by Seven International Instruments: The Hague Protocol of 1955¹⁹, Guadalajara Convention of 1961²⁰,

¹⁷Shawcross & Beaumont, *supra*, note 4 at 42.

¹⁸Milde, M., "Warsaw System And Limits of Liability-Yet Another Crossroad?", *Annals of Air and Space Law*, Vol. XVIII, 1993, p.201.

¹⁹Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929), Signed at the Hague on 28 October 1955. The Protocol came into force on 1st August 1963. As of September 1994, there were 112 Parties to it. Israel deposited its instrument of ratification on 5th August 1964. For the text of the Protocol, see ICAO Doc. 7632.

²⁰The Convention, Supplementary to the Warsaw Convention For the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier, Signed at Guadalajara on September 18th 1961. The Convention came into force on 1th may 1994.

Guatemala City Protocol of 1971²¹, and the Montreal Protocols No 1²², 2²³, 3²⁴, and 4²⁵ of 1975. Apart from these documents, notice should be given to an Inter-Carrier Agreement, separate from the "Warsaw System", namely the "Montreal Agreement" of 1966 which is an arrangement among the carriers operating from, to, or with an agreed stopping place in the U.S.²⁶.

The Warsaw Convention represents a model of essential rules which govern most cases of international carriage by air. *Inter alia*, it deals with the definition of

As of September 1994, 68 States were parties to it. Israel deposited her instrument of ratification on 27th November 1980. For the text of the Convention, see ICAO Doc.8131.

²¹The Protocol to Amend the Convention For the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12th October 1929 as Amended by the Protocol done at the Hague on 28th September 1955, Signed at Guatemala City on 8th March 1971. The entry into force of the Protocol requires 30 ratification. As of September 1994, only eleven States had ratified it. Israel did not ratify the Protocol. For the text of the Protocol, see ICAO Doc.8932\2.

²²Additional Protocols No.1 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, Signed at Montreal on 25 September 1975. As of September 1994, 28 States had ratified the Protocol. It is not in force. 30 ratifications are required. Israel signed the Protocol on 25 September 1975, and deposited the instrument of ratification on 16 February 1979. For the text of the Protocol, see ICAO Doc.9145.

²³The second Montreal Protocol to amend the Warsaw Convention, signed at Montreal on 25 September 1975. The Protocol is not in force. As of September 1994, 28 ratifications of States has been submitted. Israel signed it on 35 September 1975, and deposited its instrument of ratification on 16 February 1979. For the text of the Protocol, see ICAO Doc.9146.

²⁴The third Protocol to Amend the Warsaw Convention, Signed at Montreal on 25 September 1975. The Protocol is not in force. Israel signed the Protocol on 27 February 1988. For the text of the Protocol, see ICAO Doc.9147.

²⁵The fourth Montreal Protocol was signed at Montreal on 25 September 1975. It is not in force. As of September 1994, 25 ratification had been submitted. Israel deposited its instrument of ratification on 16 February 1988. For the text of the Protocol, see ICAO Doc.9148.

²⁶The Agreement placed a new level of liability limit for each passenger in case of death or bodily injury of \$75,000 inclusive of legal fees. Another provision in the agreement states that the carriers party to it must not avail themselves of any defense under Article 20(1) of the Warsaw Convention. For a survey of the agreement see, Matte, N. M., *Treatise on Air-Aeronautical Law*, ICASL, McGill University, Montreal, 1981, p.468.

international carriage, documents of carriage, rights and duties of Consignors and Consignees of cargo, the liability regime of the carrier. However, as the title of the Convention indicates it is concerned with only "Certain Aspects" of private law governing international carriage by air. Mankiewicz enumerated these areas which were left outside the Convention: It does not deal with legal capacity of the parties to the contract, the form, validity, cancellation, voiding, violation and non-execution of the contract, the legal status of the carrier and his agents. All these matters were left outside the Convention to be decided by the applicable National Laws, and by resolving conflicts of law²⁷.

Accepting as fact that it does not solve any possible problem, the contribution made by the Convention is such that without it "the International Civil Aviation would be an unregulated playground of conflicts of laws and conflicts of Jurisdiction"²⁸.

The Warsaw Convention came into force on 13 February 1933. As of September 1994, there are 126 Parties to it²⁹. Israel deposited the Instrument of Ratification on 8 October 1949 and the effective date of admission to the convention is 6 January 1950.

²⁷Mankiewicz, R.H., *The Liability Regime of The International Air Carrier*, Kluwer, 1981, p. 34.

²⁸Milde, *supra*, note 18 at 201.

²⁹"Status of Certain International Air Law Instruments", *ICAO Journal*, Vol.49, September 1994, p.63.

The Implementation of the Warsaw Convention instruments into the Israeli Legal System.

The major legislation relating to Air Transportation is the **Air Transport Law of 1980** which replaced its predecessor, the **Air Transport Law of 1962**³⁰. The 1962 law was the domestic legislation which dealt with the implementation of the Warsaw Convention as amended by the Hague Protocol of 1955. The 1980 law applied the Warsaw limits also to Domestic Air Transport. The first section of the 1962 Air Transport Law defines the convention, the protocol, the meaning of carriage by air, and State territory . Section 9 exempts the carrier, his agents and his employees from any other liability outside the provision of this law. Section 14 states that the limit for submitting claims under the Convention for damages is as mentioned in article 29 of the Warsaw Convention.

Carriage by Air (Amendment) Law 1978³¹ was passed to implement the changes made to the Warsaw Convention system since 1962. The first section inserted new definition to The first section of the 1962 Transportation Law adding the First and Second Montreal Protocols of 25 September 1975. The second section empowered the Minister of Transport to notify in Reshumot, (The Knesset's official publication), the coming into force of the First Protocol with respect to the State of Israel, and then the provisions of the Convention, as amended by the First Protocol shall apply to air carriage.

³⁰*Sefer HaHukim*, 374 (1962).

³¹*Sefer HaHukim*, 866 (1978).

According to section 8, in awarding any payment in an action under this law, the Court may at first fix the amount due by the defendant in foreign currency as determined in the Convention or in the Protocols. In the Judgment or in a later decision, the Court shall fix the amount of the debt in Israeli currency according to the rate of exchange on the date of the Judgment.

The Air Transport law of 1980³² replaced the Air Transport Law of 1962. The law incorporated the changes made in the Warsaw System up to 1980 into the Israel Legal System.

Section 4 of the law empowered the Minister of Transportation to notify in Reshumot the coming into force of any instrument with respect to the State of Israel and that from the date he so published, these provisions would apply to carriage by air.

Section 5 applies the Warsaw liability limitations also to Domestic Air Transport, subject to two conditions:

1. The compensation the carrier will be liable is determined by the limits indicated in the Warsaw Convention as amended by the by the Hague Protocol of 1955.³³
2. From the date the Transport Minister announced the coming into force of the Guatemala or the Montreal Protocol, the level of compensation will follow the limits of liability indicated in these documents.

³²*Sefer HaHukim*, 893 (1980).

³³Section 5(1).

As of September 1994 the Montreal Protocol is not yet in force. Israel signed and ratified the Protocol. The Guatemala Protocol is not yet in force and Israel did not ratify it.

Israeli Case Law on the Warsaw Convention.

The volume of the Warsaw Convention claims per year in Israel's court is up to 50 liability for injury claims which are usually minor in scope, and several hundred cargo claims. Leshem explained that in fact many hundreds of claims are settled out of Court and only 5% of the law suits filed actually reached trial of First Instance and fewer even reviewed by an appellate court³⁴.

The Supreme Court landmark decision on the Warsaw Convention is **Teichner And Others vs Air France Airlines**³⁵, where the Supreme Court looked into the cause of action under the Warsaw Convention. The appellants in this case travelled in a plane belonging to Air-France on flight 309 from Israel to France on June 27, 1976. Following a stopover in Athens, the plane was hijacked to Entebbe, Uganda. The appellants were held hostage for several days in the Entebbe Airport Terminal. They were freed by the Israel defence forces in "Operation Jonathan" on July 4th, 1976. Teichner and Dadon filed suit for damages in the Jerusalem District Court. On April 30th 1982, two other appellants filed suit for damages in the Tel-Aviv District Court. In both cases Air France moved for a summary judgement arguing that more than two years had elapsed between

³⁴Leshem, M., "Israel: Recent Aviation Law Development", *Air & Space Law*, Vol. xvii, No 4/5, 1992, p.178.

³⁵1987, 41(1) P.D., 589.

the hijacking and the submission of the suits, hence the suits were time barred by Section 29 of the Warsaw Convention. The defendant used Section 15 of the **Air Transport Law 1980** which indicates clearly that notwithstanding any other law, the time limit after which the claimant will lose his right to sue is the time limit indicated in Article 29 of the Warsaw Convention. The appellants claimed that the damage caused on the flight was revealed to them only after some time, and that according to section 8 of the **Prescription Law**, the prescription period begins on the day on which the facts which constitute the cause of action became apparent³⁶. The Jerusalem District Court allowed for the Air France defence and struck out the suit while the Tel-Aviv District Court rejected it. All parties appealed to the Supreme Court of Israel, which heard all the appeals concurrently. The main question before the Judges was the interrelationship between Section 29(1) of the Warsaw Convention, that became a part of Israel domestic law by virtue of the **Air Transport Law 1962**, and the prescription law. The Supreme Court reviewed extensively the global literature and case law, especially the massive U.S law and came to the conclusion that the decision in this case should be based on an examination of the convention's provisions and its intended objectives. This examination lead Levine J. To the unequivocal conclusion that the convention's final version was selected by the drafters to express the idea that nothing can interfere with the running of the two year period granted by Article 29(1). Both the legislative background and the language of that Article show that the drafters were aware of the problems stemming from a variety of prescription periods and causes of extension provided for by different

³⁶*Sefer HaHukim*, 46 (1956).

nations Legal systems, and decided on a version which would eliminate the possibility of any extensions.

The Court ruled that when a court faced interpretation of an International Convention, and especially a Convention such as the Warsaw Convention to which many States are parties, the Court must follow the object and the intention of its drafters, and only by this way a correct interpretation could be achieved. This lead the Court to rule that Article 29 of the Convention is final and exhaustive.

The interpretation of Article 26(3) of the Warsaw Convention came up in **C.A.L Cargo Airlines Ltd vs. Malkin Electronics International Ltd**³⁷. In this case, Malkin electronics International was an importer of electronic appliances and C.A.L is an Israeli Airline. Malkin imported several shipments of television sets and it was apparent to him upon delivery that some of the television sets had been damaged. A timely written notice was never given to C.A.L. However, a telephone notice was given. In the Tel Aviv District Court, Malkin contended that the telephone notice fulfilled the requirement of Article 26 (3) of the Warsaw Convention. Leshem pointed out that it seemed rather odd that such a contention could be argued in view of the very clear language of Article 26(3) which requires notice in writing³⁸. However, the Tel-Aviv Magistrate developed an interesting theory which accepted the telephone notice as acceptable notice under Article 26(3) .The court's reasoning was based on its interpretation of the purpose of the Article. The Court held that the purpose was to give the air carrier details of loss or damage and

³⁷(1989) *Pesakim*, 365.

³⁸Leshem, M., "Article 26(3) of The Warsaw Convention: The Extent of Judicial Interpretation", 15 *Air Law*, Vol. XI, 1990, pp. 100-101.

that notice should be given to as soon as possible. The Court then, developed the idea that insisting on the formalistic requirement could be understandable in 1929 when modes of communication were undeveloped. However, the Court continued, the purpose of giving full, credible and fast information could be met today, thus fulfilling the purpose of the Article.

On appeal to the Tel-Aviv District Court, sitting as an Appellate Court, the Court unanimously reversed the Judgement of the Magistrate Court. The court was very clear in asserting that the requirement of written notice could not be met by verbal notice. As the Court emphasized, the Magistrate Court's decision would have made the entire area of cargo claims a nightmare for all parties involved and would have made quick and satisfactory disposal of claims impossible.

Public International Air Law Instruments.

The Chicago Conference And Its Instruments.

General.

After the Second World War, the United States of America and its allies turned their attention to the situation the World would face in the postwar era. The extensive use of air transport during the war had eased anxieties about flying and pointed to the commercial potential of civil aviation. In November 1944, President Franklin D. Roosevelt of the United States of America invited delegates from 54 nations to draft and sign what came to be called the "Chicago Convention". The Preamble to the Convention

on International Civil Aviation, Signed at Chicago on 7th December 1944, provides the reasoning for it:

"Whereas the future development of International Civil Aviation can greatly help to create and preserve friendship and understanding among the Nations and people of the World, yet its abuse can become a threat to the general security; and

"Whereas it is desirable to avoid friction and to promote cooperation between Nations and peoples upon which the peace of the world depends...

"Therefore, the undersigned Governments, having agreed on certain principles and arrangements in order that International Civil Aviation may be develop in a safe and orderly manner and that International Air Transport services may be established on the basis of equality of opportunity and operated soundly and economically;

"Have accordingly concluded this Convention to that end"³⁹.

Fifty years passed since those 52 States participated in the Chicago Conference.

Dr.Assad Kotatite, the President of the ICAO Council wrote that "This is undoubtedly a unique achievement in the history of the development of International Legal Rules, and the Chicago Conference can be considered the most successful, the most productive and the most impressive of all International Conferences"⁴⁰. On 7 December 1944 the "Final Act" of the Conference produced the text of four treaties and 12 technical annexes.

The treaties were: the Interim Agreement on International Civil Aviation, The Convention on International Civil Aviation, The international Air Services Transit Agreement and The International Air Transport Agreement.

³⁹ICAO Doc. 7300/6.

⁴⁰ICAO Journal, Vol. 49, September 1994, p.2.

The Convention on International Civil Aviation.

The Ninety-Six Articles of the Convention are divided into four parts and twenty-two chapters dealing with a variety of subjects. The first part titled "Air Navigation", includes general principles, the application of the convention, nationality of aircraft, overflight the territory of Contracting States, measures to facilitate air navigation, and International Standard and Recommended Practices. The second part establishes the International Civil Aviation Organization. The third part titled "International Air Transport", includes three chapters dealing with information and reports that member States must give the ICAO, airports, other air navigation facilities, Joint Operating Organizations and pooled services by which the Convention expressly recognizes the right of contracting States to set up joint air transport operating organizations. Finally, the fourth part deals with such provisions including questions of disputes and default, the annexes, and formalities as to the ratifications, adherence, amendments, and denunciations of the Convention.

The Convention on the International Civil Aviation was signed at Chicago on 7 December 1944. It came into force on 4 April 1947, the Thirtieth day after deposit with the Government of the United States of America of the twenty-sixth instrument of ratification or notification of adherence in accordance with Article 91(b) of the Convention. As of September 1994, 183 States were parties to the Convention. Israel deposited its instrument of adherence on 24 May 1949.

Annexes to the Chicago Convention.

Since 1947 the ICAO Council has developed and adopted 18 Technical Annexes to the Chicago Convention. **Buergenthal** explained that the "legislative functions of ICAO are in large measure confined to highly technical problems of a non-political nature" and that the most important consist of the formulation and adoption by the ICAO Council of International Standard And Recommended Practices by virtue of Article 37 of the Chicago Convention⁴¹. The Convention did not define the meaning of the terms Standard or Recommended Practices. The definition was given by the ICAO Assembly where it defined "Standard" as "Any specification for physical characteristics, configuration, material, performance, personal or procedure, the uniform application of which is recognized as necessary for the safety or regulation of International Air Navigation and to which Member States will confirm in accordance with the Convention"⁴². The same resolution describes a "Recommended Practice" as the specification which is recognized as desirable in the interest of safety, and to which Member States will endeavor to comply in accordance with the convention. Under Article 38 of the Chicago Convention, any State which finds it 'impracticable' to comply shall give immediate notification to ICAO of the difference between its own practices and those established by the ICAO Standard or Practices. As to the legal status of the ICAO Standard and Recommended Practices they may be called 'soft law'. They are not binding like treaties and actually they may be rejected completely by Member States.

⁴¹**Buergenthal, T., *Law-Making In The International Civil Aviation Organization*, Syracuse University, 1969, p. 57.**

⁴²**ICAO Assembly Resolution A1-31, 1947.**

However, they are not without a legal force: there is a legal commitment under Article 37 of the Chicago Convention that States will comply as far as practicable. Under Article 38, States are obligated to notify of any differences.

As of December 1994 there were 18 Annexes to the Convention, dealing, *inter alia*, with various subjects as personnel licensing, meteorological services, units of measurements, operation of aircraft, aircraft nationality and registration marks, airworthiness of aircraft, aeronautical telecommunications, air traffic services, aircraft accident investigation, aerodromes, environmental protection, the safe transport of dangerous goods, and the security of civil aviation.

In Israel, many of the Annexes were implemented into domestic law. For example, by virtue of Section 30 of the Air Navigation Act 1927, the Transport Minister published the Civil Aviation Regulation (Aircraft Noise), 1977⁴³, and the Civil Aviation Regulation (Transport of Dangerous Goods by Air) 1983⁴⁴, which implemented Annex 16,18 into domestic law in Israel.

Amendments to The Convention.

The procedures for adopting an amendment and for its entry into force are governed by the International Law of Treaties in general and when dealing with the Chicago convention - by its Article 94. Burgenthal claims Article 94 to be an extremely poorly drafted which consequently made it the subject to more attempted amendments

⁴³Kovez-Takanot, 3737, 1977, p.2156. Amended and Supplemented in Kovez-Takanot, 4113, 1980, p.1399; 4243, 1981, p.1125; 5051, 1987, p.1243 and by Kovez-Takanot, 5459, 1992, p.1345.

⁴⁴Kovez-Takanot, 4548, 1983, p.340.

then any other provision of the Convention. The problem with the wording of the article is that it can be interpreted in more than one way⁴⁵. The exact meaning is that any amendment to the Convention must be approved by a two-thirds majority vote of the Assembly. As a rule of international law, the amendment will only be binding upon States that have ratified it and it will enter into force as soon as a sufficient number of States, as established by the Assembly, have ratified it. The number of States needed to bring an amendment into force may not be less than two-thirds of the total number of the Contracting States.

Milde indicated that since 1945 many situations have arisen which have called for amendments to the Chicago Convention, most of them but not all deal with constitutional matters of the Organization⁴⁶.

After an amendment comes into force it would be applicable between those States that ratified or adhered to it, but not between States that did not. As Milde indicated, more States are party to the Convention and it becomes more difficult for an amendment to come into force. A review of the amendments to the Convention would enforce Milde's conclusion. Constitutional Amendments were, *inter alia*, made to Articles 45, 48, 50⁴⁷, 56. Milde indicated that the first time in which the amendment had not

⁴⁵Burgenthal, *supra*, note 41 at 201.

⁴⁶Milde, M., "Chicago Convention: 45 Years Later; A Note on Amendments" *Annals of Air and Space Law*, Vol XIV, 1989, p.203.

⁴⁷Article 50(a) was amended several times since 1947 to increase the membership of the ICAO Council. The last time was in 1990, when the number increased to 36. Israel did not ratify the 1990 amendments.

addressed constitutional but substantive issues is Article 83bis⁴⁸. It enables the transfer of certain duties and functions with respect to an aircraft from the State of registration to the State of the operator. As of September 1994, this important amendment was not yet in force. 98 ratifications are required whereas only 83 have been deposited. Israel ratified the Protocol on 25 February 1983.

Finally, Article 3bis was adopted by the 25th (Extraordinary) Session of the ICAO Assembly on 10 May 1984. It was adopted by 152 Member States of ICAO unanimously. To come into force 102 States must ratify the amendment. As of September 1994, this important amendment was not yet in force. Only 75 ratifications had been deposited. Its main purpose is to include a specific provision forbidding the use of weapons against civil aviation, and specifically addressing the problem of intercepting civilian airlines.

"Aviation Security" Instruments and their implementation into Israel Legal System.

In *United States of America vs. Cordova*⁴⁹, a situation developed on an aircraft flying over international waters, when two passengers began fighting in the rear of the aircraft, attracting other passengers to gather around them. The weight increased in the rear and the pilot faced difficulties in restoring control of the aircraft. This situation actually put the aircraft and its passengers in danger. Upon arrival, the two were handed to the U.S Justice Authorities to be arrested. However, they were released as a result of the absence of any law covering these unlawful acts over international waters. The

⁴⁸Milde, *supra*, note 46 at 211.

⁴⁹*United States v. R*, 346 US 1 (1950).

question of Jurisdiction arose again in *Ruest vs. La Reine*⁵⁰. These situations puts the aircraft and its passengers, especially when flying over the High Seas, in a lawlessness position, where no international law is applicable.

As Dempsey states, current international law which aims at controlling aerial terrorism is based upon five Multilateral Conventions drafted outside the framework of the Chicago Convention, mainly because the problem was not anticipated at the time the 52 Delegates signed the Chicago Convention⁵¹. These Conventions were adopted under the International Civil Aviation Organization's auspices:

1. **Convention On Offenses And Certain Other Acts Committed On Board Aircraft, Signed At Tokyo, on 14 september 1963. (the Tokyo Convention)**⁵².
2. **Convention For The Suppression Of Unlawful Seizure Of Aircraft, Signed At The Hague, On 16 December 1970. (The Hague Convention)**⁵³.
3. **Convention For The Suppression Of Unlawful Acts Against The Safety Of Civil Aviation, Signed At Montreal, On 23 September 1971. (Montreal Convention)**⁵⁴.
4. **Protocol For The Suppression Of Unlawful Acts Of Violence At Airports Serving International Civil Aviation, Supplementary To The Convention For The Suppression Of Unlawful Acts Against The Safety Of Civil Aviation, Done At Montreal, On 23 September 1971, Signed At Montreal On 24 February 1988. (Montreal Protocol)**⁵⁵.

⁵⁰*Ruest c. La Reine*, (1952) 104 SCC 1.

⁵¹Dempsey, P. S., "Aerial Piracy and Terrorism: Unilateral and Multilateral Responses to Aircraft Hijacking", 2 *Journal of International Law*, 1987, p. 427.

⁵²ICAO Doc. 8364.

⁵³ICAO Doc. 8920.

⁵⁴ICAO Doc. 8966.

⁵⁵ICAO Doc. 9518.

5. Convention On The Marking Of Plastic Explosives For The Purpose Of Detection, Signed At Montreal, On 1 March 1991. (Montreal Convention)⁵⁶.

The Tokyo Convention deals primarily with jurisdiction issues surrounding dangerous acts on board of aircraft, and was drawn up in order to compensate for the inadequacy of national legislation to govern the problem raised by the commission of unlawful acts on board aircraft⁵⁷. The Convention was the first step toward suppression of unlawful acts on board aircraft. However, the convention has been criticized for some lacunas. Dempsey⁵⁸ pointed out that it failed to declare hijacking an international crime, and to create a definitive obligation on behalf of its signatories to prosecute or extradite the offender⁵⁹.

It is evident that one of the crucial challenges which faced the International Civil Aviation during the end of the Sixties was the task of protecting and safeguarding itself against acts of unlawful interference and particularly hijacking⁶⁰. Milde indicated that

⁵⁶ICAO Doc. 9571.

⁵⁷Matte, N. M., *Treatise on Air-Aeronautical Law*, McGill University, Montreal, 1981, pp. 334-349.

⁵⁸Dempsey, *supra*, note 51 at 402.

⁵⁹The Tokyo Convention was open to signature on 14 September 1963, and came into force on 4 December 1969. Israel signed it on 1 November 1968, ratified it on 19 September 1969, and it came into effect as for Israel on 18 December 1969. As of September 1994, 150 States were parties to the Convention.

⁶⁰During 1969-70, Israel faced waves of attacks on its national airline-El Al. The issue was under discussion on the agenda of the Israeli Parliament on 15 September 1970, when members of the House called for measures to face the problem. Many of the attacks had the intention of terror and blackmail, carried out by the P.L.O with the blessing of Arab States. Examples are many and include the attack on 26 December in Athens, the attempt to hijack a T.W.A aircraft which departed Tel-Aviv, the hijacking of Olympic B707, attacking an El-Al aircraft in Zurich on 18 February 1969 and attacking another El-Al aircraft in Munich on 10 February 1970.

the phenomenon was world-wide. He claimed that it is just a journalistic myth to claim that all problems of aviation security are created by "terrorism". Only 14% of the incidents are attributed to 'acts of war'. 19% are attributable to criminal acts without any political motivation, 39% committed by refugees or would be refugees, and 16% by insane people. He also claimed, that another myth was that the bases of unlawful interference with civil aviation were located in the Middle-East and are the result of the Arab-Israeli conflict⁶¹.

The Hague Convention is the result of the need to face international hijacking, and is aimed at the person who, on board an aircraft in flight, hijacks, attempt or helps to hijack an aircraft. It applied the concept known in Roman Law as "*Aut Dedere Aut Punire*", that is, either extradite or punish, and was a major step in protecting international aviation. However, the Convention has its loopholes. It was criticized that it only deals with offenses in aircraft in flight whereas aviation include also airport facilities through which millions of passengers pass every day⁶². This problem motivated the drafting and the adoption of the Montreal Convention of 1971.

The Aviation Law (Offenses And Jurisdiction) 1971⁶³, was created in order to implement the Tokyo and the Hague conventions into Israel's domestic legal system. The law was debated in the Israeli Parliament on 15 September 1970 and was published

⁶¹Milde. M., Notes From Lecture before the Tokyo Conference on 3 June, 1993 (unpublished manuscript).

⁶²The Hague Convention was signed on December 16th, 1970, and entered into force on 14 November 1971. As of September 1994, 150 States were parties to it. Israel signed the Convention on 16 December 1970 and deposited its instrument of ratification on 16 August 1971.

⁶³*Sefer HaHukim*, 617 (1971).

as Act of Law on 22 February 1971. The law was not created in a vacuum. Prior to its publication a norm was already in existence in Israeli law which was included in Section 2a of the **Jurisdiction And Responsibilities Decree of 1948** by which any aircraft or ship wherever they are, and which is registered in the State of Israel, are, for question of Jurisdiction, as if they were part of the State of Israel. The Section gives the legal basis to the fact that a person who commits an offence on board an Israeli aircraft will be brought before an Israeli Court of Law to face charges not only according to International Law but also according to Israeli Law. The law follows the Tokyo and the Hague Conventions: Chapter one gives definitions to flight, Israeli aircraft, State of Registration, State Territory. Chapter two deals with the powers and duties of the Aircraft Commander and Chapter three describes the offenses and the punishment to each one of them. Section 17 defines the offence of hijacking to mean "any act by person who while on board an aircraft unlawfully, by force or threat thereof, of by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act or hold the aircraft or willingly participate in the control of the aircraft ,when he knows that the aircraft is under unlawful control". Article two of the Hague Convention calls Contracting States to undertake to make the offence punishable by severe penalties. Section 17 of the Israeli law put down that the penalty for hijacking is life imprisonment and if the act caused the death of a person life imprisonment only. Section 18 of the law describes the offence of sabotage and threat of sabotage as any act by a person who on board an aircraft commits an act with the intention to endangering the life of any passenger or is likely to endanger the aircraft's safety, or threatens with

one of the above. The penalty is 20 years imprisonment and if the act caused the death of any person the penalty is life imprisonment.

The next step was the adoption of the Montreal Convention of 1971. The Montreal Convention was created to confront the problem of aircraft sabotage, and other unlawful acts in aviation facilities. Although in many aspects it is similar in its wording to the provisions of The Hague Convention, it emphasizes airport security and detection of sabotage prior to the flight. Under the Convention, the Contracting States are obliged to punish offenders with severe penalties⁶⁴, to take such measures as may be necessary to establish its jurisdiction, to take the offender into custody⁶⁵, and to conduct a preliminary enquiry⁶⁶.

The Air Navigation (Security In Civil Aviation) Law, 1977⁶⁷ brought the vision of the Montreal Convention into domestic law in Israel, its main concern being the security of aviation installations. In Chapter two the Act put down security directions to aircraft operators, Chapter three gives certain persons the power of search, identification and implementation of the provision of the Act, and Chapter Six Section 16 indicates the penalties.

⁶⁴Article 3.

⁶⁵Article 6(1).

⁶⁶The Montreal Convention was signed at Montreal on September 23, 1971, and entered into force on January 26, 1973. As of September 1994, 151 States were parties to it. Israel signed the Convention on 23 September 1971, and deposited the instrument of ratification on 30 June 1972.

⁶⁷*Sefer HaHukim*, 854 (1977).

The need to broaden the 1971 Montreal instrument was clear after EL-AL counters were attacked in Rome and Vienna in 1985. This motivated the ICAO Assembly to adopt a new international legal instrument dealing with offenses at airports serving international civil aviation. The 1988 Conference in Montreal adopted, by a general consensus, "the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Montreal Convention of 1971". Consequently, as between the parties to the protocol, the Montreal Convention and the protocol are to be read as one single document⁶⁸.

The disaster of Pan American flight 103 over Lockerbie in Scotland on 12 December 1988 called for immediate action by ICAO. Within weeks, the ICAO Committee on Unlawful Interference met to discuss the issues and made recommendations to the ICAO Council. The solution came with the creation of the **Convention on the Marking of Plastic Explosives for the Purpose of Detection**, signed at Montreal, on 1th March 1991. The Preamble of the Convention indicates that the States party to it are expressing deep concern regarding terrorist acts aimed at destruction of aircraft, and concerned that plastic explosives have been used for such acts. Therefore the Contracting States, recognize that for the purpose of deterring such unlawful acts, there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked. States party to the Convention undertake the obligation of prohibiting and preventing the manufacture

⁶⁸The Protocol was signed on 24 February 1988, and entered into force on 6 August 1989. As of September 1994, 49 ratification have been deposited. Israel signed the document on 24 February 1988, and deposited its instrument of ratification on 22 April 1993.

and the movement of unmarked Plastic Explosives in their territories⁶⁹. The Convention then calls upon the Contracting States to take all necessary measures to exercise strict and effective control over possession of unmarked explosives in existence⁷⁰. The Article was needed since there is no effective way to mark plastic explosives after the manufacturing process ended. Article 4 (2) calls the Contracting States to destroy such quantities within a specified time limit. The Convention establishes an International Explosives Technical Commission to evaluate technical developments relating to the manufacture, marking and detection of explosives⁷¹. The Convention is not in force⁷².

Other Instruments of Private Law.

As far as surface damage is concerned, two International Conventions are in existence. They are the **Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface**, signed at Rome, on 7 October 1952⁷³, and the **Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on**

⁶⁹Articles 2,3(1).

⁷⁰Article 4(1).

⁷¹Articles 5,6.

⁷²In accordance with Articles XIII, paragraph 3, the Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-five instrument of ratification, acceptance, approval or accession, provided that no fewer than five of these States are producers of plastic explosives. As of September 1994, only 7 ratifications had been deposited and it is not in force. Israel did not ratify the Convention.

⁷³ICAO Doc. 7364.

the Surface, signed at Rome on 7 October 1952, signed at Montreal, on 23 September 1978 (Montreal Protocol)⁷⁴.

In its provisions, the Rome Convention provides for system of 'absolute' liability in the part of the air carrier. With the acceptance of that rule by the air carrier, the Convention puts a limit of liability. The limits runs according to the weight of the aircraft⁷⁵. The limit of liability was not accepted by many States and as of September 1994 only 38 States were party to it. Israel signed the Convention on 7th October 1952 but never deposited the instrument of ratification.

The fact that the Convention would not receive worldwide acceptance became clear to ICAO as early as 1965 when the ICAO Sub-Committee met to discuss the reasons and the problems of the Convention. The discussions on the issue finally brought the Montreal Protocol of 1978. One of the important changes was replacing a new liability Article⁷⁶. Nevertheless, the leading concept of limited liability caused that the protocol was not accepted by many States⁷⁷.

⁷⁴ICAO Doc. 9257.

⁷⁵Article 11(1).

⁷⁶Article III.

⁷⁷As of September 1994, only three States ratified the document, and it is not in force. Israel is not a party to the protocol.

C. Customary International Air Law.

Milde pointed that "International law is not a set of rules carved in marble but rather the expression of the will of States"⁷⁸. Indeed, Customary International Air Law is that law which has evolved from the practices of States, and it is the foundation stone of the modern Law of nations. Although in the last three decades Treaty law has replaced custom as the primary source of International Law, many rules which govern State practices will come from Customary Law, thus its importance.

Customary International Air Law can also be gathered from published material, State Laws, Judicial Decisions, and State Declarations. Not all acts or omissions of States can give rise to Customary International Air Law and there are certain conditions which must be fulfilled before a practice can become customary law. These conditions are the elements of Customary Law and they derived mainly from a series of decisions taken by the Permanent Court of Justice and its successor, the International Court of Justice.

There are in existence many important principles of Customary International Air Law which have been codified and superseded by Conventions. These are, *inter alia*, the principles of State sovereignty, jurisdiction, responsibility, nationality and the legal status of the aircraft over the High Seas.

⁷⁸Milde, M., "Interception of Civil Aircraft vs. Misuse of Civil Aviation", *Annals of Air and Space Law*, Vol. XI, 1985, p.125.

D. Judicial decisions of the International Court of Justice.

The International Court of Justice (I.C.J) is the principal judicial organ of the United Nations. It was established by the Charter of the United Nations Organization in 1945⁷⁹. The court is composed of fifteen judges of different nationalities, which are elected by the General Assembly and The Security Council. In addition, any party to a dispute which does not have a national as a member of the Court may appoint an *ad hoc* Judge. All members of the United Nations are parties to the Statute and, therefore, have access to the Court. Only States may be parties in cases before the Court, although authorized agencies, as I.C.A.O may request an advisory opinion on any legal question⁸⁰.

In the field of Aviation Law, there is potential for development. However, the Court decided only one case involving the Jurisprudence of the Council of I.C.A.O.,. During the fifties, the United States brought a few cases before the Court involving disputes with the U.S.S.R over interception of American aircraft over the claimed territory of the U.S.S.R. Other cases included Australia submitting a claim against France on the question of Nuclear tests⁸¹.

⁷⁹See Charter of the United Nations, arts. 92 to 96, and the Statute of the Court annexed to the Charter.

⁸⁰The Statute of the I.C.J, Article 96.

⁸¹*Nuclear Tests Cases*, 1973, ICJ Rep 99.

E. Other possible sources.

The International Civil Aviation Organization.

The International Civil Aviation Organisation (I.C.A.O), was created in 1944 by the Chicago Convention on International Civil Aviation³². Since 1944, I.C.A.O. established itself as the major international body dealing with air transport and air navigation. The aims and objectives of the organization are indicated in Article 44 of the Convention as to:

"develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to: a) Insure the safe and orderly growth of international civil aviation throughout the world; b) Encourage the arts of aircraft design and operation for peaceful purposes; c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation; d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; e) Prevent economic waste caused by unreasonable competition; f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; g) Avoid discrimination between contracting States; h) Promote safety of flight in international air navigation, and to promote generally the development of all aspects of International Civil Aeronautics".

I.C.A.O is recognized by the United Nations as one of the 'Specialized Agencies' and enjoys certain diplomatic immunities and privileges³³. The permanent seat of I.C.A.O is in Montreal, Canada. As of September 1994 183 States were party to the Organization, including Israel.

³²ICAO Doc. 7300/6.

³³For detailed analysis of ICAO, see Cheng, B., *The Law of International Air Transport*, 1962, Stevens and Sons, London, pp.31-165.

The Process of the Settlement of Differences by the I.C.A.O Council-The Chicago Convention established an elaborate mechanism for the settlement of air navigation related disputes between the Contracting States. Resolution A1-23 which was adopted by the First Assembly in 1947, authorizes the I.C.A.O Council to act as an arbitrating body in any differences arising among the contracting States relating to the interpretations or applications of the Convention and its Annexes which cannot be settled by negotiations. These functions are indicated in the convention in Articles 84 to 88. A party to a dispute may appeal to the I.C.J or to an *Ad Hoc* international tribunal, whose judgment shall be final and binding. The Convention also provides for sanctions for non-compliance with the decision⁸⁴.

Since 1944, only three cases have been submitted to I.C.A.O. The first case was when in 1952 the Government of India made an application with respect to disagreement with Pakistan over the interpretation and application of Articles 5,6,7 and 9 of the Chicago Convention and the International Air Service Transit Agreement, after a prohibited zone had been established by Pakistan. The second case was a dispute between the United Kingdom and Spain in September 1967 in relation to the establishment of a prohibited area by Spain near Gibraltar, and the interpretation of Article 9 of the Chicago Convention. The third case was submitted by Pakistan in March 1971 in relation to the suspension of flight of Pakistani aircraft over Indian territory. All the above cases did not reach the ICAO decision, since the interested governments found the way out by means of negotiation.

⁸⁴The Chicago Convention, Articles 87-88.

The International Air Transport Association.

The International Air Transport Association (I.A.T.A) has been established by a Conference of Scheduled International Airlines meeting at Havana in April 1945. It is a voluntary trade association of the scheduled airlines in the world. As of December 1994, more than 200 airlines were members in the Organization. The eligibility of an airline to become a member is determined by whether or not the governments by which they are certified are themselves eligible to membership in I.C.A.O. I.A.T.A was incorporated by a special Act of the Canadian Parliament in 1945⁸⁵. Its Articles of Association can only be changed with the consent of the Canadian Government and it maintains a head office in Montreal.

The objects of the association are declared in its Act of Incorporation to be: " a) To promote safe, regular and economical air transport for the benefit of the people of the world, to foster air commerce and to study the problems connected therewith; b) To provide means for collaboration among the air transport enterprises engaged directly or indirectly in International Air Transport service; c) To co-operate with the International Civil Aviation Organisation and other International Organizations"⁸⁶. As Haanappel mentions, "Most of IATA's activities find their expression in resolutions and recommended practices adopted by the Traffic Conferences. IATA Traffic Conference resolutions can be defined as agreements adopted by the unanimous vote of the members.

⁸⁵*Statutes of Canada*, 1945, Chap.51 (Assented to 18th, 1945), as amended by *Statutes of Canada*, 1974-75-76, Chap.111 (Assented to 27th February, 1975).

⁸⁶I.A.T.A Act Of Incorporation, Section 3.

They become binding on the members when approved by the interested Governments"⁸⁷.

I.A.T.A has a few Sub-Committees such as the Technical Committee which concerned with the safety and efficiency of flights; The Financial Committee within which the Clearing House is operated; The Legal Committee, and The Traffic Advisory Committee which consider such matters as cost, fares, rates, schedules and standardization.

As mentioned by Blackshaw, in trying to achieve its aims during the last half a century

"IATA involvement, influence and significance in the Civil Aviation industry is remarkable. It has, through its regular general meetings, specialist committees and research projects, investigated and reported on many vital issues affecting both the operators and users of the industry. In many areas, such as standard form documentation, fares and interline ticketing and financing, it has established uniform systems and practices followed by most international airlines"⁸⁸.

The United States Federal Aviation Administration.

In The Federal Aviation Act of 1958⁸⁹ the United States Congress directed the Secretary of Transportation to promote the safety of flight of civil aircraft in air commerce by establishing minimum standards for aircraft design, materials, workmanship, construction, and performance. The Act also granted the Secretary the discretion to prescribe reasonable rules and regulations governing the inspection of aircraft, including the manner in which such inspections should be made⁹⁰. To monitor

⁸⁷Haanappel, P.P.C., *Rate-making In International Air Transport*, Kluwer, Deventer, 1978, p.57.

⁸⁸Blackshaw, C., *Aviation Law And Regulation; A Framework For The Civil Aviation Industry*, Pitman, London, 1992, p.9.

⁸⁹49 U.S.C 1421.

⁹⁰49 U.S.C 1421 (A)(3).

the aviation industry's compliance with the requirements the Federal Aviation Administration was empowered to develop a comprehensive set of regulations delineating the minimum safety standards with which the designers and manufacturers of aircraft must comply before marketing their products.

The F.A.A is mentioned in this section mainly because in the State of Israel, in most technical-aeronautical matters the **Civil Aviation Regulations**, which are issued by the Minister of Transportation, following in many cases the U.S Federal Aviation Regulations standards.

CHAPTER 3 - THE BASIC AIR LAW ACT - THE AIR NAVIGATION ACT OF 1927.

The major domestic air law legislation in Israel is the **Air Navigation Act of 1927¹** which was introduced in Palestine in 1937 by the British Government. Since 1937, many modifications have been introduced into the Act in order to fit its provisions to Palestine and eventually to the State of Israel².

The present chapter proposes to consider the general principles on which the Law has being developed to become the basis of Israeli Aviation Law. The Act authorized the Governor-General³ to make regulations to give legal effect to the Convention regulating International Aerial Navigation, known as the Paris Convention of 1919, which was the first major international agreement on air flight. The Governor-General was authorized to formulate regulations providing for the control of air navigation throughout the Territories of Britain.

¹*Laws of Israel*, Vol.C, p.2551.

²The Act was amended by series of Orders which were published by the King in Council in 1935,1936,1938,1939. It was amended by "The Amended Law 1950", *Sefer HaHukim*, 33 (1950); By an amendments published on *Sefer HaHukim*, 665 (1972); *Sefer HaHukim*, 778 (1975), 859 (1977), 959 (1980), 1392 (1992).

The name of the Act before the 1950's Amendment was "The Air Navigation (Colonies and Protectorates) Order in Council". The 1950 Amendment replaced the following terms in any place they were mentioned in the British Act:

The term "Order In Council" was to be "The Act", "British Aircraft" to be "Israeli Aircraft", "From Air Field of the Royal Air Force" to be "From Air Field".

³The responsibilities of the Governor-general according to the Act were given by the State of Israel Government to the Transport Minister on May 1949. Consequently the term 'Governor' was replaced with the term 'Transport Minister'.

1. Scope of The Act.

The object of the Air Navigation Act, was primarily to give effect in English national law, and after 1948 in Israeli national law to the principles embodied in the Convention on the Regulation of Air Navigation, the Paris Convention of 1919. The provisions of the act are applicable on any Israeli aircraft regardless of its location and on any foreign aircraft when it is in the State or above it's territories⁴.

2. Nationality, Registration and conditions of flying.

Part one of the Act states that an aircraft shall be deemed to possess the nationality of the State of the register on which it is entered and that an Israeli aircraft is an aircraft registered in Israel according to the Act⁵. Part one (Articles 3-7) makes detailed provisions for the registration and marking of aircraft, and states that no aircraft shall fly over Israel unless:

- A. The aircraft is registered and bears the prescribed nationality and registration marks affixed or painted on it in the prescribed manner, and;
- B. The aircraft is certified as airworthy in the prescribed manner, and any terms or conditions on or subject to which the certificate of airworthiness was granted is duly complied with, and;
- C. The personnel of the aircraft is provided with the prescribed certificates of competency and licenses, and;

⁴Section 3 (a),(b). The Section was inserted by The Amendment Act 1950.

⁵Section 2 (1),(2).

D. The aircraft carries the prescribed documents and journey log-book⁶.

To these general conditions the act prescribes certain exceptions, *inter alia*, that these conditions shall not apply to aircraft flown exclusively for the purpose of experimentation or testing, within 3 miles from a airport or on any other aircraft under special permission given by the Minister of Transport⁷. The second condition shall not apply in the case of candidates undergoing official tests for the purpose of obtaining a license.

Section five puts further conditions on flying within the State of Israel that except as expressly provided, an aircraft shall not fly within the territory of the State of Israel unless further conditions are complied with:

- A. The aircraft shall possess the nationality of a contracting State to the Chicago Convention.
- B. The provisions of the Act as to general safety, shall be duly complied with.
- C. The aircraft shall not land in any prohibited area. As of 1994, there are more than twelve prohibited area closed to civil aircraft mainly due to reasons of national security and military needs.
- D. The aircraft shall conform to such orders as may be given in regard to it by officers of police or of Customs and Excise.

⁶Section 4 (I), (II), (III), (IV).

⁷Section 4(1)(a). The Section was inserted into the 1927 Act by the 1972 amendment. The Transport Minister delegated his powers under Sections 5(2), 10 (1)(a), 10(2), 10(3), 10(5), 10(6), 10(A), 19(A), and 21 on the Act to the director of the Civil Aviation Authority, on 25 August 1955.

3. Aerodromes.

According to the act, no aircraft shall land or take off from any place in the State of Israel unless the aerodrome was given a permit for such a purpose by the Minister of Transport. The Minister was given power by virtue of Section 8(2) of the Act, to give, in special cases permission to a person to land in other places.

4. General safety provisions.

Part II, (Articles 10-25), is the main part of the Act and contains different provisions which directly or indirectly deal with safety of flight. Section 10 states that an aircraft shall not fly over any city or town within Israel except at such altitude as will enable the aircraft to land outside the city or town should the means of propulsion fail due to mechanical breakdown or other causes. This provision is difficult to comply with since many of the aerodromes in Israel are located inside or very near to cities and towns⁴. To this end, the 1972 amendment inserted a provision that qualify the prohibition in the section, that this prohibition shall not apply to any area comprised within a circle with a radius prescribed by the Minister of Transport. Section 10 also indicates that except in these cases where special permission has been granted by the Minister of Transport, an aircraft shall not be used to carry out any aerobatic flying or exhibition flying over any city or town area or populous district, or be flown in such circumstances as, by reason of low altitude or proximity to persons or dwellings or for

⁴Aerodromes located inside or near cities or towns are: Tel-Aviv Ben-Gurion Airport, Jerusalem's Atarot Airport, Eilat Airport, Dov Airport, Herzliya Airfield, Haifa Airport and Rosh Pina Airfield.

any other reason, to cause unnecessary danger to any person or property on land or water.

As a measure of safety, smoking is prohibited in any aircraft registered in the State of Israel unless and except in so far as smoking in the aircraft is permitted by a notice exhibited on the aircraft in a prominent place. Such a notice can only be exhibited if smoking is permitted by the Certificate of Airworthiness of the aircraft⁹. It is interesting to note that even though the Air Navigation Act was drafted in 1920, it saw the possibility of some kind of unlawful interference and inserted into the Act a provision stating that a person shall not commit any act, whether by interference with the pilot or a member of the operative crew, or by tampering with the aircraft or its equipment, or by disorderly conduct, or by any other means, likely to imperil the safety of any aircraft, its passengers, or crew¹⁰.

5. The Appointment and powers of the inspector.

According to Section 10(c), the Minister of Transport may appoint an inspector. His powers include entering any public place in order to examine whether the provisions of the Act and the regulations have been complied with. The 1972 amendment¹¹ inserted a penalty provision against any person who obstructs or prevents an inspector from exercising his powers. Such a person shall be liable to imprisonment for a term of six

⁹Section 10(3).

¹⁰Section 10(3),(3A).

¹¹*Sefer HaHukim*, 665 (1972).

months or a fine of two thousand New Israeli Shekels. Moreover, where it appears to the inspector that any aircraft is intended or likely to be flown in such circumstances that the flight would be contravening any of the Act's provisions, and could be a cause of danger to persons in the aircraft or to property on the ground, the inspector may give directions to prevent the flight¹². The power to appoint an inspector was delegated to the Director of the Israeli Civil Aviation Administration.

According to Section 18 the inspector can require an aircraft owner to provide him in any time his license, log-book, or any certificate mentioned in Section 17 to the Act.

6. Documents to be carried by an Israeli aircraft.

The Act put down the requirement that every Israeli aircraft on an international flight, shall carry the following documents¹³:

- A. The Certificate of Registration.
- B. The Certificate of Airworthiness, and any other certificate relating to the aircraft.
- C. The Certificates of Competency and licenses of its personnel.
- D. The journey log-book.
- E. Any license to use wireless apparatus in the aircraft.
- F. If it carries passengers, a list of names.
- G. If it carries freight, bills of lading and manifests of cargo.

¹²Section 11.

¹³Section 16.

7. Prohibited Carriage.

The Act stipulates that munitions of war must never be carried in an aircraft engaged in international navigation. The prohibition is applicable both to foreign or Israeli aircraft. Dangerous goods must not be carried either, except as authorized by the Minister of Transport, and even when authorized to be carried, particulars of such goods and the danger which they give rise to must be given in writing by the consignor to the air operator. The goods must be clearly marked as dangerous and the aircraft commander must be informed¹⁴.

8. Arrival and Departure from the State of Israel.

The Air Navigation Act was passed in order to give effect to the Paris Convention of 1919, which recognized each nation's exclusive sovereignty in the air space above its territory. Section 23 implemented the concept into the Israeli Legal System by stating that the Minister of Transport may prescribe points between which aircraft enter or leave the State of Israel shall pass, and that no aircraft shall enter the State except between such points. To that prohibition the Act gives an important exception that if an aircraft is compelled by accident, stress of weather, or unavoidable cause to enter the State from elsewhere then between such points, it shall land at a custom aerodrome, if any, nearest to its route. After landing the pilot of the aircraft shall report to an officer of Customs and Excise or police and shall on demand produce to such officer the log-book, and shall not allow any goods to be unloaded without the consent of the officer, and no passenger

¹⁴Section 19.

shall leave the immediate vicinity without such approval. To that end, the Act empowered the Minister of Transport to make such regulations for the application of the Act, relating to customs to aircraft arriving in or departing from the State of Israel as may be necessary.

As a further application of the sovereignty concept, a foreign military aircraft shall not fly over or land in the State of Israel except on the express invitation or with the express permission of the Government of Israel, or of a government Department. When such permission has been granted such aircraft shall be exempt from the provisions of the act in relation to customs and place of landing. The provision thus facilitates the landing and take off on military bases¹⁵. Moreover, the Minister of Transport is empowered by the Act to grant, if needed, a special and temporary authorization, and subject to such conditions as may be specified, to permit the flight within the State of Israel of an aircraft which does not possess the nationality of a Contracting State to the Chicago Convention¹⁶.

9. Penalties.

The Act states that if an aircraft flies in contravention of, or fails to comply with the provisions of the Act, the owner or operator of the aircraft and the pilot shall be deemed to have contravened the Act. However, the Act puts down two exceptions to that provision. The first one is that when such a contravention or failure is proved to have

¹⁵Section 26.

¹⁶Section 27(2).

been due to stress of weather or other unavoidable causes¹⁷. The second is in a way connected to the first, states that it shall be a defence at any proceeding to prove that the alleged contravention took place without the owner's or pilot's actual fault or privity¹⁸. Section 28 indicates different contravention to the act and the penalties by law that are applicable. Thus, if any person contravenes or fails to comply with the provisions of the Act, he shall be liable to a fine of 1000 N.I.S. or imprisonment for a term of one year¹⁹. Section 28 (4) states that any aircraft which flies or attempts to fly over a prohibited area or enters the State of Israel in contravention to the Act, is liable to be fired upon in accordance with the provision of Schedule VI the Act.

10. The Minister of Transport powers to cancel, or endorse licenses and to issue directions and regulations.

By virtue of the **Air Navigation (Amendment) Law, 1950**, the Minister of Transport is vested with the following powers:

A. To cancel, suspend or endorse any certificate granted in the State of Israel under Schedule one, or any license granted under Schedule five. (He may only use these powers after due inquiry, and his decision is final).

¹⁷Section 28(1)(a).

¹⁸Section 28(1)(b).

¹⁹The part of Section 28 which deals with penalties was inserted by the 1950 amendment Act.

B. Any Certificate of Airworthiness issued in the State of Israel under Schedule II to this order, may be cancelled or suspended if the Minister of Transport is satisfied that reasonable doubt exists as to the safety of the aircraft in question.

C. Where any person is convicted of any failure to comply with the provisions of the Act in respect of any Israeli aircraft registered in the State of Israel, the Minister of Transport may cancel or suspend the certificate of registration of that aircraft²⁰.

D. The Minister of Transport may require the holder of any license, certificate or any other document granted according to the Act, to surrender the same to him for cancellation, suspension, endorsement or variation. Any person failing to comply with any such requirement within a reasonable time shall be deemed to have failed to comply with the Act.

E. The Minister of Transport may issue such directions as he thinks fit for the supplementing or giving full effect to the provisions of the Act²¹.

According to the **Air Navigation (Amendment No 2) Law 1972²²**, the Minister of Transport may publish regulations for the implementation of the Chicago Convention and the carrying into effect of its provisions.

²⁰Air Navigation Act Section 29(a),(b),(c).

²¹Section 30.

²²*Sefer HaHukim*, 665 (1972).

11. Schedules to the Act.

The original 1927 Air Navigation Act had six detailed Schedules dealing with several areas regarding aviation.

Since 1948 many modifications have been made to these Schedules by the Israeli Legislator²³. The Schedules are:

Schedule I : Registration and Marking of aircraft.

Schedule II : Detention of Aircraft.

Schedule V : Licensing of Personnel.

Schedule VI : Prohibited Areas.

²³Schedule II was cancelled by Regulation 137 to Air Regulations 1977. Schedules III, IV were cancelled by Regulation 357(1) to Air Regulation 1981. *Kovez-Takanot*, 4276 ,1981, p.8.

PART II

CHAPTER 4 - MECHANISMS FOR CREATING AND ADMINISTERING AVIATION LAW AND AVIATION POLICY IN ISRAEL.

1. Government Departments concerned with Civil Aviation.

A. The Ministry of Transport.

The ministry responsible for the administration of civil aviation in the State of Israel is the Ministry of Transport. The Air Navigation Act 1927 vested the responsibilities and duties concerning civil aviation with the 'Governor', which was the British officer who administered the Mandate in Palestine. The first government of the State of Israel transferred all the responsibilities under the Act to the Minister of Transport in April 1949. The Minister is appointed by the Prime Minister and vested with the powers and duties to organizing, carrying out and encouraging measures for the development of transport by land, railways, ports, and aviation.

Powers and duties relating to civil aviation.

The main source which gives the Minister his powers and obligations is the **Air Navigation Act 1927¹**, as amended by the **Air Navigation (Amendment) Law 1950²**, and the **Air Navigation (Amendment No. 2) Law 1972³**.

The functions, powers and duties of the Minister of Transport may be broadly divided into those of a legislative, administrative and of a judicial nature. This traditional division is not conclusive since there are powers and duties which may be defined as quasi-legislative or quasi-judicial.

Legislative functions.

1) By virtue of Section 30 of the Air Navigation Act 1927, the Minister may issue such directions and regulations as he thinks fit for the purpose of supplementing or giving full effect to the provisions of the Air Navigation Act. Among such regulations are the **Aviation Regulations (Places of Entry and Departing the State of Israel) 1968⁴**, **Aviation Regulations (Safety in Civil Aviation), 1961⁵**, **Aviation Regulations (Order**

¹*Laws of Palestine*, Vol.C, p.2411 (English Edition).

²*Sefer HaHukim*, 33 (1950).

³*Sefer HaHukim*, 665 (1972).

⁴*Kovez Takanot*, 2211, 1968, p.1277. Amended by *Kovez Takanot*, 2923, 1972, p.157; 3106, 1973, p.446 and by *Kovez Takanot*, 4425, 1982, p.199.

⁵*Kovez Takanot*, 1093, 1961, p.778. Amended by *Kovez Takanot*, 4612, 1984, p.1207.

in Airports), 1973⁶, and the Aviation Regulations (Registration and marking of aircraft), 1973⁷.

2) The Minister of Transport is empowered by law to issue such regulations as he sees fit for the purpose of supplementing or giving full effect to the provisions of the Aviation Laws of the State. As of December 1994, Israel's Aviation Law consists (apart from the Air Navigation Act of 1927) of five Laws and set of regulations. These Laws are:

- A. Licensing of Aviation Services Law, 1963.⁸
- B. Aviation Law (offenses and Jurisdiction), 1971.⁹
- C. Aviation Law (Safety in Civil Aviation), 1977.¹⁰
- D. Aerodromes Authority Law, 1977.¹¹
- E. Carriage by Air Law 1980.¹²

3) The Minister of Transport may, by regulation, amend, replace or repeal all or part of the Schedules to the Act and may enact other provisions in lieu of the replaced provisions. The Act indicates that such regulations shall be brought to the knowledge of the Economic Committee of the Knesset before being passed¹³. Using this power, the

⁶Kovez *Takanot*, 3010, 1973, p.1358.

⁷Kovez *Takanot*, 3098, 1973, p.45.

⁸*Sefer HaHukim*, 397 (1963).

⁹*Sefer HaHukim*, 617 (1971).

¹⁰*Sefer HaHukim*, 854 (1977).

¹¹*Sefer HaHukim*, 859 (1977).

¹²*Sefer HaHukim*, 901 (1980).

¹³Air Navigation Act 1927, Article 7(1). Article 7 of the original Air Navigation Act was re-marked as Article 7(1) by the Air Navigation (Amendment No. 2) Law of 1972.

Minister of Transport cancelled Schedules three and four to the Air Navigation Act in 1981¹⁴.

4) The Minister of Transport is responsible for enacting such regulations for the application of the Act relating customs applicable to aircraft arriving in or departing from the State of Israel, as may be necessary. By virtue of the power given to the Minister in Section 23(4) of the Air Navigation Act, The minister enacted the **Custom Regulation (Aviation)**¹⁵.

5) The Minister of Transport may enact such regulations relating to charges in airports or for any certificate or license.

6) The Minister of Transport shall prescribe by order, with the approval of the Economic Committee of the Knesset, the amount of the fine for each offence committed by a person in contravention of the Act¹⁶.

7) The Minister of Transport has the legislative power to give effect to an Aviation Convention to which Israel has become a party. This power is mentioned as a result in other aviation relating laws: Section 3 of the **Carriage By Air Law 1962**, indicates that the Minister may announce in Reshomot¹⁷ on the coming into force, respecting the State of Israel, of the Protocol to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on October 12th, 1929 done

¹⁴*Aviation Regulation*, 357, 1981.

¹⁵*The Laws of Israel*, Vol.3, p.2598.

¹⁶Air Navigation Act 1927, Article 28(B).

¹⁷The Knesset official publication.

at the Hague on September 1955, and that after the announcement, the Convention as amended by the Protocol would become applicable in the State of Israel. A similar Section can be found in the **Carriage by Air Law 1980**.

8) The Minister of Transport is vested with the power to issue regulations concerning prohibited areas. As a condition to doing so the Minister must consult the Minister of Defence¹⁸.

9) Under Section 6 of the **Carriage by Air Law 1980**, the Minister of Transport may, by directions, after consultation with the Justice and Economic Ministers and with the approval of the Economic Committee, supplement the damages paid to a claimant under the provisions of the Warsaw Convention. He may also under Section 9(c), after consultation with the Director General of Israel Bank and with the approval of the Economic Committee, determine by order the sum in S.D.R's in lieu to the sum mentioned in Article 22 to the Warsaw Convention.

Judicial Functions.

1) According to Article 29 of the Air Navigation Act 1927, the Minister of Transport is empowered with powerful quasi-judicial functions. The Article indicates that any certificate granted in the State of Israel under Schedule one, any license granted under Schedule V, or any license given to an aerodrome, may be cancelled, suspended or endorsed by the Minister of Transport after sufficient grounds are presented to him,

¹⁸Air Navigation Act, 1927, Article 30(1). Inserted by the Air Navigation (Amendment No.2) Law, 1972.

after due inquiry undertaken by the Civil Aviation Administration officials, and his decision shall be final. Moreover, any Certificate of Airworthiness issued under Schedule two may be cancelled or suspended by the Minister if he is satisfied that reasonable doubt exists as to the safety of the aircraft.

2) According to Article 11 of **The Air Navigation Act 1927**, as amended by the **Air Navigation (Amendment No.2) Law 1972**, when it appears to the minister that any aircraft is intended or likely to be flown in such circumstances that the flight would cause danger to persons in the aircraft or to persons or property on the ground, the person acting with the authorization of the Minister may give such directions, and take such steps including detention of the aircraft.

3) The above mentioned powers are quasi-judicial in nature. the function that might be called judicial is the power emerging as a consequence of Article 30 of the **Air Navigation Act 1927**. The Article empowered the minister to issue such regulations as he sees fit for the purpose of giving full effect to the provisions of the Act. On this ground the Minister enacted the **Aviation Regulation (Investigation of Aviation Accident) 1984**¹⁹. The regulations have been adopted in accordance with the provisions of Article 26 of the Chicago Convention and follow the directions of Annex 13 of the Convention. The regulations are applicable to any Israeli aircraft where ever it may be, and to any foreign aircraft in the territory of the State of Israel, and are composed of eight Chapters.

¹⁹*Kovez takanot*, 4664, 1984, p.8. Amended by *Kovez Takanot*, 4932, 1986, p.898.

Chapter one, entitled "General", includes certain definitions such as "Israeli aircraft", to mean an aircraft registered in Israel or any other aircraft leased by an Israeli citizen from another country. Other definitions are given to the State of incident, manufacture, operator and registration.

Chapter two describes the notices which must be submitted in case of accident to any Israeli and foreign aircraft. After an accident to a foreign aircraft, the investigator empowered by the Minister of Transport shall submit a notice as soon as possible to the responsible authorities of the State of Registration, of operator and of manufacture. The notice shall include the following details: The nationality and registration marks of the aircraft, name of the owner or operator and hirer (if any), name of the pilot, date and time in G.M.T of the accident, geographical position of the aircraft at the time of the accident, number of persons killed and injured if any, the nature of the accident and the extent of damage to the aircraft.

Chapters three and four put down the responsibilities of the investigator and the Director of the Civil Aviation Administration regarding the aircraft. These include the ability to take steps to protect any evidence during the investigation, the power to suspend any license or certificate, to appoint other investigators as deemed to be needed and the publication of announcements in relation to the investigation. Chapter four indicates which procedures are to be taken in conducting the investigation. Chapter six deals with the reports of the investigator and the notices that should be submitted, whereas Chapter 8 sets forth the penalty to any person acting in contravention of the regulation, such as interference with the investigator's work. According to Section 15,

the Minister of Transport may, in special cases, order that a public inquiry be held by a committee composed of three or more people to investigate the reasons of the accident and to submit recommendations as needed. The appointment of such a committee will be published in Reshumot, and it will have all such powers indicated in the **Public Inquiries Law 1950**²⁰. The Public Inquiry Committee should consist of a Chairman assisted by at least two people who normally possess aeronautical, engineering or other special skills. The committee holds its inquiry in public and has the power of a Court of Law in regard to calling witnesses and to order the production of documents. The committee members may enter and inspect any place or building in conducting the investigation and take steps for the preservation of the aircraft. The report of the Committee shall be submitted to the Minister of Transport and to the Director of the Civil Aviation Administration.

Administrative functions and the Civil Aviation Administration.

Regulations of civil aviation can be divided, into technical regulations, which are provided by the 1927 Navigation Act and its Schedules, and economic regulations, which are provided by the **Licensing of Aviation Services Law 1963**²¹. Both Statutes confer the authority with respect to those regulations upon the Minister of Transport, who, by executive regulations, delegated much of his administrative powers to the Director of the Civil Aviation Administration (C.A.A), which is a division in the Ministry of

²⁰*Sefer HaHukim*, 360 (1950).

²¹*Sefer HaHukim*, 397 (1963).

Transportation²². The Division includes technical personnel which supervises the implementation of the regulations enacted by the Minister of Transport and aviation related issues. The main responsibilities of the Administration are to maintain aviation to and from Israel and domestic aviation at a maximum level of efficiency by way of optimal use of the skies, land, and sea by aircraft, giving services to civil aviation users in Israel, creating and maintaining civil aviation policy in regards to licensing, certification and supervision of such these issues.

The director of the C.A.A. acts in his administrative capacity and discharges his duties through the officials of the administration, all of whom are civil servants. The functions and duties of the director and his officials are defined clearly in the Air Navigation Act, and other aviation regulations as follows:

1) By Section 10(C) of the **Air Navigation Act of 1927**, the director may appoint an inspector for the purposes of the Act. The latter, or any person empowered by him, may enter any place, other then a place mainly used for residential purposes, in order to examine whether the provision of the Act and its regulations have been complied with.

2) By virtue of Section 2 of the **Aviation Regulations (Safety in Civil Aviation) 1961²³**, the director is authorized to take such measures to advance safety in civil aviation aircraft, and to this end give instructions as to the components, inspection, modifications, maintenance, specifications, structural strength and assembly of aircraft.

²²By this way the Transport Minister empowered the director of the C.A.A to use the responsibilities given to him in Sections 5(2), ,10(1A) ,10(2) ,10(3) ,10(5) ,10(6) ,10A, 19a and 21 of the Air Navigation Act 1927.

²³*Kovez Takanot*, 1093, 1961, p.778.

The Minister of Transport delegated to the C.A.A. the following powers in relation to: **A. Registration** - By virtue of the **Aviation Regulations (Registration and Marking of aircraft)**, 1973²⁴, the C.A.A is the authority for all aircraft registration in Israel. For the purpose of registration, the Minister of Transport established a registry of aircraft and appoints an officer to act as Registrar of Aircraft, who acts as the agent of the Minister and as such follows instructions issued by him. Such a registry is open to public inspection with the approval of the registrar. According to Section Three of the regulations, an aircraft is qualified to be registered if it complies with two conditions: if owned by an Israeli citizen or permanent resident, or by a company incorporated in Israel, two-thirds of whose directors are Israeli citizens or permanent resident, with the exception of a foreign company incorporated under Section 248 of the **Corporation Law 1980**²⁵.

The Registrar, upon receipt of an application for registration may, (if he satisfied that it is in order and complies with all the conditions which are indicated in Sections 4 to 14), grant the applicant a certificate of registration. The nationality mark of an aircraft registered in the State of Israel is a group of roman characters designated by the Registrar whereas the registration mark is a group assigned by the registrar of three such letters. The nationality mark of Israeli aircraft is ' 4X- '.

²⁴*Kovez Takanot*, 3098, 1973, p.312.

²⁵*Sefer HaHukim*, 420 (1980).

A person which is not satisfied with the registrar decision may appeal to the Minister of Transport, who can change, modify, or send the application to the Registrar for reconsideration. This power is only with the Minister and can not be delegated.

B. Licensing of flight schools - The C.A.A is the authority for the issuance of certificates needed for operating flight schools. The power was delegated to the C.A.A by the minister by virtue of the **Licensing Aviation Services Regulations (Flight Schools) 1971²⁶**. By Section 23, the C.A.A. director may, if he satisfied that a license holder did not comply with the regulations, cancel any such certificate.

C. Licensing of Personnel - Schedule V to the Air Navigation Act 1927, indicate that every person acting as a Commander, Pilot, Navigator, Engineer or any other operative member of the crew of an Israeli aircraft shall be the holder of a license in respect of the capacity in which he is so acting.

D. The authorization of granting certificate for operating aerodromes and airfields by virtue of the Aviation Regulations (Aerodromes) 1975²⁷.

E. Aircraft, and Aviation Component Certificates.

By virtue of the **Aviation Regulations (Certificates Aircraft and related components) 1977²⁸**, the power was delegated by the Minister of Transport to the C.A.A director to grant a type certificate to any aircraft or engine. The director may, (after due application has been submitted to him), grant type certificate to aircraft in normal, utility, transport,

²⁶*Kovez Takanot*, 2711, 1971, p.1284. Amended by *Kovez Takanot*, 4113, 1980, p.1400.

²⁷*Kovez Takanot*, 3354, 1975, p.1996.

²⁸*Kovez Takanot*, 3706, 1977, p.1576.

or acrobatic categories, and may grant the appropriate certificate to aircraft components. The director may also grant Airworthiness and Production Certificates, to issue the Provisional Type Certificate and to supplement any such certificate with any such condition he may see fit. The regulation empowers the director to give such directions and to take such steps, by way of provisional detention or otherwise in relation thereto, as he may see necessary for the purpose of causing the aircraft to be inspected, if he has reason to believe, that an aircraft registered in Israel is intended or is about to proceed on any flight while in an unfit flight condition. Upon the result of such inspection, the director is empowered to order the detention of the aircraft²⁹.

2. Intra - Governmental Relationships in Relation to Aviation.

The prime responsibility in aviation matters is with the Minister of Transport. However, the Ministry is not an island within the government, and in order to discharge his duties he is ordered by law either to consult or get approval beforehand. It is not proposed by this section to give a complete list of all government departments that participate directly or indirectly with aviation matters, but to mention those indicated by different aviation related Laws. These are:

The Defence Ministry - Even though the Ministry is not in possession of independent Civil Aviation responsibilities, by virtue of Article 30(2) to the Air Navigation Act 1927, the Minister of Transport must consult with the Minister of Defence before publishing regulations concerning prohibited areas. The Act defines 'Prohibited Areas'

²⁹Air Navigation Act 1927, Schedule II.

to mean any area in the State of Israel which the Minister of Transport may so proclaim. By virtue of published authorization, the Minister of Transport can close such areas, and aircraft which finds itself in a prohibited area as described by the Act, shall, as soon as aware of this fact, give a distress signal, and land outside the prohibited area at one of the nearest aerodromes as soon as possible.

The Aviation Regulations (Aerodromes) 1975³⁰, indicates that those areas are only to be published after consultation with the Minister of Defence and the Economic Committee of the Knesset. **Section 25 of the Aviation Law (Security in Civil Aviation) 1977³¹**, clearly indicates that the government will determine matters in which the Minister of Transport shall consult the Prime Minister or the Minister of Defence before carrying out his responsibilities.

Finally, a representative of the Ministry of Defence sits as a member of EL AL's management organ.

The Justice Ministry - As the authority responsible for the Judicial affairs of the State of Israel, the Ministry has a significant interest in generating the applicability and performance of many aviation laws. According to **Section 17(b) of the Carriage by Air Law 1980³²** the Minister of Justice may, after consulting with the Minister of Transport, publish such regulation as to the legal procedures in cases dealing with damages caused by air transportation. Moreover, **Section 6** to this Act empowers the

³⁰*Kovez Takanot*, 3354, 1975, p.1996.

³¹*Sefer HaHukim*, 859 (1977).

³²*Sefer HaHukim*, 901 (1980).

Minister of Transport, after consultation with the Justice and Economic Ministers and with the approval of the Economic Committee of the Knesset to publish regulations supplementing the sum of damages paid in accordance with the Warsaw Convention provisions in cases of injury or death.

According to Section 26 of the **Aviation Law (Offenses and Jurisdiction) 1971³³**, both the Transport and Justice Ministers are responsible for the performance of the Act, and are empowered to enact any regulation to bring its provisions into effect.

The Ministry of Treasury, and the Economic Committee - The Treasury Minister is the authority responsible before the Prime Minister and the Knesset for the financial affairs of the State. As such, the Ministry is responsible for the administration of Customs at Israeli aerodromes as regulated by the relevant Israeli Laws. The Knesset Economic Committee is responsible, by Law, to oversee the working of the government in economic issues. According to Section 28(b) of the **Air Navigation Act 1927**, the Minister of Transport shall prescribe by order, with the approval of the Economic Committee, the amount of the fine for each offence under the Act, and According to Section 9(c) of the **Carriage by Air Law 1980**, the Minister of Transport may, after approval has been given to him by the Economic Committee, publish an order replacing the sum in Article 22 to the Warsaw Convention in S.D.R. Finally, Section 8 of the **Aerodromes Authority Law 1977³⁴**, stipulates that the Minister of Transport shall, with the approval of the government, appoint members of the Authority's Council and

³³*Sefer HaHukim*, 617 (1971).

³⁴*Sefer HaHukim*, 859 (1977).

may by regulations, with the approval of the Economic Committee, prescribe qualifications for membership of the Council.

The Ministry of Foreign Affairs - The participation of the Foreign Affairs in Aviation issues has been limited to the negotiating and concluded of bilateral air agreements with other nations.

3. Ad Hoc Committees.

From time to time, the Minister of Transport may establish special *ad hoc* committees to examine and give recommendations in certain fields concerning aviation matters. Such committees are nominated periodically over the seventies to examine the charter flights to and from Israel. The last important committee was established by Mr. Israel Kessar, the Minister of Transport, in 1992, to examine the structure of the air transport to and from Israel and to submit recommendations as needed in order to bring Israeli aviation to fit the changes made in global aviation policy.

4. Israel Airport Authority.

A. Establishment and Functions.

The Israel Airport Authority (I.A.A) was established in 1977 by the **Aerodromes Authority Law³⁵**. It acts through the Council, the director and the employees of the Authority. It is a body corporate, competent in respect of any obligation, right or legal act.

³⁵*Sefer HaHukim*, 859 (1977).

The Authority is under the general supervision of the Minister of Transport and acts under his directions. A guiding principle in the activities of the Authority is that the aerodromes under its responsibility as a whole and, as far as possible, each individual aerodrome should be managed on the basis of economic calculations and as a self-supporting undertaking³⁶. The functions of the authority are:

- 1) To maintain, operate, develop and manage the aerodromes under the Authority responsibility, to carry out planning and building operations.
- 2) To plan and establish any aerodrome provided for in an aerodrome master plan approved by the Minister of Transportation.
- 3) To adopt measures for the security of the aerodromes of the Authority and of the persons, goods, aircraft, structures, installations and equipment in accordance with the directions of the Minister of Transport³⁷.

B. Council of the Authority - The Council of the Authority consists of fifteen members, appointed by the Minister of Transport after approval by the government. Seven are State employees and one of these is the chairman of the Council. The Minister may, in consultation with the Council, appoint one vice-chairman from among the members who are State employees³⁸. The period of tenure of a member of the Council is four years, which can be extended in another four years by the Minister of Transport. Extensions

³⁶Aerodromes Authority Law 1977, Section 7.

³⁷*Ibid*, Section 5.

³⁸Section 8(b)(c).

for a third period of tenure require the approval of the government. Section 10 puts restrictions on who can be appointed as a member to the Council and indicates that a person to whom one of the following applies shall not be appointed a member of the Council: he is not an Israeli national; he has been convicted of, or served a sentence of imprisonment for an offence involving moral turpitude within the ten years preceding the decision as to his appointment; he is a bankrupt, or a receiver has been appointed for him on behalf of the court³⁹. Furthermore, a person connected with the Authority by commercial or contracting transactions or has control of a body corporate, shall not be appointed a member of the Council, although representatives of public bodies or government companies shall not be disqualified by reason only that the bodies or companies represented by them are so connected. The Act puts down conditions for the termination of tenure of any member and a rule of suspension where a criminal charge had been filed against a member of the Council in respect of an offence involving moral turpitude⁴⁰.

Rules of procedure - The Council itself prescribes the methods of its work and the procedure of its deliberations insofar as they are not prescribed by or under this Law. The quorum at meeting of the Council consists of a majority of the members including the chairman and the vice-chairman. If there is no quorum at the opening of a meeting, the chairman or the vice-chairman may postpone the meeting for thirty minutes. After this interval, the meeting shall be legal if one third of the number of members aside the

³⁹Section 10.

⁴⁰Section 12.

chairman or vice-chairman participate. Moreover, when a meeting of the Council has been opened with a majority quorum, its continuation shall be legal with any number of members present, provided that one third of the members of the Council, aside from the chairman or vice-chairman, are present when resolutions are passed⁴¹. Furthermore, at the request of the Minister of Transport, the Council reconsiders any subject it has decided upon.

Meetings of the Council - Meetings of the Council shall be held at least once every six weeks, at the request of the Minister of Transport or of three members of the Council. If the chairman of the Council is requested to convene the Council, it must meet within fourteen days, unless the Chairman is requested to convene it within a shorter period⁴².

Power to appoint committees - The Council may appoint permanent and *ad hoc* committees from among its members. The findings of a committee are regarded as recommendations to the Council unless the Council decides otherwise⁴³.

C. Employees of the Authority.

The Director-General - The Council, with the approval of the government and upon a proposition made by the Minister of Transport after consultation with the Council, appoint a Director-General for the Authority. The period of tenure is of five years, but

⁴¹Section 18.

⁴²Section 19 (a),(b).

⁴³Section 20.

the Council may, upon recommendation of the Minister of Transport, extend his tenure for a further five years after the former has given advance notice to the government⁴⁴.

The tenure of the director of the Authority is terminated under certain conditions: he gives written notice of resignation to the Minister of Transport, submitted through the Council or that the Minister of Transport, after consulting with the Council, finds that the director is permanently unable to carry out his functions or decides, by a reasoned decision, to remove him from office⁴⁵.

The Deputy Director - The Council has the responsibility to appoint a Deputy Director. Such appointments are made upon recommendation of the Minister of Transport after consulting with the Council.

Aerodrome Managers - The Council, with the approval of the Minister of Transport and after the recommendation of the director, is responsible to appoint managers for the aerodromes of the Authority⁴⁶. They are responsible to the director of the Authority for carrying out the functions and decisions of the Authority⁴⁷.

D. Powers of the Authority.

- 1) The Minister of Transport may delegate to the I.A.A. powers under the Air Navigation Act 1927, as to any matter relating to the aerodromes of the Authority and

⁴⁴Section 22 (a).

⁴⁵Section 23(b)(2).

⁴⁶Section 22(b).

⁴⁷Section 36.

their operation, except for the power to make regulations with legislative effect. Since the Authority cannot create any regulation with legislative effect, the Authority must propose to the Minister of Transport to pass regulations by virtue of his powers under the Air Navigation Laws as to any matters relating to the aerodromes of the Authority. He also determines what fees are payable to the I.A.A or to others for the use of the aerodromes, installations and for services provided.

2) After the appropriate powers has been delegated to the Authority by the Minister of Transport, the Authority may, with the approval of the Minister, prescribe rules for the maintenance, management, operation and supervision of the Aerodromes of the Authority for the efficient exercise of its functions and powers under this Law.

3) The Authority may authorize another entity with carrying out any of its functions, except with regard to any matter relating to the safety or security of aviation, or the security of the aerodromes of the Authority, save with the express approval of the Minister of Transport⁴⁸.

4) The Authority is responsible for defining the functions of the director of the Authority and of aerodromes managers.

5) The Authority may delegate any of its powers to the director of the Authority or to any manager of an aerodrome, except the powers to prescribe rules, budgets and development schemes, draw up annual reports, or appoint the director of the Authority and the managers of the aerodromes⁴⁹.

⁴⁸Section 31(a).

⁴⁹Section 34(b).

6) The Authority may give the director of the Authority or to any other person power of attorney to sign documents in its name⁵⁰.

E. Budget, taxes, finance and Annual Reports.

1) The Authority is responsible for preparing, and submitting a budget for its ordinary activities, as well as a scheme and budget for the development of its aerodromes every year by the 31st October to the Minister of Transport for approval⁵¹. By virtue of Section 38, the Authority shall submit to the Minister of Transport an annual report. This is done no later than six months after the end of its business year.

2) All revenues received by the Authority are at its disposal and are within the framework of its budget, to be used for purposes determined by it to carry out its functions⁵².

3) For the purpose of the payment of taxes, stamp duty, rates, charges and other compulsory payments, the Authority is treated as the State.

F. Transfer of assets, rights and liabilities.

With the creation of the Authority, the Government of Israel transferred to it land and all movable property of the State which were, immediately before the coming into force of the Law in the area of the aerodromes of the Authority, as well as every right

⁵⁰Section 35.

⁵¹Section 37(a).

⁵²Section 42.

or interest the State had at that time in any of the aerodromes of the Authority. Furthermore, the Law required the Government to transfer to the Authority every right and power of the State under agreements, contractual arrangements and transactions which were in force in respect of the aerodromes of the Authority, immediately before the coming into force of the Law⁵³.

As to any legal action and causes of action, every action which immediately before the coming into force of the Law was pending on behalf or against the State in connection with the property, agreements, contractual arrangements, transaction or operation of any of the aerodromes of the Authority, was subsisted as if the transfer had not been made⁵⁴.

G. Aerodromes under the Authority responsibility.

1) Tel Aviv Ben Gurion Airport - Ben Gurion International Airport has been the central airport in Israel since 1936. Constructed in 1936 by the British, it was liberated in 1948, in operation "Danny", by the 8th Brigade of the Israeli defence forces, under the command of Moshe Dayan. In 1948, the year of Israel's independence, the airport accommodated only 40,000 passengers. By 1993, international traffic reached 5,009,730⁵⁵. As of December 1994 a total of 36 regular international airlines and many charter companies operated at Ben Gurion, and on peak days, the airport handles about

⁵³Sections 43,44.

⁵⁴Section 45.

⁵⁵*Take off into the future*, a publication of the I.A.A., 1993.

200 international flights. Since 1948 the airfield has been expanded, with the addition of runways and taxiway required to serve modern jet aircraft.

The existing passenger terminal was expanded over the years, but its base remains the old structures erected in the 1930's. The expansions were built as was needed to solve immediate problems without long-range planning. Growth in traffic both of aircraft and passengers in recent years have increased the congestion of the facilities and consequently the level of service has declined significantly.

In view of the fast growth of passenger traffic and the peace process in the region, the Airport Authority has prepared a project for constructing of a new terminal, which has been approved by the Government of Israel in 1993. The future terminal will be located directly west of the existing facility. Its construction will start upon the completion of the diversion of the Ayalon River. The target year for inaugurating the new terminal is 1998, the 50th anniversary of the State of Israel. In the first stage the new terminal will process 10 million passengers annually, and upon completion of the second stage it will accommodate up to 16 million. The construction will cost approximately \$850 million.

2) Jerusalem's Atarot Airport - this airport lies 8 km north of Jerusalem. Its runway was upgraded and lengthened to 1,965 m' after the Six Day War to enable jet aircraft. Atarot serves also as an alternate facility for Ben Gurion Airport. Arkia Airlines is the main regular airline operating from this airfield, with scheduled flights to and from Eilat, Tel-Aviv, and the North. Owing to great public interest in international flights to Jerusalem,

charter flights from Russia were permitted in 1990. Atarot handled a total of 63,000 passengers in 1994.

3) Eilat Airport (named after Yaakov Hozman) - The Eilat Airport was inaugurated in 1949 by the Israel Air Force after the War of Independence. In 1969, the runway was lengthened to the present 1,900 m'. International charter flights began to arrive regularly in 1975. Eilat Airport processed 60,000 international and 591,700 domestic passengers in 1993⁵⁶.

4) Ovda Airport - This airport lies about 60 km north of Eilat. Its runways allow long range international flights to and from any European destination. Most international flights began to arrive here in 1988 instead of landing at Eilat. The airport accommodated a total of 182,610 international passengers in 1993⁵⁷. Eilat and Ovda airports served a total of 850,000 passengers in 1993, including transit passengers.

5) Dov Airport (named after Dov Hoz) - The main facility for domestic civil aviation located in northern Tel Aviv on the Mediterranean coast. Considerable improvements were made at and around the terminal building during 1991-1992, including an expansion of the aircraft parking areas, installation of additional security facilities and improvements of safety on the airfield. Dov Airfield accommodated a total of 539,000 passengers in 1993⁵⁸. Work has started to relocate the airfield to the northeast, toward

⁵⁶Israel Airport Authority, *Annual Report*, 1993.

⁵⁷*Ibid.*

⁵⁸*Ibid.*

the sea in order to relieve the noise burden on residents of Tel Aviv's Lamed residential areas.

6) Herzliya Airfield - Located east of Kfar Shmaryahu. Serves as main maintenance base. It also serves as a facility for general domestic flights. Its runway is 1000 m' long. Its facilities include flight schools such as Shahaf and Nasher, facilities for tours over Israel and aerial advertising.

7) Haifa Airport (Named after Uri Michaeli) - Is located in Haifa Bay. It serves mainly the Arkia and Kanfey HaEmek Co., as well as private aircraft. The airfield has been considerably developed in recent years. International flights now depart from the airfield to Paphos, Cyprus. About 17,400 light aircraft movements took place here in 1993.

8) Rosh Pina Airfield - Located near Rosh Pina, about 30 km from Kiryat Shmona. It serves the civil aviation in the Galilee. Regular daily scheduled Arkia flights take off to Eilat, Jerusalem and Tel Aviv. This airfield served a total of 88,634 passengers in 1993⁵⁹.

9) Terminals along the Egyptian border - The Airport Authority operates and provides management and security services for the land border terminals on the Egyptian border - at Rafiah, Nitzana and Taba. A total of 720,000 passengers crossed these terminals in 1993⁶⁰.

⁵⁹*Ibid.*

⁶⁰*Ibid.*

CHAPTER 5 - NATIONAL AND PRIVATE AIRLINES

1. EL - AL Israel Airlines Ltd.

A. Introduction - The State of Israel was forged during a bloody war of independence that claimed thousands of lives and left staggering residual problems. The Prime Minister, David Ben Gurion and the government were in favor of establishing a national carrier to preserve reliable air links with the rest of the world, not only during peacetime but particularly during periods of war and crisis¹. EL AL Israel Airlines was established in 1949 as the flag carrier of Israel, wholly owned by the government. The company's charter states that the company's objective is to secure and maintain a regular airlink at all times and under all conditions within a framework of maximum profitability. The company proved its importance during the 1973 Yom Kippur War and the Persian Gulf conflict, when it served as Israel's airlink with the world, when all other airlines stopped flying to Israel.

As the flag carrier, EL AL was used by the government in many operations to bring Jews from the diaspora, and to operate special flights bringing immigrants to Israel. The company's long history of assisting in the ingathering of Jewish immigrants dates back to 'Operation Magic Carpet' in 1950, which brought Yemen's entire Jewish community to Israel in a massive airlift. The tradition continued over the past five years, during which EL AL has carried hundreds of thousands of Jews from the former Soviet Union. A more recent operation was the successful uplift of thousands of Ethiopian Jews

¹For an historical review, see Sherman, A., *The EL-AL Story*, 1972, Vallentine, London.

in a humanitarian airlift from Addis Ababa to Tel-Aviv. During this operation, EL AL set a world record by uplifting 1,087 immigrants in a specially configured Boeing 747 aircraft.

In 1972, the working relationship between management and employees deteriorated. By 1982 EL AL had incurred 69 strikes. Labor relations and financial performance had deteriorated so severely that the government shut down its operations in September 1982, nearly dissolving the company. Flights resumed four months later under a court-appointed receiver and a new president, R. Harlev. The retired Air Force brigadier-general faulted management for ceding the company control to the union's leadership. He consolidated eight labor unions into one, an act which not only streamlined negotiations but reduced distrust among the different unions. He also reduced the permanent work force, which exceeded 6,000 at its peak. It approaches about half that level today. The management set firm productivity standards and profitability incentives. Throughout the recovery, Harlev stressed flexibility and efficiency as essential elements in bringing the carrier from a staggering \$123.3 Million loss in 1982-83 to profitability four years later. Perhaps an even more startling achievement was that EL AL stayed in the black in 1990-91, the period of the Gulf war. Most carriers suffered losses during the war, as traffic plummeted and fuel prices soared. Israel's position, though, was among the worst. Few travelers were eager to visit a country targeted by Iraqi Scud missiles.

In keeping with its theme of flexibility, EL AL combined a trip to Israel with a stop in Eastern Europe. One could fly nonstop to Tel Aviv, and later, continue on to Moscow.

In fact, Russia is key to many of EL AL's current initiatives. Not only is it the source of Jewish immigration, as well as a new, potentially valuable travel market, it is EL AL's avenue to the Orient. Until the company gained access to Russian airspace, it could not reach Asia, due to hostility from neighboring Arab States that precluded flights directly eastward. Those barriers aren't the only chronic handicaps for EL AL.

By government ruling, EL AL is grounded on the Sabbath and other Jewish holidays. The company's management estimates that the restriction costs the airline \$30-35 Million a year. Kosher catering is another added expense, as it requires separate galley facilities for dairy and meat meals. Finally, EL AL security estimated at a cost of \$50.5 million a year, is another huge expense, even though the government contributes 80% of that cost.

B. The Fleet.

The total number of aircraft operated by EL AL in 1994 was 23 (21 passenger aircraft and two freighters). EL AL maintains a modern fleet of 23 Boeing aircraft, including ten 747's, two of which are 747-400's, four 767's, seven 757's, and two 737's. Moreover, in December 1994, EL AL purchased two used freighter 747-200's for \$100 million from Singapore Airlines, scheduled to be operated by the company in 1995. Furthermore, in April 1994 the company purchased another 747-400's, scheduled to be operated from mid 1995. EL AL is considering the purchase of mid-range aircraft. The candidates being considered are the Boeing 777, the MD-11 and the Airbus A340².

²*Yedioth Aharonoth*, 4th July 1994, p.8.

C. The Cargo Division.

The company is a major cargo transporter, carrying more freight to and from Israel than any other airline, reaching 64% of the entire airfreight volume passing through Ben Gurion International Airport. In 1993, EL AL carried 185,000 tons of cargo, an increase of 5% over 1992. The majority of company's cargo (82%) was carried by freighter aircraft, including a very broad range of Israel's agricultural and industrial export products.

The cargo division is highly profitable and accounts for 25 percent of EL AL's revenues. In fact, the airline is one of the ten largest cargo operators over the North Atlantic. The 747 that crashed in Amsterdam was one of EL AL's two all-cargo freighters which carry up to 130 tons of cargo. The importance of the plane to EL AL was underscored by the speed with which EL AL leased aircraft to fulfill its cargo commitments. In less than a week the airline leased a 747 as well as a DC-8. The airline operates its main European cargo terminal at Amsterdam and has smaller cargo centers at London, Frankfurt and Cologne. In North America, the major cargo center is in New York with smaller facilities in Miami and Los Angeles.

D. Business Activities.

Established in 1949 as the national airline of Israel, EL AL flies today to 49 destinations in Europe, America, Asia and Africa³. The total number of permanent employees in Israel and abroad in 1993 was 3,412. The long-term trend of increased

³This includes 28 destinations in Europe, 9 in North America (6 of which are served by N.A.A), 5 in Africa and Asia and 7 regional routes.

productivity per employee which reflects the company's performance over the past decade continued during 1993 and productivity reached 554,000 available ton-km per employee.

The years from 1990 to 1992 were difficult years for the airline industry, with soaring fuel prices and insurance premiums, the Persian Gulf conflict, and a worldwide downturn in passenger traffic⁴. Despite this, EL AL was one of the few airlines in the world to record a profit. In 1993, the company's revenue increased by 1.0%, reaching a total of \$947.1 million from the following sources: \$687.7 million from carriage of passengers; \$203.2 million from carriage of cargo and \$56.2 million from other sources.⁵ The total profit in 1993 was \$9.9 million and accumulated profit since 1986 totalling \$170.8 million⁶. The company is expected to conclude 1994 with a \$10 million profit, and for the first time, a total turnover of \$1 billion. The total company production level (measured in terms of ton-km flown) and the passenger traffic, both increased during the last 6 years. Passenger traffic (both scheduled and charter) grew in 1993 by 10% compared with 1992, totalling 2,145,000 incoming and outgoing passengers. The high load factor is characterizing EL AL over the past decade. Trans Atlantic activity

⁴The top 100 airlines of the world reported a \$8 billion loss in 1992. Source: *Airline Business Journal*, September 1994, p.42.

⁵*Airline Business Journal* published in its September 1994 issue, a list of the top 100 airlines of the world. According to this list, EL AL rank is 49 in respect of sales in \$US, and 17 in respect of highest passenger load factor.

⁶EL AL's Annual Reports, 1992, 1993.

load factor reached 78.6%, whereas the total system-wide passenger load factor reached 72.7%⁷- one of the highest in the industry.

E. EL AL's Subsidiaries.

EL AL owns two subsidiary companies. The larger of the two, Teshet, is active in the tourist sector and in-flight services. Teshet operates two Kosher catering companies: Tamam, based in Israel, and Borenstein in New York. Teshet holds interests in Maman, the cargo handlers at Ben Gurion Airport; manages the Laromme Hotel chain; and is the Israel representative of the Howard Johnson Hotel Group, Alamo Rent-A-Car, Air Nevada, British Midland, All Nippon, China Airlines and international technical aviation companies such as Pratt and Whitney, and United Technologies. Teshet and its subsidiaries reported a profit of \$2.1 million for 1993 compared with \$2.6 million for 1992.

EL AL's other subsidiary, Sun D'or International Airlines Ltd, operates charter flights between Israel and Europe, and plays an important role in developing new routes and tourist markets for EL AL. Sun D'or's activities during 1993 were characterized by traffic development to new destinations in Europe.

The company's 1993 revenue totalled \$19.5 Million, \$2.9 Million of which were contributed in favour of EL AL's profit. In 1993 the company carried 151,913 passengers on 944 flights and its network covered ten destinations in Europe; three in the Mediterranean Islands and four in the Commonwealth of Independent States.

⁷EL AL Annual Report, 1993.

During 1989, EL AL finalized the purchase of 24.9 percent stake in North American Airlines (N.A.A), providing EL AL access to the North American market. EL AL uses NAA planes to continue its flights from J.F.K- New York International Airport and from Mirabel, Montreal Airport to destinations in the U.S.

In 1994, EL AL signed an agreement with Air Holland, a charter airline in the Netherlands, to use its fleet during peak periods.

Finally, in December 1994, the Economic Committee approved the Minister of Transport's recommendation enabling EL AL to purchase a 48 percent stake in Star-Line, a Dutch airline. This would help EL AL maintain its position and compete in the deregulated air market in the European Community⁸.

F. Privatization of EL AL.

The government perspective - The Government Companies Authority (GCA) Report of 1992 listed 142 companies in which the government holds some sort of ownership. The **Government Companies Law 1975** clearly distinguished between a government company and other business entities and specifies that a government company is one in which the State, or the State together with a government company holds either: more than 50% of the voting power in the general meetings or the power to appoint more than 50% of the company's directors.

The law also established the G.C.A, administers the government's responsibilities regarding to the government companies. In the last ten years, the Israeli Government has

⁸*Ha'aretz*, 13th December 1994, p.9.

been privatizing government enterprises. Privatization signifies the complete or partial selling of assets or shares to investors or through the stock market. Privatization of government companies occurred even before those principles had been established by the Government Companies Law 1975, Section 14 of which directs that the government is the authority that decides on the selling of a company if convinced that the original objectives of the company have been achieved, or that such objectives could be more readily achieved by a private company.

In April 1988, The G.C.A submitted to the government recommendations for the privatization of government companies in Israel. Among the goals mentioned were: the decrease of government involvement in the economy, the creation of an efficient economic system able to respond to the market's need, to encourage investments, to release companies from non- profitable considerations emerging from the company's ownership, and to raise cash to cover deficits.

Indeed, the impetus behind privatization has always been the augmenting of efficiency in Israeli corporations and raising money for the government's coffers. Those concepts sound simple, but they are no small matter. Greater operating efficiency could mean closing facilities and streamlining operations in some cases. It could also result in expanded ventures in other cases. More money to the government does not necessarily attract greater government spending, although this is often the case. In addition, the most controversial issue caused indirectly by privatization is the effect on employees, and the fact that the sale of companies often result in a rash of dismissals. There is no doubt that funds from sales of government-owned corporations could be used to reduce Israel's

hefty debt. Corporations free of government control do not always have to look for guidance from above and can pursue business dealings on a pure dollars-and-cents basis. Official attitudes toward privatization in Israel are positive. In 1993, Prime Minister Yitzhak Rabin approved selling part of the government's stake in EL AL, as a part of a plan to speed up the privatization of government owned corporations. Member of Knesset, Binyamin Netanyahu, the opposition leader, has said: "it is not the government that has to create jobs, but we need to create competitive companies and privatization. The government owns 180 businesses and literally, the government has no business to be in business"⁹. Moreover Haim Herzog, the (ex) president of the State, said that Israel needs to privatize government companies in order to cope with the many challenges the State must face. By privatizing, he added, the State could generate capital which would provide a boost to immigration¹⁰.

EL AL's perspective - Ten years after putting EL AL into receivership, the Finance Ministry opened discussions on how to take the national airline out of receivership and prepare it for privatization. In November 1992, the Finance Ministry's director-general, Aharon Fogel asked senior ministry officials to investigate several theories involved in the privatization plans of EL AL. One issue is whether the country's vital interests would be harmed by selling off the national airline, and if there would be

⁹Speaking to a group of 200 young American investors with the State of Israel Bonds Association at the King David Hotel on July 18, 1993. *Yedioth Aharonoth*, July 20, 1993, p.10.

¹⁰*The Jerusalem Post*, July 5, 1991, p.17.

any way to protect such interests. On this issue, Thomas Copeland¹¹ commented that one possible solution is to sell the entire company, but protect the country's interest through regulation. In EL AL's case, the government could ensure that it would have the planes available during wartime or in times of emergency, by enacting legislation that would empower it to take possession of the planes under certain circumstances. Another delicate question is to what extent the government would continue to be financially responsible for EL AL's security system (estimated cost in 1994: \$55 million). Another difficulty is the inability of operating flights on Sabbath and on other Jewish holidays, and whether any such conditions could put the government into the privatization process. At present, Orthodox Jewish pressure forces the company to ground its fleet during those days. "We are no doubt the world's only five-and-a-half day a week airline", proclaims Harlev¹². He estimated that the airline profit would increase by \$30 million if it were allowed to operate on the Sabbath. But in Israel's current political environment, there appears to be little chance that the Sabbath ban will be revised. Moreover, it is not clear who will cover the past debts of the company, which amount to \$300 million. Finally it was unclear at the beginning whether the government was looking for a strategic partner to invest in EL AL or whether the shares were to be sold to the public on the Tel Aviv Stock Exchange¹³. In July 5, 1993 the Minister of Transport appointed a team to study

¹¹Thomas Copeland, a former professor at the University of California, Los Angeles, is an expert on the valuation of companies in their privatization efforts. He visited Israel on November 1991 at the invitation of the Jerusalem-based Floersheimer Institute for Policy Studies. A partner in McKinsey and Co., a New York-based consulting firm.

¹²Sandler, N., "Privatization on Standby", *Link Magazine*, January 1993, p.14.

¹³*The Jerusalem Post*, November 24, 1992, p.9.

the privatization of EL AL and the cancellation of its receivership status. The team, headed by Yossi Rosen included members of both the Transport and the Finance Ministries. This team submitted its recommendations for the process of EL AL's privatization. Consequently, the Minister held the view that as an interim step, he would seek court approval to increase the authority of EL AL's steering committee, so that it would enjoy the same powers as a board of directors.

A lot of hopes were quietly set aside when an EL AL cargo plane crashed in Amsterdam in October 1992. Only days before the crash, Israel's Finance Ministry decided to speed up plans to privatize the national carrier, selling at least half of the airline in 1993 and bringing it out of receivership after nearly ten years. From the government's point of view, 1993 would have been the perfect time to sell the airline. EL AL had eight straight years of profits, and in 1991, set an all-time record of \$38.6 million. After years of painful restructuring, EL AL has become one of the most efficient and profitable international carriers in the world. With the crash and the investigations that followed, the plans for the sale had been postponed. The Dutch and Israeli investigation teams examining the causes of the crash determined that it was due to a design fault in the Boeing 747's engine supports rather than the fault of EL AL maintenance. The signs of metal fatigue in the pins that connect the engines to the wings apparently cleared EL AL of culpability for the crash, but did nothing to change the inevitable dent in profits.

Talks on the privatization of EL AL resumed in August 1993 between the Ministers of Transport and Finance which agreed to act together to cancel the

receivership and to lead the company to privatization as soon as possible. However, at that time a conflict of views as to the way to follow became apparent. The Transport ministry supported a two stage process: the first step, ending the receivership status and the second step to go with the privatization only after one year, whereas the Minister of Finance favoured merging the steps together without establishing a political board of directors.

In 1994, Yossi Nizani, the Government Companies Authority Director General announced that he will not recommend privatizing EL AL during 1994 due to difficulties in the money market, and that the government is not going to get from the selling the same amount predicted in 1993, and postponed the privatization till the beginning of 1995, "until the government's vital interests in the privatization will find a proper solution"¹⁴. One such 'vital interest' is the government's desire to achieve the maximum profit possible. Believing that peace is in the doorstep, it is economically sound to delay privatization until new air contracts with the Arab world are signed, which would significantly increase the value of the company. As of September 1994, speculations are that the privatization of EL AL would take place in mid-1995, whereas:

- 1) The government of Israel decided to sell 51% of EL AL's stock in the Tel Aviv and New York stock exchange market.
- 2) The government of Israel would keep a 'Golden share' which would allow the government to use EL AL's fleet in time of war and emergency.
- 3) No major foreign shareholder would allowed to control the company.

¹⁴*Ma'ariv*, July 19, 1994, p.18.

4) The company's employees would have first option in buying 10% of the issue¹⁵.

5) Certain questions are still under discussion:

A. There is disagreement on what is going to be included in the deal, such as flights rights, subsidiaries and the cargo division. It is clearly shown in the company's last five Annual Reports that EL AL without its cargo division and subsidiaries is much less profitable company.

B. There is disagreement between the Transport and Finance Ministers as to who is going to pay for the Annual security cost (\$55 million in 1994), and a disagreement as to the payments for four aircraft that the government purchased for EL AL after 1982.

C. When, and to whom the government plans to sell the other 49% of the company ?.

When the privatization process will end, EL AL should be free from non-economical, non-business restrictions. As such, the new company will be able to fly seven days a week, and compete in new, profitable markets. However, with the adoption of the open skies policy in Israel¹⁶, the company will have to face growing competition which may affect its profit margin due to the fact that other carriers will be able to operate in the same routes.

2. Arkia Israeli Airlines Ltd.

A. Introduction - At the end of 1950, a small airline company called 'Eliata' was registered under a new name, 'Arkia'. The company was founded with the goal of

¹⁵*Globus Economic Magazine*, June 7, 1994, p.24.

¹⁶See details in Chapter six.

establishing an air link between Eilat and the northern part of the country. The registered capital was 100,000 Israeli pounds, jointly invested by the Ministry of Transport (through EL AL) and the General Federation of Israeli Workers (the Histadrut). The Israeli Air-Force allocated two C-46 Commando Curtiss planes, which Arkia adapted for civilian flights. The planes maintained two flights per week, run by the staff of the national carrier, EL AL.

In the first year of operation, the company flew 13,500 passengers on approximately 900 flights. At the beginning of 1958, Arkia began to maintain regular flights to the Mahanayim airfield, in order to attract tourism and vacationers, as well as Galilee residents who needed transportation to the center of the country. The Six Day war of 1967 changed the reality of air transportation from one extreme to another, and opened new horizons for Arkia. The Atarot airfield, near Jerusalem, became available for civilian air traffic, and Arkia planes began to land there on a regular basis on their way north and south. An important development occurred in the field of international flights in March 1967, when EL AL removed the last Britannia planes from it fleet and began to operate with a fleet comprised entirely of jets (Boeing 707). The Boeing planes were unsuitable for short flights to Cyprus, so EL AL decided to relinquish the Tel Aviv-Nicosia route to Arkia.

In 1970, growth in Arkia's passenger volume continued. In the five years after the 1967 War, the number of passengers more than tripled, reaching 578,000 in 1972. In order to expand activities in the air-taxi field and to service the small landing strips

and minor airports in Israel, Arkia entered into a partnership with the Kanaf Company. At the end of 1972, a joint company called Kanaf-Arkia was established. In 1979 the government decided to sell the company to private hands and in 1980 it was sold to Kanaf-Arkia and its employees.

In 1982 the company started to operate international charter flights to destinations in Europe under a license given by the Minister of Transport, and purchased three Boeing 737's. This transaction was one of the main reasons for the financial difficulties of the company until 1988.

In 1993, the 'Koor' company purchased 15% of the shares of 'Knafaym - Arkia Holdings Ltd' (Arkia's Parent Company); 'Knafaiym' subsequently issued 13% of its shares to the public on the Tel Aviv stock exchange.

B. The Fleet.

The total number of aircraft owned by the company on January 1994 was 22, including six De Havilland DHC-7, one De Havilland DHC-6, four Piper PA. 31-350 Chieftain, one Britten-Norman BN2A 'Islander', four Cessna 337, one Aero Commander 680, one Boeing 727-200, one Boeing 737-219, one Boeing 747-100F, one Boeing 737-281, and one Israeli Aircraft Industry Westwind.

C. Business Activities.

In 1993, the company flew approximately 500,000 passengers on 8000 domestic flights. In addition to regular flights, Arkia operates special flights for cloud-seeding to

increase rainfall, reconnaissance flights, and research and air survey flights. In the field of international charter flights, Arkia works jointly with Sun-D'or, a charter subsidiary of EL AL. The flights are operated on Boeing 737's and 757's to Paris, London, Helsinki, Zurich and other seasonal tourist destinations.

Arkia also offers tour packages and vacations packages in Israel and in Europe. Arkia has been certified by the Civil Aviation Administration as a repair station for maintenance and renovation of light and medium planes. The repair station is located at Dov Airport in Tel Aviv. Arkia's repair station also does work for other clients including the Israeli Air Force and private aircraft owners.

As of September 1994, Arkia is the only company in Israel licensed by the Civil Aviation Administration to operate scheduled flights to Eilat, the company's most profitable route. This policy of granting only one license created long legal dispute over the years.

D. Subsidiaries in the Arkia group.

I.C.S Israeli Charter Services Ltd.- Organizing charter flights to Germany. This subsidiary gives control and supervision services for charter flights of Arkia and Sun-D'or in Europe.

Arkia Flugdienst - Company registered in England since 1989. Its only property is one Boeing 727 on dry leasing to a European airline.

Arkia Leasing Limited - Established in 1990, and registered in England. Its property, one Boeing 737 is under a dry lease to Ladeco Airlines of Chile.

E. The privatization of Arkia.

Arkia saw since its establishment both times of prosperity and of severe financial difficulties. The 1967 war was a prosperous time, since it opened more destinations for the company. A Major part of the company's profit during the end of the sixties and the seventies came from services the company gave to the Defence Ministry. In 1978, the company transported 700,000 passengers (half of these for the Defence Ministry). Nevertheless in 1976-7, the Annual Reports indicated growing debts and operational losses¹⁷. Apart of these operational losses the company accumulated 400 million I.L in debts when valued at only 360 million I.L.

The ground was thus ready for the privatization of the company. In 1979 the government established a committee to investigate the situation of Arkia, which submitted its recommendation to privatize the company in the summer of that year.

The reasons for the privatization were mainly its financial status. In 1980, the Economic Committee approved plans to sell EL AL's part in the company. Arkia was sold for \$5 million and became a private company in which 74% of shares are owned by 'Kanaf' and private investors, 25% is owned by employees, and 1% by the Histadrot.

The privatization of Arkia can be used as case study. The company is reporting a profit since 1989, is able to take business decisions by a professional board of directors, and free from any political or non-economical consideration.

¹⁷In 1976, *Arkia Annual Report* indicated a growth of 42% in expenses compared to growth of only 30% in income. The company reported a loss of 85 million I.L in 1975, 12.4 million in 1976, 35 million in 1976, 12.4 million in 1977 and 57.5 million in 1978.

3. Other Private Aviation Companies in the Israeli Market.

A. C.A.L

1956 was the first year in which the government of Israel decided to permit the establishment of a company responsible for handling the export of agricultural products. Agrexco-Agricultural Export co. Ltd, was thus established and has become the sole exporter of fresh agricultural products. The company used air transportation which was made by EL AL's Boeing 707's aircraft. Since the beginning of the seventies, farmers started claiming through the Agricultural Boards (which at that time held 30% of Agrexco) that EL AL charged very high fares.

In 1975, Motti Hod proposed to form a private company which would handle the export with its own aircraft. The company was established in 1976 as CAL -Cargo Airlines Ltd. The majority of the shares were in the hands of farmers and the rest were held by private interests¹⁸.

The license to operate cargo charter flights, in leased aircraft was given to the company in 1976 by the Civil Aviation Administration. In its first year of operation, the company leased one 747 from EL AL and offered a lower price for transportation - 330\$ a ton. Today, the total agricultural exports from Israel is about 70,000 tons a year. During the winter, C.A.L transports 20,000 tons, in its 747 fleet mainly through its bases in Europe (Amsterdam and Cologne).

¹⁸For more details on the history and reasons for the establishment of CAL, see Leshem, M., *The International Air Transport Policy of Israel*, 1978, (unpublished LL.M. Thesis), McGill University, Montreal, Chapter 5.

base of the company is Ben Gurion International Airport from which the company operates non-scheduled flights to any destination. An important business feature is that the company can supply a services within four hours, which attract many business people.

D. Shahef.

Shahef is a private aviation company located at Herzliya Airfield. Under a license given to it by the C.A.A, the company operates a flight school for light aircraft (Cessna 152's and 172's) and offers to the public non-scheduled passenger and cargo flights in Israel in its Britten-Norman BN2A 'Islander'. In 1986, the company submitted the director of the Civil Aviation Administration an application to operate Scheduled flights from Tel Aviv to Eilat (the main domestic air route in Israel). This application was denied by the C.A.A.

E. Chim - Nir Ltd.

Chim-Nir was established in 1991 by a group of 16 pilots who used to fly for Al-Nir, a subsidiary of Chim-Avir, both of which were agricultural cooperatives giving agricultural flight services. In 1991, due to severe financial difficulties, Al-Nir and Chim-Avir ceased to exist, and offered its fleet for sale. The sixteen pilots established Chim-Nir few days before Chim-Avir folded and offered \$3 million for the aircraft and other property rights in Herzliya Airfield.

Chim-Nir and its subsidiary, Chim Nir Aviation Services, offered non scheduled passenger flights to all parts of Israel, Cargo flights to all parts of the country, crop - dusting services, air-photography flights, air-reconnaissance flights, all in its fleet (11 helicopters ,20 crop-dusting aircraft, 8 small cargo aircraft). The company is also supplying aircraft maintenance and support for light aircraft, under a license given to it from the Civil Aviation Administration. Although the company faces competition from other small aviation companies like S.I.S, Lahat, A.I.M and Ofek, the company reported a \$1.5 million profit in 1994.

CHAPTER 6: DOMESTIC AND INTERNATIONAL AIR POLICY IN ISRAEL.

1. General.

A. The rationale for establishing and maintaining the air transport industry, and Israel's scene.

Since the end of the Second World War, it has become clear that governments tend to engage, directly or indirectly, in various business activities. The economic circumstances and historical developments have led many governments to take an active part in the transportation branches in general and the aviation industry in particular. The main reasons for establishing and maintaining such an industry are found, *inter alia*, in political, military, economical and psychological roots.

In Israel's scene, the decision to establish an Israeli airline in 1948 was rooted in the need to preserve reliable air links with the rest of the world, in peace and war time¹. This proved to be important and vital in the political situations Israel had faced since its establishment. The two most notable instances were the role the airline played during the 1973 Yom Kippur War and the 1991 Gulf War. In 1973, EL AL Israel Airlines, though most of its equipment and manpower were requisitioned by the army, remained in the civil air transport business, and provided the only link between Israel and the rest of the

¹Sherman, A., *The El Al story*, Vallentine, London, 1972, p.13.

world². Similarly, in January 1991, all the foreign airlines announced the suspension of all their flights to and from Israel, due to the dangers of flying into a potential war zone³.

Even though the political values of maintaining an aviation industry are more difficult to assess, its importance lies in the fact that opening air routes gives the nations more points of political contact with foreign countries. Moreover, in a large area country such as Canada, the air industry can contribute to the national and political unity by connecting distant, isolated settlements with the rest of the country.

The recognition of the importance of civil aviation to national security and the military can be recognized by the fact that during war and times of crises, the airline can, at a relatively short notice, provide transportation of military personnel and cargo. Indeed, during the 1973 war, part of EL AL's fleet was used to transport vital military equipment.

Economic reasons for maintaining an airline industry are varied. The willingness of states to promote foreign trade, by enabling the transportation of import and export goods in order to contribute to its national economic growth, is only one factor. Wassenbergh explained that the transportation of traffic through the air has economic values which the states recognized as a potential source of revenue for the benefit of the national economy. According to Wassenbergh, the main economic advantages derived from the maintaining of air transportation lied, after all, with the promotion of tourism

²Coleman, H. J., "EL AL played key role in Israel's defence", *Aviation Week & Space Technology*, nov 26, 1973, P.28.

³Schachter, J., "US stops tower flights to Tel Aviv", *The Jerusalem post*, February 3, 1991, p.2.

and trade⁴. Moreover, Lissitzyn noted that airlines can help develop economically and geographically isolated areas by providing a simple means of communication, connecting these areas with larger centers of consumption and production⁵. Moreover, the utilization of aviation as an integral part of the total transportation system enables people to travel for business and pleasure purposes, thus contributing to the general welfare of the state.

Aviation law commentators such as Lissitzyn⁶ and Wheatcroft⁷ pointed out that an additional factor that applied to the international field was the value of air services as a symbol of national prestige. Lissitzyn indicated that: "The possession of well-developed air transport, especially in international traffic, is a factor enhancing the prestige of a nation at home, in the colonies and abroad. The very existence of such air transport seems to indicate that the nation is progressive, efficient and highly civilized, and that it is contributing its share to the progress of mankind"⁸.

Sletmo⁹ pointed that evidence to this factor can be seen, especially in some of the new nations, where soon after the declaration of their independence, they established their own airlines.

⁴Wassenbergh, H. A., *Aspects of air law and civil air policy in the seventies*, Martinus Nijhoff, the Hague, 1970, p.8.

⁵Lissitzyn, O. J., *International air transport and national policy*, Council on foreign relations, New York, 1942, p.42.

⁶*Ibid*, p.56.

⁷Wheatcroft, S., *Air transport policy*, Michael Joseph, London, 1964, p.51.

⁸Lissitzyn, *Supra*, note 5 at 56.

⁹Sletmo, G. K., *International Air Transport and National Interests*, 3 arkiv for luftrett, 1967, p.278.

B. Motives for regulating the aviation industry.

Wassenbergh stated that "air policy is based on the national interest in international air transportation and on the value of the national air traffic market"¹⁰. In the international arena, once the principle of each country's sovereignty over its own territory became clear according to the Chicago Convention of 1944, States then created basic procedure, originally for security reasons, to regulate the use of their own air space for the use of foreign airlines. Since the transportation of traffic has great economic value, the national sovereignty concept gives the state the ability to trade, as it sees fit the rights to transport passengers and cargo to, via, and from its territory - hence the international framework of bilateral agreements.

In his noted 1942 book, Lissitzyn suggested that regulations and governmental participation in the ownership or management of the aviation industry are the two distinct ways by which any government can exercise control over air transport¹¹. Since 1942, many states, such as the United States, Canada and England, moved away from direct participation in the ownership of its airlines, yet some sort of regulation imposed on the industry is a common practice.

There are a number of major ways for regulating the aviation industry. These can be broadly divided into three separate categories: political, technical and economic regulations. Wheatcroft indicated that in addition to their importance to the national interest, the activities of airlines have other features which caused them to be regulated.

¹⁰Wassenbergh, *Supra*, note 4 at 10.

¹¹Lissitzyn, *Supra*, note 5 at 98.

Safety is one such aspect. Consequently, almost universally, governments have made safety of air transport a special concern and enacted major and secondary legislation, requiring rigorous standards of aircraft production, airworthiness, maintenance, air crew qualification, flying hour limitations and other operational concerns, all of which were designed to "ensure the highest practicable level of safety in airline operations"¹². In the State of Israel, regulation of civil aviation is generally entrusted to the Minister of Transport and the technical regulations are embodied in various executive regulations such as the **Aviation Regulation (limit flight in aviation services), 1971¹³**, **Aviation Regulation (marking and registration of aircraft), 1973¹⁴** and **Aviation Regulation (aircraft and components certification procedures), 1977¹⁵**.

The Organization for Economic Co-Operation and Development pointed out that at the national level, there are three main reasons for government intervention: first, since air transport serves as a public service, governments had to regulate the domestic aviation industry to ensure reliable, safe and reasonable cost for transport by air to all parts of the country. Secondly, the size of the domestic market in many nations is considered as not being able to support more than few strong carriers and consequently governments tended to prevent free competition. "Thirdly, and related to the first two, it was believed on public policy grounds that the industry should remain under domestic

¹²Wheatcroft, *Supra*, note 7 at 46.

¹³*Kovez Takanot*, 2711, 1971, p.1280.

¹⁴*Kovez Takanot*, 3089, 1973, P.312.

¹⁵*Kovez Takanot*, 3706, 1977, p.1576.

control as a vital national resource and hence there was a need for extensive public involvement in airlines through direct public ownership of airlines as well as by government regulation of entry and exit, capacity and tariffs"¹⁶. Wheatcroft claimed that control of entry is a fundamental feature of most systems of regulation and that this control may be achieved by creating a system of licensing and granting exclusive operational rights to a particular carrier¹⁷. In Israel, the Minister of Transport not only administers safety regulations, but also controls the development of regularly scheduled air transport through his discretion to approve or reject operating licenses. This system of regulation is characterized both by major legislation (Section 5(1) of the **Aviation Services Licensing Law 1963**¹⁸), and related Aviation Regulations dealing with charter flights, such as the **Aviation Services Licensing Regulation (Charter flights) 1982**¹⁹.

2. Civil Aviation Policy in Israel - nature and forms of manifestation.

Jones defines "*policy*" in the following way:

"National interests are the ends for which a nation exists and acts. Survival of a nation and its people is the basic national interest. A *national objective* is a goal which, if achieved, would further the national interest. To achieve an objective we must adopt plans or policies"²⁰.

¹⁶The Organization for Economic Co-Operation and Development, *Deregulation and Airline competition*, 1988, p.35.

¹⁷Wheatcroft, *Supra*, note 7 at 46.

¹⁸*Sefer HaHukim*, 397 (1963).

¹⁹*Kovez Takanot*, 4328, 1982, p.754.

²⁰Jones, H., "The equation of aviation policy", *Journal of Air Law and Commerce*, Vol. 27, 1960, p.221.

With the establishment of domestic and international airlines, a country creates some sort of policy regarding transportation by air. Leshem indicated that the forms in which this policy is manifested vary significantly in different regimes²¹. It could be found, *inter alia*, in national legislation as in the United States, Ministerial announcements, parliamentary debates, national court decisions, national aviation reports, replies by officials in aviation cases and aviation writers. In any form the policy is manifested, it will include a set of objectives which the state sees important.

In United States, Section 102 of The 1938 Civil Aeronautics Act, a policy declaration, was the first major legislation to reflect the objectives regarding air transportation which shaped the US air policy²². The Section, title " declaration of policy" provides:

"In the exercise and performance of its powers and duties under this Act , the board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

- A) The encouragement and development of an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the National Defense;
- B) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions, such transportation by, air carriers;
- C) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preference or advantages, or unfair or destructive competitive practices;
- D) Competition to the extent necessary to assure the sound growth of an air-transportation system properly adapted to the needs of the foreign and

²¹Leshem, M., *The international Air Transport Policy of Israel*, 1978, (unpublished LL.M. Thesis), McGill University, Montreal, p.2.

²²Frederick, C. T., *Air Transport Policy and National Security*, University of North Carolina Press ,1965, p.18.

domestic commerce of the United States, of the Postal Service, and of the National Defence;

E) The promotion of safety in air commerce; and

F) The promotion, encouragement, and development of civil aeronautics."²³

To achieve the objectives indicated in the act, the Board was entrusted with the power to regulate the industry.

Blackshaw pointed out that in Great Britain, nobody has more influence on civil aviation policy than the Civil Aviation Authority, established by the 1971 Civil Aviation Act 1971²⁴ (CAA). In 1968, the British government created a committee, chaired by Sir Ronald Edwards, to review Britain's civil air transportation.²⁵ The committee Report, entitled "British Air Transport in the Seventies" (The Edward Report), was published in 1969, and become the foundation of the Civil Aviation Act of 1971, Section 4(1) of which describes general policy objective to be followed by the CAA. The Section provides that it is the CAA's duty to perform the functions conferred to it in the manner which it considers best calculated:

" a) to secure that British airlines provide air transport services which satisfy all substantial categories of public demand (so far as British airlines may reasonably be expected to provide such services) at the lowest charges consistent with a high standard of safety in operating the services and an economic return to efficient operators on the sums invested on providing the services and with securing the sound development of the civil air transport industry of the United Kingdom; and

²³Public Law 725, 85th Congress, Section 102.

²⁴Blackshaw, C., *Aviation Law & Regulation*, Pitman, London, 1992, p. 33.

²⁵Cmnd. 4018. *British Air Transport in the Seventies*, (Report of the Committee of Inquiry into Civil Air Transport), 1969.

b) to further the reasonable interests of the users of air transport services."

As indicated above, both in the United States and Great Britain aviation policy is rooted in major legislation. In Israel, no such legislation exists. Aviation policy must be gathered from different sources, such as departmental opinions made by Ministers of Transport, executive regulations dealing with different aspects of policy, court decisions, special Committees, Parliament debates and Ministerial questioning.

An important segment of aviation policy is manifested in Section 5(1) of the **Aviation Services Licensing Law 1963**. The Section gives the Minister of Transport discretionary power as to granting or denying of licenses and provides that:

"5. The Minister of Transport may refuse to grant a license if it appears to him, inter alia, that-

- (1) the granting of the license may prejudice the regulation or planning of the aviation economy; or
- (2) the granting of the license may prejudice the security of the State or is not in the interest of the State; or
- (3) the granting of the license does not coincide with the provision of an international agreement dealing with civil aviation between Israel and a foreign State or an agreement, approved by the Minister of Transport for the purposes of this law, between an Israeli company and a foreign company; or may prejudice the carrying out of any such agreement; or
- (4) the applicant for a license has no suitable and sufficient equipment or crew at his disposal or is not capable of conducting his operation in such a manner as to ensure a maximum of safety, continuity, regularity, efficiency or convenience to the public; or;
- (5) the flight may prejudice public safety or public health or the safety of air navigation or otherwise endangers the public²⁶."

Analyzing this section, considerations of State security, economy and international obligation (if by bilateral agreement or by private agreements) and public safety, are all

²⁶*Sefer HaHukim*, 397 (1963).

fundamental considerations for the Minister when granting or refusing an application. Subsection 1(4) can not be said to be a manifestation of policy.

Since there is no clear manifestation of aviation policy in one major legislation, it can be found in the forms of executive legislation enacted by the Minister of Transport. Utilizing the power given to him by virtue of Sections 4,6 and 23(a) of the **Aviation Services Licensing Law 1963**, the Minister published the **Aviation Services Licensing Regulations (charter flights) 1982**²⁷. Section 3, titled "The director's discretion", provides that when the director receives an application to operate charter flight to and from Israel he should consider, *inter alia*, the prevention of unreasonable or unfair competition²⁸, the capacity on the proposed route²⁹, the existence of international agreements³⁰, the effects of granting or denying licenses on the foreign relations of the State of Israel³¹ and the reciprocity in granting such licenses to Israel's carrier in foreign states³².

Responses given by the Ministers of Transport to Members of Knesset questions are another source of official aviation policy. However, a point of caution must be made since different respondents such as the Ministers of Transport, Tourism, or Economy

²⁷*Kovez Takanot*, 4328, 1982, p.754.

²⁸*Ibid*, section 3(1).

²⁹*Ibid*, Section 3(2).

³⁰*Ibid*, Section 3(5).

³¹*Ibid*, Section 3(6).

³²*Ibid*, Section 3(7).

might have different opinions on the same subject, thus representing different views of policy.

One such question was submitted to the Minister of Transport by Member of Knesset, Oriah Lin, on the issue of granting an operator's license on the route Tel-Aviv-Eilat to a second carrier in addition to Arkia³³.

Leshem pointed out that even though there have been no direct manifestations of policy in court decisions, the courts of Israel were a place in which the Ministers of Transport and their agents had to explain and protect policy decisions. Indeed, in the case of C.A.L³⁴, The Director of the Ministry of Transport had the opportunity to state "one of the most unequivocal policy statements ever made in Israel"³⁵, in which he made it clear that the policy of the government of Israel is that El AL, the national carrier, should be the only national airline which operates flights to and from Israel, either by scheduled or non-scheduled flight.

Another valuable source from which the government's aviation policy can be gathered are debates in the Parliament Committees. On February 28, 1990, the Knesset delegated to its Economic Committee the deliberation on the question of granting operator licenses on the Tel Aviv-Eilat route. The committee debated the issue on June 11th, 1990, and after hearing representatives from the Civil Aviation Administration, of Arkia and the Ministries of Transport and Economy, published its conclusions, generally

³³*Divrei HaKnesset*, Question 1079, 15 Jan, 1991.

³⁴1977 ,31 P.D., 246.

³⁵Leshem, *Supra*, note 21 at 63.

accepting the views of the Ministry of Transport, that in the capacity available at that time, there was no place to grant another license³⁶. Finally, aviation policies are to be found in *ad hoc* committees inquiring on different aspects of the aviation industry. On September 3th, 1992, the Government of Israel decided to establish an *ad hoc* task force, headed by the director of the Civil Aviation Administration, with the participation of by representatives of the Ministries of Transport, Economics, Tourism and Agriculture, for reviewing the Aviation policy in Israel and to submit appropriate recommendations³⁷. The committee, named after its chairman, Mr. Manahem Sharon, submitted its report in August 1993, and its recommendations became, as will be described in later sections, a turning point in Israel's aviation policy.

3. Israel's domestic air transport policy.

Until recently, the domestic airline industry in Israel was characterized by rigorous economic regulations with particularly restrictive policies applied toward carriers desiring to enter the industry or expand into new markets. In order to put the evolution of Israeli government domestic aviation policy and its subsequent development into proper perspective, it is necessary to examine the historical highlights of that policy.

With the establishment of Israel, the backbone of the Israeli air transport system was comprised within one national airline, EL AL, operating international scheduled flights to Europe. At the end of 1950, a small airline carrier called "Aliata" was

³⁶*Yedioth Aharonoth*, 11 February, 1991, p.5.

³⁷*Ma'ariv*, 4 September 1992, p.8.

registered (It later changed its name to Arkia). It was created with the goal of establishing an air link between Eilat, and the northern part of the country. Leshem indicated that since 1948, the policy which prevailed was that the air transport industry could not sustain more than one scheduled international carrier and one scheduled domestic airline.³⁸ Consequently, Arkia Israeli Airlines became the sole licensed domestic air carrier operating scheduled flights from Tel Aviv to Eilat, a route that proved itself to be the most lucrative one of Israel's domestic routes.

In 1963, the government enacted the **Aviation Services Licensing Law**. The authority vested in the Minister of Transport by Section 5 of that Law is one of the most fundamental of the minister powers. By the exercise of its authority to grant or deny the granting of licenses, which every carrier must obtain to engage in air transportation, the Minister and the Civil Aviation Administration both determine and control the total scope of the domestic air transportation market and the allocation of authorized services among individual carriers. In so doing, the Minister of Transport also profoundly influences the extent, the quantity, and the quality of services available to the Israeli public, and the economic of air carrier operations.

The monopoly of Arkia on the route Tel Aviv-Eilat was contested before the Supreme Court of Israel (Bagatz), in **Shahaf vs. The Minister of Transport, and Arkia Israeli Airlines**³⁹. The motion was based on the refusal of the Minister of Transport to allow Shahaf aviation, to operate scheduled domestic flights between Tel Aviv to Eilat.

³⁸Leshem, *Supra*, note 21 at 179.

³⁹1986, 40 P.D., 729.

The Minister denied Shahaf a license by virtue of Section 5(1) of the **Aviation Services Licensing Law (1963)**.

In the beginning of 1986, Shahaf held a license to operate scheduled flights from Tel Aviv to Ein Yhav via Mitspeh Ramon. In addition, the company held a license to operate non-scheduled domestic flights, without limitation as to flights destination. Shahaf requested the director of Civil Aviation to grant a license, enabling it to operate scheduled flights from Tel Aviv to Eilat. By virtue of the power under Section 5 that application was denied.

Shahaf claimed that as a direct consequence of that decision, the Minister of Transport was giving Arkia a monopoly which contradicted the good order and prevented competition in the market. In his answer to the court, the Minister of Transport reasoned his decision by explaining that for the existing traffic on the route, there was no room for more than one scheduled carrier and if there would be more than one scheduled carrier, the profitability margin would disappear completely. The Minister also added that if the demand for the service will grow, he would reconsider the application. The court upheld the Minister's decision in applying the broad discretion granted to him in Section 5(1) of the 1963 Law. The court stated that even if the application of Section 5(1) could lead, as in this case to a monopoly of one carrier, it will not be unreasonable and even justified if the dominant objectives does not center around commercial considerations to protect a specific carrier, but rather, in advancing and preserving the national and public interests.

Shahaf's petition was not the last time in which the interpretation of Section 5(1) was called into question. In February 1990, Gidon Gadot, a member of Knesset, asked the Knesset to discuss the licensing system, and in particular the granting of licenses on the Tel Aviv-Eilat route. In February 28th, the matter was transferred to the Economic Committee of the Knesset. The Committee invited representatives from the Ministries of Transportation and Finance, the director of the Civil Aviation Administration, the chairman of Arkia and the mayor of Eilat to address it. In its meeting on June 14, 1990, the Arkia representative explained that based on the license to operate scheduled flight to Eilat, Arkia was forced to operate transportation services in non profitable routes and invested more then \$30 million in equipment. The main route to Eilat, he contended, was the only one with profitable margins which kept the company in business. The director of the Civil Aviation Administration told the Committee that the Ministry of Transportation's policy was that at that time there was no economic justification to maintain more then one carrier in that route. Moreover, he argued that opening the route for competition, at that stage, would be followed by two foreseeable consequences: prices would plunge and one or both companies would collapse, something which is far from being in the public interest. The Committee accepted the policy put forth by the Ministry of Transportation and called Arkia to further improve its services. Finally, the Minister of Transport notified the Committee on the establishment of a task force for considering the question of competition on the route⁴⁰.

⁴⁰*Ma'ariv*, 15 February 1991, p.11.

On February 14th, the team submitted its recommendations to the Minister of Transport. It recommended opening the route to competition when one of the following conditions would come into existence:

- 1) Passenger air traffic to and from Eilat would reach 600.000, or;
- 2) The number of hotels rooms in Eilat will reach 6200 units.

With the fulfillment of any of the above, the team recommended granting another carrier a license to operate scheduled flights under the following conditions:

- 1) The licensee is to operate at least two daily flights to remote areas and transfer at least 150 passengers on the route to Tel Aviv.
- 2) The route segment- Tel Aviv-Eilat will be a connecting flight from a remote area to Eilat.
- 3) The flight are to be operated with such aircraft where the capacity is no more than 20 passengers.
- 4) At first, the licensee will be permitted to operate only two such flights a day.
- 5) The director of the Civil Aviation Administration will grant Arkia a license to operate regional flights (within an hour flight range from Tel Aviv's Ben Gurion Airport).

The team concluded that under such conditions, the opening of the route to competition will not significantly harm Arkia's profitability. It will lead to competition, lower prices and better service. Secondly, the fact that Arkia will be able to operate international regional routes will balance any losses on the Tel Aviv-Eilat route, and finally, by associating the granting of a license with the operating of flights to remote areas, a significant contribution to the overall development of such areas will be made. These recommendations were accepted by the Minister of Transport and were generally

welcomed since they indicated a shift in the old protective policy towards more competitiveness in the market.

Finally, the director of the Civil Aviation Administration announced on June 9th, 1994 that the Administration was interested in a controlled competition in the domestic market, and that within a year it would grant a license to a carrier applying to operate scheduled flights in different routes, including Eilat⁴¹.

4. Israel's international air policy.

A. Scheduled, non-scheduled and charter flights from and to Israel.

The year 1994 can be regarded as one of the milestone years for Israel's aviation policy. After the recommendations of the Minister of Transport, Mr Israel Kissar, the government of Israel accepted a new and liberal international aviation policy, called "open skies policy"⁴². A proper evaluation of this policy can be made only after a brief review of the policy which existed in the first forty-five years of Israel's independence. Leshem indicated that "since 1948, the notion which prevailed in Israel was that the air transport industry could not sustain more than one international scheduled air carrier"⁴³. "Indeed, EL AL Israeli Airlines is the sole internationally designated air carrier in all of Israel's air transport bilateral agreements, and up to the end of the Seventies, the only carrier to operate non-scheduled flights. The reasons advanced to support that policy

⁴¹*Globus Economic Magazine*, June 10, 1994, p.3.

⁴²*Globus Economic Magazine*, February 13, 1994, p.8.

⁴³Leshem, *Supra*, note 21 at 179.

were, *inter alia*, rooted in the ground that there wasn't a large enough traffic market to maintain more than one "flag carrier", and that competition would likely produce deficits for EL AL, as a result of increasing operating costs.

The performance of charter flights to and from Israel, together with EL AL's monopoly, was the subject of long litigations. The first successful attack on the policy occurred in 1976, when C.A.L (Cargo Air Lines) was granted, by the Minister of Transport, after utilizing his authority under Section 5(1) to the Aviation Services Licensing Law 1963, a limited license to operate, under certain conditions, charter cargo flights to Europe. C.A.L did not accept the conditions listed in the license and, in 1977, submitted a petition before the Supreme court of Israel against the director of the Civil Aviation Administration⁴⁴. In the court, C.A.L claimed that the conditions in its license are unreasonable since they lead to an economic absurdity (one of the condition was that it had to apply to its direct competitor, EL AL, for leasing cargo aircraft).

Leshem indicated that the director of the Civil Aviation Administration reply to the court can be regarded as one of the classic examples of international air policy manifestation⁴⁵. In paragraph 9, the director stated:

"A) The policy of the government, executed by the minister of Transport, is that EL AL should be the only national airline which operates aircraft to and from Israel, either by scheduled⁴⁶ flights, or by non-scheduled

⁴⁴1977, 31 P.D., 246.

⁴⁵Leshem, *Supra*, note 21 at 63.

⁴⁶The definitions for scheduled and non-scheduled flights were not given by the Chicago Convention, but merely referred to them in sections six and five respectively. ICAO Circular 136-AT/42, title "policy concerning international non-scheduled air transport", explains that as early as 1948, the ICAO Assembly had recognized the need for such a definition in Resolution A2-18. In

flights, whether carrying passengers or freight, directly or through a subsidiary...

C) This policy is based mainly on the premise that there should be maximum utilization of equipment, means and man-power in which much has been invested, thus saving foreign currency and achieving high added value. The policy also takes into consideration the principle of guarding as much as possible Israel's traffic rights and keeping the air routes of Israel in the hands of the national carrier."

C.A.L.'s petition was rejected on technical grounds. However, Judge Vitkon indicated that there are some contradictions in the license conditions.

During the Seventies, international non-scheduled air transport had become a major attraction for holiday traffic, mainly because of their lower fares, and that a packaged holiday relieves the passenger of financial planning during his vacation⁴⁷. Indeed, "by 1974, the total number of passenger-kilometers flown on international non-scheduled flights by both scheduled and non-scheduled operators had risen to 92,700 million, compared with 250,000 million on international scheduled services. Non-scheduled traffic thus accounted for about 27 percent of the 342,700 million passenger-

1952, the Council suggested the following definition for a scheduled international air service:

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

a) it passes through the airspace over the territory of more than one State; b) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use by member of the public;

c) it is operated, so as to serve traffic between the same two or more points, either:

1) in accordance with a published timetable, or;

2) with flights so regular or frequent that they constitute a recognizable systematic series".

The Council pointed that if one of the elements or more are missing the flight will be non-scheduled flight.

⁴⁷Wassenbergh, *Supra*, note 4 at 50.

kilometers flown on all international passenger services. Approximately 63 percent of non-scheduled traffic was carried out by non-scheduled operators"⁴⁸.

Israel could not overlook this development in the international aviation, and enacted the **Aviation Services Licensing Regulation (charter flights) 1978⁴⁹**, which was published by the Minister of Transport, and in which a concept of charters flights was accepted. The regulation stipulated the framework within which a charter flight can operate: it must be a flight in which an organizer or organizers hired the whole capacity of an aircraft for resale to others or for personal use⁵⁰. Moreover a passenger had to buy a return ticket, the participation in charter flights was limited to groups composed of forty people at least, and finally all the passengers had to depart and return from the same place⁵¹.

In the early eighties a new carrier, Maof Israeli Airlines was established. It applied for a license to operate charter flights to Europe. The license that was given to Maof in June 1981, stipulated that the company could operate international charter flights under certain conditions for operating flights from or to Ben-Gurion Airport. The reasoning beyond this provision was the desire of the Minister of Transport to develop Jerusalem's Atarot International Airport.

⁴⁸ICAO Circular 136-AT/42, paragraph 3.

⁴⁹*Kovetz Takanot*, 4127, 1980, p.260.

⁵⁰*Ibid*, section 1.

⁵¹*Ibid*, sections 2,3.

As to operating charter flight from Ben Gurion Airport, the regulation stipulated that such a flight can be operated from it to any airport, which is at least 150 kilometers from an airport to which EL AL is operating scheduled flights. This was to be known as an "Outside route flight". Arkia Israeli Airlines also applied and received a license to operate charter flights in October 1980. The first condition in its license was similar to the "150 km" rule in Maof's license. The second condition allowed the company to operate charter flights from any other airport in Israel without limitations with the possibility of technical landings at Ben Gurion Airport.

The next step toward a more liberal charter policy was made at the end of 1981 and the beginning of 1982. Then, the Minister of Transport published a document entitled "The Ministry of transportation's policy principles regarding charter flights". The goals of the policy, as stipulated by the document were, *inter alia*, to encourage tourism traffic to Israel, contribute to the economy, develop Atarot and Eilat Airports, preventing destructive competition between scheduled and charter carriers and the continuation of a policy of giving scheduled carriers a preferable position, together with giving other carriers the ability to operate charter flights⁵².

As a result of that document, the **Aviation Services Licensing Regulations(Charter flights) 1982⁵³**, were published by the Minister of Transport, which replaced the 1978 regulations. The regulations stipulate that when the Minister considers an application, he shall take into account, *inter alia*, the following: the prevention of unreasonable or unfair

⁵²*Yediot Aharonot*, March 22, 1982, p.14.

⁵³*Kovez Takanot*, 4328, 1982, p.754.

competition, the capacity of the proposed route, the ownership or control the air carrier has on the tour organizer, the existence of international agreements and the influence such a license may have on the foreign relations of Israel⁵⁴. It also indicated in detail the conditions to be fulfilled by an applicant before operating charter flights⁵⁵, and different types of charter flights such as student and pilgrim flights.

Section 15 of the regulation prohibited the performance of "mixed charters", charter flights in which some of the passengers would be tourists and others Israelis⁵⁶. The economic implications of that section on Maof and Arkia, was such that they were barred from engaging in the sale of tickets to potential passengers. On those grounds, Maof submitted a petition to the High Court of Justice, in August 12th 1983, against the Minister of Transport and the director of the Civil Aviation Administration⁵⁷.

In the petition, Maof contested the regulation on two basic grounds: by publishing the regulations, the Minister has acted *ultra-vires*, since it took into consideration the business position of EL AL, and secondly, that the regulation should be voided, since it is rooted, according to Maof, in unreasonable terms such as:

- 1) The regulation in general make Israeli carriers fly to different, and remote airports, in contradiction to the recommendations of Israeli aviation security officers.

⁵⁴*Ibid*, Section 3.

⁵⁵*Ibid*, Sections 5,8 and 9.

⁵⁶*Ibid*, Section 15(a).

⁵⁷Bagatz 508/83, Maof Air Lines vs. The Minister of Transport, The director of the Civil Aviation Administration and others, 1983, 38(3) P.D., 533.

2) The regulation enables EL AL to prevent, as it wishes, the development of charter flights, since EL AL can operate a scheduled flight to any such destination, thus preventing the charter.

3) The 150 Km limitation is unreasonable, since it directly implied blocking the charter carrier from operating flights to Europe.

The High Court of Justice held that the decision for publishing the regulations, and the conditions indicated in Maof's operating license, were within the discretion and powers given to the Minister by virtue of Section 5(1) of the Aviation Services Licensing Law 1963, thus he acted *intra-vires*, and that the decision of the Minister is one that any reasonable Minister would accept. Indeed, the "mixed charter" rule puts obstacles on the operation of the charter carrier. However, the Court indicated that one should consider the overall policy. This policy opened more possibilities for the charter carriers and put more competition into the market, which can contribute significantly to the public benefit. The policy might be seen as too restrictive from the stand point of the charter carriers and too liberal as far as EL AL was concerned. However, in general, the Court found that the Minister reached a balanced decision considering the different demands, and therefore reached a reasonable decision.

The question as to what is the preferable policy for air transportation from and to Israel arose again in 1992. The government of Israel decided to appoint an inter-ministerial committee to determine Israel's present and future aviation policy (the Sharon Committee)⁵⁸. The committee, which was appointed by the Minister of Transport on 31

⁵⁸Government of Israel, resolution No.140, 3th September 1992.

January 1993⁵⁹, was headed by Mr Menahem Sharon, director of the Civil Aviation Administration, and composed of representatives from the Finance and Agricultural Ministries. The Committee dealt with various aspects of aviation policy in relation to international scheduled, non-scheduled and charter flights, together with bilateral air transport agreements of Israel. The Committee submitted its recommendations to the Minister of Transport on 19th August 1993⁶⁰. In the introductory part, the Committee stated that air transportation to and from Israel was operated by scheduled and charter services, and that in 1992, the scheduled services transported 86% of the traffic whereas 14% was transported by the charters. In a manifestation of aviation policy, the Committee stated that the main goals of the Israeli Aviation policy were to enable the existence of air transport services at any time, and to promote the performance of services at a high level of safety and security, all at reasonable cost to the public and the carriers.

As to the position of charter companies, aside from the bilateral air transport agreement between the United States and Israel, the operations of charter flights were not established by bilateral agreements. The control of the charter flights is made by virtue of the **Aviation Services Licensing Regulation (Charter flights) 1982**. The committee specified that the main goal of charter flights was to encourage tourism to and from Israel, together with decreasing fares and responding to the market demands. the Committee recommended that:

⁵⁹*The Jerusalem Post*, August 10, 1993, p.12.

⁶⁰*The Jerusalem Post*, August 24 ,1993, p.3.

- 1) In each year, beginning in 1994, the Civil Aviation Administration would allow 25 % growth in capacity.
- 2) Allowing "mixed-charters" and abolishing Section 15 of the 1982 Charter regulations.
- 3) Unlimited permission should be given to charter carriers to operate "outside route" flights from Atarot and Eilat Airports, as long as the flights are operated between one point of origin to one point of destination.
- 4) The minimum number of passengers in a charter group should be 20 passengers, instead of 40.

This new approach, known as the "open skies policy", opened the door for liberal international charter services to become an effective market alternative to scheduled service by allowing, albeit restricted, a certain level of competition.

B. Israel's bilateral agreements on air transport- special features and general characteristics.

Hannappel defined "Bilateral Air Transport Agreement" as the "international trade in services agreements, whereby two sovereign nations regulate the performance of commercial air services between their respective territories, and beyond"⁶¹. The agreement is usually negotiated at the level of government official civil servants belonging to the Foreign Affairs Ministry, and may be also negotiated at ministerial levels. There are many factors which may influence the negotiating policies of States. Among others, the geographic position of the State, technology, domestic economy,

⁶¹Hannappel. P. C. C., "Bilateral air transport agreements", in *Government regulation of air transport (Cases and materials)*, Institute of Air and Space Law, McGill University, 1992, p.405.

military and political considerations all play an important part in shaping the way a negotiating team will try to advance its interest in the bilateral agreement.

Since its establishment, Israel signed many bilateral air transport agreement in order to facilitate the transportation by air to and from its territory. The first such agreement was the bilateral air transport agreement with the United States⁶², which was replaced in 1978 by the most liberal agreement Israel ever signed.

In other bilateral air transport agreements, common and similar characteristics can be found in which the guiding line was the exchange of equal opportunities. Generally, all of these include the following features:

1. one designated airline⁶³.
2. the capacity on the route is stated in the agreement itself and divided so that half the volume be carried by each party's carriers (50%-50%). Increasing capacity requires the authorization of the civil aviation authorities of both States. *Ex post facto* reviews of capacity are provided⁶⁴.
3. fares on the route are similar for all designated carriers, predetermined by an agreement between the carriers and subject to the approval of the concerned states. A

⁶²*kirvei Amana*, 16, p.175, Air transport agreement between the government of Israel and the government of the United States of America, signed at HaKirya on June 13, 1959.

⁶³In agreements with: France (1952), Greece (1952), Netherlands (1956), Austria (1963), Switzerland (1965), Romania (1967), Canada (1971,1983), Germany (1971), Norway (1977), Sweden (1977), Egypt (1980), Hungary (1989), Poland (1990), Bulgaria (1991).

⁶⁴The air transport agreements with: The Philippines (1951), Austria-Article 9 (1963), Romania-Article 11, (1967), Canada-Article 10, (1971), Norway-Article 12, (1977), Sweden-Article 12, (1977).

refusal of one government put a complete ban on the tariff. A reference to the IATA rates mechanism is usually specified⁶⁵.

4. normally, no fifth and sixth freedom are granted.
5. pooling agreement between the carrier are accepted.
6. No Cabotage rights are granted⁶⁶.
7. The submission of disputes to arbitration when they cannot be resolved by negotiations between the parties⁶⁷.
8. reciprocity exemptions from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts, and other items intended for use solely in connection with the operation of flights.
9. In bilateral air transport agreements signed after 1989, security provisions are to be found, specifying that:

" The Contracting Parties reaffirm their obligation to each other to protect the security of civil aviation against acts of unlawful interference. The Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Signed in Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, the Convention for the Suppression of Unlawful

⁶⁵In the following bilateral agreements with: Greece-Article 6 (1952), Norway-Article 10, (1977), Sweden-Article 10, (1977), Egypt-Article 10, (1980).

⁶⁶Specified in the Air transport agreements with the following nations: The Philippines- Article 3 (1951), Greece-Article 3 (1952), Switzerland-Article 4, (1968), Romania-Article 1(3), (1967), Canada-Article 2(2), (1983), Sweden-Article 3(3), (1977), Egypt-Article 3(3), (1980), Hungary-Article 2(3) (1989).

⁶⁷Specified in the following Bilateral Air Transport Agreements with: The Philippines-Article 10,(1951), France-Article 7 (1952), Austria-Article 10, (1963), Canada-Article 17, (1971), Norway-Article 14, (1977), Sweden-Article 14, (1977).

Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 and the protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988"⁶⁸.

The purpose of the present Section is not to give an exhaustive detailed account of the entirety of Israel's bilateral agreements, but rather to present the issues by reviewing the bilateral agreements with the United States and the United Kingdom, since generally each represent different types of agreements, whether it be "Bermuda 1"⁶⁹, "predetermination", or the U.S "Liberal" type⁷⁰, each one with its own special features. Finally, a review of the "Sharon committee" recommendations in relation to international air transport agreement will be made.

The first bilateral air transport agreement was the one signed with the United States in 1950. Leshem pointed out that transportation by air between the two countries started even before any agreement was signed when TWA operated flights from New York to Lydda airport⁷¹ (later to become Ben-Gurion International Airport). The agreement contains 13 articles dealing, *inter alia*, with various aspects of air

⁶⁸The bilateral agreements with: Hungary-Article 10 (1989), Poland-Article 10 (1991).

⁶⁹On the background and features of the agreement, see Cooper, J. C., "The Bermuda Plan: World Pattern for Air Transport", in *Explorations in Aerospace Law*, ed. by Vlasic, I. A., Montreal, 1968, p.381; Diamond, R. B., "The Bermuda Agreement revisited: a look at the past, present and future of bilateral air transport agreements", *Journal of Air Law and Commerce*, Vol.41, 1975, p.419; Lissitzyn O. J., "Bilateral Agreements on air transport", *Journal of Air Law and Commerce*, Vol.30, 1967, p.248.

⁷⁰See, Haanapeel, *Supra*, note 61, pp. 485-495.

⁷¹Leshem, *Supra*, note 21 at 162.

transportation, such as the definitions of territory, designated airlines⁷², charges⁷³, the acceptability of aviation related documents⁷⁴, the obligation of registering the agreement with the International Civil Aviation Organization⁷⁵, and the procedure for amendment and arbitration. As to designation of airlines, section 1 to the Annex provides that: "The government of Israel grants to the government of the United States the right to conduct air transport services by one or more air carriers ...". Section three exchanges transit rights between the nations, and section six provides that there shall be a "fair and equal opportunity" for the carriers of the contracting parties to operate on any route between the respective territories. Cheng pointed out that in contrast to the predetermination and prior allocation of capacity, the Bermuda type agreements introduced the concept of controlled competition, in which the designated airlines are no longer tied down to rigid allocations, but are granted fair and equal opportunity to operate on the specified routes⁷⁶. Moreover, Article 5(2) contains a provision that, in operating the agreed services, each party shall take into consideration the interests of the other party in its designated airlines so as not to unduly affect the opportunity for the airlines of each party to offer the services agreed upon.

⁷²*Kirvei Amana*, 16, pp.175-190.

⁷³*Ibid*, article 4.

⁷⁴*Ibid*, article 6.

⁷⁵*Ibid*, article 8.

⁷⁶Cheng, B., *The Law of International Air Transport*, 1962, Stevens and Sons, London, p.412.

As to tariffs, Section nine indicates that rates to be charged are subject to the approval of the aeronautical authorities of both contracting States, the so-called "dual approval role", together with the rate mechanism of IATA⁷⁷.

One Section which leads to unequal opportunity was the routes specification by which the designated United States airlines were to be granted permission to operate flights to or from Israel and beyond. In other words, Israel granted the five freedoms of the air, whereas the United States granted to Israel only the first four freedoms. This route system was in favour of the American Airlines and was the subject of much deliberations between the two nations. To conclude, the agreement was a typical Bermuda-type, governed by the principles of the agreement signed between the United States and the United Kingdom in 1946. As early as the signing of the agreement, it came clear that the North Atlantic route to the USA, was most lucrative, and the limitations on the route pattern, as was indicated by the 1950 agreement, put obstacles in the business opportunities open to EL AL, the sole Israeli designated airline on the route. This was under review between 1950 and 1978, when Israel and the United States signed the Protocol relating to Israel-United States Air Transport Agreement of 1950⁷⁸. The preamble of the protocol provided that very reason for its creation. It reads that the two governments "desiring to expand air services through elimination of restrictions and to promote an international aviation system based on competition among airlines in the marketplace with minimum governmental regulation".

⁷⁷*Kirvei Amana, Supra*, note 69, Section 9(d).

⁷⁸The Protocol was signed at Hakirya on June 13, 1978. *Kirvei Amana*, 866, p. 673.

The number of designated airlines to be operated on the route is unlimited, to be determined by any side unilaterally⁷⁹. As of June 1994, there were seven designated US airlines operating flights to Israel, out of which four were scheduled and three charter airlines⁸⁰. Israeli Airlines (currently only EL AL), were granted the permission to operate flights to New York and four additional points in the United States. In addition EL AL is permitted to fly from one specified US point to Mexico City, and from any specified US point to South America and Asia. EL AL utilized the fifth freedom right for a short time in the beginning of the eighties. As of June 1994, there are no scheduled flights to Mexico City or to South America⁸¹. Moreover, each designated airline may, on any or all flights and at its option, operate flights on the route without any limitation as to the change in type or number of aircraft operated⁸². This economically important provision enabled El Al to transport passengers from Tel Aviv to New York in a wide body aircraft such as the Boeing 747 and then continue the flight with smaller aircraft such as the Boeing 737, 757 or MD-83, to other destinations within the United States. This principle called 'Change of Gauge' is defined as "The operation of one of the agreed services by a designated airline in such a way that the section of the route nearer the terminal in the territory of the contracting party designating the airline is flown by

⁷⁹*Ibid*, Article 2.

⁸⁰*Yediot Aharonot*, July 1994, p.14.

⁸¹EL AL Israel Airlines, *Annual Report*, 1993, p.16.

⁸²The Protocol, *Supra*, note 78, Article 3(4).

aircraft different in capacity from those used on the more distant section"⁸³. Cheng comments that to insist on the use of a larger aircraft when a smaller one would suffice would seem to be both unreasonable and unnecessary⁸⁴.

Under Article five of the protocol, there is no limit on the volume, frequency, or the aircraft type operated by the designated airlines. Thus capacity is left for the free determination by the airlines. Article six entitled "Fares, Rates and Price" specified that since the two parties to the agreement desire to facilitate the expansion of international air transportation opportunities over the routes specified, this objective can best be achieved by allowing each airline to offer a variety of service options at the lowest fares, rates and prices "that are not predatory or discriminatory and do not present an abuse of monopoly position". To this end the fare on the route is to be determined by each carrier unilaterally, and will be valid unless the two governments reject it - the "dual disapproval role".

"The agreement between the government of Israel and the government of the United Kingdom of Great Britain and Northern Ireland for air services between and beyond their respective territories" was signed in London on 6th December 1950⁸⁵. The agreement was amended by an exchange of notes constituting an agreement, which was signed in Tel Aviv on November 4th 1959⁸⁶, was replaced again by a new bilateral

⁸³Cheng, *supra*, note 73 at 434.

⁸⁴Cheng, *Supra*, note 73 at 435.

⁸⁵*Kirvei Amana*, 27, p.339.

⁸⁶"Exchange of notes constituting an agreement between the government of Israel and the government of the United Kingdom of Great Britain and Northern Ireland amending the agreement

agreement which was signed in September 1975⁸⁷. According to this agreement, a new scheme of predetermination of frequencies and capacity was to be introduced. This represented a major departure from the "Bermuda 1" principle to a more liberal agreement, based on the predetermination of routes, on which there is no limitation on capacity. Any carrier can increase its capacity after giving advance notice to the other carrier. Tariffs under the agreement are subject to the "dual approval role" and the IATA rate mechanism.

Israel's Bilateral air transport agreement - The "Inter-ministerial Committee to review the air transportation to Israel" (the Sharon Committee) recommendations.

Following the political and economical changes that took place in Europe during 1992 and 1993, the Committee recommended not to change the general framework of the bilateral agreement, but to adopt measures to open the aviation market to controlled competition within which EL AL will be able to compete and to respond to the market needs.

As far as scheduled flights, since the establishment of Israel, EL AL was the sole designated airline in all the bilateral agreement. The committee recommended granting another airline permit to operate regional scheduled flights.

In relation to capacity clauses, the Committee recommended the termination of the concept of 50%-50%, mainly to enables more competition between the airlines

for air services signed at London on 6 December 1950", *Kirvei Amana*, 27, p.339.

⁸⁷*Kirvei Amana*, 26, p.235.

operating a specified route. On routes covered by the national carrier, the committee would allow a foreign carrier to carry up to 60 percent of the payload. Eventually, the committee recommended that such limits be abolished altogether⁸⁸. This would lead, the committee believed, to better service and lower fares to the benefit of consumers. Moreover, the Civil Aviation Administration would be able to grant a permit to operate additional flights in peak traffic times.

As to prices, the recommendation was that airlines should be allowed to modify prices without coordinating with the other carriers operating on the same route, as is the practice today.

⁸⁸*The Jerusalem Post*, August 24, 1993, p.3.

Since its establishment, Israel has tried to come to terms with its Arab neighbors. The 1978 Camp David Accords, the 1979 Peace Treaty with Egypt, the 1991 Madrid Peace Conference, the 1993 Israel-PLO Accord, and the 1994 Peace Treaty between the State of Israel and the Hashemite Kingdom of Jordan all constitute important milestones in the progress towards a peaceful resolution of the Arab-Israeli conflict. The peace process may lead to a much more stable environment in the Middle East. In times of peace, the immense resources expended for weapons of war could be used in the development, *inter alia*, of the region's economic, education, science, medicine, agricultural and tourism.

Within this framework, aviation can play an important role in connecting the citizens, businessmen, and can be a major factor in boosting the economy of the region's States.

On May 4th 1994, Israel and the Palestinian Liberation Organization signed in Cairo, an Agreement regarding the Gaza Strip and Jericho Area². Article XIII, deals with aviation and is titled "Security of the Airspace". Section one states the maximum number of aircraft and capacity that may be carried between the Gaza Strip and the Jericho Area, and that any intended change in number, type or capacity, must be discussed in a special Joint Aviation Subcommittee (JAC)³. For conducting aviation activities in the air space above Gaza, Jericho or in the corridor between them, the Palestinian Authority must obtain prior approval from Israel, and would be subject to its

²Government of Israel, *"Agreement on the Gaza Strip and the Jericho Area, Signed in Cairo, May 4, 1994"*, Ministry of Foreign Affairs, Jerusalem 1994.

³*Ibid*, Section 2.

Air Traffic Control Regulations, together with any regulations monitoring air routes⁴. Moreover, aviation activities by Israel will continue to be operated above the Gaza and Jericho areas. Consequently, at this stage, the Palestinian Authority is not granted total sovereignty over the relevant airspace, mainly because of security concerns on the part of Israel⁵. The agreement deals also with registration of aircraft and licensing of air crews, and specifies that any aircraft taking off or landing in the Gaza Strip and the Jericho Area and their air crews "shall be registered and licensed in Israel or in other States member of ICAO"⁶.

Section six sets forth a prohibition to carry any firearms, munitions, explosives or weapon systems in any aircraft, unless there is a prior arrangement agreed upon and approved by the committee. Section 10 deals with the facilitation of commercial flights, and states that commercial, domestic and international air services to, from and between the Gaza Strip and the Jericho area may be operated by Palestinian, Israeli or foreign operators approved by both sides. However, only those foreign States maintaining bilateral air transport agreements with Israel may operate flights to the area. Finally, the establishment and the operation of airports in the two areas will be discussed and agreed upon by the two sides in the committee.

The agreement contains many security provisions for the Israeli side, which at present, serves a true concern for Israel, which feels it must protect itself from the

⁴*Ibid*, Section 4.

⁵*Ibid*, Section 9(1).

⁶*Ibid*, Section 5.

possibility of aerial attacks on its citizens. However, the agreement leaves to the aviation Subcommittee the discretion to broaden and allow further development of the aviation industry within the Palestinian Authority⁷. The future development and powers of any Palestinian Aviation Authority is thus dependent on the overall development of the relationship between Israel and the Palestinian Authority. Evidence of such developments can be reflected in the announcement made by the Palestinian Authority on a combined plan with Egypt to build an airport in the Gaza Strip, with runways in the Sinai desert⁸.

On October 26, 1994, Prime Minister Yitzhak Rabin and Prime Minister Abdul-Salam Majali signed a Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan, the second peace treaty Israel has signed since its independence. The peace treaty with Jordan comprises 30 articles and five annexes, which address boundary demarcations, water issues, police cooperation, environmental issues and mutual border crossings.

Article 15 deals with civil aviation matters, and states, *inter alia*, that "The parties recognize as applicable to each other the rights, privileges and obligations provided for by the multilateral aviation agreements to which they are both party, particularly by the 1944 Convention on International Civil Aviation (The Chicago Convention) and the 1944 international Air Services Transit Agreement"⁹. With the

⁷*Ibid*, Section 8(b).

⁸*The Jerusalem post*, November 2, 1994, p.4.

⁹Agreement on the Gaza Strip, *Supra*, note 2, Section 15(1).

ratification of the Treaty, both States started negotiations for the purpose of concluding a civil aviation agreement.

As early as September 1994, when it was clear that the treaty was not a dream, Arkia Israeli Airlines announced its plans to operate scheduled flights to Amman, Damascus and Beirut¹⁰. At present, it seems that no later than May 1995, it will operate international scheduled flights to a few destinations in Jordan.

With the advance of the peace process, more Arab States are seeking air transport negotiations with Israel. In December 1993, the Minister of Transport announced that Morocco is negotiating air links with Israel¹¹. Moreover, in order to face future expansions in tourism and aircraft movements, the Israeli Minister of Transport, Mr. Kessar, approved plans to build ten new runways across Israel, to serve air traffic and light planes, which, if a total peace is reached in the region, may begin arriving from neighboring Arab countries. Plans were also announced to widen ten small existing runways to allow the landing of large cargo aircraft.

2. The need for adopting of a new Civil Aviation Act and its proposed principles.

The State of Israel was established on May 14, 1948. The British Government was the mandated ruler of Palestine from 1917 to 1948 and its Law was the base for the Law of the newly born State.

¹⁰*The Jerusalem Post*, September 13, 1994, p.14.

¹¹*The Jerusalem Post*, December 15, 1993, p.3.

In relation to Aviation, Israel inherited the English Air Navigation Act of 1927¹². Although it has been modified and supplemented during the past 40 years by major and executive legislation, it is still the basic aviation act of Israel. Drafted in the early 1920's, the drafters of the act could not foresee the many changes and developments that eventually occurred in international civil aviation. Important subjects such as aviation security, environmental protection, transfer of rights and obligations in aircraft, and the economic regulations of the aviation industry, were all unknown to international civil aviation in the 1920's, issues that can not be overlooked today. Facing the challenges the 21th century might pose on civil aviation, the 1927 Air Navigation Act could no longer serve as the appropriate legal instrument to regulate civil aviation in Israel.

A new aviation act should be clear in its terms and should be able to consolidate many important segments of aviation law existing today. The present section contains a basic proposal for the adoption of a new aviation act, and the fundamental principles it should contain. The new act should be the current legal framework for regulating civil aviation in Israel toward the beginning of the 21th century. The new act must deal with the following:

1. Introductory provisions:

1.1. Definitions section defining, *inter alia*, the relevant international Conventions to which Israel is a party, such as the Chicago Convention on International Civil Aviation¹³, and the five international legal instruments concerning security in civil

¹²*Laws of Israel*, Vol.C, P.2551.

¹³ICAO Doc. 7300/6.

aviation, ICAO, Contracting State, Aircraft, Israeli aircraft, Foreign aircraft, the Ministry responsible for civil aviation, the Civil aviation Administration, Airports, Air Navigation facilities, Airways, Routes, Personnel, Crew Members, Air Carriers, Air Services, Goods, Prohibited areas, Restricted areas, Danger areas, The Register, Scheduled and non-Scheduled flights, Charter air carriers and International and Domestic Air Services.

1.2. The applicability of the Act - to be applicable to any aircraft over the territory of the State of Israel and to Israeli aircraft wherever it may be.

2. Provisions concerning the regulation of the air space above Israel:

2.1. The principle of sovereignty over Israel's skies.

2.2. Nationality of aircraft.

2.3. Registration and marking of aircraft, applications and procedures.

2.4. General conditions of flying in the airspace over Israel, including references to conditions of flying in prohibited, restricted and dangerous areas.

2.5. General rules for entering and departing the State of Israel.

3. Declaration of Air Policy in Israel.

Both in the United States¹⁴ and in the United Kingdom¹⁵ aviation policy is rooted in major legislation. In Israel, no such declaration of policy exists, but

"what exist are fragmentary departmental opinions by the Ministry of Transport, and a manifestation of specific policy towards charter flights to Israel, in the form of executive regulations. Consequently, tracing

¹⁴Federal Aviation Act of 1958, *Public Law 85-726*; 72 Stat.737.

¹⁵Civil Aviation Act 1972.

Israeli policy... is an empirical task without much of a doctrinal background¹⁶.

This situation has created confusion and uncertainty regarding the air policy of the State. In the past, a declaration of aviation policy may resolve such uncertainties.

4. Aeronautical Authorities in Israel, powers, duties and obligation:

4.1. The Minister of Transport.

4.2. The Civil Aviation Administration.

4.3. The Aerodrome Authority.

4.4. Air Traffic Control.

5. Inclusion of a special section dealing with air carrier economic regulations:

5.1. Certifications and procedures for application.

5.2. Route applications.

5.3. Conditions for merger and control of aviation enterprises.

5.4. Creation of a committee to regulate competition among aviation enterprises to correct and abolish anti competitive practices. This committee shall act under the auspices of the Ministry of Transport, and would be staffed by politicians, academics, and aviation industry representatives. The competition policy may assimilate basic principles of the European Community Competition Policy, such as the definitions and applications of a dominant position by a company and abuse of that position, together with the control over restrictive agreements.

¹⁶Leshem, M., *The international Air Transport Policy of Israel*, 1978, (unpublished LL.M. Thesis), McGill University, Montreal, p.59.

5.5. Creating a new set of qualifications for granting operating licenses, bringing the 1993 liberalization in civil aviation policy into legislation. To that end, section 5(1) of the **Licensing of Aviation Services Law, 1963**¹⁷, should be amended to allow more flexible qualifications for entry into the market.

6. Right and obligations of aircraft operators:

6.1. lease - The Act should contain an article regarding the leasing of aircraft, drafted to reflect the vision put forth by the 1983 amendment to the Chicago Convention. This amendment is referred to as Article 83*bis*. It permits the State of registration to transfer certain duties and obligations regarding aircraft to the State of operator.

7. Safety and acceptance of document in civil aviation:

7.1. Conditions of flying over the State of Israel.

7.2. Applications, procedures and granting certification of airworthiness.

7.3. Validation of foreign aviation licenses of air crews and aircraft.

7.4. Documentation aircraft should carry.

7.5. Maintenance of aircraft and duties of aircraft operators.

7.6 Carriage of dangerous goods.

8. Civil responsibilities of aircraft operators in relation to passengers and cargo in the aircraft and on the ground.

9. The inclusion of all five instruments of security of civil aviation into the Israeli Aviation Law.

10. Environmental protection from noise and pollution made by aircraft.

¹⁷*Sefer HaHukim*, 397 (1963).

11. Aviation insurance.

12. Final provisions:

12.1. Charges, taxes, and fees in civil aviation.

12.2. Penalties.

The proposed act should be followed by a number of schedules containing detailed provisions elaborating the subjects in the main body of the act.

The schedules should be a consolidation of existing Israeli executive legislation, adopted since 1948 in the following fields:

Schedule 1: Registration and marking of aircraft.

Schedule 2: Certification of aircraft airworthiness and its components.

Detention of unairworthy aircraft, and inspection thereof.

Schedule 3: Licensing of personnel.

Schedule 4: Operation of aircraft.

Schedule 5: Environmental protection.

Schedule 6: Rules of flying over prohibited areas.

Schedule 7: Accident investigation.

Schedule 8: Dangerous goods and prohibited articles.

Schedule 9: Air traffic services.

3. Ratification of certain International Aviation Conventions and amendment to the Chicago Convention.

The Convention on the Marking of Plastic Explosives For the Purpose of Detection, was signed at Montreal, on 1 March 1991 (The Montreal Convention). It was one of the milestones in the war against unlawful acts against civil aviation. In accordance with Article XIII, paragraph 3, the Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession. As of September 1994, only 7 ratification had been deposited and it is not yet in force. The vast acceptance of the Convention in the international level will benefit the protection of civil aviation generally, and that of Israel specifically. Israel did not ratify the Convention, and should act to ratify it quickly. Faller pointed out that:

"Governments, individually and collectively, must continue to face the serious challenge which acts of unlawful interference pose to the further safe and secure development of international air services in the years and decades to come. All States have an overriding, long term common interest in protecting and preserving the framework and the means of peaceful international air communications, and only Governments can take the necessary technical and legal measures to meet this enormous challenge"¹⁸.

Israel can not stay outside this international effort and should ratify the convention.

An important amendment to the Chicago Convention was made by the 25th (Extraordinary) Session of the ICAO Assembly on May 10th 1984. The amendment, known as article 3bis, was adopted by 152 members of ICAO, and requires ratification

¹⁸Faller, E., "Aviation Security: the role of ICAO in safeguarding international civil aviation against acts of unlawful interference", *Annals of Air and Space Law*, Vol.XIII, part 1, 1992, p.380.

by 102 States before coming into force. As of September 1994, it is not yet in force since only 75 States had ratified the document. The main purpose of the amendment was to include a specific provision forbidding the use of weapons against civil aviation, and specifically addressed the problem of intercepting civilian airlines. For the unity of the international civil aviation, and especially with the prospects of air travel across the Middle East by many different carriers, Israel and the neighboring countries should ratify this important amendment and implement it into their respective domestic legal systems.

4. Evaluation of current aviation policy.

Israeli Government's policy objectives for civil aviation have evolved since the creation of EL AL Israel Airlines in 1948 and of Arkia Airlines in 1950. The starting point was one of an almost total monopoly which the two airlines held in the international and domestic aviation markets respectively. However, from the beginning of the eighties, the government of Israel, albeit with numerous limitations and conditions, provided entry of private airline enterprises into the air transport market. This trend was further developed by the recommendations of the interministerial "Sharon Committee on air transport" of 1993, and the adoption of a liberal new aviation policy based on its recommendations (The "Open Skies" Policy), in which one element was the opening up of the market to new entries in the domestic and international market¹⁹.

¹⁹*Globes Economic Magazine*, June 10, 1994, p.3.

This welcomed development reflects a view that the operation of monopolies in air transport does not necessarily provide the Israeli public with the best and most efficient air transport system, and that the maintaining of a competitive environment (although restricted in its scope), is the appropriate way to ensure airline efficiency and adequate air services. With the growing challenges and opportunities that peace in the region may offer the State of Israel in relation to aviation, such as increasing numbers of incoming passengers and an expansion of international routes, it seems that the Open Skies Policy and the liberalization trend is the proper step to take.

Together with allowing more competition into the market, the government must ensure the prevention and correction of all anti-competitive behavior by any airline. This can be done by adopting major legislation, or specific executive aviation regulations dealing with competition in the aviation market together with the establishment of a specific competition committee. To achieve the best out of the new policy, the Minister of Transport and the Civil Aviation Administration must act to ensure the profitable existence of a number of airlines, initially in the domestic market and eventually in the international one, strong enough to compete effectively with each other.

5. Ben Gurion International Airport in the year 2000 - the central hub of the Middle East?

Ben Gurion Airport is the only central international airport in Israel. In 1992, the Airport Authority prepared plans for constructing a new terminal. Together with the current expansions of the present aviation facilities, the target year for inaugurating it in

1998. It will be able in the first place, to process 10 million passengers annually, and in the second stage 16 million.

The question is whether the new airport can become a hub, not just a final destination. The potentiality exist since, geographically Israel is located in a crossroads; Europe and Asia could connect there. Indeed as early as July 1992, China announced that it sees Ben Gurion Airport as a main stopover point for its flights from Europe to Beijing. This may be practicable since Israel has the infrastructure to provide tourism services, while EL AL can provide facilities for the overflow of tourists from Air China²⁰.

Yisrael Borowitz, director general of Arkia Airlines, claims that Ben Gurion Airport may become, with peace in the region, an international aviation crossroad in the Middle East. However, the airport must be completed as soon as possible, since other countries such as Cyprus and Egypt also have advanced plans to build bigger airports²¹.

One commentator argued that Israel is an unlikely choice for a Middle Eastern or African hub, as European cities are geographically close. In addition, the tourism base is not strong enough, "although this may change if the political situation settles"²².

Since the political situation is changing day-by-day, Israel has the potential to become that link. However, to reach that target, there must be immediate investments and policy changes. Along the way, there are several major obstacles: first, landing and

²⁰*The Jerusalem Post*, July 6, 1992, p.3.

²¹*Ma'ariv*, November 16, 1993, p.15.

²²Guild, S., "EL AL: private tribulations", *Airline Business*, July 1994, p.9.

aviation services charges, including fuel prices, are relatively expensive in comparison to other international airports. Secondly, tariffs in Israel's tourism facilities such as hotels are higher than their counterparts in other countries in the Middle East. Thirdly, and by far the most difficult to bridge, Israel must act to create a business center to attract investments and businessmen. A good example is Hong Kong, which foresaw planning a free business area, in which foreign businessmen are exempt from certain taxes²³. Israel must consider and resolve these obstacles if it intends the Airport to become an international center and transfer point. Since decisions in the business world are taken according to financial considerations, without these necessary changes Israel may lose to another, the economic possibilities embodied in operating an international hub.

²³*Globe Economic Magazine*, August 1, 1994, p.46.

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