THE BILATERAL AIR TRANSPORT AGREEMENTS OF FINLAND

A Study in Public International Air Law

by

Lasse Oskari Johannes Lehtonen

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

Institute of Air and Space Law
McGill University
Montreal

August, 1977

Lasse Lehtonen LL.M.

THE BILATERAL AIR TRANSPORT AGREEMENTS OF FINLAND
A Study in Public International Air Law

The substance of this thesis represents a comprehensive examination of bilateral air transport agreements concluded by Finland.

Following a survey of the relevant international and national air law regulations, the specific Finnish circumstances which largely determine the content of the bilateral agreements are canvassed at some length.

The main portion of the thesis consists of a detailed analysis of the individual air transport agreements entered into by Finland. Certain key provisions of these agreements, such as those relating to frequency and capacity, have been subjected to closer scrutiny, while the others are examined in more general terms.

The current policies of Finland in the implementation of its bilaterals and probable future trends in international air transport policies of the country are next discussed in detail.

In conclusion, a balance-sheet of the Finnish bilaterals is drawn up and an attempt is made to evaluate the findings in light of Finland's needs in international air transport.

Lasse Lehtonen LL.M.

LES ACCORDS BILATERAUX DE LA FINLANDE EN MATIERE DE TRANSPORTS AERIENS

Etude dans le domaine du droit international publique aérien

La matière de cette thèse représénte un examen compréhensif des accords bilatéraux conclus par la Finlande dans le domaine des transports aériens.

Après une revue des règlements de droit aérien international et national pertinents sont présentées dans une bonne mesure les circonstances spécifiquement finlandaises déterminant en grande partie le contenu des accords bilatéraux.

La partie principale de cette thèse consiste en une analyse détaillée des divers accords sur les transports aériens auxquels la Finlande a souscrit. Certaines clauses clés de ces accords, telles celles relatives à la fréquence et à la capacité, font l'object d'une étude minutieuse, alors que les autres sont examinées sur un plan plus général.

La politique actuelle de la Finlande appliquée à la mise en oeuvre de ses accords bilatéraux ainsi que les tendances futures probables de la politique finlandaise en matière de transports aériens internationaux sont ensuite discutées en détail.

En conclusion, un bilan des accords bilatéraux finlandaises est établi et il est fait une tentative d'évaluer les conclusions à la lumière des besoins de la Finlande dans le domaine des transports aériens.

A C K N O W L E D G M E N T S

The basic research for the present thesis was done and a first draft manuscript almost completed at the Institute of Air and Space Law during the academic year 1971/72, the author's second year of residence in Montreal. Mainly because of the author's heavy professional work-load back home in Finland, the task of working over the draft for final submission has taken years instead of months, as initially could have been expected. The thesis by now completed, the writer would like to express his deep gratitude to his Thesis Supervisor, Professor Ivan A. Vlasic who, despite the many years of suspense, never lost his confidence in the present candidate, and whose friendly remindful encouragement from time to time kept the work running. Regardless of his many duties at the University, Professor Vlasic has been extremely helpful and has made many valuable suggestions and remarks as to the particulars of the drafts. His able supervision and firm guidance throughout the many years are highly appreciated.

The present author would also like to put on record his gratitude to the Directors of the Institute of Air and Space Law, Professors E. McWhinney, I.A. Vlasic, M.A. Bradley, and N.M. Matte for their admirable patience and understanding in taking the troubles with the recurrent registration procedures and excess overseas correspondence caused by the delay.

Sincere thanks are also due to the Institute Secretaries, Misses Sheila H. Macbrayne and Josephine M. Leake for their cheerful and effective assistance in clearing up for the author several troubles connected with the various formalities of the bureaucracy. The McGill Law Librarian, Miss Marian Scott and her staff members, as well as the brave postmaster Mr. Guido Guidi deserve special thanks for their kind cooperation during the author's stay in Montreal.

From among the Finns, the author owes a special debt of gratitude to Mr. K.J. Temmes, Director General of the Finnish Board of Aviation, and to Mr. E. Hultin, at the time Secretary

General of the Finnish Delegation at the Nordic Council, at present Secretary General of the Finnish Parliament. Both Mr. Temmes and Mr. Hultin have, in the course of personal discussions, furnished the author with valuable information of the specific legal and policy aspects within their branches of administration. The documents and other materials provided by these two Gentlemen just for the asking could easily form the basis for another dissertation.

Sincere thanks are further extended to Mr. V. Virkkunen, Chief Public Relations of the Finnair Oy, and to Mr. J. Ranta, Director of the Finnair Aviation College, as well as to Mr. O. Pesola and Mr. V. Pyötsiä of the Kar-Air Oy for their kind assistance in making available documents and other materials, or providing information concerning their particular fields of action. Similar assistance provided by certain other officials of the said airline companies, and by officials of the Finnish Board of Aviation and of the Finnish Ministry for Foreign Affairs is also greatly appreciated. The names of these helpful persons are mentioned in the appropriate passages of the text.

The research for and preparation of the present thesis has been accomplished at the author's own expence. Therefore, the author would like to express his gratitude to his employer, the City of Helsinki, for its liberal undertaking to pay to the author a partial salary for a several months' off-duty period during his stay in Montreal in 1971/72.

Apart from certain particular refinements suggested by Professor Vlasic, the English text of the present thesis has been written entirely by the author himself. M. André Boullenger of Helsinki, Finland, is mainly responsible for the French translation of the Abstract attached hereto.

TABLE OF CONTENTS

APPENDICES

I N T R O D U C T I O N

The history of the Finnish civil aviation can be traced back as far as to 1784, when the first unmanned hot-air balloon was successfully launched in this country [1], although it is true that the Balloon Era proper involving some thirty years of numerous manned balloon flights, both domestic and international, began not until 1886 [2]. The first successful flights with heavier-than-the-air contrivances in Finnish air space were performed in 1911 [3].

Given this historical background, it is not surprising that also the Finnish civil air transport industry came into being at a relatively early stage in 1923 [4]. From the very beginning, the Finnish airline company came to operate international air services. The initial routes were drawn in 1924 to connect Finland with her neighboring countries Sweden and Estonia. Since then, the network of the Finnish international air services has been extended, step by step, so as to include at present almost all of the European states, and the United States of America.

Despite this development, the specific circumstances of the Finnish international civil air transport may be more or less unknown to the rest of the world. Apart from the relatively small size of the resources and enterprises of the

---

1) This remarkable event took place on August 29, 1784, at the market-place of Oulu, a small town in Northern Finland, to celebrate the return of the Swedish King Gustaf the III from a voyage to Italy. The launch was carried out by the town pharmacist, Mr. Johan Eriksson Julin, in the presence of the District Governor, the Mayor, and a large number of other persons of rank, and ordinary townspeople.
- Janarmo, Varhaisilmailumme 1753-1919, 1963, pp. 13-14.

2) Ibid., p. 25.

3) Ibid., p. 53. - Both gliders and powered flight were involved.

4) The Finnair Story, 1973, p. 14.

Finnish civil aviation, this feature may be referred partly to the scarcity of litterature on the subject. Especially the legal writings relating to Finnish civil aviation are extremely few in number consisting of one single published thesis for the Doctor of Laws degree [5] and some essays of a more general nature in various Finnish legal periodicals. It would appear, therefore, that every attempt to bring more light onto the legal problems of the Finnish civil aviation could serve a useful purpose.

In order to provide a better insight into the specific questions connected with bilateral agreements, in Chapter I the legal framework of international air transport in Finland is first examined. Commencing with a brief outline of the evolution of the legal status of air space, the fundamental question for any regulation of air traffic, the discussion in this Chapter then moves on to the multilateral rules relevant to the Finnish international air transport, and to the origin of the bilateral air agreements system as well. Given the close Nordic collaboration in the field of Air Law, due regard is paid also to Finland's contribution to the development process from both national and Nordic point of view. For the sake of completeness, all the thus far published bilateral air agreements concluded to date by Finland are examined, regardless of whether they are still in force or have been superseded by new agreements, or otherwise terminated. The inquiry on the legal framework is consequently extended to include the relevant rules both under the Convention relating to the Regulation of Aerial Navigation dated in Paris on October 13, 1919 (The Paris Regime), and under the Convention

---

5) Tenho Autere: Oikeus Ilmatilan Käyttöön Siviili-ilmailutarkoituksessa Rauhan aikana (Rights in Aviation - An International Survey of the Legal Aspects of the Air Space in Peacetime Civil Aviation, with Special Reference to Finnish Law), 1965. - The eminent work of Professor Erik Castrén, Ilmasota I-II of 1938-39, deals with aerial warfare.

on International Civil Aviation, done at Chicago on December 7, 1944 (The Present Rules of International Law). The regulatory agencies, the International Commission for Air Navigation and the International Civil Aviation Organization, established respectively under these conventions, are also shortly discussed. In the course of this examination, the participation of Finland in these organisations is focused upon.

Next, the relevant law of Finland is discussed in order to place the national air regulations and administrative institutions in an appropriate perspective. Given the status of the bilateral air transport agreements as a part of conventional international law, the Finnish system of making and executing treaties is thereafter dealt with in some depth.

It would appear more generally that legal matters cannot be fully understood nor properly interpreted without due regard being paid to the underlying political, social, and economic factors from which the law emerges. Consequently, in Chapter II the determinants for the Finnish scheduled international air transport policy consisting of geographical, political, and economic factors are examined. Among these, special attention is paid to the relations between Finland, on the one hand, and the Union of Soviet Socialist Republics, the Nordic countries, and other European Power Groups respectively, on the other. In addition, the origin and development of the Finnish international civil air transport industry is outlined in some length in Chapter III. In the same Chapter, the relations between the Finnish flag carrier, the Finnair Oy, and the International Air Transport Association also are briefly discussed. Inquiry on the policy factors and some other features are based to some extent on an interview conducted by the present author with Director General of the Finnish National Board of Aviation,

Mr. K.J. Temmes [6].

The bilateral air transport agreements to which Finland is a party, make the bulk of this thesis and are scrutinised in detail. The early arrangements, entered into before 1945, are discussed separately in Chapter IV. Following an inquiry in Chapter V on the general framework and features of the bilaterals concluded since 1945, certain key provisions of these agreements are picked out for a more particular discussion in Chapter VI under subtitles (a) Exchange of Routes; (b) Frequency and Capacity Clauses; (c) Regulation of Tariffs; (d) Settlement of Disputes; and (e) Termination of Agreement respectively. In Chapter VII, the remaining provisions are scrutinised in detail under the following headings: (a) Inauguration of Agreed Services; (b) Operation of Agreed Services; and (c) Operation of the Treaty.

In order to demonstrate the Finnish bilaterals in action, special attention is given in Chapter VIII to the 1969/70 dispute between Denmark and Finland relating to the frequency of flights and capacity to be offered at Copenhagen by Finnair Oy on their North-Atlantic air services between Helsinki and New York. Future trends connected with the introduction in scheduled services of jumbo jets and supersonic transport aircraft, and the possible impact of such equipment on the Finnish international air transport position are discussed in Chapter IX.

Finally, in Chapter X (Conclusions) a balance sheet of the Finnish bilaterals is drawn up and an attempt made to evaluate the findings in order to disclose how the legal foundation has stood the test of the times. Some future considerations then close the present thesis.

Four Appendices and a list of books, articles and

---

6) The information thus obtained is indicated in the text by the notice "Temmes' interview".

other materials used for the preparation of this paper are to be found at the end of the work.

- o - o - o -

ADDENDUM

The closing date for the preparation of the present thesis was February 29, 1976, whereafter the final typescript was made. Consequently, it has not been possible to take account of the subsequent developments and changes in the state of affairs as presented in the text. For the convenience of the reader, however, a short reference is made in the following to the changes occured since the closing day and up to August 10, 1977, in the status of the Finnish bilateral air transport agreements:

The previously concluded agreements with the PEOPLE'S REPUBLIC OF CHINA [1] and with GREECE [2] have come into force as of March 15, 1976, and March 11, 1977, respectively.

New agreements have been negotiated in 1976 with BELGIUM [3] and THAILAND [4], and in 1977 with CANADA [5]. These fresh agreements have thus far not been implemented nor published in Finland.

Negotiations for a new agreement with Denmark were resumed after a long interruption, and those with Japan were continued in 1976 [6]. These negotiations will be further continued [7].

---

1) Published in the Finnish Statute Book, Treaty Series, as No. 19/1976.

2) Ibid., as No. 16/1977.

3) The Finnish National Board of Aviation, Yearbook 1976, p. 16.

4) Ibid.

5) According to M.A.(Pol.Sc.), Mrs. Pirkko Eskuri of the Finnish National Board of Aviation, this agreement was signed on May 16, 1977. - Telephonic inquiry by the author on August 10, 1977.

6) The Finnish National Board of Aviation, Yearbook 1976, p. 16.

7) Ibid.

C H A P T E R I - THE LEGAL FRAMEWORK OF INTERNATIONAL AIR TRANSPORT IN FINLAND

(a) International Law.

(i) The Legal Status of Air Space.

The question of cardinal importance to international civil air transport is that of the legal status of air space: on its solution depends in the first place to what extent air traffic may or may not move unrestricted above and on the Earth's lands and waters of different legal capacity. As regards the air space superincumbent the high seas and the unoccupied areas, the freedom of flight has never been challenged [1]. Though only implied in the multilateral air navigation conventions the freedom to fly over the high seas has been specifically stated in the Convention on the High Seas dated in Geneva on April 29, 1958 [2], comprising provisions generally declaratory of established principles of international law [3]. The absolute equality of all nations in this respect is further emphasised by providing that the said freedom, as well as the other freedoms specified in the Convention [4], shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas [5]. Finland is a party to this Convent-

---

1) See Cooper, Legal Problems of Spacecraft in Airspace, as reprinted from Festschrift für Otto Riese, 1964, p. 465, in Vlasic, ed., Cooper, Explorations in Aerospace Law, 1968, p. 307 et seq.

2) Item (4), para. 1, Article 2, of the Convention.

3) Preamble to the Convention.

4) These are the freedoms of navigation and fishing and the freedom to lay submarine cables and pipelines (para. 2, Article 2, of the Convention).

5) Ibid.

ion by the deposit of her instrument of ratification on February 16, 1965, with the Secretary General of the United Nations [6].

With respect to the air space over the national land territories and territorial waters, however, a quite reverse solution, the principle of complete and exclusive sovereignty of the subjacent states has been adopted. Each state has thus been accorded the unilateral power to determine whether or not foreign aircraft be admitted into or above its territory, and if so on which conditions and to what extent. Consequently, international air transport has become fettered by a dense net of restrictive rules incorporated in multilateral conventions, complementary bilateral agreements, and national legislations.

In 1917 when on December 6 Finland declared independent and became a sovereign state, the above-mentioned principle was already standing as a generally accepted customary rule of international law [7]. The development to that end certainly had been long and variable: it appears to have commenced almost in step with the introduction in 1783 of manned flight [8]. Apart from the early national and inter-

---

6) Suomen asetuskokoelman sopimussarja (The Finnish Statute Book, Treaties Series) No. 7/1965, p. 30.

7) According to Cooper, this principle was thus accepted already by the outbreak of the First World War. - Cooper, State Sovereignty in Space: Developments 1910 to 1914, as reprinted from Beiträge zum internationalen Luftrecht: Festschrift für Alex Meyer, 1954, in Vlasic, ed., Cooper, op.cit., p. 136.

Wagner, on the other hand, considers that it happened first during the World War I. - Wagner, International Air Transportation as Affected by State Sovereignty, 1970, p. 38.

8) This flight was performed in France by a hot-air balloon of the brothers Montgolfier. The first provision of air law, a police decree prohibiting balloon flights without special permission, was promulgated in Paris in 1784, only a year after the flight. - Shawcross and Beaumont, On Air Law, 1966 (3rd edition), Volume 1, p. 3 and notes 1 and 2.

national regulation of aerial navigation [9] in which the principle of sovereignty was merely implied, and from the various theories as to the legal status of air space formulated since 1901 by numerous legal scholars [10], the decisive activities leading rapidly to a general acceptance of the principle in question did commence only in 1910. Among these activities, the following three could be recalled as the most important:

(1) The International Air Navigation Conference held in Paris in 1910, a diplomatic conference in which eighteen European states took part. In the course of this

---

9) The first international air agreement ever made was concluded in 1898 between Germany and Austria-Hungary relating to the crossing of the national boundaries by military balloons. - Riesch, Das erste Luftfahrtabkommen der Welt, Archiv für Luftrecht, Volume 10, 1940, pp. 41-45.

10) These theories ranged from the principle of complete freedom of air navigation to the idea of full sovereignty. Departing from either of these two extremes, intermediary theories allowed to the subjacent states more or less restrictive powers in important state interests, such as preservation. Among the legal scholars Paul Fauchille of France was the first to present the thesis of the freedom of the air in his essay "Le domaine aérien et le régime juridique des aérostats" published in the Revue générale de droit international publique in 1901, p. 414 et seqq.

For full discussion of the various theories, see, for instance, Meyer, Freiheit der Luft als Rechtsproblem, 1944, p. 67 et seqq, and p. 78 et seqq, and Wagner, op.cit., p. 17 et seqq.

conference, an almost complete draft convention relating to international aerial navigation was prepared except two articles intended to cover admission of air navigation into or above foreign territory. Although the conference adjourned without having succeeded to sign a convention, many of the draft articles preliminary adopted thereby show clear evidence of a general understanding of the drafters on the principle of state sovereignty in territorial air space [11]. In other respects, too, the draft convention contained principles and rules which were to form the basis for future development of international air law.

(2) In the absence of international conventions states had to resort to unilateral regulation of air navigation. Since 1910 national legislation relating, inter alia, to establishment of prohibited zones, and prohibited transport in aircraft were promulgated in Britain, France, Germany, and some other European states without any objections rised by foreign governments against these unilateral rulings [12].

(3) During the course of the First World War the principle of sovereignty gained extended application. Apart from the belligerent powers, the neutral European states, too, closed their national air space for foreign aircraft and en-

---

11) See draft Articles 2, 23, 24, 29, 30, 34 - 36, and 38. - Conférence internationale de navigation aérienne, Paris: Procès-verbaux des séances et annexes, 1910, p. 188 et seqq.

See also Cooper, The International Air Navigation Conference, Paris 1910, as reprinted from Journal of Air Law and Commerce 127 (1952) in Vlasic, ed., Cooper, op.cit., p. 120 et seq.

12) For details, see Cooper, op.cit. supra note 7 at p. 7.

forced those regulations with particular determination and succes. In America, the United States imposed upon belligerent aircraft similar regulations within her jurisdiction at the Canal Zone in Panama. With the exception of minor objections, the uniform practice of the neutral states was respected by the belligerent powers [13].

Despite its customary application, however, the principle of state sovereignty in territorial air space had not yet been expressly affirmed by any international convention, and was thus still discussed from time to time in various occasions. In the course of Nordic collaboration [14], the first

---

13) For details, see Vlasic, ed., Cooper, op.cit., p. 135 et seq, and Wagner, op.cit., p. 36.

14) From the very beginning of her independence Finland established close relationships with the other Nordic countries Sweden, Norway, and Denmark to whom she was bound since the past by strong historic, religious, cultural, and ethnic reasons.

For centuries Finland had been united to Sweden but was during the Napoleonic Wars conquered by Russia in 1808-1809. Emperor Alexander I of Russia, however, conferred in 1809 upon Finland the status of autonomy declaring her to have been elevated to the rank of a nation among nations. Although her special position within the Russian Empire did depend exclusively on that imperial declaration, Finland must since then be considered juridically as a state, still lacking sovereignty, it is true. In this position as an autonomous Grand Duchy of Russia, Finland substantially preserved her legal system of Scandinavian origin established under the Swedish rule, and had also a legislature, the Assembly of the Four Estates, of her own. But with respect to foreign affairs, Finland had no own voice.

Despite conscious Russian attempts since the end of the Nineteenth Century to break down and oppress the specific position of Finland, she nevertheless succeeded to preserve her status through the inherent national self-esteem of, and a determinate moral resistance by the Finns. Thus the good century of Russian rule did not to any noteworthy degree alter Finland's inherited status as a Nordic nation.

For details, see, for instance, Blomstedt, A Historical Background of the Finnish Legal System, an essay published in Uotila, ed., The Finnish Legal System, 1966, p. 10 et seqq. - See also Castren, Suomen kansainvälinen oikeus, 1959, p. 49 et seq.

Nordic Air Navigation Conference met in Stockholm, Sweden, on April 26, 1918. This Conference, in which all the four Nordic countries Sweden, Norway, Denmark, and Finland took part, discussed, inter alia, the question of the legal status of air space and adopted a resolution in favour of state sovereignty [15].

Finally, the principle of sovereignty in territorial air space was affirmed multilaterally by the Convention relating to the Regulation of Aerial Navigation dated October 13th 1919, also known as the Paris Convention or 'Cina'. This Convention was drafted in connection with the Versailles Peace Conference which met in Paris in 1919 [16], and was signed by twenty-seven states members of the Allied and Associated Powers. Para. 1, Article 1, of the Convention red as follows:

"The High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the air space above its territory."

As evident from the words "every Power", the principle was recognised by the contracting states as an already established rule of customary international law binding on all states whether parties to the convention or not. The territory of a state was defined in para. 2, Article 1, as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto. The territories of protectorates and of areas administered in the name of the League of

---

15) See Meyer, op.cit., pp. 43 and 72.

16) Finland did not belong in the Allied and Associated Powers and did thus not participate in the said Conference.

Nations were, for the purposes of the Convention, assimilated to the territory of the protecting or mandatory states (para. 2, Article 40). Thus only the air space over the high seas and unoccupied areas where no state could exercise sovereign rights was left unregulated. No upper limit was set to the exercition of sovereignty. The true intention of the Convention nevertheless appears to have been to regulate flight by aircraft within the atmospheric space only [17].

(ii) The Paris Regime.

The principle of sovereignty affirmed in Article 1 of the Paris Convention carried with it the right to every state to regulate air navigation in its national air space as it saw fit, and to exclude the exercition of any rights therein by other states except with the consent of the territorial state. In the interest of international aerial intercourse it was therefore necessary to lay down rules relating to the admission of foreign aircraft above the territory of a state. In this respect, the Convention introduced in para. 1, Article 2, the freedom of innocent passage which each contracting state undertook to accord above its territory to the aircraft of the other contracting states. This conventional freedom was reiterated in para. 1, Article 15, stating that every aircraft of the contracting states had the right to cross the air space of another contracting state without landing. In this case it should, however, follow the route fixed by the state flown over and would,

---

17) This question caused no controversies during the Paris regime but has been discussed in retrospect in connection with the problems created by the introduction of spacecraft. - For details, see Vlasic, Law and Public Order in Space, 1964 (2nd printing), pp. 324 - 332.

for reasons of general security, be obliged to land if ordered to do so by means of prescribed signals. The freedom of innocent passage was further subject to observation of the numerous restrictive conditions laid down elsewhere in the Convention, and was effective in time of peace only. As the concept of innocent passage was defined nowhere in the Convention, confusion arose as to the question whether or not the right to land also was included.

With respect to cabotage, under para. 1, Article 16, of the Convention each contracting state had the right to establish reservations and restrictions in favour of its national aircraft [17a]. Cabotage was defined as being carriage of persons and goods for hire between two points on the territory of a contracting state [17b]. The other contracting states were entitled to retaliate by imposing, even on an exclusive basis, the same reservations and restrictions upon aircraft of the contracting state which had taken such action [17c].

Relative to regular international air services, para. 3, Article 15, provided that the establishment of international airways should be subject to the consent of the states flown over. The intention of para. 1, Article 2, and para. 1, Article 15, would appear to have been to grant at least the right of non-stop transit also to the aircraft of the other contracting states engaged in regular or scheduled international air transport. Para. 3, Article 15, was nevertheless commonly interpreted as a general proxy for

---

17a) The reservations and restrictions thus established had to be communicated to the I.C.A.N. which had to notify them to the other contracting states (para. 2, Article 16).

17b) Given the broad definition of the term "territory", cabotage was thus independent of any physical contiguity or connection between the areas where the points of call were located. It therefore differs from the maritime cabotage which is confined to journeys along the same physical coastline of a country.

17c) Article 17.

demanding prior permission for the establishment and operation of all foreign regular or scheduled air services even in the case of transit without landing. The establishment and development of international air lines became therefore, as Warner put it, 'in every instance, ... the matter of negotiation and of bargaining for mutual advantage by the governments of the States concerned' [18]. Certain contracting states, for instance, refused to allow the traversing of or landing on their territories by regular air lines of another contracting state or pressed entirely unreasonable conditions on their granting of permissions even for purely non-stop transit services [19]. Consequently, the exercition of the freedom of innocent passage was confined in practice to special flights by civil aircraft not amounting to a regular or scheduled service. Such flights could then be made without the necessity of obtaining previous permission from the state to be flown over or into [20].

The proper interpretation of para. 3, Article 15, was taken under consideration at the Sixteenth (Extraordinary) Session of the International Commission for Air Navigation (I.C.A.N.), the regulatory agency established under the Paris Convention. The session was held in Paris in June 1929. At this session, twenty-two states parties to the Convention, and sixteen non-contracting states, among them

---

18) Warner, The International Convention for Air Navigation and the Pan American Convention for Air Navigation: A Comparative and Critical Analysis, 3 Air Law Review, 1932, p. 265.

19) For details, see, for instance, Warner, op.cit., p. 266, and Wagner, op.cit., p. 65 et seq.

20) Latchford, The Right of Innocent Passage in International Civil Air-Navigation Agreements, 11 Department of State Bulletin, 1944, p. 20.

Finland, met on the invitation of the I.C.A.N. for the purpose of examining the text of the Convention and studying proposed amendments thereto [21].

By the time of that session, however, as Latchford notes, 'the practice followed ... had become so well established that ... the majority of the delegations were unwilling to do anything more than to bring article 15 into line with the interpretation which had been placed upon it' [22]. Put to the vote, the thesis that no air line should be able to exist without the authorisation of the states flown over prevailed by twenty-seven votes to only four [23]. Regarding the Nordic countries, the votes of Denmark, Norway, and Finland were cast for 'authorisation' while Sweden pronounced in favour of 'liberty' [24]. The text of the said paragraph was then unanimously amended to read:

---

21) For the list of participants, see I.C.A.N., Official Bulletin No. 16, 1929, pp. 26-29.

22) Latchford, op.cit., p. 21.

23) The Minutes of the Sixteenth (Extraordinary) Session of the I.C.A.N., 1929 (Drafts): Minutes No. 79, Second sitting of 11th June 1929, p. 56.

24) Ibid. - The Chairman invited the Conference to pronounce ./.

'Every contracting State may make conditional on its prior authorisation the establishment of international airways and the creation and operation of regular international air navigation lines, with or without landing, on its territory.' 25)

An additional British proposal to the effect that such authorisation might be refused only on reasonable grounds was voted down by nineteen votes to eleven [26]. The Nordic group was divided again: While Norway, Sweden, and Finland voted for the proposal, Denmark pronounced against it. The both votes taken together, of the Nordic countries Denmark seems to have represented the most stringent point of view while both Norway and Finland were in favour of some kind of a compromise. Sweden alone voted in both occasions for freedom.

At the time of the session, Denmark and Sweden had already adhered to the Paris Convention [27] while Finland and Norway had not. The minutes of the session give no explanation to the positions taken by Denmark, Sweden, and Finland, the delegates of these states having taken no active part in the official deliberations. Given the similar status

---

./. in favour of one of the two theses presented, and requested the delegations, consulted in alphabetical order, to cast their vote repeating either the word 'liberty' or the word 'authorisation'.

25) I.C.A.N., Official Bulletin No. 16, 1929, p. 33.

26) The Minutes supra note 23, p. 63. - A recommendation to the contracting states not to refuse the authorisation except on reasonable grounds was, however, unanimously agreed upon by the same session. - Ibid., and op.cit. supra note 25, p. 34.

27) Denmark on October 14, 1923, and Sweden on July 21, 1927. - List of Signatures, Ratifications and Adhesions Concerning the Convention, I.C.A.N., Official Bulletin No. 27, 1940, p. 129.

of both Norway and Finland as states non-parties to the Convention, and their similar attitudes to the questions put to the vote, it might be of interest to extract from the minutes the statement made by the Norwegian representative, Captain Dons, before the second vote:

'Captain Dons desired to set forth the position of the Norwegian Government with regard to the Air Convention of 1919: it had not yet adhered to the Convention and, on the other hand, had not proposed any amendment of its text.

For this reason, it would be difficult for the Norwegian Government to take part in votes relating to amendments of the text now in force. Norway had not yet taken up a position in respect of the various problems studied by the Conference because commercial air navigation was very little developed in her territory. It was probable nevertheless that within a very short time she would adhere to the Convention of 1919, but until that time the Norwegian Government did not intend to discuss the details of the Convention.' 28)

In other respects the Paris Convention established an almost complete set of principles and rules to govern international air navigation [29] and thus met in general the need for an early agreement to prevent controversies. But as evident from the above discussion, the Convention did not meet the needs of multilateral regulation of scheduled international air navigation. In addition to this, the Convention had another major drawback which deserves our attention.

Initially, Article 5 of the Convention deprived the contracting states of the right, except by a special and temporary authorisation, to permit the flight above their territories of an aircraft which did not possess the nationality of a contracting state. Article 34 again placed

---

28) Quoted from op.cit. supra note 23, p. 63.

29) The Convention incorporated, beside the convention proper, eight Annexes (A to H) which were part of the Convention but were not signed by the contracting states. In addition, Annex J was later adopted.

certain great powers into a preferential position as compared with the other contracting states with respect to representation and voting rights in the I.C.A.N. Finally, Articles 41 and 42 laid down different conditions for the adhesion to the Convention by states which had taken part in the Great War but were not signatories of the Convention, that is to say, were not members of the Allied and Associated Powers. Such states could join the Convention only if they were members of the League of Nations, or were approved in accordance with the special conditions laid down in Article 42 [30].

Because of these discriminatory provisions many states initially hesitated to join the Convention [31]. In 1922, Article 5 was amended so as to allow the contracting

---

30) Lenin's Government was already in 1917 the first to recognise Finland's independence. In connection with a civil war started by left wing rebellions in Finland, the two countries were nevertheless in spring 1918 de facto involved in a state of war. The peace was restored by the Peace Treaties concluded between the U.S.S.R. and Finland in Dorpat in 1920 and 1922. As a consequence of this state of war, Finland fell into the category of the discriminated ex-enemy states with respect to the adherence to the Paris Convention. But having joined in 1920 the League of Nations, Finland became entitled to direct adhesion to the Convention.

For details, see Blomstedt, op.cit., p. 11, Castrén, op.cit., p. 11 et seq., and p. 444, and Jakobson, Finnish Neutrality - A Study of Finnish Foreign Policy Since the Second World War, 1969 (Second printing), p. 4.

31) At a meeting in Copenhagen, Denmark, in December 1919, Finland together with the other Nordic countries Denmark, Norway, and Sweden, and with Spain, the Netherlands, and Switzerland agreed not to join the Convention unless it had been amended so as to entitle all the contracting states to conclude special conventions with non-contracting states, and to place all the member-states on a footing of absolute equality with regard to the voting rights within the I.C.A.N.

See Roper, Note by the Secretary General on the Origin of the Air Convention of 13th October 1919, its Progressive Extension from 1922 to 1928 and the Problem of its Revision, dated February 14, 1929, as reproduced in the Minutes of the Sixteenth (Extraordinary) Session of the I.C.A.N., 1929 (Drafts), Annex A, p. 3.

parties to admit the aircraft of non-contracting states above their territories also on ground of special conventions. The stipulations of such conventions must not, however, infringe the rights of the states parties to the Paris Convention, and must conform to the rules laid down by the Convention and its Annexes. The special conventions should further be communicated to the I.C.A.N. in order to be brought to the knowledge of the other member-states.

The modification of Article 5 did not, however, prove satisfactory to many states. A further amendment was made in 1929 entitling each contracting state to conclude special conventions with non-contracting states. The previous requirement of an absolute conformity to the Paris Convention and its Annexes was mitigated thus far that the special conventions should not, in so far as might be consistent with their objects, be contradictory to the general principles of the main Convention.

Of the other discriminatory provisions of the Convention, Article 34 was amended in 1923 in accordance with a compromise proposal made, inter alia, by Finland [32]. In 1929, Article 34 was further amended, Article 41 modified, and Article 42 deleted.

The course of action discussed above removed step by

---

32) In September 1922, the Netherlands, and Switzerland, and the Nordic countries Denmark, Finland, Norway, and Sweden met in Copenhagen and, aware of the difficulties within the I.C.A.N., agreed to propose adoption of the principle of equality of all contracting states of the I.C.A.N. subject, however, to the modification that in case of amendments of the Annexes the originally preferential states would still have a kind of preferred status. As pointed out by Roper, this compromise proposal greatly facilitated the discussion and resulted in the subsequent amendment of Articles 5 and 34 in 1922 and 1923.

See Roper, op.cit. supra note 31, p. 4.

step the discriminatory provisions from the Convention. The adhesion to the Convention was nevertheless significantly suspended for many states awaiting the completion of the slow amendment procedures.

The Paris Convention came into effect on July 11, 1922, for sixteen states and was subsequently joined by twenty-two more states, among them Finland [33]. As four states denounced the Convention and the adhesion by Austria was later rendered void on the ground of her 'Anschluss' to Germany, the Convention counted by January 1, 1940, thirty-three member-states including most of the major European states except Germany and the U.S.S.R. Among the member-states there were also twelve states from outside Europe. Eight of the signatory states, among them the United States and Brazil, never ratified the Convention [34]. Thus the Convention did not succeed to achieve universality, one of its main objectives.

---

33) The adhesion of Finland was effected by a note dated November 12, 1931, to the French Government notifying the decision of the Finnish Government to adhere, as of January 1, 1932, to the Convention, and to the Protocols of October 27, 1922, and of June 30, 1923, concerning the amendments of Articles 5 and 34 thereof.

By a letter of December 4, 1931, to the Secretary General of the I.C.A.N. Finland further notified her adhesion to the Protocols of June 15, 1929, and of December 11, 1929, further modifying the Convention.

I.C.A.N., Official Bulletin No. 20, 1932, p. 4.
I.C.A.N., Official Bulletin No. 21, 1933, p. 6.

34) I.C.A.N., Official Bulletin No. 25, 1937, List of Signatures, Ratifications and Adhesions concerning the Convention, p. 137.

I.C.A.N., Official Bulletin No. 27, 1940, List of Signatures e.t.c., p. 129 et seq.

I.C.A.N., Convention relating to the Regulation of Aerial Navigation dated 13th October 1919, printed in 1937, note supra text of the Convention proper.

In consequence of the deficiencies of the Paris Convention two parallel multilateral conventions were concluded. The Ibero-American Convention Relating to Air Navigation [35], also known as the Ibero-American Convention, or 'Ciana', was signed in Madrid on November 1, 1926, by Spain, Portugal, and nineteen Latin American states. Apart from the discriminatory articles of the original Paris Convention which were replaced by liberal provisions, the Ibero-American Convention was an almost exact copy of the former Convention and its Annexes A to E [36]. Ratified, however, by only seven states, the Convention achieved no practical significance. The Pan American Convention on Commercial Aviation [37], also known as the Havana or Pan American Convention, was signed in Havana on February 20, 1928, by the United States, Haiti, and all the Latin-American states signatories to the 'Ciana'. This Convention was intended no doubt to grant to both the scheduled and non-scheduled air services of the contracting states the right of non-stop transit over, and commercial entry into the territory of the other contracting states. Nevertheless, the interpretation of the Convention in practice followed the same restrictive lines established in respect of the Paris Convention [38].

---

35) For the complete text of the Convention proper, see the Minutes of the Sixteenth (Extraordinary) Session of the I.C.A.N., 1929 (Drafts), Annex C, in English translation.

36) The Annexes A to E to the Ibero-American Convention reproduced, with very slight differences, the corresponding Annexes to the Paris Convention but the Annexes F, G, and H to the latter had no equivalent in the 'Ciana'. - Statement by the Secretary General of the I.C.A.N., ibid., at p. 10 of Annex C to the Minutes.

37) For the text of this Convention, see the Minutes supra note 35, Annex D, in English translation.

38) See Latchford, op.cit., p. 23.

Finland was not a party to either of these two Conventions which have thus been mentioned here rather for the sake of completeness.

Another consequence of the drawbacks of the Paris Convention discussed above was the conclusion in a large scale of bilateral agreements. The lack of universality forced states to enter into bilateral air navigation conventions of a general character in such cases where none of the states concerned was a party to any of the multilateral air conventions, or where the one of the states in question was a party to such a main convention but the other again a party to either another multilateral convention or none of them. In the absence of adequate multilateral rules, pairs of states, though parties to the same multilateral air convention, had to regulate their international air commerce among themselves by means of special bilateral arrangements, predecessors to the multitude of the present-day bilateral air transport agreements. Sometimes even plurilateral arrangements were entered into between three or more states for the operation of certain specified routes connecting the states concerned [39]. In many cases the regulation of air commerce between two states was, however, made solely by unilateral grant of commercial rights by the one state to the airlines of the other state.

During the Paris regime Finland entered into bilateral agreements of both types referred to above. These agreements

---

39) E.g., the tripartite Aeronautical Agreements between Italy, Roumania, and Yugoslavia relating to the Establishment of Air Navigation Lines dated on September 19, 1937. For the texts, see I.C.A.N., Official Bulletin No. 27, 1940, pp. 17 to 30.

are dealt with in detail in Chapter IV below. The majority of international air connections from and to Finland in those days would appear, however, to have been operated on the basis of unilateral grant of traffic rights.

Before entering into the examination of the relevant rules of international law governing the present-day international air transport in Finland, let us briefly focus on the International Commission for Air Navigation (I.C.A.N.), the regulatory body established under the Paris Convention, and on the acitivities of Finland as a permanent member of that agency. The Commission, provided for in Chapter VIII of the Convention, came into being on July 11, 1922. It was composed of representatives of all the contracting states. The permanent seat of the Commission was in Paris where also its Secretariat was located. Beside its manifold administrative duties, the Commission had the following functions:

- The legislative function to amend the Annexes to the Convention except Annex H which dealt with customs regulations;

- The judicial function to settle disagreements concerning the annexed technical regulations [40]; and

- The consultative function to give its opinion on questions submitted for examination by the states.

Thus the I.C.A.N. was entrusted with broad powers not usually accorded to an international organisation. The initial fears that the Commission might try to justify its existence by interfering with matters properly under the jurisdiction of the member-states did not come true. In

---

40) Para. 4, Article 37, of the Convention.

practice, the Commission managed to avoid political controversies by concentrating its activities mainly upon the technical regulation of civil aviation where its efforts proved extremely succesful [41].

Finland made her first appearance as a full member of the Commission at the Twentieth Session held in Paris on May 25 to 28, 1932. At the same Session, the adhesion of Finland to the Convention also was officially notified [42]. Since then Finland was present at all the annual Sessions of the I.C.A.N. held before the outbreak of the Second World War except the Twenty-third Session held in Brussels in 1935. Until 1937 Finland was represented at the Sessions usually by her diplomatic or military authorities on duty at the place of each Session and once by the Head of the Aeronautical Department of Sweden [43]. By 1937 the representation of Finland was set on a more permanent basis, when the late Mr. K.T.B. Koskenkylä, the first Civil Aviation Authority of Finland and later Director of Civil Aviation in Finland, took the position of the delegate of Finland. Given the more or less provisional character of the Finnish representation during the first five years of her membership, and the fact that civil aviation in those days was very moderately developed in Finland, the Finnish contribution to the work of the I.C.A.N. could hardly exceed the level of ordinary membership.

After the World War II, the Paris Convention and

---

41) Meyer, op.cit., p. 59.

42) I.C.A.N., Official Bulletin No. 20, 1932, pp. 25 and 32. - The adhesion of Norway on July 1, 1931, to the Paris Convention was notified at the same Session. Ibid., p. 32.

43) At the Twenty-second Session in Lisbon in 1934. - I.C.A.N., Official Bulletin No. 22, 1934, p. 48.

the I.C.A.N. were replaced by the Convention on International Civil Aviation done at Chicago on December 7, 1944, and the International Civil Aviation Organization (I.C.A.O.) instituted under the latter Convention. During the transfer period before coming into effect of the new Convention, the I.C.A.N. provided all possible assistance to the provisional organisation, the P.I.C.A.O., and was then liquidated by denounciation of the Paris Convention by its member-states [44]. On July 1, 1947, the Convention was denounced by Finland and ceased to be in force for her as of July 1, 1948 [45].

(iii) The Present Rules of International Law.

(1) The Freedoms of the Air.

In contrast to the Paris regime when the vague conception of innocent passage was the only element of the freedoms of the air so far formulated, in contemporary legal theory and practice, as well as in the rules of law, at least five distinct freedoms are well established and defined. The term 'freedom' (of the air) contemplates in this connection a privilege to carry a prescribed class of traffic specified by certain objective criterions [46].

---

44) Report of the Interim Council - Part I - Review of PICAO Activities June 8, 1946 - March 31, 1947. A 1 - P/3, 1/4/47, Doc. 4023, p. 9.

45) Suomen asetuskokoelman sopimussarja (The Finnish Statute Book, Treaty Series), No. 23/1948, p. 200.

46) Lødrup, Luftrett, 1962.

The Five Freedoms of the Air [47] contain the following privileges granted to a carrier of a state by another state to be exercised in or above the territory of the grantor-state:

(1) The freedom to fly and carry traffic across the territory of the grantor-state without landing;

(2) The freedom to land for non-traffic purposes, that is to say for any other purpose than taking on or discharging passengers, cargo, or mail;

(3) The freedom to discharge passengers, cargo, and mail taken on in the territory of the flag-state;

(4) The freedom to take on passengers, cargo, and mail destined for the territory of the flag-state; and

(5) The freedom to take on passengers, cargo, and mail destined for the territory of any other state than the flag-state and to discharge passengers, cargo, and mail coming from any such territory [48].

The first two freedoms are usually referred to as technical or transit rights in contrast to the freedoms (3) to (5) which are called commercial or traffic rights. The third and fourth freedom traffic being traffic from and to the carrier's home-state is commonly regarded as traffic of primary entitlement to that country, while the fifth freedom traffic is deemed to be of a secondary nature to it.

---

47) The freedoms one to four were first formulated in a Canadian proposal to the International Civil Aviation Conference convened at Chicago on November 1, 1944. The fifth freedom was proposed by the United States at the same Conference. - See the Proceedings of the International Civil Aviation Conference, 1948, Vol. I, pp. 571 and 605.

48) The fifth freedom could be broken up further into (5a) anterior-point, (5b) intermediate-point, and (5c) beyond-point fifth freedom according to whether the traffic is coming from or destined for a third state located on the agreed route anterior to the flag-state, between the flag-state and the grantor-state, or beyond the grantor-state respectively.

In addition to the classic five freedoms of the air mentioned above some other freedoms also have been formulated:

(6) The sixth freedom as applied at the present time means the carriage of traffic between the grantor-state and a third state with an intermediate stop in the territory of the flag-state. The position of this freedom as a distinct privilege is, however, highly controversial [49].

(7) The seventh freedom contemplates international air traffic carried by an airline operating entirely outside its home-state.

(8) The eighth freedom is a term employed to cover air cabotage, that is to say the right to take on passengers, cargo, and mail carried for remuneration or hire and destined for another point within the territory of the same state [50].

(2) Multilateral Rules.

The multilateral elements of contemporary regulation of international civil aviation are formulated by the International Civil Aviation Conference which convened at Chicago on November 1, 1944, on invitation by the Government of the

---

49) The sixth freedom may be looked at merely as a designation given to a specific type of fifth freedom. - See Cheng, The Law of International Air Transport, 1962, pp. 13 and 16. Considering the geographic scope of bilateral air transport agreements and the difficulty in defining the origin and destination of traffic, the sixth freedom could also be regarded simply as the third and fourth freedom on the route. - See Wassenbergh, Aspects of Air Law and Civil Air Policy in the Seventies, 1970, pp. 24 to 26.

50) Article 7 of the Chicago Convention. - Air traffic carried between two end points within the territory of a state but with an agreed intermediate stop in a foreign country is commonly regarded as an international service rather than cabotage. - Of this opinion are, for instance, Meyer, Le Cabotage Aérien, 1948, p. 73, and Lødrup, op.cit., pp. 81-82.

United States of America. This Conference, in which delegates of fifty-four states took part [51], adopted at its Final Plenary Session on December 7, 1944, apart from the Interim Agreement on International Civil Aviation designed to cover the transitional period of time before coming into force of the Convention proper, the Convention on International Civil Aviation, also known as the Chicago Convention, incorporating the general system of international civil aviation. In consequence of the failure of the Conference to reach agreement on the rules governing scheduled international air services [52], this part of regulation was omitted from the main Convention and inserted in two separate agreements to be accepted or rejected by the states in their own discretion. The International Air Services Transit Agreement, also known as the Transit or Two Freedoms Agreement, regulates the rights of non-stop transit and technical stops. The International Air Transport Agreement, often called the Transport or Five Freedoms Agreement, deals with all the five freedoms of the air.

Finland is a party to the main Convention which counted at the end of the year 1974 onehundred and twenty-nine member-states [53], by her deposit of adherence on March 30, 1949, and to the Transit Agreement by her notification of acceptance on

---

51) Finland had been involved in war with the U.S.S.R. in 1939-40 and again in 1941-44 and during the latter period in a formal state of war with some Western countries, too. Consequently, Finland was neither invited to nor present at the Conference.

52) Four proposals were presented to the Conference: (i) The United States' proposal advocating wide commercial freedoms of international air navigation; (ii) the British and (iii) the Canadian proposals intending to entrust the regulation of routes, capacity and rates to an international body; and (iv) the New Zealandic proposition supported by Australia purporting to confer the operation of international trunk routes and the ownership of aircraft and ancillary equipment employed thereon upon an international authority. - For details, see the Proceedings of the International Civil Aviation Conference, 1948, Vol. I, pp. 554, 566, 570 and 549 (et seqq).

53) Annual Report of the Council - 1974, ICAO Doc 9127, p. 89.

April 9, 1957 [54].

The Chicago Convention is, just like was the Paris Convention, based on the principle of complete and exclusive state sovereignty in territorial air space, recognised in Article 1 as an established rule of customary international law binding on all states. The territory of a state is defined in Article 2 as including the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such state. No upper limit is set for the exercition of sovereignty except that limitation inherent in the word 'airspace' used in this connection. The freedom of flight over the high seas is implied in Article 12 where the contracting states agree as between themselves that the rules of the air to be applied thereon shall be those established under the Convention.

Relative to international air transport, the principles that international air transport services may be established on the basis of equality of opportunity and that every contracting state shall have a fair opportunity to operate international airlines are recognised in the Convention [55]. But in almost equal terms as the Paris Convention, the Chicago Convention provides in Article 6:

'No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.'

In consequence hereof, the operation of any scheduled

---

54) The Annual Report of the Council to the Assembly for 1970, Appendix 1, Part I, States Parties to the Chicago Acts as of 31 December 1970, Doc. 8918, A 18-P/3, p. 163. - See also Suomen asetuskokoelman sopimussarja (The Finnish Statute Book, Treaties Series) No. 11/1949, p. 56, and No. 5/1957, p. 22.

55) The Preamble to the Convention and item (f), Article 44.

international air services over or into a foreign territory is possible solely by virtue of a special international agreement or unilateral grant of operating rights by the territorial state.

The right of non-scheduled flight is regulated in Article 5 of the Convention where this branch of international aviation is specified by negative deduction as concerning aircraft not engaged in scheduled international air services. But while the conception of a scheduled service is defined nowhere in the Convention, the proper dividing line between the two branches of flight is hard to be drawn. This problem was well recognised in an early stage. Following a careful study and preparation of the matter, the I.C.A.O. Council adopted on March 25, 1952, a definition of a scheduled international air service [56]. The definition which is not binding on states [57], reads as follows:

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

(a) it passes through the air-space over the territory of more than one State;

(b) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use be members of the public;

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

(i) according to a published time-table, or

(ii) with flights so regular or frequent that they constitute a recognizably systematic series.' [58]

The first two characteristics (a) and (b) reiterate

---

56) Report by the Council to Contracting States on the Definition of a Scheduled International Air Service and the Analysis of the Rights conferred by Article 5 of the Convention. - I.C.A.O. Doc. 7278-C/841, p. 1

57) Ibid. - The definition was adopted for guidance of contracting states in the interpretation and application of the provisions of Articles 5 and 6 of the Convention.

58) Ibid., p. 3.

the specifications of an 'air service' and an 'international air service' contained in Article 96(a) and (b) of the Convention with the additional feature, however, that the transport is performed for remuneration. Though a good approach to the problem, the definition still leaves room for discussion [59]. In the practice of states it has not found wide application either [60].

More recently, in step with the enormous growth of the non-scheduled operations during the latter half of the 1960s throughout the world [60a] and the resulting sharp competition between the two modes of international civil air transport, the distinction between scheduled and non-scheduled flight has become increasingly obscure and inadequate as a regulatory determinant. It would appear, therefore, that a thorough revision of the regulatory system laid down in the Chicago Convention would be urgently called for [60b]. One possible solution could be the replacement of the said distinction by some more expedient criterion, e.g. the class of air transport product offered, or the distinction between operations authorised under bilateral air transport agreements on specified routes and operations carried out on other routes, as suggested

---

59) Lødrup, op.cit., p. 60. - Lødrup argues that a verbatim application of the subcriterions (c)(i) and (c)(ii) as independent alternatives might lead to unreasonable ends in the case where a time-table has been published but the service offered amounts clearly to no systematic series under (c)(ii), e.g. when only two return flights between two points have been advertised.

60) Wassenberg, op.cit., pp. 55-58, and Post-War International Civil Aviation Policy and the Law of the Air, Second revised Edition, 1962, p. 8.

60a) For instance, in the North Atlantic passenger traffic, the most important air transport market in the world, the share of the non-scheduled operators in the total number of passengers carried in the years 1969 to 1974 has fluctuated between 27.0 and 30.8 per cent. - Annual Report of the Council - 1974, Table I-8, ICAO Doc 9127, p. 13.

60b) In April 1972, a conference called "The First World Congress on Air Transportation" convened at Madrid with representatives of more than 60 nations and 50 airlines attending. The stated aim of the conference was to assess the changes that had taken place since the Chicago Convention and to define the role of non-scheduled service in international transportation and tourism. - Annual Report of the Council - 1972, ICAO Doc 9046, p. 14.

by Wassenbergh [60c].

Under Article 7 of the Convention, each contracting state shall have the right to refuse permission to the aircraft of other contracting states to engage in the carriage of cabotage traffic [60d]. On the other hand, each contracting state undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other state or airline of any other state, and not to obtain any such privilege from any other state [60e].

Between states parties to the Transit Agreement which came into force on January 30, 1945, the first two freedoms of the air are exchanged on a multilateral basis. The exercition of these two freedoms is, under Article I of the Agreement, subject to certain conditions:

(1) It is not applicable in respect of airports utilized for military purposes to the exclusion of any scheduled international air services;

(2) It shall be in accordance with the provisions of the Chicago Convention;

(3) Each contracting state may, subject to the provisions of the Agreement

(a) designate the route to be followed and the airports to be used;

(b) impose or permit to be imposed just and reasonable charges for the use of such airports and other facilities; these charges are subject to review by the Council of I.C.A.O. entrusted in this respect with advisory powers, and shall not be higher than would be paid for the use of such airports and facilities by national aircraft of

---

60c) Wassenbergh, Aspects of Air Law ... , p. 93.

60d) For a definition of cabotage, see supra p. 26, item 8.

60e) Cabotage rights may thus be granted and received by the contracting states on a non-exclusive basis or, provided that they are not specifically granted, even on an exclusive basis. -See Cheng, The Law of International Air Transport, 1962, p. 315.

the grantor-state engaged in similar international services

Certain additional conditions would become applicable in areas of active hostilities or of military occupation, and in time of war.

The airlines which operate, under the Agreement, services involving stops for non-traffic purposes are obliged, on the request by the territorial state, to offer reasonable commercial service at the points at which such stops are made. Such a request shall not, however, involve any discrimination between airlines operating the same route. It shall further take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned, or the rights and obligations of a contracting state.

The privileges being exchanged between the contracting states, their abuse by states non-parties to the Agreement is precluded by the requirement that substantial ownership and effective control of the air transport enterprises engaged in the operation of services under the Agreement must be vested in nationals of a contracting state. If not satisfied that these qualifications are met, the territorial state may withhold or revoke a certificate or permit to any such enterprise. The same sanction would apply also in case of failure by such enterprise to comply with the laws of the territorial state, or to perform its obligations under the Agreement.

Specific quasi-judicial and judicial powers are conferred upon the Council and the Assembly of the I.C.A.O. with respect to actions by any contracting state deemed by another contracting state to cause injustice or hardship to it [61]. Disagreements relating to the interpretation or application

---

61) Section 1, Article III, of the Transit Agreement.

of the Agreement which cannot be settled by negotiation, are brought under the provisions of Chapter XVIII of the Chicago Convention (Disputes and Default) 62).

In relation to the Chicago Convention, the Transit Agreement is of supplemental nature: the Agreement may be accepted by any state member of the I.C.A.O., that is to say a party to the main Convention 63); and it shall remain in force as long as the main Convention provided, however, that it may be denounced by any contracting state on one year's notice 64).

The Transit Agreement counted at the end of the year 1974 the acceptance of eighty-seven states, among them all the states with which bilateral air transport agreements have been concluded by Finland except the People's Republic of China, Romania, the U.S.S.R. and Yugoslavia 65). The German Democratic Republic who is not a party to the main Convention either, was consequently outside the Transit Agreement.

The Transport Agreement exchanges on similar conditions as the Transit Agreement all the five freedoms of the air among the contracting states. Relative to the commercial freedoms, however, the undertaking of each contracting state relates only to through services on a route constituting a reasonably direct line out from and back to the homeland of the flag-state 66). And furthermore, in the establishment and operation of through services due consideration shall be given to the interests of the other contracting states so as

---

62) Section 2, Article II, of the Transit Agreement.

63) Para. 2, Article VI , of the Transit Agreement.

64) Article III of the Transit Agreement.

65) Annual Report of the Council - 1974, Appendix 1, Part I - States Parties to the Chicago Acts as of 31 December 1974, ICAO Doc 9127, pp. 103 - 106.

66) Para. 2, Section 1, Article I, of the Transport Agreement.

not to interfere unduly with their regional services or to hamper the development of their through services [67]. Though come into effect already on February 8, 1945, the Transport Agreement has not obtained sufficient acceptance. At the end of the year 1974, it counted only twelve member-states, most of them countries with minor importance to the international civil air transport. Of the bilateral compagnions of Finland, only Greece, the Netherlands, Sweden and Turkey were parties to this Agreement at the end of 1974, while Finland herself is not [68].

Despite persistent endeavours to find a more acceptable multilateral solution to the exchange of commercial rights in international civil air transport, the question still remains unsolved [69]. Some progress towards multilateralism has, however, been made with a regional approach by the European Civil Aviation Conference (ECAC). Thus a multilateral treaty, the International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services, was signed at

---

67) Article III of the Transport Agreement.

68) ICAO Doc 9127 mentioned in supra note 65.

69) The question of permanent multilateral regulation of scheduled international air services on the basis of either internationalisation or a general multilateral convention was referred to the Interim Council of PICAO by the Chicago Conference.
-Recommendation X of the Conference, Proceedings of the International Civil Aviation Conference, Volume I. p. 130. See also para. 3a (3)(4), Section 6, Article III, of the Interim Agreement on International Civil Aviation, and Article 55 (d) of the Chicago Convention, where the study of this matter is further suggested.

The question was then under continuous study during the transitional period by the PICAO and since then by ICAO. On a regional basis, preparations were made by the Council of Europe and the ECAC. Particular efforts were made at a special commission open to all ICAO member-states at Geneva in 1948 but the commission did not succeed in drafting a convention ready for signature. At the Seventh Assembly of ICAO at Brighton in 1953, the issue was regarded as unattainable for the moment, and since then it has been left rather dormant. - For details of this development, see ICAO Doc 5230 A2-EC, and Wassenbergh, Post-war International Civil Aviation Policy and the Law of the Air, Second revised edition, 1962, pp. 40-46.

Paris on July 10, 1967, by Finland and six other ECAC member-states [70]. The agreement is in force for Finland as of May 30, 1968 [71]. Given the close connection of this agreement with the bilateral regulation of tariffs, it will be examined more closely in Chapter VI below.

The unwillingness of states to regulate their mutual air commerce multilaterally on the lines of the Transport Agreement and the failure in reaching another general multilateral solution to the problem led once again to bilateralism. In consequence of the almost universal adherence of states to the Chicago Convention, a firm base for a common air practice has been established throughout the world [72]. Thus in contrast to the Paris regime, there is little need for bilateral regulation in this respect. But relative to the regulation of scheduled international air commerce, bilateralism continues to prevail as the sole system generally accepted by the states [73]. Under the Chicago Convention, the contracting states may freely make arrangements not inconsistent with the provisions thereof [74]. In this respect, the Standard Form of Agreement for Provisional Air Routes adopted by the Chicago

---

70) Suomen asetuskokoelman sopimussarja (the Finnis Statute Book, Treaties Series) No. 83/1968 and No. 84/1968.

In the non-scheduled field of international civil air transport, similarly a limited regional arrangement has been arrived at by the signature at Paris on April 30, 1956, of the Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe. This treaty is in force for Finland as of February 6, 1958. - Ibid., No. 15/1957.

71) Ibid., No. 84/1968.

72) This state of affairs has been called the technical freedom of the air.

73) More recently, the United States has been insisting on the conclusion of bilateral intergovernmental agreements covering charter services, separate from those concerning scheduled services. Thus the bilateral practice is showing signs of enlargement. - See the Annual Report of the Council - 1972, ICAO Doc 9046, p. 14.

74) Article 83 of the Convention.

Conference at its Final Plenary Session [75] and the Standard Clauses for Bilateral Agreements developed by ECAC at its Third Session in 1959 [76] have proven most useful in securing a great measure of uniformity in the agreements. Similarly, the capacity clauses incorporated in the so called Bermuda Agreement of 1946 between the United Kingdom and the United States have found wide application in the subsequent agreements concluded between states, thus creating uniformity.

Under Article 83 of the Chicago Convention, any such arrangement shall be fortwith registered with the Council, which shall make it public as soon as possible. At the end of the year 1974, the number of agreements and arrangements thus registered rose to 2,525 [77], the vast majority thereof being bilateral air transport agreements.

Just like was the case with the ICAN during the Paris regime, the greatest success achieved by the International Civil Aviation Organization (ICAO), the regulatory agency instituted under the Chicago Convention, has been in the ever expanding technical field of international civil aviation. In the economic field, the work of the Organization has gained despite the experienced difficulty to obtain agreement of contracting states for joint support arrangements [78]. In the legal field, the emphasis of the work of ICAO has been on private international air law questions. [79] More recently, however, urged by the rapid growth of international air terrorism, increased activity has been devoted by ICAO also to the questions of security in international civil air transport

---

75) Recommendation VIII, Proceedings ... mentioned in supra note 69, pp. 127-129.

76) The Standard Clauses are reproduced in full in the Handbook on Administrative Clauses in Bilateral Air Transport Agreements, ICAO Circular 63-AT/6, pp. 116-120.

77) Annual Report of the Council - 1974, ICAO Doc 9127, p. 91.

78) Binaghi, "The International Civil Aviation Organization (ICAO)

./.

The participation of Finland in the work of ICAO has been conducted thus far on the basis of special representation at Assembly Sessions and meetings of the Legal Committee and at various special conferences and meetings open to all ICAO member states [80]. In contrast to the SAS countries Denmark, Norway and Sweden, Finland has never been elected a member of the ICAO Council [81]. Evidently, the combined contribution by the SAS countries to the provision of facilities for international civil air navigation has made the three bloc members in turn eligible to the Council under item 2, para. (b), Article 50, of the Chicago Convention. Yet the location of Finland in the same geographical area has excluded her election under item 3 of the said paragraph. In June 1975, however, a resolution was adopted by the Nordic Ministerial Council to the effect that Finland be admitted into the rotation among the Nordic countries relative to the membership in the ICAO Council [82]. Thus possibly at the next election of the Council in 1977, Finland already may appear as a candidate for the

---

./. after Twenty Years", Institute of Air and Space Law/McGill University, Yearbook of Air and Space Law 1967, printed in 1970, p. 7.

79) It should be recalled that ICAO took over the work of the Comité International Technique d'Experts Juridiques Aériens (CITEJA), a permanent international committee instituted in 1925 in Europe for the study and preparation of questions concerning private international air law.

80) Source: Annual Reports of the Council from 1949 to 1974.

81) Among the Technical Assistance Field Staff and the Professional Category Staff of ICAO there have been a few experts and officers drawn from Finland since 1957 and 1960 respectively. The share of Finland in ICAO personnel would seem to have been proportionally much lesser that that of the other Nordic countries, particularly the SAS countries. The ICAO's technical assistance to Finland took the form of fellowships, in all twelve of which were granted between 1951 and 1956 to Finnish recipients.
-Source: Annual Reports of the Council from 1949 to 1974.

82) Finnish National Board of Aviation, Yearbook 1975, p. 18.

membership [83]. As another consequence of the ministerial resolution, Finland will undertake to participate in the work of the permanent Nordic representation at ICAO in Montreal [84]. Thus in the future, Finland may gain increased opportunity to contribute to the important work of ICAO.

---

83) Ibid.

84) A Finnish civil servant will be assigned to this post as of March 1, 1976. - Ibid.

(b) Finnish National Law [1].

The immediately following two subsections deal with the provisions regulating the admission of foreign aircraft into Finland, the right to fly within Finnish territory, and the conditions for entry into air transport business in Finland. Subsection (iii) provides an insight into the organisation of the civil aviation administration in Finland.

(i) Early Legislation.

The first air law regulation in independent Finland, the Statutory Order on Air Navigation in Finland [2], was promulgated by the Senate of Finland [3] on September 13, 1918 [4]. Under this Order, all air navigation not carried out by the armed forces of the country was subjected to the provisions thereof. Given the exceptional circumstances still existing in Finland at the time, it is not surprising that the regulatory power was vested in the General Staff of the Finnish Army. Almost all important activities in the field

---

1) The Finnish legislation constitutes of (i) Acts of Parliament, (ii) Statutory Orders issued by the President of the Republic, and (iii) Decisions of the Council of State (the Cabinet), or of its Ministries issued in virtue of express authorisation in an Act or Statutory Order (legislative delegation). These legal enactments are published in the Finnish Statute Book which also has a separate branch for the publication of treaties (the Treaties Series).

Subordinate administrative regulations and directives which are not published in the Statute Book may further be issued by competent administrative authorities.

For more details of the Finnish legislative system, see, for instance, Merikoski, The System of Government, published in Uotila, ed., op.cit., pp. 25-40.

2) During the Russian rule, a Decision of the Senate of Finland on Air Navigation in Finland was issued on May 26, 1914, followed by certain more or less known administrative restrictions.

3) The counterpart of the Council of State under the Russian rule and during the period of time before coming into force of the Constitution Act of 1919.

4) Suomen asetuskokoelma (the Finnish Statute Book) No. 118/1918.

of air navigation, such as construction and trade of flight vehicles, matters of airworthiness, competence and licensing of flight-crews, and establishment of airdromes, were put wholly within the jurisdiction of the military. Professional carriage by air of persons and goods could take place only by the permission of the General Staff. Similarly, the performance of test flights and air races was also subject to authorisation by the Staff.

It is evident that the Statutory Order of 1918 was enacted solely in the interests of general security and public safety and should, therefore, be considered as an exceptional and temporary arrangement.

Soon after the promulgation of the Statutory Order of 1918, increasing attention was paid to the plans of Nordic co-operation in the field of air navigation [5]. On the invitation of the Government of Norway, the first official Nordic Air Navigation Conference was held in Oslo (then Christiania) on June 2-4, 1919, with the delegates of Denmark, Finland, Norway, and Sweden participating. The Conference agreed upon certain principles for a uniform legislation on air navigation in the Nordic countries which were further elaborated during subsequent conferences and committee sessions. The culmination of these efforts were Draft Air Navigation Acts for each of the Nordic countries which were prepared in order to achieve the greatest possible uniformity [6]. As a result of this co-operation, on May 25,

---

5) Regional legislative co-operation in Scandinavia dates back to the end of the 19th century. - Nylen, "Scandinavian Co-operation in the Field of Air Legislation", Journal of Air Law and Commerce, Volume 24, 1957, p. 36.

6) Hallituksen esitys Eduskunnalle ilmailulaiksi (Government Bill to the Parliament for Air Navigation Act), 1923.

1923, the first Air Navigation Act (hereinafter referred to as the Act of 1923) was promulgated in Finland [7].

Apart from the provisions on private air law (Articles 6 - 13) [8], the Act of 1923 contained only general provisions on public air law. The more specific regulations thereon were laid down in the Air Navigation Order [9], a Statutory Order promulgated much later, on March 12, 1937 (hereinafter referred to as the Order of 1937). As a matter of fact, the Act of 1923 did render void the Statutory Order of 1918, although the latter was expressly repealed first by Article 35 of the Order of 1937.

The principle of State sovereignty in territorial air space was not expressly stated in the Act of 1923 but was clearly implied therein. Article 1, for instance, provided that air navigation within the territory of Finland may take place only in conformance with the Act and regulations and instructions issued pursuant thereto. In Article 30 of the Order of 1937 again there was further stipulated that by the operation of aircraft within Finnish territory all instructions given by the competent authorities for the observance of lawful regulations and general security must be complied with. On the other hand, extraterritorial effect was imposed upon certain Articles of the Order of 1937 by Article 28 insomuch that they should be applied to Finnish

---

7) Ilmailulaki, Suomen asetuskokoelma (the Finnish Statute Book) No. 139/1923. - For an English translation of the Act of 1923, see Air Laws and Treaties of the World, Volume I, 1965, pp. 695-697.

8) These Articles regulate the liability of the owner and user of aircraft for damage caused to third parties by the use of the aircraft for air navigation, and are still in force.

9) Ilmailuasetus, Suomen asetuskokoelma (the Finnish Statute Book) No. 127/1937.

aircraft even when operating outside Finnish territory [10].

Aircraft which did not possess Finnish nationality were entitled to fly within Finnish territory provided that they were duly registered in a foreign country with which a treaty was concluded granting such right to the aircraft of that country, or in virtue of special authorisation [11].

The regulations governing the conduct of commercial air operations were incorporated in Chapter 7 (Articles 24-26) of the Order of 1937. The operation of regular air services on a fixed route or of other air services for the carriage of persons and goods for pay was under Article 24 subject to authorisation by the Ministry of Communications and Public Works (hereinafter referred to as the Ministry of CPW). The State or such joint stock company in which the State possessed the majority of shares were, however, exempted from this authorisation. In the absence of more specific regulations, the conditions on which an authorisation (licence) could be issued were adopted in practice by the analogy from the regulations concerning motor traffic [12]. Thus the compatibility of the service proposed with the public interest was first examined. Attention was next paid to the need for and expediency of the service, having regard to the already existing transport facilities. Finally,

---

10) Articles 18, 22, 23 and 27 of the Order of 1937 dealing with the competence of flight-crews, prohibited transport, and documents to be carried on board aircraft.

11) Para. 1, Article 2, and Article 5 of the Act of 1923. - The term 'aircraft' was defined in para.2, Article 2, of the Act as contemplating airplanes, motor balloons, and free balloons which could be used as vehicles of conveyance.

12) Autere, Oikeus ilmatilan käyttöön siviili-ilmailutarkoituksessa rauhan aikana, 1965, p. 268.

the reliability and financial standing of the applicant, as well as his ability to operate the service properly, were examined. In conformity with the interpretation of the motor traffic rules, the licensing of commercial air services was considered as being of a concessive nature. Invoking the public interest involved, the grant or refusal of a licence was thus regarded as being within the discretion of the Ministry of CPW [13].

With respect to air cabotage, defined in para. 1, Article 25, of the Order of 1937 as air traffic moving solely between Finnish localities, the powers of the Ministry were, however, limited. A licence for such air service could not be granted to foreign national or foreign company. Furthermore, restrictions were imposed upon foreign ownership in Finnish companies. A licence for air cabotage could thus be granted neither to a Finnish trading company or commandite company with a foreign partner, nor to a joint stock company unless its stock certificates were issued on named persons and at least two thirds of its shares were owned by Finnish nationals [14].

The validity of a licence for commercial air traffic undertaking could be limited to a fixed term within the discretion of the Ministry of CPW which also was empowered to prescribe the manner in and the conditions under which the services might be operated [15]. Although revocation of a licence was nowhere expressly provided for, the licences were generally granted until further notice and considered as revocable [16]. As pointed out by Autere, this system did not provide to the enterprises that legal security to

---

13) Autere, op.cit., p. 268.
14) Para. 2, Article 25, of the Order of 1937.
15) Article 26 of the Order of 1937.
16) Autere, op.cit., p. 270.

which they were entitled pursuant to the Constitution Act of 1919 [17].

Supplementary provisions to the Act of 1923 and the Order of 1937 with respect to foreign aircraft were incorporated in the Statutory Order on the Visits of Foreign Men-of-War, Merchant Vessels, and Aircraft to the Territory of Finland in Time of Peace, promulgated on April 28, 1938 [18]. Unless otherwise provided for in a treaty, or unless a special arrangement of air navigation, e.g. of scheduled air services, had been arrived at, the entry of a foreign aircraft into the territory of Finland could take place, as a general rule, only on prior permission and notice (Articles 21 - 23). Specific conditions and rules upon the flight by foreign aircraft within Finnish territory were also laid down (Articles 24 - 30). The Order of 1938 was repealed by the Statutory Order on the Control of the Land and Water Territory and the Airspace of the Realm, promulgated on April 18, 1963 [19].

(ii) Present Law.

The spectacular growth of flight technology during the Second World War, and the replacement of the Paris Convention by the Chicago Convention rendered obsolete the air navigation laws then in force throughout the world. As once

---

17) Ibid.

18) Suomen asetuskokoelma (the Finnish Statute Book), No. 178/1938.- The Order was partially amended on May 16, 1958. Ibid, No. 214/1958.

19) Ibid., No. 185/1963. - This Order is still in force. Its relevant provisions are dealt with under the next subtitle.

before, the Nordic countries, now joined by Iceland, again decided to co-ordinate their policies. Following several conferences of the legal experts of the five countries between 1949 and 1954, a high degree of uniformity was achieved as to the main principles while considerable differences in detail and wording remained unsettled. Thus the contemporary Nordic laws on aviation, though much the same, are still far from identical [20].

The new Aviation Act [21], incorporating the general principles and rules, was promulgated in Finland on December 11, 1964, but came into force first as of October 1, 1968 [22]. The Act is based mainly upon the Nordic co-operative results but partly also upon the new Aviation Acts of France, the German Federal Republic, Austria, Switzerland, and the United States [23].

The more specific regulations were laid down in the Aviation Order [24], a Statutory Order promulgated on August 23, 1968, and brought into force as of October 1, 1968.

Like in the Act of 1923, the principle of State sovereignty in territorial airspace is only implied in the Aviation Act. Apart from a slight difference in wording, Article 1 of the Aviation Act is actually equivalent to

---

20) For details, see Nylen, op.cit. supra note 5 at p. 39, pp. 36-46.

21) Ilmailulaki, Suomen asetuskokoelma (the Finnish Statute Book) No. 595/1964.

22) It was made effective by a Statutory Order issued in virtue of para. 1, Article 76, of the Act. - The Act of 1923 was repealed by the Aviation Act except Articles 6 to 13 which remained and still are in force.

23) Hallituksen esitys Eduskunnalle ilmailulainsäädännön uudistamiseksi, 1963 vuoden valtiopäivät No. 61, p. 2.

24) Ilmailuasetus, Suomen asetuskokoelma (the Finnish Statute Book) No. 525/1968. - The Order of 1937, as amended, was completely repealed by the Aviation Order (the ending clause to the latter).

Article 1 of the Act of 1923. With respect to the extra-territorial effect of the Aviation Act, Article 2 thereof provides that the Act shall apply also to navigation of Finnish aircraft outside Finnish territory unless otherwise stipulated in the Act, and provided that it does not violate the law of any foreign state which might be applicable pursuant to an agreement or otherwise. It is evident that this stipulation satisfies also the requirements laid down in Article 12 of the Chicago Convention.

The provisions regulating civil aviation are incorporated in Part I of the Aviation Act [25]. Under Article 5, the right of air navigation within Finnish territory is granted exclusively to such aircraft which possess either Finnish nationality, or the nationality of a foreign state with which a treaty has been concluded upon the right to aviation within Finnish territory, or a special permission issued by the Ministry [26].

The control of entry into commercial civil aviation [27] is based on the general principle that all aviation for revenue purposes, scheduled as well as non-scheduled, shall be subject to a licence granted by the Ministry [28]. In this

---

25) Part I of the Act is divided into fourteen Chapters involving Articles 5 to 71.

26) Para. 1, Article 4, of the Aviation Act provides that by the Ministry is meant the Ministry of CPW. - See, however, infra p. 54 where the subsequent changes in the organisation are explained. The power to grant a special permission would at present be vested in the National Board of Aviation.

A special permission may be granted only for a fixed term not longer than one month in each occasion (Article 3 of the Aviation Order).

27) The relevant Articles are incorporated in Chapter 7 of the Aviation Act ("Aviation for Revenue Purposes", Articles 41 to 45), and in Chapter 7 of the Aviation Order ("Aviation for Revenue Purposes and Other Aviation Activities", Articles 90 to 95). Of the latter, Articles 90 and 91 are placed under the subtitle "Scheduled Air Services" while Articles 92 to 95 are under the subtitle "Other Aviation for Revenue Purposes".

28) At present, by the National Board of Aviation.

respect, the State of Finland and such joint stock companies in which the majority of shares are owned by the State are no more in a preferred position but must obtain a licence just as any other person or enterprise. The grounds on which a licence may be granted are now expressly specified in law. The qualifications laid down in this respect in para. 1, Article 42, of the Aviation Act apply equally to the licensing of scheduled services and other aviation undertakings, and follow closely the customary rules developed in practice under the Order of 1937 [29]. A licence may be granted only when not precluded by reasons of public interest. Regard shall also be paid to the need for, and expediency of the planned air services, as well as to the applicant's ability to operate them in an appropriate manner. It should, however, be pointed out that there is no absolute obligation under the paragraph to grant a licence even if all the requirements would be met by the applicant. Thus the grant of a licence has the nature of a concession [30].

In general, no difference is made between the applicants for a licence with respect to nationality. A licence may thus be granted equally to Finnish and foreign applicants [31]. An exception is, however, made in Article 43 of the Aviation Act as to the air cabotage described in para. 1 thereof as being carriage of passengers or goods for remuneration between Finnish locations exclusively. Unless otherwise provided for in an agreement concluded with a foreign state, a licence for such air cabotage may be granted only to applicants

---

29) Supra pp. 41-42.

30) Autere, op.cit., pp. 268-269.

31) Another question would be the impact of the public interest issue upon the decision to be made.

specified in the said paragraph identically with para. 1, Article 8, of the Aviation Act. The applicant should thus meet the qualifications for Finnish ownership relative to registration of aircraft. Further restrictions are, however, imposed upon corporate bodies in this respect. Thus a licence for air cabotage may not be granted to any one of the following applicants:

(a) a trading company, or commandite company with a foreign partner;

(b) a joint stock company unless its share certificates are issued upon named persons, and a 'foreigner's clause' [32] is inserted in its articles of association; or

(c) a co-operative society, or an association, foundation, or other corporation unless all of its board-members are Finnish nationals resident in Finland.

Under the Order of 1937, no exemption was allowed from the restrictions on air cabotage. It would appear, however, that the interests of Finnish civil aviation might call for exceptions in specific circumstances, for instance, in such cases where air cabotage rights for Finnish operators in a foreign country were made conditional on reciprocity [33]. The Council of State is thus empowered under para. 3, Article 43, of the Aviation Act, for special reasons and without prejudice to the normal qualifications, to grant a licence for air cabotage.

---

32) A legal clause restricting foreign ownership in the shares, and the voting rights of foreigners at the General Assembly of the company. Originally, this clause is intended for the restriction of foreign ownership in and occupancy of realties in Finland. - For more details, see Olsson, "The Organisation of Business and the Right of Establishment", published in Uotila, op.cit., pp. 142-144.

33) Hallituksen esitys ..., supra note 23 at p. 44 , p. 9.

A comparison between para. 1, Article 43, of the Aviation Act and Article 7 of the Chicago Convention shows the difference that, while the latter is based on the nationality of the aircraft, the Aviation Act speaks of the nationality of the licence holder respectively. The latter arrangement would seem more favourable to the Finnish operators than the former by allowing them freely to use leased foreign equipment for flights within Finland and, on the other hand, by precluding generally the use by foreign operators of aircraft possessing Finnish nationality for flights solely within Finnish territory [34].

There is no exemption in the Finnish law from the obligation to obtain a licence for scheduled air services. Thus a licence must be issued, e.g., for scheduled flights across Finnish territory, with or without landing for non-traffic purposes, even when performed by aircraft of a foreign state a party to the Transit Agreement. Similarly, a licence would be required for scheduled flights performed within Finnish territory by a foreign airline pursuant to a treaty. Another question would be, however, that the grant of a licence to a foreign airline operating scheduled services pursuant to a bilateral air transport agreement may be executed in a short cut procedure. Apart from the treaty provisions, such simplified method could be based upon the view that the responsibility for the fulfilment of the obligations arising out of the I.C.A.O. regulations and the treaty itself would rest with the foreign licensing and designating authorities. Thus a new examination of all

---

34) Nylen, A Study of the Draft Swedish Civil Aviation Act of 1955, a thesis, McGill University, 1956, p. 75.

the particulars already considered and accepted by the foreign authorities would only mean wasteful duplication of work [35]. As pointed out by Autere [36], the requirements of public interest, as well as the need for and expediency of the service proposed have already been duly examined by competent Finnish authorities in the course of negotiation and conclusion of the treaty. In respect of the ability of the foreign operator to pursue the service properly, the considerations of the competent foreign designating authorities may with good reason be relied on [37]. It may be further notified that this interpretation would seem to be implied in Article 90 of the Aviation Order. While numerous particulars are laid down as to the information and documentation to be normally provided by the applicant, a foreign air traffic enterprise shall provide such information and present such documentation as may be considered necessary. On the other hand, nothing would preclude from entering into an examination of facts where such action all the same would be called for.

A licence for scheduled services shall include a statement of the routes and of the conditions on which the service may be operated [37a]. It may be made subject to such conditions as are considered necessary, and its validity may be limited. A licence may also be revoked in case of a substantial failure by the holder to comply with the conditions thereof, or with other regulations governing the licensed service [38]. Would a holder of a licence for air cabotage cease to qualify under para. 1, Article 43, of the Aviation

---

35) Temmes' interview.
36) Op.cit., p. 258.
37) Ibid. 37a) Para. 1, Article 91, of the Aviation Order.
38) Para. 2, Article 42, of the Aviation Act.

Act, the licence will render void unless the defect is corrected within a term set by the licensing authority [39].

With respect to scheduled services, the time-tables and tariffs, as well as amendments thereof, and amendments of route plans are subject to approval by the Ministry [40]. Regarding the time-tables for international services, attention has been paid in practice to the requirements of equal opportunity for the operators of the both countries pursuant to relevant bilateral air transport agreements and, on the other hand, to the interests of the travelling public [41]. The tariffs applied to international services have been those established by the IATA Traffic Conferences except in 'open rate' situations where the decisions have been taken solely within the discretion of the Finnish authority [42].

The Ministry also has the general power to issue specific regulations to be complied with in the operation of scheduled air services [43]. Any person or body pursuing aviation activities has a duty to provide such information as the Ministry may deem necessary in the interests of flight safety, and such statistics of the operations as may be requested by the Ministry [44]. Furthermore, the Ministry may oblige the owner or occupant of an aircraft as well as the

---

39) Para. 2, Article 43, of the Aviation Act.

40) Para. 2, Article 91, of the Aviation Order. - At present, this power is vested in the National Board of Aviation.

41) Temmes' interview. - Difficulties sometimes encountered have been disposed of by negotiation between the airlines and the authorities. - Ibid.

42) Temmes' interview. - At the time of the interview, the regulatory power did rest with the Department of Civil Aviation, Ministry of Communications.

43) Para. 3, Article 91, of the Aviation Order. - At present, this power is vested in the National Board of Aviation.

44) Article 103 of the Aviation Order. - At present, these powers rest with the National Board of Aviation.

aircraft commander to provide such information [45].

Before closing this subsection, the Statutory Order on the Control of the Land and Water Territory and Airspace of the Realm of 1963 [46] should be shortly examined. In this Order, reference is made with respect to foreign civil aircraft, and foreign state aircraft intended for business to the ordinary stipulations on air navigation within Finnish territory [47]. Through this arrangement, the airlines of the socialist countries owned and operated by the states themselves, and the airlines of the other foreign states have been placed completely on an equal footing. In other respects, the 1963 Control Order would have no bearing upon our present discussion.

(iii) Civil Aviation Administration.

In order to provide a better insight into the position of the civil aviation authorities within the hierarchy of the Finnish administrative system, some brief outlines of the general organisation may first be drawn. The supreme executive power in Finland is vested in the President of the Republic. The Council of State (the Cabinet) does have general jurisdiction over all matters of government and administration not expressly withheld from it and is thus

---

45) Ibid.

46) Supra p. 43.

47) Para. 1, Article 26, of the Control Order of 1963. - The stipulations contemplated here are those of the Act of 1923 and the Order of 1937 until October 1, 1968, and since then the relevant provisions of the Aviation Act and the Aviation Order.

The regulations incorporated in the Control Order of 1963 apply, speaking of aircraft, to foreign military aircraft and other foreign aircraft used exclusively for state purposes other than business. This state of affairs is confirmed in Article 74 of the Aviation Act and in Article 141 of the Aviation Order.

the highest instance of general government. Within the internal organisation of this body, the various Ministries play a predominant role. The Ministries are divided into Departments and these further into Divisions [1].

Subordinated to the Ministries, the National Boards take care of specific branches of administration and have jurisdiction over the entire country. As to their internal organisation, each National Board is headed by a Director General, and divided usually into Departments and Divisions [2].

The regional and local authorities within a specific branch are then subordinated to the National Board of that branch.

As already has been explained before [3], the regulatory power relative to air navigation in Finland was under the Statutory Order of 1918 vested in the General Staff of the Finnish Army. The main bulk of the civil aviation administration proper was, however, from the very beginning, that is to say from 1918, allotted to the Ministry of CPW. Initially, the matters concerning civil aviation were dealt with on a part-time basis by one of that Ministry's referendaries, assisted since 1933 or 1934 by one Finnish Air Force officer in matters of flight technology [4]. But the steady growth of civil

---

1) The matters within the jurisdiction of the Council of State are decided at plenary meetings in a collegiate order. Matters expressly delegated to a Ministry by an Act or Statutory Order may, however, depending on the rules of internal procedure, be decided by the Minister or by a senior civil servant, such as the Head of Department or Division, under their personal responsibility.

2) The method of decision making within a National Board is collegiate in general but in specified matters the power to make decisions may be delegated to the Director General or to other civil servant of the Board.

3) Supra p. 38.

4) Committee Report, No. 11/1937, p. 38.

aviation in Finland, speeded up significantly by the construction since 1932 of civil land airdromes [5], soon urged more radical measures.

On March 1, 1936, a special referendary was thus appointed by the Ministry of CPW to deal with the preparation of civil aviation matters as his sole function. Under Article 1 of the Order of 1937, the specific position of Civil Aviation Authority was then conferred upon the said referendary carrying with it the duties and powers expressly specified in the Order [6]. In other respects, the responsibilities concerning civil aviation administration remained to rest with the Ministry. A significant part of technical functions in the field of civil aviation administration, however, had been and continued to be allotted to various National Boards [7].

By subsequent developments first the Division of Civil Aviation was instituted in 1943 within the Ministry of CPW [8], and then replaced in 1963 by the Department of Civil Aviation [9] within the same Ministry. The specific position of the Civil Aviation Authority did rest with the Head of the Division or Department respectively until October 1, 1968, when it ceased to exist by the coming into force of the new

---

5) Until that time, civil aviation in Finland had been forced to operate from water bases or, in winter-time, from frozen lakes or sea.

6) Among these, granting of the specific permission for air navigation within Finnish territory (Article 5 (b) of the Act Of 1923) could be mentioned in this connection.

7) These were: The National Board of Public Roads and Waterways, the Posts and Telecommunications Administration Board, the Central Institute of Meteorology, and the National Board of Building. - See the Committee Report, No. 11/1937, p. 38.

8) Article 1 of the Order of 1937, as amended on March 19, 1943. - Suomen asetuskokoelma (the Finnish Statute Book) No. 237/1943.

9) Within this Department, three Divisions were established: the Administrative Division which also dealt with matters of international relations, the Air Traffic Division, and the Technical Division. - Statutory Order on the Ministry of CPW of January 15, 1965, Articles 1 and 5 to 8, Suomen asetuskokoelma (the Finnish Statute Book) No. 14/1965.

Aviation Act and Aviation Order, from which this institution was omitted.

In connection with the partition as of March 1, 1970, of the Ministry of CPW into two distinct Ministries, the Ministry of Manpower, and the Ministry of Communications, the Department of Civil Aviation was incorporated in the latter. The Meteorological Institute (formerly the Central Institute of Meteorology) was simultaneously subordinated to the Department of Civil Aviation [10].

By these developments the centralisation of the civil aviation administration under one single body was largely accomplished. But still another important step was urged by the civil aviation authorities. They demanded jurisdiction over the planning, construction, and maintenance of airports inclusive runways and certain facilities, which significant sector of functions was under the management of the National Board of Public Roads and Waterways [11]. This goal was finally achieved by the institution as of March 1, 1972, of the National Board of Aviation [12].

Subordinated to the Ministry of Communications, the National Board of Aviation is headed by the Director General, and has three Departments. The internal organisation scheme of the Board is the following:

---

10) Statutory Order on the Ministry of Communications of February 6, 1970, Articles 1 and 5 to 9. - Suomen asetuskokoelma (the Finnish Statute Book) No. 100/1970.

In this connection, also a fourth Division, the Communications Division was established within the Department of Civil Aviation.

11) This sector equalled at the time two thirds of the manpower and funds involved in the civil aviation administration as a whole. - Temmes, "Siviili-ilmailuhallintomme ja sen kehittämistavoitteet.", Tekniikka 1971, Volume 6, p. 29.

12) The Act on Aviation Administration of January 14, 1972. - Suomen asetuskokoelma (the Finnish Statute Book) No. 40/1972.

(a) Aerodromes Department

(i) Air Traffic Services Division
(ii) Communications and Electrical Division
(iii) Planning and Designing Division
(iv) Maintenance and Construction Division

(b) Administrative Department

(i) Administrative and Legal Division
(ii) Economics Division
(iii) Division for International Affairs

(c) Flight Safety Department

(i) Technical Division
(ii) Flight Operations Division [13].

The Finnish Meteorological Institute remains subordinated to the Ministry of Communications. The regional and local Airport Administration, as well as the Airport Construction Projects are subordinated to the Aerodromes Department. A separate Liaison Office is established beneath the Board for co-operation with the General Headquarters and the Airforce Headquarters [14].

The terms of reference of the Board are laid down in Article 2 of the Act on Aviation Administration of January 14, 1972 [15]. Under this Article, it is the duty of the Board as the competent authority for the direction of the aviation administration to develop and further aviation, and to deal with such matters of aviation administration which pursuant to provisions enacted before March 1, 1972, were assigned to the Ministry of Communications or to the National Board of Public Roads and Waterways with the exception, however, of matters which shall be decided by the Ministry pursuant to the provisions on the competence of the Ministries or may be assigned by a Statutory Order to the Ministry of Communications.

In connection with the drafting of the 1964 Aviation

---

13) Finnish National Board of Aviation, Yearbook 1975, p. 4.
14) Ibid.
15) Suomen asetuskokoelma (the Finnish Statute Book) No. 40/1972.

Act, the institution of a specific Board to deal with matters of civil aviation was not considered the most expedient solution for the moment. It was thought necessary nevertheless to maintain within the Ministry a unit for certain matters of civil aviation [16]. The institution of a Board would, therefore, result in certain amount of duplication of work [17]. Yet this line of thought may be equally true even today. It would seem, however, still too early to draw a balance-sheet of the pros and cons before letting the Board have sufficient opportunity to prove its merits.

---

16) Hallituksen esitys ... mentioned in supra note 23 on p. 44, p. 3.
17) Ibid.

(c) Treaty Making and Executing Powers.

In this section, the treaty making and executing machinery of Finland is examined having in mind, in the first place, the bilateral air transport agreements. The inquiry is divided into five subsections corresponding to the distinct phases of the procedure.

(i) Treaty Making Powers.

Normally, the treaty making power in Finland is vested in the President of the Republic who has the general competence and duty to conduct Finland's relations with foreign states [1]. Would the stipulations of a treaty, however, fall within the domain of legislation, or create new state expenditures, the approval of the treaty by the Parliament also is required [2]. Furthermore, the President may submit any treaty to the Parliament for approval [3]. According to the prevalent Finnish legal doctrine and practice, the approval by the Parliament of a treaty is interpreted to be participation in the conclusion of the treaty rather than an act of implementation [4].

The Minister for Foreign Affairs who shall report to the President, inter alia, the matters concerning treaties, is by no express provision in the law empowered to enter into

---

1) Para. 1, Article 33, of the Constitution Act of 1919. - The decisions of the President are made in the Council of State upon the report of the Minister for Foreign Affairs. Such decision shall be signed by the President and countersigned by the Minister reporting. - Para. 1 and 2, Article 34, of the Constitution Act.

2) Para. 1, Article 33, of the Constitution Act. - The approval is granted by a resolution adopted at one single reading of the Government proposition. - Para. 1 and 2, Article 69, of the Parliament Procedure Act of 1928. - These matters are prepared by the Parliament Committee for Foreign Affairs.

3) Para. 2, Article 69, of the Parliament Procedure Act.

4) Castrén, op.cit., p. 244.

any international agreement. It is, however, regarded in practice that the Minister for Foreign Affairs may have, at least in matters of minor significance, beside the President a general competence of representation carrying with it a limited competence to make arrangements binding upon Finland [5].

A limited competence to enter into international agreements may also be conferred upon the Minister for Foreign Affairs or any other authority pursuant to an express stipulation in a treaty. It is far from unusual that under bilateral air transport agreements certain amendments or specifications thereof shall be made by exchange of notes, or by agreement between the competent civil aviation authorities of the both states concerned [6].

With only one exception [7], all of the bilateral air transport agreements entered into by Finland have been concluded without co-operation with the Parliament. The multilateral air conventions more often call for legislation or create new expeditures for the state and are, therefore, subject to approval by the Parliament [8].

---

5) E.g., oral arrangements. - Ibid.

6) In the first case, the competent Finnish authority would be the Minister for Foreign Affairs. For the latter, see, for instance, Article 11 (c) of the agreement between Switzerland and Finland. Under that provisc, two subsequent amendments to Schedule No. 2 of the Annex have been made by agreement between the Swiss Board of Aviation and the Division of Civil Aviation of the Ministry of CPW of Finland. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treatics Series) No. 11/1960 and No. 62/1967.

7) The agreement between Poland and Finland of 1939 was approved by an Act of Parliament. - Suomen asetuskokoelma (the Finnish Statute Book) No. 161/1939.

8) For instance, the adhesion to the Chicago Convention by Finland was beforehand approved by the Parliament. - Suomen asetuskokoelma (the Finnish Statute Book) No. 331/1949.

(ii) Preparation and Negotiation.

The first step towards the negotiation for a bilateral air transport agreement may be taken by the flag-carrier or the civil aviation authorities, or by any other person or body of either of the two states concerned. But regardless of the source of initiative, the preparations for the negotiation shall, so far as concerns Finland, be made in the first place by the Ministry for Foreign Affairs. The more specific expertise in matters of civil air transport is provided by the Consultative Committee for Civil Aviation Policy, a permanent State Committee instituted by the Ministry of CPW on April 6, 1967 [9]. This Committee shall, as a body for consultation and negotiation, prepare and deal with matters concerning international air transport agreements, air services licensing, and civil aviation policies in general. It has also the duty to develop co-operation between the authorities and air traffic operators in matters within its jurisdiction, and make proposals therein [10]. Apart from these important functions, the Committee may also give useful advices to the negotiating team.

In specific circumstances the Committee for Foreign Affairs within the Council of State may come into the picture. It is the duty of this Committee to deal preparatorily with

---

9) Order No. 1191/18-67 of the Ministry of CPW. - A similar body was instituted once before in the post World War II period. That body was, however, subsequently abolished in the course of a general reduction of State Committees because of a shortage of funds. - Temmes' interview.

The Committee is composed of a chairman and four members, all personally nominated. The chairman is the Director General of the National Board of Aviation. Two of the members are civil servants at the Board and the Ministry for Foreign Affairs respectively, while the two other members are directors of Finnish airline companies.

10) Order No. 1191/18-67 of the Ministry of CPW.

matters within the jurisdiction of the Ministry for Foreign Affairs whenever their significance so demands [11].

In general, the President of the Republic does not officially participate in the preparations but will decide upon the commencement of the negotiations, nominate the chairman and the members of the delegation, and issue their instructions [12]. Normally, a delegation for the negotiation of a bilateral air transport agreement has one senior civil servant from the Ministry for Foreign Affairs as chairman, and one senior civil servant from the National Board of Aviation and one representative from the Finnair Oy as members [13]. But depending on the composition of the foreign delegation, the Finnair Oy representative may also have the status of an expert [14].

Usually, the delegation is entitled to negotiate and approve a draft agreement which the delegates also may confirm with their initials [15].

(iii) Conclusion.

The signature of a bilateral agreement normally takes place afterwards at a special occasion [16]. The

---

11) Ordinance for the Council of State of 1943, para. 1, Article 46 as amended in 1944, and Article 48.
The Committee convenes under the chairmanship of the Prime Minister and has normally the Minister for Foreign Affairs and three other Ministers designated by the Prime Minister as members.

12) Castrén, op.cit., pp. 244 and 245.

13) Temmes' interview.

14) Ibid.

15) Ibid.

16) The authorisation to sign the agreement is issued by the President and countersigned by the Minister for Foreign Affairs.

ratification, where provided for by the treaty, rests with the President of the Republic [17]. In Finland, the instrument of ratification has the nature of merely a notification of the action taken. It does not contain information of whether or not the agreement has been concluded in co-operation with the Finnish Parliament [18].

Agreements that prescribe compliance with the constitutional requirements of the contracting states for the conclusion and/or entry into force of a treaty [19], or are silent in this respect [20] shall, as far as Finland is concerned, be approved by the President. The approval may be given separately from the act of implementation or by implication simultaneously therewith [21].

(iv) Implementation.

The Constitution of Finland does not contain a provision to the effect that international law as such should be applied in this country as the law of the land or otherwise without further enactment. It would appear, therefore, that the Finnish legal system is based on the dualistic doctrine according to which international law and domestic law are two completely distinct branches of law [22]. Consequently, the rules of international law must, in order to make them applicable in Finland, be specifically implemented into the national law.

---

17) Ratification is not provided for in the Finnish law.

18) Castrén, op.cit., p. 247. - The instrument of ratification shall be signed by the President and countersigned by the Minister for Foreign Affairs.

19) ROMANIA, the USSR (1972), and SPAIN.

20) E.g., AUSTRIA, BULGARIA, and PORTUGAL.

21) With only two exceptions, all of the bilateral air transport agreements concluded by Finland since 1969 and thus far made public have been specifically approved by the President. The exceptions: MALTA (came into force by the signature); and the GDR (was ratified by the President though ratification was not prescribed therein).

22) Castrén, op.cit., p. 250.

This may be done by the normal enactment procedure laid down for national legislation [23].

In such cases, where an international agreement would contain provisions falling within the domain of legislation, and the Finnish law in force would not adequately conform with the treaty provisions, the Finnish law must be amended or a new act passed to that effect. But in other respects, the implementation of a treaty may be accomplished simply by a Statutory Order, or by another suitable administrative measure, as the case may be [24]. Almost all of the ordinary bilateral air transport agreements entered into by Finland have been implemented by 'en bloc' Statutory Orders.

(v) Execution and Termination.

The execution of a treaty rests with the Ministry for Foreign Affairs unless otherwise provided for by the treaty or by law. With respect to bilateral air transport agreements, certain specified powers and duties usually are conferred thereby upon competent civil aviation authorities. The operation of the agreed services again is performed by the designated airlines under the control and supervision by the authorities concerned.

Where the termination of a treaty is within the

---

23) The method of implementation most commonly applied in Finland is the 'en bloc legislation'. Under this method the Act or Statutory Order would incorporate only a reference to the treaty together with a provision thus formulated that the stipulations of the treaty shall be in force as agreed upon thereby. The text of the treaty is annexed to the Act or Statutory Order both in original language and, where it would be called for, in a translation into Finnish and Swedish, the two national languages of Finland.

24) Bilateral air transport agreements concluded by exchange of notes, as well as amendments to such agreements made in similar order or by agreement between competent civil aviation authorities have been implemented in Finland simply by their publication in the Statute Book upon the decision by the Ministry for Foreign Affairs.

competence of the contracting parties [25], the decision to that effect shall be made by the President of the Republic [26]. An approval of such decision by the Parliament is not necessary yet the treaty would have been concluded in co-operation with the Parliament [27].

---

25) For instance, the renouncement of a treaty.

26) As to the preparation and reporting of such matters, see supra note 1 on p. 57, and supra pp. 59 - 60.

27) Castrén, op.cit., p. 251.

C H A P T E R I I - THE DETERMINANTS FOR THE FINNISH INTERNATIONAL CIVIL AIR TRANSPORT POLICY

Under the contemporary system of bilateral regulation, certain basic circumstances may either strengthen or reduce the bargaining power of a country drastically enough to amount to true determinants for that country's civil air transport policy. Though mostly interconnected with each other in many ways, such circumstances could be generally divided into geographical, political, and economic factors.

(a) Geographical Location.

It has been held, rightly, that the main aspects of the geographical location of a country with respect to its bilateral bargaining power are its value as an essential base for foreign flight operations or important accessory functions, the shape and extent of its land mass, and the alternatives which exist for substitution of destination [1]. Other factors inherent in the geographical location, such as climate and weather, should generally no longer be looked at as determinants

---

1) Thornton, International Airlines and Politics, 1970, pp. 58 - 72.

for civil air transport in a strictly geographical sense but rather as economic factors involving tourist attraction, operation expences, and the like.

From her location in the northeasternmost corner of the Western world it has followed that for long times Finland did not gain any vital significance as a base for foreign flight operations other than those originating in or destined for its territory. For the same reason, the exploitation of the longish shape of the country,[2] otherwise an effective barrier against foreign flights moving from the West to the East, and vice versa, also has been practically excluded. Moreover, this position of a hinterland terminal has made Finland extremely dependent upon the attitudes of foreign countries with respect to the procurement to her national airlines of traffic rights abroad [3]. This situation has been further aggravated by the close vicinity of alternate destinations within the common-Nordic passport area [4], such as Copenhagen in Denmark and Stockholm in Sweden.

Since 1955, however, the situation has changed somewhat by the opening up, step by step, of the airspace of the USSR to the airlines of certain Western countries. Thus at present several Western operators are maintaining scheduled services to Moscow and some other major Soviet cities, and on routes traversing the USSR to Tokyo. As pointed out by Temmes [5], future expectations may reasonably embrace direct

---

2) 1,160 kilometres (725 miles) lengthwise in the North-South direction, and 540 kilometres (337 miles) crosswise. - Otavan Iso Tietosanakirja (Encyclopedia Fennica), 1964, Volume 8, column 540.

3) This aspect has been emphasised by Mr. G. Teir, then Minister of CPW of Finland, answering on April 21, 1965, before the Parliament a question made by certain MPs on refusal of air charter licences. - Parliamentary Documents, 1965 Year's Diet, Question No. 28, p. 2.

4) There is no passport control in the intra-Nordic traffic.

5) Temmes' interview.

great circle routes from points in the Far East, such as Tokyo, Manila, Shanghai, or Peking, to points in Western Europe, such as Paris, or London. Similarly, significant air traffic could be expected to move along Trans-Atlantic great circle routes connecting points in North America and in the USSR. Because these routes would travers Finnish territory, Finland would then become able to draw benefits of her geographical location.

A full exploitation of the new setting would, however, demand a radical reorganisation of the bilateral air transport agreements relevant to the great circle traffic, and the possible denouncement of the Transit Agreement by Finland as well. But the probability of repercussions on the European and North Atlantic air services operated by Finnish airlines would restrain Finland from such measures. The declared Finnish intention to commence in future operations on the Trans-Siberian route to Tokyo and on the great circle routes to Far East would probably have similar restrictive effect. Thus the expected improvement in the Finnish position should not be overestimated.

(b) Political Factors.

It would appear, that the political situation which follows from Finland's location between the rest of the Western world and the USSR were to certain extent dualistic. In the East, Finland is endeavouring to maintain and foster the good and friendly relations with the neighbouring USSR. And on the other hand, strong affinity together with vital political and economic interests drive Finland to seek close co-operation and integration within the Western world, especially in Nordic and European contexts. Mostly, the political factors relevant to the relations with either power group may have no bearing

upon each other. But when antagonistic interests would sometimes conflict, their successful conciliation in consistence with the peaceful political neutrality pursued by Finland might become an overriding objective for the Finnish policy.

(i) Finland and the USSR.

Between the two World Wars the Finnish policy had been, as Jakobson put it, 'based on the assumption that the Soviet Union, combining traditional Russian imperialism with the Communist doctrine of world conquest, inevitably must aim at destroying Finnish independence' [6]. In the aftermath of the Second World War, however, a completely opposite line of thought was adopted, known as the Paasikivi Line [7] after its designer Mr. J.K. Paasikivi, then President of Finland. Derived from the presumption that the Soviet interest in Finland were primarily strategic and defensive, this policy of appeasement was designed to assure the Soviet Government that its need for security would be satisfied by Finland but that Finland would not yield beyond the legitimate Soviet interests in this respect, that is to say beyond safeguarding of Soviet territory from aggressions by or through Finland [8]. Unanimously supported by the Finns, this policy has been accepted by the USSR either. The application in practice of this policy has meant that,

---

6) Jakobson, op.cit., p. 34.

7) Nowadays commonly known as the 'Paasikivi-Kekkonen Line' taking into account the successful continuance and development of this policy by Mr. U.K. Kekkonen, the successor of Paasikivi as President of Finland.

8) Jakobson, op.cit., p. 34.

without being in any way subservient, an overriding importance has been given to the maintenance of good-neighbourly relations and friendship with the USSR, and to avoidance of any commitments deemed intolerable to the security of the USSR, or so regarded by the Soviet Government [9].

There are no indications that problems of this kind would have occurred with respect to the post-World War II Finnish bilateral air transport negotiations. As to the question of a closer participation by Finland in Nordic or even larger Western integration in the field of international civil air transport, such as Finnair Oy, the Finnish flag-carrier, joining the Scandinavian Airlines System or some other Western joint venture, it might be too early to speculate on a possible outcome. Given the military aspects always inherent in civil aviation and matters of international integration, one could reasonably expect that a negative attitude of the Soviet Government, if any, might easily amount to a determinant for the Finnish policy [10]. But the progress of détente policies in Europe [11] may well change the picture also in this respect.

---

9) The foundation of the Fenno-Russian relations is laid by the Treaty of Peace with Finland, signed at Paris on February 10, 1947 (UN Treaty Series, Volume 48, No. 746), and by the Treaty of Friendship, Co-operation, and Mutual Assistance between the Union of Soviet Socialist Republics and the Republic of Finland, signed at Moscow on April 6, 1948 (UN Treaty Series, Volume 226, No. 742).-

The latter treaty differs radically from the treaties concluded under similar titles between the USSR and her socialist allies. It does not commit Finland to anything beyond the defence of her own territory, and is in effect a guarantee for the Finnish political neutrality. - Jakobson, op.cit., p. 49.

In recent years, this policy has been critisised abroad for its alleghedly unnecessary exaggeration by Finland. A specific term, 'finlandisation', has also been introduced by the critics for the depiction of that policy.

10) It should be borne in mind that, for instance, of the Nordic countries the SAS members Denmark and Norway also are members of the North Atlantic Treaty Organisation (NATO).

11) E.g., the Conference for European Security and Co-operation /.

(ii) The Nordic Community.

Reference has already been made to the collaboration between the Nordic countries in the field of air legislation which certainly is only one specific sector of the traditionally broad Nordic co-operation in general [12]. At present, the general system of co-operation is governed by the Treaty on Co-operation between Denmark, Finland, Iceland, Norway, and Sweden, signed at Helsinki on March 23, 1962, as amended on February 13, 1971 [13]. Under this treaty, the Nordic countries shall endeavour to maintain and develop co-operation among themselves in juridical, cultural, social, and economic fields, and in the field of communications [14]. The main bodies to conduct this co-operation are the Nordic Council and, since 1971, the Nordic Council of Ministers at the parliamental and governmental levels respectively [15]. But collaboration

---

./. which held its Final Plenary Session at Helsinki on August 1, 1975.

12) The Nordic collaboration has its roots as far as in the 14th century. Interrupted by some three centuries of wars between Denmark and Sweden, the peaceful co-operation was revived during the latter half of the 19th century. Since then it has been under steady expansion so as to embrace at present almost every sector of human activity.

13) Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaties Series) No. 28/1962 and No. 21/1971.

14) Article 1 of the Treaty.

15) Originally, the co-operation at the parliamental level was conducted within the larger context of the Inter-Parliamentary Union until 1907, when the Nordic Inter-Parliamentary Union (NIPU) did constitute itself as a regional unit of the main organisation. This regional unit was, however, rendered superfluous by the establishment on its own proposal in 1952 of the Nordic Council, a permanent consultative body for co-operation between the Parliaments of the member States. Finland who joined the NIPU after the First World War, adhered to the Council in 1955.
- For more details, see Anderson, The Nordic Council, 1967, pp. 15, 16 and 24.
The Nordic Council of Ministers was established pursuant to the 1971 Amendment to the original treaty.

shall also take place at ministerial meetings other than those of the Council of Ministers, through special bodies for co-operation, and between competent authorities [16]. Having neither supranationality nor a federalist programme, the Nordic Council may adopt only recommendations without any binding effect upon the member States [17]. The decisions of the Council of Ministers are, in the contrary, subject to certain conditions binding on the States [18]. As to their legal status, the decisions would appear to be properly interpreted as international agreements concluded pursuant to the authority derived by the Ministers from the main treaty.

The recommendations adopted and decisions taken by the two main bodies will no doubt efficiently further the creation of uniform rules and procedures in the Nordic countries. In extra-Nordic context, the uniformity thus achieved may result in increased opportunity to common Nordic representation and, consequently, in a significant gain of power beyond that available to the countries by separate representation[19].

The highly protectionist attitudes of states pre-

---

16) Article 36 of the 1971 Amendment to the treaty.

17) The Nordic Council may also make proposals or statements to the governments of one or more of the Nordic countries or to the Nordic Council of Ministers.
Article 40 of the 1971 Amendment to the treaty.

18) The decisions at the Council of Ministers shall be taken by unanimous vote, each of the countries having one vote thereat. Decisions upon matters that under the constitution of one or more of the States require approval by the Parliament, shall not be binding on the States before such approval has been granted by the Parliament of the State or States concerned. -Articles 57 and 58 of the 1971 Amendment to the treaty of 1962.

19) E.g., the success of the single Nordic negotiating unit in the "Kennedy-Round" within the General Agreement on Trade and Tariffs (GATT) organisation in 1967.
-See Jakobson, op.cit., p. 67.

valent in the field of international civil air transport and the elements of national prestige ever involved nevertheless seem to frustrate the prospects for common Nordic civil air transport policies. Thus an inter-Nordic treaty of 1972 governing specifically the co-operation in the fields of transportation and telecommunications excludes from its sphere of application explicitly the questions of circumstances relative to the international aviation policies of the Nordic countries [20]. Furthermore, the consortium airline SAS of Denmark, Norway and Sweden and the Finnair Oy of Finland stay since the commencement in 1969 of the North Atlantic services by the latter in fierce competition with each other. Advocated by the three SAS countries, the issue of Finnair Oy joining SAS has been the subject of discussion at numerous occasions both within the Nordic Council and at Nordic meetings at the governmental level. Thus far no particular terms or detailed proposals for the consolidation have been made public or referred to. Actually, the argument has been presented rather as a direct consequence of the Nordic co-operation as such. On the Finnish side, however, this argument has been contested as by far not so self-evident. It has also been maintained that the bloc of the three SAS countries constitute eo ipso a tendency toward wall-building between the Nordic countries and thus toward protectionism [21]. Improvement of service as a result of mutual competition, the considerably lower expenditure level with Finnair Oy, and the success of that

---

20) Article 1 of the Treaty Between Denmark, Finland, Iceland, Norway and Sweden on Co-operation in the Field of Transportation and Telecommunications of November 6, 1972. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaties Series) No. 23/1973.

21) Mr. V. Saarto, then Minister of Communications of Finland, addressing the Nordic Council on February 17, 1971. - The Nordic Council, 19th Session 1971, Minutes of the Sixth Meeting on February 17, 1971, p. 31.

airline as an independent company have also been mentioned as further counter-arguments by the Finns [22].

Despite the steady growth of the Finnair Oy in recent years, statistics [23] still show a heavy disparity between the two airlines with respect to international operations. Thus the total load of 96,698,000 tonne-kilometres carried by Finnair on international services in the operational year 1973/74 [24] amounted to 11.1 per cent only from the corresponding SAS figure for 1973 [25]. The total load carried along the routes connecting Finland with Denmark, Norway and Sweden respectively amounted in the same periods to 27,272,000 tonne-kilometres for the both airlines together. From this traffic, the Finnair share was 57.1 per cent or 15,580,000 tonne-kilometres compared with 42.9 per cent or 11,692,000 tonne-kilometres for SAS. On the routes connecting Finland with Norway and Sweden respectively, Finnair was superior to SAS by almost four to one and 2.5 to one respectively, but inferior by less than one to 1.5 on routes between Denmark and Finland. In addition to this, Finnair carried a total load of 455,000 tonne-kilometres between Sweden and Norway representing 6.1 per cent of the corresponding SAS traffic of 7,425,000 tonne-kilometres. The main bulk of the SAS inter-Nordic traffic, in all 70,990,000 tonne-kilometres, was

---

22) Ibid., pp. 31 and 32.

23) Source for the statistics referred to in this paragraph: The Nordic Council and the Nordic Statistical Secretariat, Yearbook of Nordic Statistics 1974 (printed in 1975), Table 125 (Traffic of Finnair O/Y), p. 178, and Table 128 (Traffic of Scandinavian Airlines System (SAS)), p. 180. -The percentage and proportional figures are computed from the original information by the present author.

24) Year ending on March 31.

25) 873,721,000 tonne-kilometres for SAS.

carried between the three SAS countries and between Denmark and Iceland. Thus the SAS traffic to and from Finland amounted only to 14.1 per cent of the airline's total inter-Nordic traffic. The shares in the total inter-Nordic traffic of 98,717,000 tonne-kilometres carried by the both airlines together were 16.2 per cent for Finnair and 83.8 per cent for SAS [26].

The above examination of statistics may provide a general insight into the proportional differences between the two airlines concerned. But in the absence of any detailed proposals or calculations thus far made public it would, however, seem impossible to draw any firm conclusions on the question whether or not a merger would be in the best interest for the one or the other of the parties concerned. At the governmental level, the question was discussed the last time at the meeting of the Nordic Ministers of Communications at Reykjavik on February 9, 1970. According to Mr. P. Aitio, then Minister of Communications of Finland, the project proved to be impossible, and no further study thereof was intended [27]. But regardless of what the outcome may be, the relation between the two airlines would appear to amount to a determinant for the Finnish international civil air transport policy. Instead of following a supranational policy adapted to joint or co-ordinated operation in the case of consolidation, Finland would have in the opposite case to face and counteract the competitive practices available to the SAS countries and to develop her policies accordingly.

---

26) 16,035,000 and 82,682,000 tonne-kilometres respectively.
27) Press interview, Uusi Suomi, February 11, 1970.

Prepared by the Nordic Council, the Nordtrans plan aims at the co-ordination of location and transportation in the Nordic countries taken as one single region. In this respect, the greatest advantage of the co-operation is seen in the intensification of the joint contribution of the Nordic countries internationally, carrying with it, inter alia, the benefits of economies of scale and specialisation [28]. As to international civil air transport, the centralisation of the ever increasing long-haul services to a single super-airport most adequately located on Saltholm Island near Copenhagen has been proposed in the Nordtrans plan as an evidently advantageous solution for the mutual Nordic interests [29]. Consequently, the intra-Nordic air connections would then be degraded to a secondary traffic level and function as feeder lines to the long-haul services. This project seems perfectly fit to the prevalent views of an expedient route pattern (spoke-grid) for wide-bodied jet aircraft engaged in long-haul services. It would also be in close harmony with the thus far established position of the Copenhagen Kastrup airport as the central home-port for the SAS long-haul services. On the Finnish side, however, it has been emphasised that the project should not be understood as compelling the Finnish direct services to call at Saltholm for intermediate stops [30]. But where the traffic originating in or destined for Finland would not adequately support direct services, the viability of the Finnish services would be heavily dependent upon admission into and exploitation of

---

28) Nordtrans, Nordic Reports, No. 1969:13, p. 179.

29) Ibid., pp. 93 and 184.

30) Mr. Saarto, then Finnish Minister of Communications, addressing the Meeting of the Nordic Council. - Minutes of the 19th Session of the Nordic Council on February 17, 1971, p. 32.

the vast and ever growing air traffic market at Copenhagen [31].

On June 6, 1973, the Parliament of Denmark already decided in favour of the construction of the Saltholm international airport. In this conjunction, an agreement also was signed on June 8, 1973, between Denmark and Sweden on the construction of, inter alia, a permanent stationary link between Copenhagen (Denmark) and Malmö (Sweden) via Saltholm Island (bridge/tunnel) [32]. The Danish Parliament, however, refused to accept this agreement which thus rendered void. The question of both the stationary link and the airport were then in 1975 referred to specific national committees for further study and preparation. The committees are expected to submit their reports by 1977 [33].

Some further recommendations thus far adopted by the Nordic Council may also deserve being mentioned in this context. Recommendation No. 16/1971 on Prohibition relative

---

31) From 1964 to 1973 the total number of take-offs and landings on scheduled services at Copenhagen Kastrup airport has more than doubled. Despite a decrease of 0.7 per cent in 1973, the average annual increase during the whole period was more than eight per cent. In 1973, the total number of operations on scheduled services at Kastrup was 133,943. - Yearbook of Nordic Statistics 1974, Table 214 Air Traffic: Take-offs and Landings at Copenhagen and Malmö Airports, p. 271.

In consequence of the denouncement in 1970 by Denmark of the Dano-Finnish bilateral air transport agreement, the Finnair traffic rights at Copenhagen stay at present on a temporary basis. For details, see Chapter VIII below.

32) Yearbook of Nordic Statistics 1974, p. 261.

33) Report of the Nordic Ministerial Council on the Nordic Co-operation, December 1975, Nordic Council Document C 1/1976, p. 214.

The Airport Committee shall prepare a combined evaluation of the economic, environmental and other consequences of the construction of a new airport at Saltholm Island and, alternatively, the enlargement of the existing airport at Kastrup. - Ibid.

According to a statement by Mr. Knut Hagrup, Director General of SAS, the Kastrup airport may still meet the traffic demands for twenty to twenty-five years to come. - Press interview, Hufvudstadsbladet, April 15, 1973.

to Supersonic Aircraft in the Nordic Countries proposes, inter alia, that the Governments impose in common, at the earliest convenience, an absolute prohibition upon flight performed by supersonic civil aircraft over land in such a manner that the sonic booms reach the surface [34]. In a contending Finnish opinion it was argued that, supposed the supersonic transport (SST) aircraft would succeed on the trans-ocean routes, it would be unrealistic to try to close the Nordic airspace for them. Furthermore, this might also adversely affect the integration of the Nordic countries in respect of economics, technology, tourism and the development of communications [35].

It would appear that, as pointed out in a Swedish Air Force memorial [36], the wording of the Recommendation may be unnecessarily categorical. The condition that the sonic boom must in no circumstances reach the surface would amount to a total prohibition of all civil supersonic flight over land day and night, regardless of the fact whether or not the sonic boom would have a harmful strength or effect at the surface level [37]. It should also be noted that, in

---

34) The Recommendation was adopted on February 17, 1971, with sixty votes, five of the Finnish delegates abstaining, and thirteen delegates absent. Prior to the final vote, a dissentient Finnish proposal was defeated by sixty votes to five. This proposal, while opposing any absolute prohibition at the time, aimed at the formulation by the Nordic Governments in common - in good time before the practical operation of the SST would become actual - of such prohibitions and restrictions as they might intend to introduce in this respect. - The Nordic Council, 19th Session 1971, Minutes of the Sixth Meeting on February 17, 1971, p. 39. For the dissentient proposal, see Nordic Council Document A 306/t Supplement, p. 8.

35) Mr. G. Ehrnrooth, a Finnish Delegate, addressing the Nordic Council. - Minutes mentioned in supra note 34, p. 38.

36) Nordic Council Document A 306/t, p. 12. - The memorial was dated on January 15, 1971.

37) Ibid.

the light of subsequent experience, sonic booms created by existing civil SSTs are unlikely to cause significant physical damage or injury [38]. Looked at in the advent of permanent operation of SST aircraft on scheduled services by France, the United Kingdom and the U.S.S.R., the Recommendation No. 16/1971 would appear to have been adopted at least prematurely [39]. To date, the Recommendation has not been implemented or otherwise officially confirmed in Finland. But brought into effect, it would bar the operation of SST aircraft on the various great circle routes traversing Finland and thus frustrate the opportunities for this country to draw benefits of her geographical location.

Finally, as possible future determinants of a more local nature two recommendations of the Nordic Council aiming at the development of the inter-Nordic air connections may be recorded. First, the alleviation of the economic conditions for the operation of short routes connecting the domestic networks of pairs of the Nordic countries was proposed [40]. This course of action would involve also a reduction of the

---

38) Startle reactions and a certain amount of interference with sleep are, however, to be expected under some circumstances. - Annual Report of the Council - 1973, ICAO Doc 9085, p. 47.

39) It is understood that Aeroflot expects to operate about 75 SSTs by 1978. - Annual Report of the Council - 1974, ICAO Doc 9127, p. 36.

According to its memorial of December 29, 1970, SAS had neither an order nor an option on SST aircraft. - Nordic Council Document A 306/t, p. 7.

At a press interview in 1973, the Director General of SAS, Mr. Knut Hagrup, confirmed that SAS had been extremely careful with respect to the SST issue. He nevertheless was confident that the SST would come some time, perhaps after ten years. - Hufvudstadsbladet, April 15, 1973.

40) Recommendation No. 8/1972 of the Nordic Council.

air fares concerned to the level applicable to equal domestic stage lengths [41]. Second, a recommendation was adopted to the effect that the Governments of Finland, Norway and Sweden should undertake, at the earliest convenience, measures for the establishment of transversal air services in the northern parts of the countries [42]. The both questions are still under further study and preparation within the Nordic Council and the Nordic Council of Ministers [43].

(iii) Other Political Factors.

In the larger European context, Finland is a member of the European Civil Aviation Conference (ECAC) [44], established in 1956 for the promotion of the co-ordination, the better utilisation, and the orderly development of the intra-European air transport [45]. The functions of ECAC are purely consultative and its conclusions and Recommendations subject to the approval of governments [46]. But even so, the co-ordinated policies adopted by the Conference would obviously override

---

41) It would be of interest to note that a similar idea has been put forward in 1972 by the five states comprising the Grupo Andino, that is to say Bolivia, Colombia, Chile, Equador and Peru. The fares on flights within that sub-region were reduced by 30 per cent effective by May 1, 1973, with a view to promoting regional tourism. The reduced fares, approved at the IATA meeting in Miami, were available to groups of ten persons. - Annual Report of the Council - 1973, ICAO Doc 9085, pp. 21 and 22.

42) Nordic Council, Recommendation No. 28/1973.

43) The study and preparation of the latter question was referred in 1973 to a working group (the NKF-Group) under the Nordic Ministerial Council. The group is expected to submit its report before summer 1976. - Report of the Nordic Ministerial Council on the Nordic Co-operation, Nordic Council Document C 1/1976, p. 204.

44) Established following an initiative of the Consultative Assembly of the Council of Europe under the auspices of ICAO, the Conference now counts in all twenty member States.

45) Para. b, Article 3, of Resolution No. 1 of ECAC, as reproduced in the Yearbook of Air and Space Law 1965, printed in 1967, p. 239.

46) Article 5 of ECAC Resolution No. 1, ibid., p. 240.

the national policy-making and thus amount to determinants for the latter.

Among the early measures of ECAC for the co-ordination of policies there are the preparation of Standard Clauses for Bilateral Agreements in 1959 [47] and the adoption for signature of the International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services in 1966 [48]. At present, ECAC is attempting to participate in the final stages of the study of European inter-city transport conducted jointly by the Organisation for Economic Co-operation and Development (OECD), the European Council of Ministers of Transport (ECMT) and the European Economic Community (EEC) [49]. The outcome of this study may also affect the intra-European air transport policies.

Despite the emphasised intra-European objective of the ECAC, its activities have more recently shown an increasing tendency to turn outwards in order to protect the common interests of the member States against outside competition, particularly by the United States' carriers [50]. This has been specifically true regarding the non-scheduled international civil air transport [51]. But changes in the discount and promotional fare structure evolved by the scheduled international air transport industry as an answer to the competition

---

47) The Standard Clauses were developed at the Third Session of ECAC in March 1959. They are reproduced in the Handbook on Administrative Clauses in Bilateral Air Transport Agreements, ICAO Circular 63-AT/6, 1962, Appendix II, pp. 116 to 120.

48) At the Seventh Meeting of the Committee on Co-ordination and Liberalization of ECAC on July 27, 1966.

49) ECAC Eighth Intermediate Session, Report, ECAC Doc ECAC/INT. S/8, 1975, p. 6.

50) Temmes' interview.

51) See, for instance, Report by the Chairman of the ECAC Economic Committee II (non-scheduled air transport) for the dialogue with the United States and Canadian authorities on North Atlantic charter operations, ICAO Doc 9062, ECAC/8, Appendix 6, pp. 130 to 139.

from the non-scheduled carriers have increasingly affected the IATA rate-fixing machinery so as to cause frequent open rate situations [52]. In this respect, the intervention of the ECAC member States has proved most successful. Since 1971, several recommendations have been passed by the Conference to the effect of reaching agreement on new fares and rates, or maintaining "status quo" in open rate situations [53].

For some time, certain organisations of European integration dealing only occassionally with air transport have criticised the organisation of European air transport and made proposals thereupon. Thus the European Parliament recommends, inter alia, a thorough investigation into coherent bilateral agreements and traffic rights at the level of the European Economic Community, the improvement of the existing network of routes by adding circular routes to two-way air routes, and the introduction of a common system of capacity control [54]. A common approach to regulatory provisions affecting air transport and a common rate-making policy related to capacity regulation are also called for by the same recommendation [55]. The Assembly of the Western European Union urges the encouragement of concertation among its member countries for the re-establishment of the balance between the United States and Western Europe through continuing

---

52) Annual Report of the Council - 1973, ICAO Doc 9085, p. 20.

53) For details, see ICAO Doc 9062, ECAC/8, pp. 96 and 97; ICAO Doc 9085, p. 20; and Annual Report of the Council-1974, ICAO Doc 9127, p. 21.

54) Report by the President of ECAC, Eighth Triennial Session 1973, Report, ICAO Doc 9062, ECAC/8, Appendix 4, p. 98; and Annual Report of the Council - 1973, ICAO Doc 9085, p. 26.

55) Ibid.

negotiation on traffic rights [56]. The Consultative Assembly of the Council of Europe insists upon the intensification of the co-operation between the flag carriers of the European Communities with a view to ensuring a Community approach to a co-ordinated and progressive multilateral liberalisation of air traffic rights. The Assembly Resolution also underlines the need for ECAC to reach an early agreement with the United States and Canada permitting some effective control of the capacity offered on scheduled air services on the North Atlantic [57]. Propositions of this kind, if brought into effect in future, may become determinants also for the Finnish civil air transport policy.

The two major western European trade blocs, the European Economic Community (EEC) [58] and the European Free Trade Association (EFTA) [59] have by the abolition or reduction of the former heavy customs duties in their mutual trade simultaneously accelerated the development of the transportation industry, including international civil air transport, as well. Thus, for instance, the establishment of branches on the European continent by Nordic enterprises has created completely new demands on transport [60]. The corresponding trade bloc of

---

56) Report by the President of ECAC, Eighth Triennial Session 1973, ICAO Doc 9062, ECAC/8, Appendix 4, p. 99.

57) Ibid.

58) Finland is not a member of the EEC but has a free trade agreement therewith concluded on October 5, 1973. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaties Series) No. 66/1973.

59) Finland is an associate member with a special status in EFTA since 1961. - See the Treaties relative to the Creation of an Agreemental Relationship between the Republic of Finland and the States Members of the European Free Trade Association of January 4, 1960, and March 27, 1961. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaties Series) No. 15 and 16/1961.

60) Nordic Council, Nordtrans Report, 1969, pp. 53 and 180.

the socialist countries, the Council for Mutual Economic Assistance (CMEA or COMECON) [61] may have a similar incitement effect upon transportation from and to its member countries. The special needs for transport that may arise from the participation in or co-operation with such trade blocs might under the circumstances amount to determinants for the Finnish civil air transport policy.

An even more direct bearing upon the said policy may have the bilateral treaties on co-operation in the field of tourism that have been concluded in 1974 and 1975 by Finland with five of the socialist countries [62]. Under these treaties, the parties will, inter alia, further the development of their mutual tourist exchange.

(c) Economic Determinants.

Among the economic factors decisive to a country's international civil air transport policy, the characteristics which determine the value of that country as a source or destination of air travel seem to be of cardinal importance. Additional factors of more specific or temporary nature could also be recorded, such as considerations relative to the balance of payment, purchase or sale of equipment, and the like [63].

(i) Source.

The demonstrated ability of a country to produce aircraft boardings within its territory should evidently be considered the key bargaining ploy in contemporary bilateral

---

61) Finland does not belong to the COMECON but has concluded on May 16, 1973, a treaty of co-operation therewith. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaties Series) No. 39/1973.

62) These countries are: the USSR, Bulgaria, Hungary, Poland and Romania. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaties Series) No. 6, 36, 40 and 35/1975 and No. 12/1976 respectively.

63) Thornton, op. cit., pp. 49, 54, 92 and 101.

civil air transport negotiations [64]. The degree of ability or disability in this respect would thus directly influence the policies available for the country concerned. Broken down, this feature would appear to consist of a multitude of components. Among these, the size and prosperity of the population and the number of nationals of the country living in an expatriate status abroad have been held and reasonably proved to be proportionally indicative of the productivity in aircraft boardings in pleasure air travel [65]. Regarding business air travel, the total volume of the bilateral trade between two countries would be similarly indicative [66].

Now, let us try these hypotheses to the Finnish circumstances. As to the size of population, Finland with her 4.68 million inhabitants in 1974 placed among her bilateral air partners superior only to Norway and the extremely small countries Iceland, Malta and Luxembourg [67]. In the other extreme, the treaty compagnions of Finland include such giants as the United States, the USSR and the People's Republic of China. Regarding prosperity, the Per Capita Gross Domestic Product (GDP) of 3,720 U.S. dollars achieved by Finland in 1973 equals roughly the corresponding figures for the United Kingdom, Austria and the Netherlands [68]. In this respect, Finland is inferior to only ten of her treaty partners. While these ten, however, belong to the twelve richest countries in the world, the position of Finland would appear to be favour-

---

64) Ibid., p. 58.

65) For details, see Thornton, op.cit., pp. 50-52.

66) Ibid., p. 52.

67) For the population figures, see Appendix I.
- According to official population projections for Finland, the population would total 4.36 million in 2000; it would thus have decreased by almost 0.24 million people since 1970. This would be caused by the decline in the birth rate and the rise in emigration since the 1960s. - The Population Research Institute of Finland, Population and Development in Finland, 1973, pp. 5 and 62.

68) For the specific figures of the countries, see Appendix I.

able. Another indicator of the standard of living, the number of passenger cars in proportion to the size of population (163 cars per 1,000 inhabitants for Finland in 1971) provides, with the exception of the United Kingdom and the Netherlands who are in this respect superior to Finland, the same general response as the Per Capita GDP factor [69]. The disadvantage of the small size of population would thus be significantly outweighed by the more favourable prosperity factor [70]. And compared with the socialist countries, the travel restrictions imposed by those countries upon their nationals, in addition to their radically lower prosperity level, make Finland as a source of pleasure air travel by far superior to those more populous countries [71].

Before the Second World War, emigration from Finland was rather insignificant [72]. It was heading mainly to the United States. But after the war, emigration has grown rapidly. Forced by unemployment at home or persuaded by the higher salaries and standards of living in the western neighbor country, almost 90 per cent of all the post-war Finnish emigrants have moved to Sweden. It is estimated that in 1973 there were already 300,000 Finnish emigrants living in Sweden. The remaining 10 per cent of the emigrants have moved mainly to the other Nordic countries, or to Australia, the United States or Canada. Having regard to the low-priced charter flights

---

69) For details, see Appendix I.

70) In 1974, the Finnish expenditure in recreation and entertainment was 8.1 per cent of the total private consumption. Valtiovarainministeriö, Taloudellinen katsaus 1975 (Ministry of Finance, Economic Survey for 1975), 1975, Table 21, p. 84.

71) According to Mr. P. Todorov, Chairman of the Tourism Committee of the Council of Ministers of Bulgaria, of the 2.7 million foreign visitors in Bulgaria in 1971, 6,000 were Finns, while only 1,000 Bulgarians visited Finland in the same year. - Press interview, Hufvudstadsbladet, February 18, 1972.

72) Source for this paragraph: The Population Research Institute of Finland, op. cit., pp. 12 and 13.

frequently operated from Finland to North America by specific Finnish affinity associations, it could be reasonably maintained that the overseas emigration does not amount to a significant source of scheduled air travel in Finland [73]. But the Finns making their living in Sweden could, in the contrary, be expected to contribute considerably to the scheduled air travel between the two countries both ways. The fact that surface transport must for the most part traverse both land and sea outweighes the advantage of moderate distance. The resulting waste of time would thus cause diversion from the modes of surface transport to the air services [74].

Speaking of business travel, the bilateral trade factor proposed before would seem to suggest that the bulk of such air travel move from Finland to Sweden, the United Kingdom, the Federal Republic of Germany, the USSR and the United States respectively [75]. The next five countries of importance would be Denmark, France, the Netherlands, Norway and Japan in this specific order.

---

73) E.g., a total of 22,000 passengers were carried in 1971 on affinity group charter flights between Finland and North America. - Press interview with Mr. K.J. Temmes, Director General of the National Board of Aviation of Finland, Uusi Suomi, January 11, 1972.

74) The heavy disparity in the number of revenue passengers carried by Finnair, on the one hand, and by SAS, on the other, on scheduled services between Finland and Sweden would be partially indicative of this feature. -

In 1973, these figures were 199,014 revenue passengers for Finnair and 86,256 for SAS. - Yearbook of Nordic Statistics 1974, pp. 178 and 180.

75) The combined value of imports from these five countries to Finland in 1973 amounted to 61.8 per cent of the total imports to this country. The combined value of exports from Finland to the same five countries accounted for 60.2 per cent of Finland's total exports.

The percentage figures have been calculated by the present author on the basis of the figures to be found in Tables 84 and 85, Yearbook of Nordic Statistics 1974, pp. 122-125. For the trade figures, see Appendix I.

At this point, a look into the statistics may provide us a general view of the present status of Finland as a source of air travel. In 1974, the total number of passenger departures by air from Finland was 702,316, an increase of 3.0 per cent over the previous year. Thus the passenger departures by air made 14.5 per cent of the combined total of 4,842,009 passenger departures by all modes of transport that year [76]. Of the air departures, international charter traffic (Inclusive Tours) accounted for 234,000 passengers or 33.3 per cent [77].

(ii) Destination.

As pointed out by Thornton, the value of a country as a destination for air travel depends to a large extent on motivation and is thus behavioristic rather than demographic [78]. An inquiry conducted in 1963 by the Suomen Matkailijayhdistys (Finnish Tourist Association) among foreign tourists then visiting Finland disclosed certain basic motivations [79]. The novelty of Finland as a tourism country was mentioned by almost all visitors other than Swedish or Norwegian. As another advantage, the abundance of space was emphasised especially by travellers from central Europe [80]. Further, the beautiful nature of the country and the exceptionally large opportunities to various kinds of outing offered thereat were appreciated. To the extra-Nordic tourists, Lapland and the Midsummernight Sun of course were of special interest.

---

76) Matkailun edistämiskeskus, Matkailun Vuosikirja 1974, Table 3 (Passenger Traffic between Finland and Other Countries, Incl. Nordic Countries, in 1974), p. 8.

77) Finnish National Board of Aviation, Yearbook 1975, p. 6.

78) Thornton, op. cit., p. 54.

79) The Present State of Tourism in Finland and Plans for its Development, Publications of the National Planning Office, Series A:17, 1965, pp. 39 and 40.

80) The average density of population in Finland is only fourteen inhabitants per square-kilometre.

Last but not least, attention was paid also to the Finnish hospitality and the cultural achievements of the Finns, particularly in the fields of architecture and art design industry.

The above motivations may be equally relevant even today. It should also be pointed out that the climate of Finland is far from that severe one might expect on the ground of the geographical location of this country in the far North [81]. The winter season with snowfall and freezing temperatures lasts normally from October to April/May except on the south and south-west shore and in the archipelago where it is milder. In the South of Finland, the number of daylight hours vary from a maximum of nineteen hours in the Midsummer to only six hours close before Christmas. In the northernmost part of the country one can enjoy continuous daylight through seventy-three days in summer but must in turn endure fifty-one days of undisrupted darkness in winter [82]. Due to these circumstances, tourism to and within Finland is divided into summer and winter seasons, the former of which is by far more important. In North Finland, the winter tourist season must be confined to the spring months exclusively.

Of Finland's total area almost ten per cent consists of internal waters. The scenic features predominant in most parts of the country are the forests and lakes. The lake structure enables the operation in summer-time of a multitude

---

81) Due to the Gulf Stream, the predominant warm south-westernly winds and the soothening effect of the numerous waters, the average temperature in Finland is about six centigrades above that otherwise experienced at the same latitudes. Thus the daily temperatures measure from a high of plus 30-35 centigrades in summer to a low of minus 30-50 centigrades in winter. - Encyclopaedia Fennica, Volume 8, 1964, columns 539 and 550.

82) Encyclopaedia Fennica, Volume 8, 1964, column 550.

of extensive inland-waterway services for pleasure. Along the sea-shore, marine tours across the labyrinthine archipelago of countless islands and skerries also are operated. Still another tourist attraction might be the domestic rail, bus and air fares in Finland which are among the cheapest in Europe [83]. A relatively dense chain of modern hotels, motels and other accommodation facilities are offering their services to the travellers [84].

In this connection, the increasing appreciation of Finland as a site for international conferences and other important meetings [85] should be recalled, as well as the growing foreign interest in the cultural occurences arranged in Finland, such as the Finland Festivals, an annual chain of a number of separate art features.

The official promotion of tourism within and to Finland is conducted by the Matkailun edistämiskeskus (Tourism Promotion Center), established by March 1, 1973, under the Ministry of Trade and Industry [86]. Supervised by the Center, the Finnish National Tourist Offices operate in six European countries and in the United States. In Los Angeles (USA), Finland is a party to the common-Nordic Tourist Office [87].

---

83) Matkailun Vuosikirja 1972/73, pp. 12, 13, 15 and 16.

84) At the beginning of the year 1974, there were 378 hotels, 70 motels and 343 boarding houses or motor inns in Finland. - Matkailun Vuosikirja 1974, p. 17.

85) E.g., the Strategic Arms Limitation Talks (SALT) between the United States and the USSR and the Conference for European Security and Co-operation which were held partly in Helsinki.

86) This agency was preceded by the Matkailutoimisto (Tourism Bureau) established by March 1, 1971, within the Ministry of Trade and Industry, and the Council of Tourism, instituted by March 1, 1969. Before that time, the promotion of tourism to Finland was conducted in practice by the Suomen Matkailuliitto r.y. (Tourism Association of Finland) on a State subsidy. - Matkailun Vuosikirja 1972/73, pp. 48 and 49.

87) Matkailun Vuosikirja 1974, pp. 48 and 49.

The last available statistics show a total of 698,858 passenger arrivals in Finland by air in 1974, an increase of 3.9 per cent over the previous year [88]. Of the grand total of 4,864,799 passenger arrivals in Finland in 1974, the air arrivals accounted for 14.4 per cent [89]. The bulk [90] of foreign air travellers arriving in Finland directly from non-Nordic countries consisted of nationals of the United States, the Federal Republic of Germany, the United Kingdom, the Netherlands and Switzerland, in this particular order.

It would appear that the position of Finland as a destination for air travel is reasonably modest and that good prospects for its further development also exist. This conclusion would seem to be partially supported by the fact that the Finnish balance of travel, having theretofore been negative, has shown a steady profit since 1969 [91].

(iii) Other Economic Determinants.

Certain factors of a more special nature, such as balance of payments considerations and questions of equipment purchase, also have been held susceptible of determining to some extent the civil air transport policies of a country [92]. It seems to be a generally accepted point of view that a national airline, engaged in international civil air transport is an important earner of foreign currencies and thus a significant factor with respect to the balance of payments of

---

88) Matkailun Vuosikirja 1974, Table 3, p. 8.

89) Ibid., p. 7.

90) 94,602 passengers or 68.2 per cent of the total of 138,704 non-Nordic air travellers. - Matkailun Vuosikirja 1974, Table 4, p. 9.

91) Matkailun Vuosikirja 1974, p. 23. - The profit has varied between 4 million Fmk in 1969 and 340 million Fmk in 1973. The figure for 1974 was 326 million Fmk.

92) Thornton, op.cit., pp. 92, 97 and 104.

its home-country. Similarly, Finnair Oy has been maintained to be one of the greatest earners of foreign currency among the Finnish enterprises [93]. Especially when the balance of payments shows a huge deficit, as it does today in Finland [94], the necessity to secure the national airline's interests may reduce the bargaining power of the country and lead to commitments otherwise deemed unacceptable.

The contemporary concentration of aircraft manufacturing industry to a few countries makes these particularly sensitive to the marketing interests of that industry. Finland who has today no such industry worth of mentioning would thus be put in an advantageous position if negotiating on traffic rights with a manufacturing country, provided that equipment purchase would be used as a bargaining ploy thereat.

---

93) Statement by Mr. G. Korhonen, Director General of Finnair Oy. - Press interview, Uusi Suomi, January 12, 1972.

94) The deterioration in the current balance, which began at the start of 1973, became more pronounced during 1974 and by the first half of 1975 the deficit amounted to 8,488 million Fmk representing about 9 per cent of the Gross Domestic Product. - OECD Economic Surveys, Finland, December 1975 (printed in 1976), pp. 6 and 7.

CHAPTER III - THE DEVELOPMENT OF THE FINNISH CIVIL AIR TRANSPORT INDUSTRY

Given the significant position which major airlines of a country have in bilateral air transport negotiations and policies for that country, a survey in the development of the Finnish civil air transport industry seems to be called for in this context. For an examination of bilateral air transport agreements, however, certain features of the national air transport industry may be of specific interest. Thus the expansion of the international route network of an airline would visualize not only the application of the relevant agreements in practice but also future trends to be reasonably anticipated. Strong economies and efficiency in operations are generally essentials for an airline to face foreign competition. The same features also strengthen the case for the carrier's home-state in bilateral negotiations. In this respect, the composition of a company's fleet would reveal important details. More specifically, the type of aircraft used may or may not be a general guarantee of sufficient range, speed, comfort, and reliability. These factors also have a direct bearing upon the reputation of an airline among customers. In this context, the airline's safety record also pays a significant role. Furthermore, the figures of an airline's production and revenues would provide an insight into the economic feasibility of the exploitation of the agreed services. And still another point worth of examination in this connection would be the degree of state participation in and control over the enterprise. Along these outlines, let us now focus on the development of the two Finnish flag-carriers, the Finnair Oy, and the Kar-Air Oy. In a third subsection, the relations between the former and the International Air Transport Association (I.A.T.A.) are shortly examined.

(a) Finnair Oy [1].

Aero O/Y [2], the first Finnish civil air transport enterprise viable enough to commence operations, was registered on October 9, 1923 [3], thus obtaining juridical personality. On March 20, 1924, the company began operations between Helsinki and Tallinn (Reval), the capital of Estonia. Later in the same year, on June 1, scheduled services were initiated on the route Helsinki-Stockholm under reciprocal agreement with the Swedish company AB Aerotransport (ABA). Thus from the very beginning, active co-operation with foreign airlines was characteristic of the activities of Finnair. Though not until 1938 operated by aircraft of the Finnish airline, an extension of the Helsinki-Tallinn service to Berlin via Riga, Königsberg, and Danzig was established under a reciprocal agreement with the Deutsche Lufthansa (DL). Since 1930, Finnair also took active part in the European night mail flights on agreed stages in Sweden and Denmark. Another significant application of the co-operation policy was the establishment in 1933 of the Scandinavian Air Express by the Finnish, Swedish, and Dutch airlines [4].

Until 1936, the air services to Tallinn and Stockholm

---

1) General sources for this subsection:
-Press Releases by Finnair of 1963 ("Finnair 40 1923-1963"), of July 1967, and of September 1971;
-The Finnair Story, published by Finnair, 1973;
-Finnair Annual Reports for the years 1959 to 1974/75;
-Friis, "Finnair on the North Atlantic", Esso Air World, Volume 21, No. 5.

2) In 1968, the company changed its name to Finnair Oy. In the following, however, the term Finnair is used to mean the company regardless of its actual name at the time of the incidents referred to.

3) The Finnair Story, 1973, p. 14.

4) By this service, the voyage from Tallinn via Helsinki, Stockholm, and Copenhagen to Amsterdam, and by connecting services further to London or Paris could be made normally in 24 hours.

were operated from water bases. But the opening for traffic of the civil land aerodromes at Turku and Helsinki (Malmi) in 1935 and 1936 respectively, made it possible to switch the services over to these aerodromes, and the hydroplane paramouncy suddenly took an end. This move also allowed regular year-round operations instead of the former traffic periods.

In 1938 Finnair already was making preparations to meet the vigorous traffic growth expected due to the 1940 Olympic Games to be held at Helsinki. The thought of overseas air services also was presented in the course of the Nordic co-operation. These plans together with the 1940 Olympics were, however, precluded by the outbreak of the war.

During the Winter War (1939-1940), international services were maintained only to Sweden. After the war, services to Tallinn were resumed but had to be closed again because one of the Finnair Junkers Ju-52 aircraft was shot down and lost over the Gulf of Finland en route to Helsinki from Tallinn. During the Continuation War (1941-1944), international services were maintained to Sweden and, since November 1941, along the reopened route between Helsinki and Berlin. By the end of the war, all flying in Finland was prohibited until further notice by the Allied Control Commission. International air traffic was allowed temporarily during the first two months of 1945 but prohibited again until November 1947.

The international operations of Finnair resumed with the reopening of services on the Helsinki-Stockholm route. But during the two decades that followed, a continuous expansion of the international route network was carried out. Thus the routes operated by Finnair were extended in 1948 to Denmark and Holland, in 1951 to West Germany, and in 1953 to France

and the United Kingdom. By the inauguration on February 18, 1956, of the route Helsinki-Moscow, Finnair placed itself first among the airlines of the Western world to maintain air services to the capital of the U.S.S.R. The route network embraced further in 1958 Switzerland, and in 1960 Norway. In 1962, the unduplicated total length of the company's international routes passed the 10,000 kilometres mark. But the expansion developed further so as to reach in 1963 Italy, in 1964 Luxembourg and Spain, and in 1965 Yugoslavia and Greece. By the opening in 1969 of the so-called Danube route, also Austria, Czechoslovakia, and Hungary were reached. In the Seventies, a Finnair service to Portugal was inaugurated in 1971, and scheduled services commenced also to Poland, Belgium, and the German Democratic Republic in 1973. Since May 14, 1969, Finnair has maintained scheduled services across the North Atlantic between Helsinki and New York. In summer 1974, the unduplicated total length of Finnair's international routes was already 67,205 kilometres [5].

It would be clear without saying that in the course of development the details of the route network have been subject to continuous changes. Thus some of the countries mentioned above have been dropped from the company's itineraries,

---

5) From this figure, 45,857 kilometres count for the European services, and 21,348 kilometres for the North Atlantic route. - Finnair Annual Report 1974/75, p. 24.

Apart from the domestic legs on the Helsinki-Turku-Maarianhamina-Stockholm route, Finnair had operated until 1937 international services only. But since then, scheduled domestic services proper also have been included in the company's network. The development of these services has been closely related to the traffic offering. According to Finnair Annual Report 1974/75, the unduplicated total length of the domestic routes was in summer 1974 already 16,841 kilometres (p. 24).

or called at only temporarily or seasonally. At present [6], Finnair is maintaining scheduled international passenger services through four different gateways [7] to seventeen European countries and the United States. The services are operated either by daily return flights or on a less frequent weekly basis. Among the foreign states of call there are five socialist countries [8]. Besides Denmark, Belgium, and the Federal Republic of Germany [9], all the countries concerned have a bilateral air transport agreement in force with Finland.

Reciprocal scheduled services are being operated to Finland by the airlines of all the five socialist countries and the United Kingdom, the Federal Republic of Germany, and Switzerland under pooling agreements with Finnair [10]. The three S.A.S. countries do operate similar services independently. Thus the Finnair services to the remaining six European states [11] and the United States have, for the time being, no reciprocal foreign counterparts.

The points of call include four different localities in Sweden, two points in either the U.S.S.R. and the Federal Republic of Germany, and one point in each of the remaining states. All of the reciprocating foreign services call exclusively at Helsinki. With the exception of the route segments between Warsaw and Vienna v.v. and between Brussels and Paris v.v., local traffic is allowed on all international

---

6) In the Winter Season 1975/76. - General source: the Finnair published time-table for 1.11.1975-31.3.1976. -For details of the routes, frequencies, and aircraft used, see Appendix II to this thesis.

7) These are: Helsinki, Turku, Maarianhamina, and Vaasa. - In the summer season, services are usually maintained also from Ivalo to Kirkenes in Norway.

8) The U.S.S.R., Poland, the German Democratic Republic, Czechoslovakia, and Hungary.

9) With the latter an agreement has been signed but is not yet in force.

10) Finnair Annual Report 1974/75, p. 7.

11) The Netherlands, France, Belgium, Luxembourg, Spain, and Austria.

stages of the network.

In addition to the scheduled passenger services, Finnair is operating specific cargo flights from Helsinki to Stockholm, Amsterdam, London, Frankfort, and Duesseldorf respectively. Some of these services are being maintained in cooperation with the British and the West German carriers respectively [12].

It would appear that the equipment policy of Finnair has always been one of modest enterprise and met increased demands sensibly [13]. In the early years, the four-seat Junkers F-13s together with the nine-seat Junkers G-24 formed the Finnair fleet until 1932. Since then, the famous Junkers Ju-52 aircraft constituted the main tool of the airline on international services throughout the 1930s and the early 1940s [14].

Preceded in 1941 by two second-hand airliners of the type Douglas DC-2, the then ubiquitous Douglas DC-3 aircraft was introduced in the company's fleet in 1946. This type formed the backbone of equipment right up to the late 1950s [15].

In the search for bigger planes to meet the ever increasing traffic demands, a noteworthy degree of skill and foresight was demonstrated by the Finnair management. Thus Finnair was the first European airline to operate the Convair-340, and the Convair-440 Metropolitan aircraft [16], the first

---

12) For details, see Appendix II.

13) Davies, A History of the World's Airlines, 1967 (reprint with corrections), p. 287.

14) In all, five Ju-52s were bought by Finnair.

15) A total number of ten DC-3s were purchased. The last five of them were dropped from regular passenger services as late as of April 1, 1967.

16) In all, eight Metropolitans were bought. Some of them are still in operation with the company.

of which were received in 1953 and 1956 respectively. In 1960, Finnair took delivery of its first pure jet aircraft, a French Caravelle SE-210 III. The inauguration on April 1, 1960, of the Caravelle services between Helsinki and Stockholm placed Finnair fifth airline in the world to operate this reliable aircraft [17]. But soon in 1964 Finnair was the very first airline in the world to use the second generation of this craft, the Super Caravelle 10B. The latter type still is the mainstay on the company's European services but will soon be replaced by the DC-9-50 type aircraft, six of which have been ordered by the company [18]. Since 1971, second-hand DC-9-10 and DC-9-15 aircraft have been operated mainly on the domestic services but partly also in international traffic. The North Atlantic services were commenced with brand new DC-8-62 CF aircraft but have been operated since March 1975 also with DC-10-30 airliners, two of which were delivered to the company in 1974 and 1975 respectively.

Today, the fleet of Finnair consists of two DC-10-30s, three DC-8-62 CFs, eight Super Caravelle 10Bs, eight DC-9-10s, one DC-9-15, and five Convair-440 Metropolitans. In addition, three of the six DC-9-50 aircraft on order, have been delivered in January-February 1976 [19]. To meet the ever growing traffic

---

17) Davies, op.cit., p. 488. -Air France was the first on May 6, 1959, closely followed by S.A.S. on May 15 of the same year. - Ibid.

18) Finnair Annual Report 1974/75, p. 10.

19) Uusi Suomi (a Finnish newspaper), January 28, 1976, and February 23, 1976.

demands, the company has from time to time supplemented its fleet with leased equipment [20].

To date, the safety record of Finnair is relatively good. Apart from the shooting down in 1940 of the Finnair Ju-52 plane "Kaleva", which occurrence the company cannot be blamed for, there have been only two fatal accidents in the early 1960s [20a]. Thus far, there has been only one single attempt to hijack a Finnair plane [20b].

---

20) During the financial year 1974/75, for instance, Finnair leased two Super Caravelles, one for the entire year and the other beginning in December 1974. Finnair also continued to lease a DC-8-51 from Kar-Air Oy for charter flights, and a DC-6B-ST for cargo flights. - Finnair Annual Report 1974/75, p. 10.

To the list of aircraft introduced above, two de Havilland Dragon Rapide aircraft and two Douglas DC-6B aircraft should be added.

The two Rapides were operated in the late 1930s and in the early 1940s on domestic services. The DC-6Bs again were owned by the company in the 1960s but were mainly leased to other companies.

For several years already Finnair has owned a couple of Debonair light aircraft for the use by its Aviation College.

20a) On January 3, 1961, a Finnair DC-3 aircraft en route from Kruunukylä to Vaasa met with a fatal accident in which all the twenty-two passengers and the crew of three were killed.

Another DC-3 aircraft was lost on November 8, 1963, en route from Turku to Maarianhamina. This accident cost the lives of twenty of the passengers and the both pilots, while three persons were seriously injured.

20b) This attempt was made on June 29, 1971, on board a Finnair DC-9-10 aircraft en route from Helsinki to Turku. The hijacker, a woman armed with a 6.35 calibre pistole was, however, swiftly and firmly forced into a seat by Stewardess, Miss Marketta Autio, and then disarmed by other Finnair personnel. - For more details, see Uusi Suomi, June 30, 1971.

Illustrative of the growth of Finnair's operations as it may be, the total annual production of the company, expressed in terms of available tonne-kilometres, passed in 1928 the 100,000 kilometres mark, and has since then multiplied by ten by 1942, 1954, and 1967. The last available statistics show the figure of 323.5 million available tonne-kilometres for the operational year 1974/75, an increase of 7.7 per cent over the previous year [21].

The inauguration of the North Atlantic services in 1969 certainly marked a vigorous expansion in the production and business of the company. Thus the number of available tonne-kilometres on scheduled international services rose from 74,890,000 in the operational year 1968/69 to 157,648,000 in 1969/70, an increase of 111 per cent. The increase in revenue tonne-kilometres amounted in 1969/70 to 74 per cent over the previous year. Consequently, the weight load factor dropped from 42.1 per cent in 1968/69 to only 34.8 in the following year but was in 1970/71 soon up to 37.9, and in 1974/75 to 40.5 per cent. The total operating revenue for the company was in 1974/75 541.9 million Finnish Marks, and the profit 1.3 million Finnish Marks.

On the North Atlantic run, production increased from 106,658,000 available tonne-kilometres in 1971/72 to 109,622,000 in 1974/75. Sales grew even faster, from 36,529,000 revenue tonne-kilometres in 1971/72 to 44,814,000 in 1973/74, but decreased to 41,566,000 revenue tonne-kilometres in the year that followed [22]. The figures for scheduled European services increased from 97,322,000

---

21) Finnair Annual Report 1974/75, p. 21.

22) Thus the weight load factor rose from 34.2 per cent in 1971/72 to 41.2 per cent in 1973/74 but dropped to 37.9 per cent in 1974/75.

available tonne-kilometres in 1971/72 to 132,514,000 in 1974/75, and from 43,557,000 revenue tonne-kilometres to 56,412,000 respectively [23].

During its first four years of operation, the North Atlantic service accounted for roughly 12 per cent of the company's total revenue, while the corresponding share for the European services was penduling between 40.3 and 42.9 per cent. More recently, however, a slight decrease has been characteristics of the both traffic sectors [24]. The corresponding figure for domestic services rose from 15.0 per cent in 1969/70 to 17.9 per cent in 1974/75 [25]. For charter and leasing operations, the share in total revenue has varied between 17.4 and 23.3 per cent during the same period. It would thus appear that the scheduled European services still are holding the position of the most significant traffic sector for the company [26].

Originally, Finnair was established on a basis of completely private ownership with the share capital raised by the founders themselves. But soon in 1926, a loan was granted to the company from public funds for the purchase of equipment.

23) The weight load factor decreased correspondingly from 44.8 per cent in 1971/72 to 42.6 per cent in 1974/75.

24) In 1973/74 11.3 per cent for the North Atlantic route and 41.1 per cent for the European services, and in 1974/75 8.8 and 39.3 per cent respectively.

25) It would be of interest to note that since 1945, the number of passengers carried on domestic services has, with the exception of the years 1951 and 1952 only, exceeded the number of international passengers. Because of the short stage lengths, the figure for available tonne-kilometres in domestic traffic was in 1974/75 still as low as 81,337,000, yet the weight load factor was up in 47.4 per cent.

26) The impact of the DC-10-30 wide-bodied aircraft on the company's operations is not yet covered by the last available statistics for 1974/75 because of the commencement of the DC-10-30 operations almost at the end of that statistical year.

Furthermore, a direct State subsidy was granted to the company in the same year [27]. The annual subsidy then rose step by step but remained nevertheless proportionally among the smallest in Europe [28]. Moreover, from 1930 to 1937 this subsidy decreased by two thirds in proportion to tonne-kilometres flown by the company [29]. In addition to the direct subsidy, Finnair was remunerated by the State for the conveyance of air mail [30]. Indirect subvention in the form of building of airdromes and facilities, and of establishing wireless and meteorological services also was provided by the State.

Specific safeguards of the State interests were established in the Charter of the company as to the Government representation in the Board of Directors, and the signing for the company. Additional controls were provided for in the agreements concluded between the Government and the company on the operation of the services to be subsidised [31].

In the late 1930s, certain Governmental plans were made for the replacement of Finnair by a single joint stock company, substantially owned and controlled by the State. The company proposed would overtake administration of the entire ground organisation of civil air transport except air

---

27) Salovius, "Statens övervakande och understödjande av den civila luftfarten i Finland", Nordisk Administrative Tidskrift, 1935, p. 400.

28) See Committee Report No. 11/1937, p. 28, for a reference to the League of Nations publication "Economics of Air Transport in Europe" of 1935. According to this reference, the subsidy for Finnair amounted in 1935 to 38.6 per cent of the company's total revenue compared, e.g., with 79.17 per cent for all French airlines, 51.67 per cent for Imperial Airways, 48.57 per cent for AB Aerotransport of Sweden, and 41.20 per cent for K.L.M. of the Netherlands.

29) Ibid., p. 29. - In 1930, 18.69 Finnish Marks, and in 1937 6.07 Finnish Marks per tonne-kilometre flown.

30) Salovius, op.cit., p. 401.

31) Committee Report No. 11/1937, p. 28.

traffic control, radio communications, and meteorological services [32]. Two successive State Committees were instituted in 1936 and 1938 respectively for this purpose. The 1936 Committee came in its Report of December 7, 1937, to the conclusion that the project would encounter extremely great difficulties, and would not help the Finnish civil air services to meet the challenges of modern times [33]. The 1938 Committee proposed in its Report of October 27, 1938, the establishment of a joint stock company on the lines referred to above [34]. This proposal was, however, never carried into effect.

But in 1946, the State acquired the majority of shares in Finnair [35]. Direct subsidy for the company was discontinued. Since then, the State support to the company has consisted, apart from the State portion of the share capital [36], of direct State loans, State guarantees for the company's other loans, remuneration for air mail conveyance, and indirect subsidy through the expenditure of civil aviation administration. The indirect subsidy has been confined almost exclusively to domestic operations. The tendency prevalent in Finland, however, would appear to be toward strict correlation of revenues with costs within civil aviation administration, and thus toward the introduction of "open" subvention which would be made public [37]. In 1975, a correlation of 65 per cent was achieved

---

32) The excepted services were at the time already provided by the State.

33) Committee Report No. 11/1937, p. 2.

34) Committee Report No. 13/1938, pp. 14-15.

35) In 1945, the State had already bought a third of the shares. Then in 1946, 22,000 new shares were issued for subscription by the State which thus became in possession of 70 per cent of the share capital.

36) At present, this portion is 74 per cent. - Finnair Annual Report 1974/75, p. 12.

37) Temmes, op.cit., p. 29.

with respect of scheduled domestic services, while scheduled international services were almost self-supporting in this specific respect [38].

The relevant laws in Finland are generally interpreted to mean that State-owned companies should operate according to business economy principles with business economy targets [39]. Under the Carter of Finnair, the Director General is explicitly responsible for the management of the company's affairs in accordande with sound business principles and having regard to profitableness [40].

Pursuant to its overall majority in the share capital, the State has an almost exclusive control over the company [41]. Furthermore, amendments made to the Charter in 1946 entitle the representative of the Ministry of Communications to attend the meetings of the company's Board of Administration and Board of Directors, and to take active part in the discussions thereat [42]. Upon the chairman of the Board of Administration a similar right of attendance and speech is conferred regarding the meetings of the Board of Directors [43]. And finally, one of the auditors must be a civil servant holding office at the State Audit Office [44]. A step toward closer co-ordination

---

38) Yearbook 1975 of the Finnish National Board of Aviation, p. 15. - A comparison between revenue and expenditure of the aviation administration per trip results in an indirect State subsidy of 44 Finnish Marks in domestic traffic, and around one Finnish Mark in international traffic in 1975. In terms of domestic air fares, the indirect State subsidy amounted in 1975 to about 53 per cent thereof. - Ibid.

39) Lund, "Topical Problems Facing the Central Administration of State-Owned Companies", State Owned Companies in Finland 1974, p. 5.

40) Finnair Charter, Article 12.

41) Decisions on amendments to the Charter, sale of real estate, and dissolution of the company may be taken by the General Assembly only by a majority vote of three fourths of the shares represented thereat. Thus the present State majority of 74 per cent of the shares would not eo ipso allow such decisions. Specific safeguards of the private shareholders' position against the State also are established in some minor respects, such as election of members to the Board of Administration, and auditors.

42) Finnair Charter, para. 1, Article 42. 43) Ibid.

44) Ibid., para. 1, Article 15.

and supervision of all the State-owned companies at central administrative level has been taken more recently by the institution in 1973 of the Office for State-Owned Companies within the Ministry of Trade and Industry [45].

(b) Kar-Air Oy [46].

Kar-Air Oy, the second major Finnish airline company, was preceded by over thirty years of tenacious enterprise by the brothers Niilo, Valto, and Uuno Karhumäki. Commenced with the successive construction between 1925 and 1929 of four light aircraft of their own [47], the brothers' business developed favourably so as to embrace several branches of commercial light plane flying. In 1933, the enterprise was registered as a trading company by the name Veljekset Karhumäki but was transformed soon in 1939 into a joint stock company. The corresponding suffix "Oy" was added to the firm's name thereby.

In 1950, scheduled domestic services were introduced by the company between Helsinki and Joensuu using two second-hand de Havilland Dragon Rapide aircraft [48]. One year later, the Rapides were replaced by two Lockheed Lodestar aircraft, capable of carrying 14 to 16 passengers [49]. At the same

---

45) The activities of this Office consist of ex post facto analysis, planning, and implementation. - Lund, op.cit., p. 5.

46) General sources for this subsection:
- Kar-Air Oy, 40 Years of Finnish Aviation 1925-1965, 1964.
- Press Release by Kar-Air Oy, 1967.
- Kar-Air Oy, Annual Reports for the years 1967, 1967/68, and 1969/70.
- Karhumäki, Karhunahas, 1959.
- Kar-Air, A Story of Finnish Enterprise, reprint from Esso Air World, Volume 23, No. 1, 1970.

47) The construction work was done in the henhouse of the brothers' home-farm near Jyväskylä, a town in central Finland.

48) The Rapides had been acquired from Finnair in 1945.

49) A third Lodestar was purchased later for ore prospecting flights.

time, an extension of the original route was put into operation between Joensuu and the Swedish town Sundsvall via Jyväskylä and Vaasa in Finland [50]. In this international connection, the name "Karhumäki Airways" became established in use for the Flight Operations Department of the company. The Joensuu-Sundsvall stage was discontinued in 1952, and a new service opened along the route Helsinki-Tampere-Stockholm. In 1954, the Lodestars were replaced by three second-hand Douglas DC-3 aircraft.

The ever increasing growth of the flight operations inevitably called for transformation of the Karhumäki Airways into a distinct company. This was done on January 4, 1957, when the new company, the Kar-Air Oy, was officially registered. Among its major shareholders the new enterprise had one of the biggest shipping companies in Finland. Control over the business remained nevertheless to rest with Veljekset Karhumäki Oy. The development of operations continued with the emphasis on charter business. Increasing demand was met by the purchase of two Convair-440 Metropolitan airliners in 1957 and 1958 respectively, and of one Douglas DC-6B aircraft in 1961.

Soon in 1962, however, the state of affairs changed so as to force the Karhumäki brothers to surrender their business after so many years of persistent endeavour. On November 30, 1962, the entire share stock in Veljekset Karhumäki Oy was sold to Finnair Oy. Through this transaction, Finnair also

---

50) During the first four years of operation, the scheduled services of the company must be suspended for the winter season because of the lack of public funds for keeping the Joensuu airport cleared of snow. Meanwhile, the company's aircraft were engaged in busy charter flights everywhere in Europe, and in Egypt and Israel.

acquired 27 per cent of the share capital in Kar-Air Oy [51]. Because the latter shares, however, entitled to a preferred vote by four to one vis-á-vis the other shares amounting thus to an overall majority at the General Annual Meeting of Kar-Air Oy's shareholders, Finnair attained exclusive control over Kar-Air Oy as well [52]. At present, the Finnair holding in Kar-Air Oy amounts to 35 per cent of the share capital [53].

The economic situation of Kar-Air Oy was subsequently improved by raising the share capital by 3.28 million Finnish marks. The short term, high interest debts of the company were at the same time rearranged on a long term basis by means of State guarantees up to a maximum of 5.0 million Finnish marks [54]. In order to improve the finances of Kar-Air Oy through savings in expenditure, an agreement on joint operation as of November 1, 1963, also was concluded between the two companies for a term of six years [55]. Veljekset Karhumäki Oy, the original company, was amalgamated with Finnair on March 31, 1964 [56].

Flight operations of the both companies became considerably integrated by the use of wet and dry leased equipment of the one airline on the routes or flights of the other, and vice versa. Furthermore, under an agreement providing

---

51) Finnair Annual Report 1962, p. 4.

52) Hallituksen esitys Eduskunnalle Kar-Air Oy:n ulkomaisten ja kotimaisten lainojen vakuudeksi annettavasta valtion takauksesta, 1963 vuoden valtiopäivät, No. 5.

53) Finnair Annual Report 1974/75, p. 20.

54) Hallituksen esitys ..., supra note 52. - See also Suomen asetuskokoelma (the Finnish Statute Book) No. 179/1963, by which the guarantee was put into effect.

55) Finnair Annual Report 1963/64, p. 6.

56) Ibid., p. 9.

for co-operation between the two companies in charter services as of April 1, 1973, Finnair has used one DC-8-51 aircraft delivered to Kar-Air Oy in 1972 to supplement its own charter capacity [57]. Since January 1968, Mr. E. Korhonen, President of Finnair, has been elected the chairman of the Board of Directors in Kar-Air Oy. Thus Kar-Air Oy actually has become a subsidiary of Finnair.

After the transaction of 1962, the development of the Kar-Air Oy fleet slowed down so as to involve the purchase of two DC-6B aircraft from Finnair in 1964 and 1965 respectively. In addition to the DC-8-51 aircraft mentioned above, a DHC Twin Otter turbo-prop aircraft was purchased in 1972.

The scheduled international services operated by the company were discontinued in March 1964. Since then, the flight operations have consisted mainly of charter flights and certain less important scheduled domestic services.

At the end of March 1975, the company's fleet included one DC-8-51 aircraft, one DC-6B-ST freighter, and one DC-3 airplane [58]. In 1974, in all 91,690 passengers were carried on Kar-Air Oy charter flights, and 10,966 passengers on its scheduled domestic services [59]. The total turnover of the company for 1974 amounted to 26.6 million Finnish marks, less than five per cent of the corresponding figure of 541.9 million Finnish marks achieved by Finnair [60]. The charter flights thus far performed by Kar-Air Oy have extended to all continents except Antarctica. They also have included several round-the-world flights. In October 1968 Kar-Air Oy,

---

57) Finnair Annual Report 1973/74, p. 8.
58) Finnair Annual Report 1974/75, p. 20.
59) Ibid.
60) Ibid., pp. 5 and 20.

then already holder of a Foreign Carrier Permit granted by the CAB of the United States, was permitted by the U.S.S.R. to operate commercial flights to the Far East over Moscow and Taschkent. To date, the safety record of Kar-Air Oy includes only one accident and no fatalities or hijackings [61].

(c) Finnair and I.A.T.A.

By May 1, 1949, Finnair became a member of the International Air Transport Association [62]. The indirect link connecting Finland with the I.A.T.A. machinery for determination of international air fares was thus established. Though today the world's fifth oldest operating I.A.T.A. airline, Finnair is not yet among the biggest. In terms of available tonne-kilometres on scheduled services it ranked at the end of 1970 forty-fourth among the then 106 I.A.T.A. airlines [63]. In the same year, the total production of Finnair in available tonne-kilometres amounted to 0.45 per cent of the total production of all the I.A.T.A. airlines [64].

Until 1962, the relationship between Finnair and I.A.T.A. was developing on the basis of ordinary membership. But since the acquisition in 1962 by Finnair of effective control over Kar-Air Oy, a non-I.A.T.A. airline, the situation has become more complicated. Under the joint operation agreements between the two companies, their flight operations

---

61) On February 5, 1973, the Kar-Air Oy's DHC Twin Otter aircraft en route from Oulu to Kuusamo was lost in an accident. One of the passengers and the crew of two pilots were seriously injured.

62) Finnair Press Release of July, 1967.

63) This information was developed by the present writer from I.A.T.A. World Air Transport Statistics, No. 15, 1970. -Of the 106 member airlines, 11 did report only international and 13 only domestic services, while 5 members did provide no information at all.

64) Ibid. - 222.362 million tonne-kilometres for Finnair of the I.A.T.A. total of 49,546 million tonne-kilometres.

are highly integrated [65]. Since Finnair is not bound by the I.A.T.A. regulations with respect to charter flights performed under wet or dry lease agreements for Kar-Air Oy, this certainly improves the competitive practices available to Finnair [66].

In connection with the North Atlantic services of Finnair, a controvercy arose in 1971 as to the compliance with I.A.T.A. regulations [67]. On a complaint by the I.A.T.A. Enforcement Office holding Finnair guilty of violation of the I.A.T.A. Resolution 064a, [67a] a fine of 50,000 U.S. dollars was imposed upon Finnair by a Commissioner. The status of Finnair as a first offender was taken into consideration by the Commissioner as a fact in mitigation of the breach. On the other hand, the clearly wilful nature and the lengthy continuance of the violation motivated, in the opinion of the Commissioner, nevertheless the application of a higher fine in this specific case than in the past had been considered adequate for first offenders [68].

It has been held, however, that almost all I.A.T.A. member airlines had been engaged in offering rebates and discounts to their customers, and in a host of other malpractices, and that such breaches had occurred thick and fast, and often flagrantly [69]. Therefore, this incident should not undermine the good international reputation heretofore enjoyed by Finnair.

---

65) For instance, Finnair was authorised by the CAB of the United States to engage in wet lease charter operations for Kar-Air Oy with respect to persons and property chartered by the latter company pursuant to its authority. - See Wassenbergh, Aspects ..., note 95 at p. 141.

66) I.A.T.A. attempts to halt similar practices have not thus far succeeded. - For details, see Pillai, The Air Net, 1969, pp. 98-99.

67) Source for the following review: Pajunen, "Kun Finnair tuomittiin", Helsingin Sanomat, August 1, 1971, p. 15.

:/.

./.

67a) It was held in the complaint that, during the first half of the year 1970, Finnair had sold in Frankfurt tickets to 4,000 passengers at fares amounting in all to 280,000 U.S. dollars instead of a total of 1,018,000 U.S. dollars consistent with the lowest approved fares, and carried the customers from Amsterdam to New York and back.

The complaint was contested by Finnair, and the incident explained as a pure credit loss, yet some administrative faults were admitted.

68) That is to say, a reprimand or fines between 4,000 and 10,000 U.S. dollars. - Pajunen, op.cit., p. 15.

69) Pillai, op.cit., pp. 99-100.

C H A P T E R I V - THE BILATERAL AIR TRANSPORT AGREEMENTS ENTERED INTO BY FINLAND BETWEEN 1917 AND 1944.

The formal air agreements concluded by Finland during the Paris regime were very few and did not even cover the route network of the national airline. In 1919, when the Nordic countries decided so far not to adhere to the Paris Convention, a regional draft Nordic Convention was prepared to substitute for the former. Because of some controversies, however, such a Convention was never signed. Subsequent proposals made in order to dispose of the question bilaterally among pairs of the Nordic countries [1] also remained fruitless.

The air connections between Finland, on the one hand, and Estonia, Sweden and later Germany, on the other, were obviously maintained under the authority of temporary permits or pursuant to informal arrangements or understanding between the states or the airlines concerned. Therefore, no urgent need for formal agreements did actually exist. In the following two subsections, first the bilateral air agreements and stipulations of a general nature and then the bilateral civil air transport agreements proper are examined to the extent they have been published.

(a) The Dorpat Peace Treaty and Early Arrangements in Transborder Air Traffic.

The first bilateral stipulation relating to international civil air transport ever concluded by Finland was incorporated in the Peace Treaty between Finland and the USSR,

---

1) A Note of November 2, 1920, by the Danish Embassy at Helsinki to the Finnish Minister for Foreign Affairs. - Archives of the Finnish Ministry for Foreign Affairs, Helsinki.

signed at Dorpat on October 14, 1920 [2]. In para. 4, Article 8, of the Treaty, the right to fly in transit across the territory of Petchenga (Petsamo) in Finland between the USSR and Norway was granted to unarmed Soviet aircraft provided that the general regulations in force were observed [3]. The more specific regulations were laid down in another treaty, concluded between the two countries at Helsinki on October 28, 1922 [4], pursuant to a specific provision in the Peace Treaty [5]. In Article 9 of the 1922 treaty, the transit right was defined as a right to carry air traffic between the USSR and Norway across the territory of Petchenga (Petsamo) in Finland. The regulations to be observed thereat were described as being such international technical regulations relating to aviation that were in force for Finland. The pilots must be in possession of a transit permit issued by the competent Soviet authority, and air waybills for the goods in transit [6]. No visa from the Finnish authorities was required for the transit permit. In case of landing in Finnish territory, the documents must be presented by the pilots to the Finnish authorities. Finally, compliance with the provisions of any air navigation agreement that would be concluded between the two states in future was also provided for [7].

---

2) Peace Treaty Between the Republic of Finland and the Russian Socialist Federal Soviet Republic. - League of Nations Treaty Series, Volume 3, No. 91.

3) Ibid., p. 18 (English translation at p. 68).

4) Convention Between the Republic of Finland and the Russian Socialist Federal Soviet Republic Concerning the Conditions on which the Russian State and its Nationals shall be entitled to Free Transit through the Territory of Petsamo (Petchenga). - League of Nations Treaty Series, Volume 19, No. 493.

5) Para. 5, Article 8, of the Peace Treaty.

6) Particular regulations concerning the issue of the air waybills were laid down in para. 2, Article 3, of the treaty.

7) For an English translation of Article 9 of the treaty, see p. 212 of the document mentioned in supra note 4.

Already in 1919, the British Government had suggested to the Government of Finland that, pending the ratification of the Paris Convention, and as a purely temporary measure, an agreement be concluded between the two countries on the lines of a British draft simultaneously submitted [8]. Although a Finnish draft was provided in reply to the British Legation at Helsinki roughly one year later [9], an agreement was never arrived at on those lines. But in 1923, the difficulties encountered in practice called for new action. According to a Note of July 24, 1923, by the British Minister at Helsinki, Mr. Ernest Rennie, to the Finnish Minister for Foreign Affairs[10], the British Air Council had considered the question of procedure to be followed in the case of British aircraft flying to certain European countries which were not parties to the Paris Convention, or with which no provisional agreement had been signed for the control of air traffic. Because of the considerable delay caused by the then necessary use of diplomatic channels [11], the Council had suggested that the owner of the aircraft apply direct to the representatives in London of the state or states over whose territory he wished to fly, and that such representatives be empowered to grant applications without previous reference to their governments. On these grounds the British Government inquired whether the Finnish Government were prepared to invest their representative in London with the necessary authority.

---

8) Note No. 200 by the Chargé d'Affair of the United Kingdom in Finland, Mr. H.M. Bell, to the Finnish Minister for Foreign Affairs on July 26, 1919. - Archives of the Finnish Ministry for Foreign Affairs.

9) On July 31, 1920. - Archives of the Finnish Ministry for Foreign Affairs.

10) UAM No. 32/1936 K.D. 1923 25/7/1923. - Archives of the Finnish Ministry for Foreign Affairs.

11) The practice was for the owner of the aircraft to notify ./.

After a lengthy and exhaustive preparation of the matter within the Finnish bureaucracy, an agreement was finally reached by exchange of Notes on December 14, 1925 [12]. By this agreement, the Finnish representative in London was invested with the authority proposed subject, however, to certain conditions formulated by the Finnish authorities. Thus a permission would be granted only to civil aircraft, and for three months at the most. The permission did not entitle to commercial air navigation in Finland, and would not be valid in times of mobilisation. Furthermore, the owners and pilots of the aircraft must comply with certain more specific regulations. The permission also could be revoked, when necessary.

While the arrangement was entered into by Finland on the explicit condition of reciprocity, the British Government agreed similarly to grant permission for Finnish aircraft to fly over British territory subject to the same or analoguous conditions.

The arrangement entered into force as of the date of the exchange of the Notes and was to be valid until further notice. In the aftermath of the Second World War, the arrangement was not renewed by the British Government in accordance with the provisions of the Treaty of Peace with Finland and was thus rendered void.

Pending the adherence to the Paris Convention by Estonia [13], a bilateral treaty, the Convention Concerning Aerial Navigation Between Finland and Estonia, was signed by the

---

./. his intended flight to the British Air Ministry who forwarded a formal application through the diplomatic channels to the governments of the states concerned for permission for the aircraft to fly over and in their territory. - Ibid.

12) Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaty Series) No. 39/1925.

13) Finland had adhered to the Paris Convention as of January 1, 1932.

two states on September 12, 1936 [14]. The stated purpose of the treaty was the facilitation of the development of the mutual air communications of the parties [15]. The treaty was subject to ratification [16] and did enter into force by the exchange of the instruments of ratification at Tallinn on November 7, 1936. In accordance with the then customary practice in the continental Europe, the sole authentic language of the treaty was French. The main function of the treaty was to fill up the gap caused by the total lack of international air regulation binding upon the both parties.

As a party to the Paris Convention, Finland had to see to it that the stipulations of the bilateral treaty would not be contradictory to the general principles of the Paris Convention [17]. It is therefore not surprising, that in the Fenno-Estonian treaty all the essential components of the Paris Convention were incorporated, such as freedom of innocent passage, prohibited zones, temporary prohibition of flight, nationality of aircraft, certificates, etc. The general framework and the formulation of the particular stipulations of the treaty followed the generally uniform pattern established in the practice of European states in those days [18]. As to scheduled air services, para. 2, Article 1 of the treaty provided, in harmony with para. 4, Article 15 of the Paris Convention as amended on June 15, 1929, that the establishment and exploitation of regular air lines over the territory of either of the contracting parties, with or without landing, be subject to special agreements to be concluded between the two governments. Air cabotage could be reserved to the national

---

14) Convention Concernant la Navigation Aérienne entre la Finlande et l'Estonie. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaty Series) No. 56/1936.

15) Preamble to the treaty.

16) Article 23.

17) Para. 4, Article 5 of the Paris Convention as amended on June 15, 1929.

./.

aircraft [19]. Apart from private aircraft, also state aircraft engaged exclusively in commercial or postal services were governed by the treaty.

The administration of the treaty was made as simple as possible. Thus the details of its application should, whenever possible, be settled by special agreement directly between the competent authorities of the relevant branch of administration of the two countries, especially with respect to customs formalities [20].

Under Article 22, the treaty would be deemed denounced with immediate effect if the parties thereto would conclude with other states an air convention of a general nature. Consequently, the treaty was terminated by the adherence of Estonia on January 1, 1938, to the Paris Convention [21]. No formal bilateral agreement on the operation of scheduled services was concluded pursuant to para. 2, Article 1 of the Fenno-Estonian treaty.

(b) Bilateral Civil Air Transport Agreements.

The only bilateral civil air transport agreement proper concluded during the Paris regime by Finland was the Convention between the Republic of Finland and the Republic of Poland relative to the Exploitation of Regular Air Services [22], signed at Helsinki on July 28, 1938. In the Preamble to the treaty the parties stated their explicit desire to regulate, facilitate and favour the development of air services in the two countries on the basis of the Paris Convention, to which both of them

---

./. 18) For details, see, for instance, Meyer, op.cit., pp. 25, 26, 140-142 and 154-156, and the bilateral conventions referred to therein.

19) Cf. Article 16 of the Paris Convention.

20) Para. 1, Article 20 of the treaty.

21) ICAN, Official Bulletin No. 27, List of Signatures ..., p. 129.

./.

were parties [23]. The treaty entered into force on June 3, 1939, the thirtieth day from the exchange of the instruments of ratification at Warsaw [24]. The sole authentic language of this treaty was French.

As pointed out by Meyer, the bilateral commercial air transport agreements concluded in Europe during the later years of the Paris regime followed an almost uniform pattern as to their framework and content [25]. The treaty under discussion was no exception of this rule. Thus the grant of rights and specification of the routes were incorporated in the treaty itself. Under paras. 1 and 2, Article 1, the governments did grant reciprocally to the air navigation enterprise designated by the other government the necessary authority for the exploitation within the territory of the grantor-state of an air navigation service between Helsinki and Warsaw. Both parties had the right to designate for their national airline the route and the points of call to be used outside the territory of the other party (para. 3, Article 1).

With respect to the exploitation of the route, the both enterprises duly designated were put on a footing of complete equality and reciprocity (para. 4, Article 1). No control of capacity was provided for in the treaty. Apart from the scheduled services, the airlines had the right to operate

---

./. See also, Suomen astuskokoelman sopimussarja (the Finnish Statute Book, Treaty Series) No. 5/1938.

22) Convention entre la République de Finlande et la République de Pologne relative à l'Exploitation des Lignes de Communication Aérienne régulière. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaty Series) No. 15/1939 and No. 16/1939.

23) A signatory to the Paris Convention, Poland ratified it on November 26, 1924. - ICAN, Official Bulletin No. 27, List of Signatures ..., p. 129.

Obviously, the conclusion of the treaty was urged also by the fact that the Polske Linie Lotnicze (LOT) already since April 29, 1937, had maintained scheduled air services between

./.

additional flights on the same route (para. 5, Article 1). The establishment of air lines other than those specified in Article 1 was, however, subject to separate agreement between the contracting parties. All the stipulations of the main treaty would then apply equally to the new air services thus specifically agreed upon (paras. 1 and 2, Article 2).

The treaty did not replace the concession provided for by the national legislation of the parties [26]. A licence must thus be granted to the designated airlines by the competent foreign authority [27] immediately after coming into force of the treaty. In the licence, the rights and obligations of the airlines as well as the more specific conditions for the exploitation of the agreed routes should be laid down (Article 3). The most favoured foreign airline treatment was, however, guaranteed [28] to the designated airlines in the treaty itself (Article 4).

Certain obligations were imposed upon the designated airlines directly by the treaty. They thus had a general duty to comply with the provisions of the Paris Convention and with the national laws and regulations of Finland and Poland respectively (paras. (a) and (b), Article 9). The designated airlines also had to provide to the foreign government specified advance

---

./. Warsaw and Helsinki. - "Suomeen lentävät yhtiöt", Ilmailu, No. 2/1972, p. 20.

24) The exchange of the instruments of ratification was completed on May 4, 1939. - Suomen asetuskokoelma (the Finnish Statute Book) No. 162/1939.

25) Meyer, op.cit., pp. 26 and 157-159. See also the bilateral agreements referred to by Meyer.

26) Article 24 of the 1937 Air Navigation Order for Finland.

27) That is to say, to the Finnish enterprise by the Ministry of Communications of the Republic of Poland, and to the Polish airline by the Finnish Ministry of CPW. - Paras. 1(a) and 1(b), Article 3.

28) ... at least the same rights and special facilities accorded to the most favoured foreign air navigation enterprise ... (translation into English by the present author).

information concerning the operations on the agreed routes [29]. Furthermore, their right to employ personnel within the territory of the other party was confined primarily to Finnish and Polish nationals. Employment of nationals of a third state was admitted in exceptional cases only and required prior permission granted by the competent authorities of the other party (para. (d), Article 9). The designated airlines must also carry mail on conditions to be agreed upon among themselves and the postal authorities of the both states (Article 10).

The both contracting states reserved the right to designate, at any time, another national airline in substitution for the enterprise previously designated. In this case, the licence granted to the latter would render void, and a new licence must immediately be granted to the new operator. The airline whose licence had thus been revoked by its government was not entitled to claim indemnification from the other government (para. 1, Article 11). In order to avoid circumvention of the designation system it was further provided that the designated enterprises holders of a licence were not allowed to cede it, wholly or in part, to another enterprise (para. 2, Article 11).

In the event of breaches of the treaty provisions concerning safety, public order, customs duties, devises or taxes, each of the contracting parties were entitled to require dismission of the employees found guilty thereof. Would the violation be repeated or grave, the contracting parties had the right to require also the revocation of the airline's licence (Article 12).

The settlement of disputes relating to the application

---

29) The information comprised of the names of the crew members, aircraft type and registration marks, tariffs, timetables and general conditions of carriage (para. (c), Article 9).

of the treaty should, in the first instance, be conducted by direct discussions between the competent authorities of the two states. This having failed, the dispute should be submitted to a procedure of conciliation or arbitration under the Convention on Conciliation and Arbitration between Finland, Estonia, Lithuania, and Poland which was signed at Helsinki on January 17, 1925 [30] (Article 14).

The termination of the treaty was marked in practice by some special vicissitudes. Under Article 13 thereof, the treaty would remain in force subject to revision in the case that one of the contracting parties would cease to be a party to the Paris Convention. After the lapse of its original term by December 31, 1948, the treaty would be tacitly renewed for periods of five years each time unless denounced by one of the contracting parties at least two years before the expiry of the current period. Yet the application of the treaty had been suspended under the circumstances of the Second World War. The Paris Convention had also long ago been denounced by both Finland and Poland. Nevertheless, the absence of a formal denunciation kept the bilateral treaty in force until its termination on November 4, 1963, by a specific Protocol between the parties [31]. While the Protocol was subject to ratification, the bilateral treaty actually did not cease to be in force until the exchange of the instruments of ratification at Warsaw on May 15, 1964, when the new bilateral air transport agreement between the two countries simultaneously entered into force [32].

---

30) League of Nations, Treaty Series, Volume 38, No. 991.

31) Protocol between the Republic of Finland and the People's Republic of Poland concerning Termination of Convention between the Republic of Finland and the Republic of Poland concerning the Operation of Scheduled Air Services, signed at Helsinki on July 29, 1938. - Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaty Series) No. 19/1964.

32) Suomen asetuskokoelman sopimussarja (the Finnish Statute Book, Treaty Series) No. 19/1964.

C H A P T E R V - DEVELOPMENT SINCE 1945 IN BILATERAL AIR TRANSPORT ARRANGEMENTS OF FINLAND

(a) Aftermath of World War II.

By the end of the Second World War, only one bilateral air transport agreement was, yet formally, in force for Finland[1]. Pending the conclusion of commercial treaties or agreements between individual member-states of the United Nations and Finland, certain temporary regulations were laid down in Article 30 of the Treaty of Peace with Finland, signed at Paris on February 10, 1947 [2]. Finland thus undertook to grant a specified treatment to each of the United Nations which, in fact, reciprocally granted similar treatment in like matters to Finland. This arrangement was to be valid during a period of eighteen months from the coming into force of the Treaty. With regard to the operation of commercial aircraft in international traffic, the agreed treatment comprised of the undertaking by Finland not to grant exclusive or discriminatory right to any country, and to grant on a reciprocal and non-discriminatory basis to all United Nations the right to fly over Finnish territory without landing. Furthermore, Finland agreed to afford all the United Nations equality of opportunity in obtaining international commercial aviation rights in Finnish territory, including the right to land for refueling and repair. These provisions must not, however, affect the interests of the national defence of Finland.

---

1) POLAND (1938-superseded).

2) United Nations Treaty Series, Volume 48, No. 746, pp. 250-252. - The Treaty was concluded between Finland, of the one part, and the USSR, the UK, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic, and the Union of South Africa, as the states which were at war with Finland and had actively waged war against the European

./.

The undertakings by Finland were understood to be subject to the exceptions customarily included in commercial treaties concluded by her before the war. Similarly, the provisions with respect to reciprocity granted by each of the United Nations were understood to be subject to the exceptions customarily included in the commercial treaties concluded by that state.

Already before the coming into force of the Treaty [3], a provisional air services agreement was concluded on March 27, 1947, between Finland and the United States [4]. It dealt with the grant of traffic rights in Finland to the American enterprise American Overseas Airlines, Inc. (AOA). During the transitional period set in the Peace Treaty, that is to say between September 15, 1947, and March 15, 1949, there are indications of two provisional air services agreements having been entered into between Finland and Sweden though the texts or details thereof have not been published [5]. A permanent air transport agreement

---

./. enemy states with substantial military forces, of the other part. - Preamble to the Treaty.

3) The Treaty of Peace came into effect by September 15, 1947. - Note 1, op.cit. in supra note 2, p. 228.

4) ICAO Reg. No. 487.

5) The documents registered with and published by ICAO under Reg. Nos. 730 and 724b are actually operating permits issued by Sweden to the Finnish airline company Aero O/Y (later Finnair Oy). It is, however, indicated in the permits that they have been granted upon propositions made, with respect to the former by a note from the Finnish Legation at Stockholm to the Swedish Ministry for Foreign Affairs, and regarding the latter by the Finnish Ministry of CPW to the Royal Board of Civil Aviation of Sweden. The registered documents should thus be looked at more properly as end products of agreement between the two states rather than arrangements between Sweden and the Finnish airline, as classified by ICAO.

Originally, the Finnish scheduled air services to Sweden were resumed after the war in November 1947 pursuant to unilateral grant by Sweden of applications for operating permit made on behalf of Aero O/Y by its general representative in Sweden, the Swedish airline company AB Aerotransport. - ICAO Reg. Nos. 724 and 724a.

also was concluded between Finland and the Netherlands during the transitional period on February 25, 1949, but came into effect first after the lapse thereof [6].

(b) General Observations of the Bilateral Air Transport Arrangements.

(i) Simplified Agreements.

It would appear to be an established practice in Finland not to publish provisional bilateral air services agreements in the Finnish Statute Book. Thus scheduled international air services from and to Finland have been inaugurated and operated for long times prior to the conclusion of a permanent bilateral air transport agreement between the two states concerned, without any formal agreement having been published thereupon.

Some of the agreements and arrangements between states and airlines registered with ICAO indicate that such services have been operated on the basis of unilateral grant of rights by a foreign state to the Finnish flag-carriers [7]. Under the same heading, however, four provisional air services agreements arrived at between Finland and a foreign state also seem to have been registered. Of these, two have been concluded with the United Kingdom and one both with the United States and France [8].

---

6) The date for the coming into force of the agreement was March 27, 1949.

The Netherlands, as well as the United States and Sweden, though not signatories to the Peace Treaty with Finland, were beneficiaries of Article 30 thereof pursuant to their membership in the United Nations.

The Soviet airline Aeroflot inaugurated scheduled air services to Finland in 1948, but no agreement covering the operation thereof up to 1955 has thus far made public. - "Suomeen lentävät yhtiöt", Ilmailu, No. 2/1972, p. 20.

7) E.g., ICAO Reg. Nos. 724 and 724a (Sweden), and Nos. 1088 and 1137 (West Germany/Allied High Commission for).

8) The United States, March 27, 1947 (ICAO Reg. No. 487); the United Kingdom, July 27, 1953 (ICAO Reg. No. 1091), and July 8, 1954 (ICAO Reg. No. 1138); and France, September 4, 1953 (ICAO Reg. No. 1090).

All the four agreements have been entered into in a simplified form by exchange of notes. Two of the agreements deal with the grant of rights by the foreign party to the Finnish flag-carrier [9]. The other two secure corresponding rights in Finland to the airline of the foreign party [10]. All these agreements have been superseded by subsequent ordinary bilateral air transport agreements or otherwise terminated.

It should be noted in this connection that the documents registered with ICAO as agreements and arrangements entered into between Sweden and either of the Finnish airlines Aero O/Y (later Finnair Oy) or Veljekset Karhumäki Oy actually are operating permits issued by Sweden. In some of them reference is made to an exchange of notes [11] or another arrangement [12] between the two states themselves, as the cause for the grant of the permit. The underlying material thus indicated, however, has not been made public. Consequently, these agreements must be left outside the scope of our present examination. Reference to simplified Finnish bilateral air services agreements will thus comprise only the four agreements discussed in the preceding paragraph [13].

(ii) Short International Treaties.

The first ordinary bilateral air transport agreement entered into by Finland after the Second World War was signed

---

9) The United Kingdom (ICAO Reg. No. 1138), and France.

10) The United States, and the United Kingdom (ICAO Reg. No. 1091).

11) ICAO Reg. No. 730.

12) ICAO Reg. Nos. 724b, 730a, and 1092.

13) These agreements will be referred to in the text as simplified agreements, or indicated with the sign (S) after the name of the foreign state party to the agreement, as may be expedient under the circumstances.

on February 25, 1949, with the Netherlands. Since then, similar agreements have been concluded by Finland with the following twenty-five states in this specific order: the United States of America, Sweden, Norway, Denmark, Czechoslovakia, the Union of Soviet Socialist Republics, Switzerland, Iceland, Luxembourg, Hungary, France, Poland, the United Kingdom, Yugoslavia, Austria, Bulgaria, Malta, Portugal, Romania, the German Democratic Republic, Spain, Greece, the Federal Republic of Germany, Turkey, and the People's Republic of China [14]. The agreement with Denmark has been subsequently terminated as of April 1, 1971, on Danish initiative [15]. With the USSR, two successive agreements have been entered into. The agreements with Greece, the Federal Republic of Germany, Turkey, and China were at the closure of this thesis not yet in force. As they had not been published either, they consequently must be excluded from the present discussion so far as the treaty provisions are concerned.

To date, certain amendments have been made to the agreements with Sweden, Norway, the USSR (1955-superseded), Switzerland, and the Netherlands.

In contrast with the four simplified agreements which were all entered into by exchange of notes, the ordinary post-war Finnish bilateral air transport agreements have been concluded in the form of short international treaties. Particularly in the earlier agreements, the intention of the parties to promote civil air communications between their respective territories

---

14) For a list of signatures etc, see Appendices III and IV to this thesis.

It may be noted that ten of the bilateral counterparts of Finland are socialist countries, while the remaining sixteen states belong to the Western world.

At present, no air services are maintained pursuant to the bilateral agreements in force between Finland, on the one hand, and Iceland, Yugoslavia, Bulgaria, Malta, Portugal, and Romania, on the other.

15) This incident will be discussed in more detail in Chapter VIII below.

was most commonly stated as the sole purpose of the treaty[16]. It nevertheless was quite normal to include also points beyond in the route-schedules annexed to the agreements, thus enlargening the geographical scope initially laid down therefor. In harmony with this development, the more recent agreements expressly aim at the establishment of air services "between and beyond" the territories of the contracting parties [17]. To this inherent purpose of any bilateral air transport agreement, some other reasons of a more general and solemn nature may have been added. Among them, the considerable increase in the possibilities of commercial aviation as a means of transport, and the desirability of organising scheduled air services in a safe and orderly manner may be mentioned [18]. The aims of developing international co-operation in the field of air transportation [19], and of strengthening the friendly relations between the countries concerned [20] have also been referred to in this connection.

The most part of the treaties have become effective simply by the date of signature [21], or after a specified term therefrom [22]. One did enter into force by a date determined directly in the agreement [23]. In some instances, however, certain specific measures were provided for the entry into effect of the treaty. These provisions may have prescribed

---

16) Preambles to the agreements with the Netherlands, the US ("direct air communications"), Sweden, Norway, Denmark (terminated), Czechoslovakia ("as direct and rapid air communicatims as practicable"), the USSR (1955-superseded), and Iceland.

17) Switzerland, Luxembourg, the UK, Yugoslavia, Austria, Bulgaria, Malta, Portugal, and Romania.

18) Luxembourg.

19) Switzerland, Luxembourg, and Hungary.

20) Hungary.

21) Norway, Denmark, the USSR (1955-superseded), Iceland, the UK, and Malta.

22) The Netherlands, the US, Austria, and Portugal after 30 days, and Bulgaria after 90 days from the signature.

23) Sweden, by May 1, 1949.

a reciprocal confirmation by the parties that the agreement had been approved by both of them [24]; or that the constitutional requirements relating to the conclusion and/or entry into force of a treaty had been complied with [25]; or that the agreement had been approved by the one of the parties, and ratified by the other [26]. In one instance, a unilateral notification was required from the party whose constitution did prescribe ratification [27]. For the act of confirmation, various modes were provided: it should be effected by exchange of notes [28], through diplomatic channels [29], by exchange of letters [30], or in an unspecified manner [31]. The entry into force of the agreement was effected usually by the completion of the exchange of the notifications but in one event [32] after one month from that incident. With five exceptions [33], all the agreements calling for such special measures for their entry into force were, pending the necessary confirmation, to be applied provisionally as of the date of their signature.

Six of the post-war Finnish bilateral air transport agreements are done bilingually as well in Finnish as in the language of the other contracting state [34], both texts being equally authoritative. One agreement is done trilingually in

---

24) POLAND (1963), and CZECHOSLOVAKIA.

25) HUNGARY, FRANCE, YUGOSLAVIA, ROMANIA, the USSR (1972), the GDR, and SPAIN.

26) LUXEMBOURG.

27) SWITZERLAND. - As explained before, the Constitution of Finland does not require ratification of international treaties.

28) POLAND (1963), YUGOSLAVIA, the USSR (1972), the GDR, and SPAIN.

29) SWITZERLAND.

30) CZECHOSLOVAKIA.

31) LUXEMBOURG, HUNGARY, FRANCE, and ROMANIA.

32) FRANCE.

33) POLAND (1963), ROMANIA, the USSR (1972), the GDR, and SPAIN.

34) SWEDEN, NORWAY, DENMARK, the USSR (1955-superseded), the UK, and the USSR (1972).

the Finnish, Spanish and English languages [35]. Two agreements are drawn up solely in French [36], while another is formulated in Swedish only [37]. All the other bilaterals have English as their sole authentic language.

All of the ordinary bilateral air transport agreements thus far in force for Finland have been implemented in this country by Statutory Orders and published in the Finnish Statute Book, Treaty Series. They have also been registered with the ICAO Council and published in the United Nations Treaty Series.

(iii) Relation between Bilateral and Multilateral Air Agreements [38].

Given the failure of the Chicago Convention to regulate scheduled international air services, it would go without saying that the bilateral air transport agreements concluded between states parties to the said Convention are of a supplementary nature in relation thereto. This has been explicitly stated in five of the most recent agreements [39] and implied in three others [40]. Under Article 83 thereof, the provisions of the Chicago Convention have a general co-ordinating effect upon individual bilateral agreements, regardless of whether these have been concluded between two parties to the Convention, or between a party thereto and a non-contracting state. In the

---

35) SPAIN. - Though the agreement is silent in this respect, all the three texts should be considered equally authoritative. -See, for instance, Castel, International Law Chiefly as Interpreted and Applied in Canada, 1965, pp. 832-833.

36) SWITZERLAND and FRANCE.

37) ICELAND.

38) For a list of comparison relating to the conclusion and entry into force of certain bilateral and multilateral agreements, see Appendix IV.

39) The UK, AUSTRIA, BULGARIA, MALTA, and PORTUGAL.

40) FRANCE, ROMANIA, and SPAIN.

latter case, however, the lack of general multilateral regulation binding on both parties to the bilateral treaty may more often than not result in bilateral regulation of matters otherwise covered by the main Convention [41]. Apart from the simplified agreement with the United States, two of the ordinary Finnish bilaterals have been entered into immediately prior to the adherence of this country to the Chicago Convention [42]. While the intention of Finland shortly to adhere to the Convention no doubt must have been known at the time of the signature of the two agreements, this circumstance has in no way affected the formulation thereof.

Regarding the Transit Agreement to which Finland adhered as late as of April 9, 1957 [43], all of her bilateral partners except seven [44] were already at the time of the signature of their bilateral agreements with this country parties to the said Agreement. The transit rights relative to the agreed services are, however, customarily exchanged in the bilateral agreements independently even between states parties to the Transit Agreement. Thus no implications on the formulation of the various bilateral agreements concluded by Finland have been caused by the different status of the states relative to the Transit Agreement.

---

41) This is the case with the agreements with the USSR (1955- superseded), Hungary, and the GDR who at the time of their conclusion of the bilateral agreements were not parties to the Chicago Convention. Subsequently, the USSR and Hungary have adhered to the Convention in 1970 and 1969 respectively, while the GDR has not.

42) The NETHERLANDS, and the UNITED STATES. The latter agreement did enter into force first after the adhesion by Finland to the Convention.

43) All the four simplified agreements, as well as the ordinary bilateral agreements with the Netherlands, the United States, Sweden, Norway, Denmark, and Czechoslovakia, which states already were parties to the Transit Agreement, were concluded prior to this date.

44) These are: the USSR, Hungary, Yugoslavia, Bulgaria, Romania,

./.

Similarly, the circumstance that a few of the bilateral partners of Finland have accepted the Transport Agreement [45], while Finland herself has not, has had no bearing upon the respective bilaterals.

The International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services has the effect of replacing the tariff clauses in any bilateral agreement already concluded between two states parties to the former for so long as it remains in force for the two states [46]. Whenever two states parties to the Tariff Agreement have no bilateral agreement between them to cover scheduled international air services, or whenever such relevant bilateral agreement contains no tariff clause, the Tariff Agreement shall establish the tariff provisions applicable to the said services [47]. In the absence of a bilateral agreement or of provisions for the settlement of disputes therein, the Tariff Agreement also establishes a procedure for the settlement of disputes arising of disagreement on or disapproval of tariffs [48].

With only eight exceptions [49], all of the ordinary Finnish bilaterals include a provision to the effect that they

---

./. the GDR, and China. The Transit Agreement was accepted by Bulgaria in 1970, shortly after coming into force of the bilateral agreement with Finland, and by Hungary in 1973. The USSR, Yugoslavia, Romania, the GDR, and China were at the end of the year 1974 still not parties to the Agreement. The possible implications of this situation on the bilateral agreement with China are unknown because the agreement has not yet been published.

45) These states are: the Netherlands, Sweden, Greece, and Turkey. The agreements with the two latter states having not yet been made public, the possible implications of the Transport Agreement thereupon are unknown.

46) Para. (b) of Article 1. - For a list of states parties to the Tariff Agreement, see Appendix IV to this thesis.

47) Para. (a) of Article 1.

48) Article 3.

49) The NETHERLANDS, CZECHOSLOVAKIA, the USSR (1955-superseded), HUNGARY, FRANCE, POLAND (1963), the USSR (1972), and the GDR.

shall be amended so as to conform with any multilateral Convention which may become binding on both contracting parties. While the early agreements confine this provision specifically to "general multilateral air transport Convention" 50), the more recent agreements refer in general terms to "any multilateral Convention" 51) The bilateral agreements containing such a provision suggest generally negotiations or common understanding as the method of execution of the prospective amendment. The Malthesian agreement, however, goes on more directly to stipulate that it "shall be deemed to be amended without further agreement" as may be necessary to such conformity.

(c) General Framework of the Agreements.

All the four simplified agreements of Finland deal with the grant of traffic rights by one of the two contracting states to a specified airline of the other. They were concluded either explicitly or by implication on a provisional basis. The conditions for the operation of the agreed services were laid down in very general terms incorporating only a few features most essential to the execution of the agreement 52). In one instance, the conditions were referred wholly to an agreement to be negotiated with the authorities of the grantor-state 53). The simplified agreements had no annexes or route schedules but were self-supporting in this respect.

Apart from the agreements concluded with the USSR, Hungary, France, and the German Democratic Republic, the post-

---

50) The UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), and ICELAND.

51) SWITZERLAND, LUXEMBOURG, the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, and SPAIN.

52) E.g., frequency of the services, and tariffs.

53) The UNITED STATES.

World-War II ordinary Finnish bilateral air transport agreements follow generally the Chicago Standard Form for Provisional Air Routes (hereinafter CSF) up to 1961 [54], and since then the ECAC Standard Clauses for Bilateral Agreements (hereinafter ECAC/SC) as of 1963. With only a few exceptions [55], all the agreements are composed of two parts: the Agreement proper, and an Annex. In the most early agreements adhering generally to the CSF framework, a description of the routes and rights granted, together with the conditions incidental to the granting of the rights [56], are laid down in the Annex [57]. In the more recent agreements within the CSF group, however, the said conditions [58], eventually together with the description of the rights granted [59], have been incorporated in the Agreement proper. Thus it would appear that the development has anticipated in this respect the formulation adopted by the ECAC/SC.

Article 1 of the ECAC/SC would seem to suggest that the Annex to an agreement comprise solely a specification of the routes. Many of the Finnish bilaterals that adhere generally to the said model agreement, follow also this suggestion [60]. But as many others incorporate, however, in general terms the grant of commercial rights in the Agreement proper and lay down the more specific stipulations thereon in the

---

54) The intention to follow the CSF is expressly stated in the Preamble to the agreement with the Netherlands.

55) The USSR (1955-superseded) has no Annexes, while the USSR (1972) has two. To the Annexes to the agreements with the Netherlands, the United States, and Luxembourg a distinct Schedule of routes is attached.

56) E.g., regulations on capacity and tariffs.

57) With respect to the agreements with the Netherlands, the United States, and Luxembourg, see infra note 55.

58) ICELAND, and LUXEMBOURG.

59) SWITZERLAND. The Annex to this Agreement thus contains solely the Schedules of routes.

60) POLAND (1963), the UNITED KINGDOM, BULGARIA, and SPAIN.

Annex [61].

The agreements that belong to either of the two categories discussed above follow their model formulae relatively closely in subject. With respect to the details of wording and to the successive order of the individual provisions, however, considerable variation is offered thereby.

Regarding the agreements which do not fall under either of the standard formulae, the Annexes to the agreements with France and the German Democratic Republic contain only the specification of routes. Annex I to the 1972 agreement with the USSR incorporates the grant of both transit and commercial rights, as well as the specification of routes. In Annex II thereto, specific stipulations are laid down as to the safety of flight and the responsibility of the parties for the operation of air services. The Annex to the Hungarian agreement contains, apart a specification of routes, regulations on the frequency of flights.

In other respects, while the agreement with the USSR (1955-superseded) makes use of some of the CSF clauses [62], the agreements with Hungary, the USSR (1972), and the German Democratic Republic have certain features in common with the CSF but others with the ECAC/SC formulae [63]. All these agreements embody also special provisions intended either to compensate the lack of general international air regulation

---

61) YUGOSLAVIA, AUSTRIA, MALTA, PORTUGAL, and ROMANIA.

62) Articles 6 and 7 of the CFS.

63) HUNGARY: e.g., Articles 5 and 7 of the CSF; Articles 2(1,2,4), 3(1)(b,c), and 13(1) of the ECAC/SC.

The USSR (1972): e.g. Articles 4, 5 and 6 of the CSF; Articles 2, 3, 4, 8, 9, 10 and 12 of the ECAC/SC.

The GDR: e.g., Articles 4(a), and 6 of the CSF; Articles 1, 2, 3, 4, 5, 7(1)(2), 9, 10, 12 and 13(1) of the ECAC/SC.

binding upon both of the states concerned [64], or to bridge over the differences in the economic and political systems of the parties [65]. Similar supplementary provisions may be found also in agreements with certain other socialist countries which in other respects do generally adhere to the ECAC/SC formula [66].

The agreement with France is divided under two Titles: "General Provisions", and "Agreed Services" respectively. It is a mixture of CSF and ECAC/SC provisions with certain variations [67], and of stipulations of its own.

A common feature to the agreement with the United States and the fourteen most recent agreements is the introduction of definitions on certain terms used in the agreements [68]. The Austrian agreement differs from all the others in that every Article has its own Title.

As pointed out by Cheng, in law, all the various sections of a bilateral air transport agreement, be it the main body thereof, or the annex, or the schedule, form integral parts of the treaty and have equal force [69]. All reference to the agreement must, therefore, be considered including

---

64) It should be noted that at the conclusion of the agreements of 1955 and 1962 respectively, the USSR and Hungary were not yet parties to the Chicago Convention, and that the GDR has not at all adhered thereto. It would seem surprising, however, that despite the adherence of the USSR to the Convention in 1970, the 1972 agreement incorporates even more supplementary regulations than the superseded agreement of 1955.

65) E.g., provisions on the right to maintain representatives and other personnel in the territory of the other conracting party, and on the nationality of such personnel or of the crew members.

66) E.g., YUGOSLAVIA, BULGARIA, and ROMANIA.

67) E.g., Articles 5, 6 and 8 of the CSF; and Articles 4, 5 and 12 of the ECAC/SC.

68) Beginning with LUXEMBOURG. For details, see Chapter VII.

69) Cheng, op.cit., pp. 237 and 238.

reference to the annex and/or to the schedule as well, unless otherwise expressly provided [70].

---

70) This is explicitly stated in the agreements with Hungary and the GDR. - In the light of the above discussion, such express provisions would appear to be superfluous.

C H A P T E R V I - THE KEY PROVISIONS

Each stipulation in a bilateral air transport agreement may have its special significance. Certain key provisions nevertheless may be singled out because of their overriding importance with respect to the operation of the agreed services, or of the treaty itself. The regulations concerning exchange of routes, frequency and capacity, and tariffs would seem to be reasonably classified as the key provisions of the first group. And the stipulations governing settlement of disputes, and termination of agreement would seem equally able to deserve the same attribute within the latter. In the following sections of this Chapter, the appearance and operation of these key provisions in the Finnish bilateral agreements are examined in detail.

(a) Exchange of Routes.

The basic elements to be considered in the complicated procedure of route planning and negotiation are the route structure, and the pattern of the air services. These two elements will determine the factual formation of the routes on both sides and thus the geographical scope of the agreement. But a route thus specified would still have no independent meaning, unless provided with the operating rights concerned. Specific significance must therefore be attached to the traffic streams on the different stages of a route. But the underlying economic and political calculations involving every route as a whole and each of its individual traffic points and stages, will finally determine the extent and details of the exchange. This is even more true because the parties to a bilateral agreement intend to exercise control over the whole route thus specified, regardless of whether or not the points and stages

are located in their territories. The said intention is clearly recognisable in the route patterns and individual stipulations of the various agreements.

(i) Route Structure.

According to a classification introduced by Cheng [1] four main classes of route structures may be discerned:

- Rigid, where all traffic points of a specified route are individually indicated and may be altered only by agreement between the contracting parties;

- Semi-flexible, where each traffic point may be chosen among a number of predetermined parallel points (e.g., the Bermuda Agreement);

- Flexible, where the route is fixed only in general terms in the agreement (e.g., the Transport Agreement);

- Free, where a complete freedom of flight is exchanged between the contracting parties.

Apart from these orthodox types, there is a host of different variations and combinations thereof.

In contrast with the simplified agreements, the majority of which introduce a rigid route pattern [2], only a few among the ordinary agreements make use of it. This is the case with the British and Hungarian agreements, though the latter provides some variation by the introduction of two alternate rigid route patterns for each of the parties. With some minor exceptions involving individual semi-flexible and/or flexible points on a route [3], all the numerous routes specified in the Swedish agreement and its modifications as to the Annex belong to the rigid category. The agreement with Switzerland, while

---

1) Cheng, op.cit., pp. 392-394.

2) The UNITED KINGDOM (S-1953) and (S-1954), and FRANCE (S).

3) The Finnish route Helsinki-Norrköping(Visby) and beyond; and the Swedish route Stockholm- Helsinki and beyond.

specifying an otherwise rigid route structure, introduces flexible points of departure for each of the parties [4] and a semi-flexible intermediate point for the Swiss route [5]. The USSR (1972) agreement comprises, inter alia, two rigid route structures for each of the parties [6].

Thus far, there is no Finnish agreement providing for an orthodox semi-flexible route structure. But quite a number of the agreements lay down completely flexible formulas [7]. The Finnish route in the Romanian agreement may be quoted here for the purpose of illustration:

"Points in Finland - via intermediate points - to points in Romania and beyond, in both directions" [8].

Otherwise the route structures to be found in the Finnish bilaterals are rather of a mixed composition. Two main groups could nevertheless be distinguished. Thus there are agreements which indicate of the various traffic points individually only those of departure and of destination [9], while in other agreements solely the latter point is similarly specified [10]. In both cases, the points not individually

---

4) Points in Finland, and points in Switzerland respectively.

5) Points in Switzerland - Frankfurt on Main or Duesseldorf or Hannover - Copenhagen - Stockholm - Helsinki.

6) The routes connecting Helsinki with Moscow and Leningrad respectively and vice versa.

7) The UNITED STATES (S), ICELAND, YUGOSLAVIA, AUSTRIA, MALTA, PORTUGAL, ROMANIA, and SPAIN.

8) The Romanian mirror-image route is described in similar wording.

9) NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, and BULGARIA.

10) The NETHERLANDS, the UNITED STATES, the USSR (1955-superseded), LUXEMBOURG, FRANCE, and POLAND (1963).

The LUXEMBOURGIAN agreement is somewhat ambiguous in that it is not quite clear whether the word "Luxembourg" in the route schedule means the State of Luxembourg, or her capital which has the same name. As the route for Luxembourg is described using Helsinki as destination, the word "Luxembourg" in the schedule obviously must be understood similarly to mean the capital of Luxembourg in respect of the Finnish route, and

./.

./. the State of Luxembourg for the Luxembourgian route (description of the Finnish route: Finland, via intermediate points, to Luxembourg and points beyond, if desired, in both directions; the Luxembourg route: Luxembourg, via intermediate points, to Helsinki and points beyond, if desired, in both directions).

The agreement with POLAND (1963) offers also freely optional intermediate points and beyond points with respect to which, however, the fifth freedom is excluded.

---

indicated are specified for the most part flexibly. Only in the agreement with CZECHOSLOVAKIA, which belongs to the first group mentioned above, the intermediate and beyond points are semi-flexible or optional [11].

The agreement with the GERMAN DEMOCRATIC REPUBLIC, while specifying for both parties flexible points of departure and rigid points of destination, provides the German intermediate and beyond points flexibly but the beyond points for the Finnish route semi-flexibly. Apart from the rigid route structures already mentioned above, the USSR (1972) agreement includes also two principally flexible routes for each of the parties. Illustrative as it may be of the future plans of Finnair, the last of the four Finnish routes may be quoted here as follows:

"Points in Finland - Moscow and/or some other point in the territory of the USSR upon agreement between the aeronautical authorities of the Contracting Parties and beyond to one or more points in Europe, Near East and South Asia (Afghanistan, Pakistan, India and Iran) and beyond to third countries upon agreement between the aeronautical authorities of the Contracting Parties, in both directions." [12]

---

11) The Finnish route: Helsinki - one or more of the following intermediate points: Stockholm, Copenhagen, Berlin, Warsaw - Prague and beyond to Vienna or Budapest, in both directions. The Czechoslovak route, departing from Prague, is otherwise a mirror-image of the Finnish route but includes Leningrad in the USSR as an optional point beyond Helsinki.

12) Item (d) of the Schedule of Routes for the Finnish Aircraft in Part I of Annex I to the USSR (1972) agreement. Translated from the authentic Finnish text by the present author.

Where a point or points on a route is or are left flexible, they must, unless otherwise provided for in the treaty, be agreed upon between the contracting parties before any service departing from, calling at, or ending at any such point may be inaugurated. In this respect, numerous more recent agreements [13] delegate to the aeronautical authorities of the parties concerned the powers to agree on the specification of the routes or points left flexible in the agreements. The corresponding delegation under the YUGOSLAV agreement refers only to the intermediate and beyond points. Consequently, the points in Finland and Yugoslavia being not specified in the agreement are not covered by the delegation. These points should thus be agreed upon between the contracting parties, or delegated specifically to their aeronautical authorities. The agreement with the UNITED STATES empowers the aeronautical authorities of either contracting party to proceed unilaterally to make changes in the routes described in the schedule, except those which change the points served by the other contracting party. A notice of any such change shall, however, be given without delay to the aeronautical authorities of the other contracting party.

A further characteristics of the route structure is the opportunity that may be reserved in the agreement to omit certain points out of the specified routes. While the majority of the Finnish agreements contain no such clause, and while the UNITED KINGDOM (S-1954) agreement expressly denies the omission of any intermediate point from the route, the route structures adopted therein could be classified as non-abridgeable [14].

---

13) AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, SPAIN, and the USSR (1972).

14) Cheng, op.cit., p. 396, distinguishes in this respect three classes of route structures: abridgeable, semi-abridgeable, and non-abridgeable, according to the extent to which points on a specified route may be omitted. - In such cases where the routes are composed of the terminal points only, an

./.

Some of the agreements allow the omission of intermediate stops but not of points beyond out of the specified routes [15]. The agreement with SWITZERLAND which grants no beyond points, offers the opportunity to omit some stops. The omission of all of the intermediate stops would thus not be allowed. The UNITED STATES' and HUNGARIAN agreements, while granting no beyond points, allow the omission of points on any route which consequently could be operated as direct services as well [16]. Complete abridgeability is provided also in the agreement with SWEDEN as modified in 1962, 1963, 1964, and 1966 [17], and in a number of the most recent agreements [18]. The agreement with PORTUGAL lays down the specific condition that the omissions must be previously published in the time-tables. In the agreements with the UNITED STATES, SWITZERLAND, and the GDR the right of omission is made by express provision applicable to any or all flights. But it would appear that even without such express stipulation the same result would be achieved by interpretation.

Unless otherwise expressly provided, the right to omit specified points on a route may be exercised by the state to whom the route is granted. The UNITED STATES' and HUNGARIAN agreements explicitly delegate this right to the airline or airlines designated. And under the USSR (1972) agreement, all points in the territory of the grantor-state may be omitted on services which pass through that territory only by agreement between the aeronautical authorities of the contracting parties.

./. omission clause would, of course, have no meaning.

15) YUGOSLAVIA, AUSTRIA, and MALTA.

16) Cf., the Finnair direct flight No. AY 105/106 between Helsinki and New York. - See Appendix II.

17) The routes specified in these modifications are for the most

./.

In all of the Finnish bilaterals, the point of departure is located in the territory of the state to whom the route is granted [19]. It would appear that an omission of such a point with reference to a general clause admitting the omission of any point on a route would not be consistent with the intention of the parties to maintain air communications between their respective territories, which is more or less expressly indicated in all of the Finnish agreements.

(ii) Pattern of International Services.

Samples of the various patterns of international air services in the Finnish bilateral agreements have already been seen in the preceding subsection. Such patterns may be expediently divided into different classes according to their flux with respect to the territories of the contracting parties [20].

./. part direct services between two terminal points, though in some services certain beyond points also are included.

18) BULGARIA, PORTUGAL, ROMANIA, the GDR, and SPAIN. The omission of all beyond points has the effect of transforming the flight from a through services into a terminating one. This would allow the designated airline to use its full capacity to serve the traffic to and from the territory of the grantor-state. - For the various views of the states in this respect, see Cheng, op.cit., pp. 400-402.

19) In other words, in the territory of the state whose nationality the designated airline possesses. The bilateral system thus differs from that adopted in the Transit and Transport Agreements which equal the point of departure and the nationality of the a i r c r a f t .

20) Cheng, op.cit., pp. 399-403, introduces the following classification:
(I) Terminating services, being services between the territories of the contracting parties on a reasonably direct route, with or without stops in third countries for non-traffic purposes;
(II) Terminating services with intermediate points in third countries;
(III) Through services to points beyond the grantor-state;
(IV) Preternational services which begin at a point or

./.

Consistently with the "hinterland terminal" location of Finland, the majority of her bilateral air transport agreements provide for through services [21]. For obvious geographical reasons, the agreements with the three Scandinavian countries prescribe, apart from through services, with respect to DENMARK (terminated), and NORWAY (as modified in 1963) also terminating services with intermediate points, but regarding SWEDEN only direct terminating flights. The latter kind of services appears as the sole pattern in the agreements with the USSR (1955-superseded), POLAND (1963) [22], and the UNITED KINGDOM. Terminating services with intermediate points are the only route pattern to be found in all of the simplified agreements and in the ordinary agreements with the UNITED STATES, SWITZERLAND, HUNGARY, FRANCE, and SPAIN. The agreement with LUXEMBOURG provides in the first place terminating services with intermediate points but offers also optional beyond points [23].

By the omission of all beyond points, the through services under the agreement with SWEDEN as modified in 1962, 1963, 1964, and 1966 may be transformed into terminating services. Similarly, the through services specified in the agreements with BULGARIA, PORTUGAL, and ROMANIA may be altered into terminating services with intermediate points and, by further omission of even all the intermediate points, into direct

---

./. points in third states anterior the point of departure in the home-state of the designated airline; and
(V) Extranational services which are operated entirely outside the territories of the both contracting parties.

21) The NETHERLANDS, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, ICELAND, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, and the GDR. - Among the USSR (1972) agreement's routes, one through service for either party also is included.

22) POLAND (1963) provides also optional intermediate and beyond points without the fifth freedom.

23) "... if desired ...".

terminating flights. In similar manner, the route pattern introduced in the UNITED STATES' agreement could be transformed into a direct service on some or all flights.

Thus far no preternational or extranational services have been introduced in the Finnish bilateral air transport agreements.

Usually, the right to operate the specified routes in both directions is expressly granted in the agreements. But even where some agreements are silent in this respect, the intention of the parties to grant the operating right for return services is clearly implied in the stipulations relating to the grant of traffic rights [24], or in some other individual provision [25], or in the agreement as a whole [26].

(iii) Traffic Streams.

Corresponding to the pattern of a bilaterally agreed route and the freedoms of the air applicable thereto, various traffic streams moving on the whole or part of the route may develop in practice. In this respect, a theoretical classification of the possible traffic streams has been introduced by Cheng [27]. According to this classification, five main groups of traffic may be distinguished:

I. Total-route traffic means the sum total of all the individual traffic streams on an agreed route.

II. Inter-partes traffic contemplates the traffic streams between the territories of the two states parties to the agreement.

III. National traffic is composed of all individual

---

24) FRANCE, Article XIV(1): "...to pick up and set down international traffic ...". The UNITED KINGDOM, Article 2(1)(c): "... for the purpose of putting down and taking up international traffic ...". Neither of these two agreements provides beyond points.

25) In FRANCE (S) the carriage of local traffic is prohibited

./.

traffic streams to and from the flag-state of the designated airline. It may be broken down to (a) inter-partes and (b) third-country traffic according to the location of the other end of the stream either in the grantor-state or in a third country. National third-country traffic may be further divided into (i) anterior-point, (ii) intermediate-point and (iii) beyond-point traffic on the ground of the location of the third country on the route either anterior to the flag-state or between the two contracting states or beyond the grantor-state respectively.

IV. Grantor's traffic comprises all individual traffic streams to, from and through the grantor-state on the agreed routes. This traffic may be further broken down to eight sub-classes according to the respective eight freedoms of the air.

V. Third-country traffic means traffic originating in or destined for a third country. Within this class, three subclasses could be distinguished: (a) national third-country traffic which has been referred to above [28], (b) extra-partes third-country traffic which is carried between third states exclusively, and (c) fifth-freedom third-country traffic which is the traffic between the grantor-state and any one of the third states en route. The fifth-freedom third-country traffic may be further broken down to (i) anterior-point, (ii) inter-mediate-point and (iii) beyond-point fifth-freedom third-country

---

./. "entre Dusseldorf et Paris et vice versa". The UNITED STATES (S) speaks of "the opening of a commercial service between the territories of Finland and the United States".

26) The UNITED KINGDOM (S-1953) and (S-1954).

27) For more details, see Cheng, op.cit., pp. 403-408.

28) Class III, subclass (b).

traffic according to the location of the third state vis-à-vis the grantor-state.

(iv) Grant of Rights.

Under the present system of bilateral regulation, the right to establish and operate any scheduled international air service must be specifically granted by the foreign state in or over whose territory the service will be operating. In the Finnish bilateral air transport agreements many different ways may be distinguished for the grant of rights.

In all the four simplified agreements, the grant of rights was made by one contracting party with respect to a specified airline of the other. The condition of future reciprocity was nevertheless therein indicated, either expressly [29] or by implication [30]. For the most part, the description of the rights granted was laid down in general terms by reference to "a commercial service" [31], or "a scheduled air service" [32] on the agreed route, or to "traffic rights to Aero O/Y at London on the scheduled service" specified [33]. The more specific terms and conditions were left to be agreed upon between the airline specified and the aeronautical authorities of the grantor-state. Only the agreement with FRANCE (S) did specify the rights in terms of the freedoms of the air [34].

---

29) The UNITED KINGDOM (S-1953): "The competent (Finnish) authorities have concluded the foregoing on condition that prospective Finnish requests for flying permission would be met positively by the British authorities."

30) The UNITED STATES (S) was entered into "pending the conclusion of an air services agreement between the two Governments". - FRANCE (S) foresaw revision of the terms and conditions provided Air France would decide to resume their services in Scandinavia, and referred to a protocol concluded between Aero O/Y and Air France on the operation of the agreed route.

31) The UNITED STATES (S). 32) The UNITED KINGDOM (S-1953).

33) The UNITED KINGDOM (S-1954).

34) "... la compagnie finlandaise pourra bénéficier sur cette ligne des droits de 3ème et 4ème ainsi que de ceux de 5ème liberté à Copenhague."

Also with respect to the ordinary agreements, the grant of rights is based on reciprocity. This is clearly evident from the wording of the individual clauses but has been further emphasised in some agreements by additional express statement [35]. In the USSR (1955-superseded) agreement there is expressly provided that the grant of the rights is made "on the basis of reciprocity and in equal measure".

In the earlier ordinary agreements, the grant-of-rights clause is drafted on the lines of the Bermuda Agreement or the CSF model Article [36]. It thus contains a general declaration that the contracting parties grant to each other the rights specified in the attached Annex or Schedule necessary for the establishment of the air routes and/or services described therein [37]. In the Annex or Schedule, the grant is reiterated and explained further to comprise the right to conduct air transport services on the specified routes by one or more airlines designated by the recipient government. The designated airlines of each contracting party are then accorded in the territory of the other contracting party, "rights of transit and of stops for non-traffic purposes", as well as the right of "commercial entry and departure for international traffic" [38], or "the right to embark and disembark"[39] international traffic at the specified points on the agreed routes. The clauses governing the grant of the commercial rights would appear to be interpreted so as to cover, apart from the third and the fourth free-

---

35) CZECHOSLOVAKIA, the USSR (1955-superseded), and FRANCE.

36) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, ICELAND, and LUXEMBOURG.

37) The CSF term "international civil air routes and services" is used in the agreements with the UNITED STATES and CZECHOSLOVAKIA.

38) The NETHERLANDS, and the UNITED STATES.

39) SWEDEN, NORWAY, DENMARK (terminated), ICELAND, and LUXEMBOURG.

doms, the fifth freedom as well unless otherwise specifically excluded [40]. The SWISS agreement lays down for the grant of rights provisions similar in substance but differing in wording and written in one single Article in the main body of the Agreement.

The agreement with CZECHOSLOVAKIA grants the third and the fourth freedoms separately and adds the right to carry fifth freedom traffic to each of them by reference to international traffic coming from or destined for other states respectively. In the USSR (1955-superseded) agreement, the grant-of-rights clause refers in general terms to the right for civil aircraft of the parties to make scheduled flights on the routes specified. And under the HUNGARIAN agreement, each contracting party grants the designated airlines of the other contracting party the right to take on and put down in its territory international traffic [41]. The HUNGARIAN agreement prescribes points in third countries as well, while the USSR (1955-superseded) agreement does not. Consequently, the carriage of fifth freedom traffic would be allowed under the former agreement but excluded under the latter. None of the three agreements discussed in this paragraph do mention or grant expressly the transit rights which thus are (or were) excluded unless (or until) covered between the parties concerned by the Transit Agreement [42].

In the agreement with FRANCE, the transit rights are accorded under Title I "General Provisions" in more general

---

40) E.g., where no points in third countries are included. The carriage of fifth freedom traffic has been more specifically emphasised in the agreement with ICELAND which specifies the traffic to be picked up or put down as moving to or from the territory of the carrier's flag-state, or to or from a third country.

41) This clause is preceded by a general clause exchanging between the contracting parties the right to operate international air services in order to secure international transport in passengers, cargo and mail.

42) See Appendix IV.

terms to the aircraft of the contracting parties. The grant and specification of the commercial rights are laid down under Title II "Agreed Services" and refer expressly to the designated airlines as the beneficiaries thereof. It would thus appear that the grant of the transit rights would apply even to civil aircraft other than those of the designated airlines, and to aircraft of the designated airlines even when not operating the agreed services [43]. The grant of the commercial rights is made without reference to the territories of the contracting parties:

"The airlines designated by each Contracting Party shall enjoy the right to pick up and set down international traffic in passengers, mail or cargo at the points mentioned in the annex to the present Agreement." [44]

Given the intermediate points on the agreed routes, the fifth freedom is here included.

With only two exceptions [45], the remaining agreements [46] adhere in substance to the ECAC/SC model Article 1. A typical clause, including item (c) which is left open in the model Article, may be quoted here from the agreement with BULGARIA as follows:

"1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate Section of the Annex to the present Agreement. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. The airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a

---

43) This could be explained by the more general desire of the parties expressed in the Preamble to the Agreement to facilitate the air relations between their territories.

44) Para. (1) of Article XIV. - Quoted from the English translation to be found in the United Nations Treaty Series, Volume 498, p. 309.

45) The USSR (1972) and the GDR.

46) POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, and SPAIN.

specified route, the following rights:

(a) to fly without landing across the territory of the other Contracting Party;

(b) to make stops in the said territory for non-traffic purposes; and

(c) to make stops in the said territory at the points specified for that route in the Annex to the present Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail." [47]

The commercial rights accorded under item (c) of the Article would thus include, apart from the third and the fourth freedoms, also the fifth freedom unless excluded by the specified routes [48] or otherwise. In the agreement with YUGOSLAVIA, the specification of the commercial rights, including the fifth freedom, between the territories of the contracting parties and third states is referred to the aeronautical authorities of the contracting parties. In some other agreements [49], a more particular specification of the rights granted includes only the third and fourth freedoms but refers other commercial rights to an agreement to be made between the aeronautical authorities of the contracting parties. Under the PORTUGUESE treaty, the aeronautical authorities are empowered to establish also the conditions under which those additional rights may be exercised. The agreement with ROMANIA lays down no further specification of the rights enumerated in item (c) but refers to the aeronautical authorities for agreement the commercial rights to be exercised with regard to the intermediate and beyond points. Some agreements [50] do not contain

---

47) Para. 1 of Article 2 in the BULGARIAN agreement.

48) This is actually the case with respect to the agreements with POLAND (1963) and the UNITED KINGDOM which specify only direct terminating services between terminal points in each of the respective territories.

49) AUSTRIA, MALTA, and PORTUGAL.

50) POLAND (1963), the UNITED KINGDOM, BULGARIA, and SPAIN.

additional provisions to the general clause drafted in a wording similar to or identical with item (c) of the BULGARIAN Article quoted above.

The agreement with POLAND (1963) accords the designated airlines of the contracting parties expressly the right to serve any intermediate point on the agreed routes [51], or to extend their services to any point beyond the territory of the other contracting party. No commercial rights may, however, be exercised between such points and the territory of the other contracting party. The MALTHESIAN agreement accords each contracting party, subject to similar exclusion of the commercial rights, the right to exercise scheduled traffic between its territory and any intermediate stop or point beyond. It would thus appear that, regarding the optional intermediate and beyond points, both national third-country traffic and extra-partes third country traffic may be exercised under the former agreement but only national third-country traffic under the latter.

In the USSR (1972) agreement, the general grant of the rights is made on the lines of the two opening sentences of Article 1 of the ECAC/SC. Under the specification-of-rights clause in Part II of Annex I to the agreement, the second, the third and the fourth freedoms are accorded directly but the first [52] and the fifth freedoms only subject to agreement between the aeronautical authorities of the contracting parties. The points for non-commercial technical stops in the territory of the grantor-state shall also be agreed upon between the said authorities. Furthermore, the right to carry international

---

51) Points in Finland - Warsaw, and points in Poland - Helsinki respectively, in both directions.

52) The right to fly across the territory of the grantor-state is subject to the condition that the airline designated by the other contracting party shall make at least one inter-

./.

traffic across the territory of the grantor-state between points in the territory of the contracting party designating the airline and points in third countries is distinctly accorded 53). In this specific transit right, the right to stop over at points in the territory of the grantor-state may be included upon agreement between the aeronautical authorities of the contracting parties.

Apart from certain variations in wording, the grant-of-rights clause in the agreement with the GERMAN DEMOCRATIC REPUBLIC differs from the BULGARIAN Article quoted above in that the fifth freedom is granted separately from the third and the fourth freedoms, and in the grant of the transit rights. The fifth freedom clause refers to stops made in the territory of the grantor-state for the purpose of putting down and taking up international traffic coming from or destined for the specified points outside the territories of the contracting parties. Of the transit rights the second freedom is granted in the usual wording with respect to the agreed services. In an additional clause, however, the first and the second freedoms are accorded to the designated airlines with respect to the operation of international scheduled services, that is to say even other than the agreed services. Evidently, this exceptional arrangement is called for by the circumstance that the GDR is not a party to the Transit Agreement.

In all of the ordinary Finnish bilateral air transport

./. mediate landing in the said territory, unless otherwise agreed upon between the aeronautical authorities of the contracting parties. A contrario, this would mean that normally all points except one may be omitted in the territory of the grantor-state.

53) In other words, the right to exercise beyond-point national third-country traffic is here expressly mentioned.

agreements, the commercial rights are expressly granted for the carriage of international traffic in passengers, cargo and mail. In addition to the three components of traffic, baggage is expressly mentioned in some agreements [54]. Given the close connection between the carriage of passengers and their luggage, however, it is to be presumed that even in the absence of an express mention the carriage of luggage also is allowed [55].

With only one exception [56], the clauses governing the carriage of third-country traffic link the embarkation and disembarkation thereof to the territory of the grantor-state. Of the various classes of third-country traffic thus only fifth-freedom third-country traffic is included, while national third-country traffic and extra-partes third-country traffic are left outside. But as pointed out by Cheng [57], it should nevertheless be presumed that the designated airlines may carry also the two categories of traffic not specifically included. The FRENCH clause quoted above [58] does not establish the link between the taking up or putting down of traffic and the territory of the grantor-state. Thus all streams of traffic are covered by that clause. The specific transit clause in the USSR (1972) agreement comprises exclusively beyond-point national third-country traffic. It would seem evident, however, that the said clause serves merely the purpose of regulating the stopover right ancillary thereto. Therefore, the circumstance that extra-partes third-country traffic has left without express mention should not be interpreted restrictively so as to deprive the designated airlines of the right to carry also

---

54) The USSR (1955-superseded), and POLAND (1963).
55) See Cheng, op.cit., p. 312.
56) FRANCE.
57) Cheng, op.cit., p. 308.
58) Supra p. 147.

this category of traffic [59].

The reference to international traffic to be found in all the ordinary Finnish bilaterals would 'per se' exclude cabotage. Beginning with HUNGARY, however, all the more recent agreements lay down a general provision for the exclusion of cabotage. In this respect, the stopover clause in the USSR (1972) agreement serves a useful purpose, because carriage of stopover traffic between two or more stopover points in the territory of the grantor-state would otherwise be excluded by the clause prohibiting cabotage.

(v) Modes of Route Exchange.

Depending on underlying economic and/or political considerations, various modes of route exchange may be applied [60]. According to Temmes [61], at times the negotiation of the Finnish bilateral air transport agreements has followed purely the line of trading commercial air rights for commercial air rights, while at other times certain questions of general trade policy or general politics also have been involved. An examination of the route schedules in the ordinary Finnish bilateral air transport agreements soon discloses that the overwhelming majority thereof are based on the method of double

---

59) Anterior-point and intermediate-point national third-country traffic are not included in the route-pattern and need thus no mention.

60) Loy enumerates several possible modes of route exchange:
(a) Trading of commercial air rights for commercial air rights on the basis of an equitable exchange of values;
(b) Trading of commercial air rights as part of an overall bilateral exchange of commercial products;
(c) Trading of air transport rights for explicit or implicit political or other non-commercial benefits, either aviation related or non-aviation related;
(d) Route exchange on the basis of visual reciprocity:
(i) Double tracking;
(ii) Equal number of intermediate and beyond points;
(iii) Equal number of similar looking routes for each country;
(e) Route exchange in terms of most favoured nation

./.

tracking, that is to say the both parties have the same route, or on some other closely related branch of visual reciprocity [62]. The agreement with SWEDEN and the modifications thereto accord to Finland one to three routes in excess to the Swedish routes. The HUNGARIAN agreement, though providing two alternative double tracked routes for each of the parties, could in actual practice make an exception of the rule if the parties would chose to operate different alternatives. The routes specified in the agreement with the GERMAN DEMOCRATIC REPUBLIC show no traces of visual reciprocity:

The Finnish route: Finland - Berlin/Schönefeld - and beyond to not more than two of the following points: Prague, one point in Yugoslavia except Beograd and Zagreb, Athens, Istambul, in both directions.

The GDR route: The German Democratic Republic - one point in Denmark or Sweden - Helsinki - one or more points beyond Finland, in both directions.

Having regard to all relevant factors, it would appear that visual reciprocity alone cannot guarantee an equitable exchange of economic benefits with the exception, perhaps, of short-stage direct services between the neighbouring countries Finland and Sweden. Given the fifth freedom rights generally

---

./. treatment;
(f) Route exchange based on overall bargaining strength.
-For more details, see Loy, "Bilateral Air Transport Agreements: Some Problems of Finding a Fair Route Exchange", McWhinney, Ed., The Freedom of the Air, 1968, pp. 176-179. See also Loy's discussion of the computation of the route values, ibid., pp. 179-189, and the remarks made by Wassenbergh, Aspects ..., pp. 39-40.

61) Temmes' interview.

62) Equal number of intermediate points (e.g., SWITZERLAND), or beyond points (e.g., SWEDEN as modified in 1962: the Finnish route Helsinki - Stockholm - Oslo; the Swedish route Stockholm - Helsinki and beyond). - Equal number of similar looking routes (e.g., SWITZERLAND as modified in 1967).

exchanged in the Finnish bilateral air transport agreements and the generally superior traffic generating potential of the co-parties of Finland, it would seem, however, that considerably greater economic benefits have been gained by Finland in the route exchange than traded away by her. In this respect it would perhaps suffice to recall the Finnair services to New York and to the capitals of many major European states. The fact that reciprocal services accorded under the bilateral agreements have not been operated to Finland by all of the foreign states parties to the agreements would work further in favour of Finland. On the other hand, the consequences of the issues of general trade policy and general politics admittedly involved in some negotiations have so far not been made public. Furthermore, the confidential memorandums of understanding not unusually attached to the Finnish agreements and the pooling arrangements between the designated airlines would, for the time being, render impossible any reliable valuation of the economic net result of each route exchange. Thus the balance sheet of the Finnish route exchange still remains obscure.

(b) Frequency and Capacity Clauses.

Next to the exchange of routes and rights, the regulation of capacity is of cardinal importance in securing the establishment of the agreed services on a basis of equality of opportunity, and a sound and economical operation thereof.

The term "capacity", though frequently applied, is defined nowhere in the bilateral air transport agreements concluded by Finland. Therefore, we have to lend a definition from abroad:

"The term 'capacity' in relation to an aircraft means the payload of that aircraft available on the route or section of a route.

The term 'capacity' in relation to a specified air service means the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and route or section of a route." 63)

For the purpose of regulating capacity, the term has to be understood in the meaning expressed in the latter paragraph quoted above unless otherwise indicated or implied.

In bilateral practice of states, two principal modes for the regulation of capacity have developed. On the one hand, general principles, supplemented by more particular criteria, may be formulated for the provision of capacity, subject to ex post facto review 64). On the other hand, the capacity to be offered may be fixed by predetermination which may be done either directly in the agreement or, under principles and rules laid down therein, by agreement prior to the inauguration of the agreed services.

Some of the simplified Finnish bilateral air transport agreements provided that the particular conditions for the operation of the agreed services be agreed upon between the competent authorities of the grantor-state and the airline of the other contracting party operating the services 65). The FRENCH (S) agreement referred to a Protocol concluded between the French and the Finnish airlines on the operation of the agreed route. Review of the allocation of capacity was also foreseen provided the French company would resume their services in Scandinavia. In the BRITISH (S-1954) agreement, capacity was regulated by means of a maximum frequency on a weekly basis 66), subject to review in due course. As evident from the sparse

---

63) AFGHANISTAN-PAKISTAN (1957), Article XIII (D) and (E), as reproduced in the Handbook on Capacity Clauses in Bilateral Air Transport Agreements, ICAO Circular 72-AT/9, 1965, p. 5.

64) This is the famous formula introduced originally in the Bermuda Agreement of 1946.

65) The UNITED STATES (S) and the UNITED KINGDOM (S-1953). In

./.

provisions referred to above, all the simplified agreements of Finland were based essentially on predetermination of capacity.

Almost all of the ordinary bilateral air transport agreements entered into by Finland formulate more or less elaborate clauses for the provision of capacity. Only from the agreements with ICELAND and LUXEMBOURG the regulation of capacity is completely omitted.

(i) General Principles Governing Capacity.

A majority of the Finnish bilateral air transport agreements formulate general principles as to the regulation of capacity. They deal with adjustment of transport capacity to traffic requirements, opportunity to operate agreed services and safeguarding of mutual interests on common routes.

The basic principle introduces the qualification that the air transport facilities available to the travelling public, that is to say the capacity offered, shall bear a close relationship to the requirements of the public for such transport [67]. It would be inexpedient, however, to operate air services in such a manner that the capacity offered would be almost precisely related to the traffic offering [68]. Therefore, in some of the more recent agreements adopting this principle, the qualification of reasonable load factor is superimposed on the criterion of

---

./. the latter, reference was made to "the arrangement of the traffic and the timetables" as the features to be agreed upon.

66) "... not exceeding a frequency of three services per week ...".

67) With slight variations in wording, this principle, originally introduced in the Bermuda Agreement, is expressly adopted in the agreements with the NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, the UNITED KINGDOM, AUSTRIA, MALTA, ROMANIA and SPAIN.

68) It has been maintained, inter alia, that in operating scheduled air services an overall load factor of 60 or 70

./.

close relationship [69]. Under this conception, first a reasonable volume of capacity shall be allocated to the usually unsold part of the payload. The relevant comparison shall then be made between the remainder of the capacity and the traffic offering. But with a view to the general acceptance of the reasonable load factor approach in scheduling and operating regular air services, it would appear that the criterion of a close relationship should be similarly understood even in the absence of an express provision to that effect [70]. The sole general principle governing capacity to be found in the agreement with the USSR (1972) provides that the capacity offered by the designated airlines on the agreed services shall be "reasonably related to the requirements for transportation on these services" [71].

Another principle of a general nature prescribes that there shall be fair and equal opportunity for the airlines of both contracting parties to operate the agreed services [72]. This principle is confined to the specified routes between the territories of the contracting parties in all other agreements containing the clause except the agreement with FRANCE in which it is applied generally to the "agreed services" [73]. Because all the routes granted in the FRENCH agreement, however, are between France and Finland, the different wording does not

---

./. per cent of their capacity should not be exceeded. - See Adriani, "The 'Bermuda' Capacity Clauses", 22 JALC (1955), p. 409.

69) The UNITED KINGDOM, AUSTRIA, MALTA, ROMANIA and SPAIN.

70) Adriani, op.cit., p. 409.

71) The USSR (1972), Article 3 (1).

72) With slight variations in wording, this clause is included in the following agreements: the NETHERLANDS, the UNITED STATES, SWITZERLAND, FRANCE, the UNITED KINGDOM, AUSTRIA, MALTA, PORTUGAL, ROMANIA, the GDR and SPAIN. - The FRENCH formula which differs most from the general pattern stipulates that the airlines designated by each contracting

./.

amount to an actual exception from the rule.

The same principle would seem to be included in the following clause in the agreement with YUGOSLAVIA:

"A fair treatment shall be accorded to the airlines of both Contracting Parties in respect of operation of the agreed services ..." 74) .

Fair and equal opportunity may not necessarily be identical with equal allocation of capacity. Thus the agreement with the USSR (1955-superseded) which grants the rights to operate the agreed services "in equal measure" 75), would not fall within this category of agreements. But even otherwise a clear distinction should be made between the opportunity to operate the agreed services and the share in the operations 76). The principle discussed cannot be presumed to require that the designated airlines should necessarily take equal shares in the traffic, because this would only mean that the operational ability of the weaker and less active carrier would determine the capacity to be offered by the carrier of the other contracting party. Interpreting the clause, the emphasis must thus be laid on the word "opportunity".

Numerous agreements 77) introduce a general principle developed for the prevention of excessive competitive practices between the airlines concerned. Starting with a formula almost identical with that adopted originally in the Bermuda Agree-

---

./. party "shall be ensured just and equitable treatment so that they may enjoy equal opportunities in the operation of the agreed services". Article XIV (2), UNTS translation, Volume 498, p. 311.

73) Ibid.

74) YUGOSLAVIA, Article 9 (3).

75) The USSR (1955-superseded), para. 1 of Article 1.

76) Adriani, op.cit., p. 409.

77) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, FRANCE, the UNITED KINGDOM, MALTA, PORTUGAL, ROMANIA and SPAIN.

ment [78], the description of this principle in the subsequent Finnish bilaterals shows considerable variation in wording but no changes in substance. Some of the most recent agreements describe the principle as follows:

"In operating the agreed services, the airline(s) of each Contracting Party shall take into account the interests of the airline(s) of the other Contracting Party so as not to affect unduly the services which the latter provide(s) on the whole or part of the same routes." [79]

(ii) Capacity Criteria.

The function of capacity is to accommodate the traffic offering. Thus the criteria for the regulation of capacity must necessarily be related to the respective traffic streams on the specified routes. In connection with criteria other than total-route traffic, which already includes all the individual traffic streams on that route, supplementary capacity criteria may be used in order to accommodate traffic streams not embraced by the primary traffic criterion [80].

A majority of the ordinary bilateral air transport agreements concluded by Finland which regulate capacity, lay down particular criteria for the actual provision thereof. With the exception of POLAND (1963) and PORTUGAL, all of these agreements apply national traffic as the primary capacity criterion. Regarding the supplementary capacity criteria, however, more variation exists.

Total-route capacity criterion is applied only in the agreement with POLAND (1963) which provides that "(t)he designated airlines shall offer the capacity adequate to the current

---

78) The NETHERLANDS and the UNITED STATES introduce this Bermuda-like formulation.

79) Article 7 (2) in the agreements with the UNITED KINGDOM, MALTA, PORTUGAL and ROMANIA; Article 8 (2) in SPAIN which refers more particularly to the "designated airline" of the other contracting party. Under the agreements with PORTUGAL and SPAIN, each contracting party may designate only one airline; consequently, the references to the airlines are

./.

and reasonably anticipated requirements for international carriage on the specified routes." [81] Apart from the routes directly specified in the agreement, optional intermediate and/or beyond points for the carriage of national third-country and extra-partes third-country traffic also may be included under this agreement. The wording of the capacity clause would appear to include allowance of capacity for this optional traffic.

In the agreement with PORTUGAL, inter-partes traffic forms the primary capacity criterion:

"The capacity to be provided by the designated airlines for the purpose of putting down and taking up international traffic in passengers, cargo and mail in accordance with the appropriate Part of the Annex shall be maintained in equilibrium with the traffic requirements between the terminals of the specified route." [82]

Additional capacity may be offered under the PORTUGUESE agreement whenever an agreed service is operated via intermediate points and/or to points beyond [83], subject to the agreement between the competent aeronautical authorities. The said authorities may also establish the conditions under which traffic rights other than the third and fourth freedoms may be exercised [84] including, as it would appear, the determination of the supplementary capacity criterion.

The agreements applying national traffic as the primary

./. in the singular form in these two agreements.

80) For more details, see Cheng, op.cit., pp. 415 - 421.

81) POLAND (1963), Article 5 (1). No general principles as to capacity are incorporated in this agreement.

82) PORTUGAL, Article 7 (3). - Out of the traffic rights, only the third and fourth freedoms are granted directly in the agreement (Parts I and II of the Annex).

83) PORTUGAL, Article 7 (9).

84) PORTUGAL, Article 7 (9) and Annex, Part III (2).

capacity criterion [85] follow more or less closely the formulation adopted in this respect originally in the Bermuda Agreement. While the agreements with the NETHERLANDS and the UNITED STATES contain a clause essentially identical with the Bermuda stipulation, in the agreement with CZECHOSLOVAKIA the following wording with no change in substance is adopted:

"Services provided by the designated airlines shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic." [86]

In some more recent agreements [87], however, certain adjustments have been made also in substance. First, the idea of promotional traffic [88] is introduced by making express allowance for the reasonably anticipated volume of national traffic. Second, the description of the national traffic criterion has been improved so as to correct the inherent deficiency in the Bermuda phraseology of excluding national traffic from third countries to which there is no service from the flag-state of the carrier [89]. The primary capacity clause thus modified reads, for instance, in the agreement with the UNITED KINGDOM as follows:

"The agreed services provided by the designated airlines of the Contracting Parties ... shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which had designated the airline." [90]

---

85) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, FRANCE, the UNITED KINGDOM, AUSTRIA, MALTA, ROMANIA and SPAIN.

86) CZECHOSLOVAKIA, Section III (c) of the Annex.

87) FRANCE, the UNITED KINGDOM, AUSTRIA, MALTA, ROMANIA and SPAIN.

88) For this term, see Adriani, op.cit., pp. 408-409.

89) See also Cheng, op.cit., p. 419.

90) Article 7 (3).

In connection with national traffic as the primary capacity criterion, third-country traffic other than national third-country traffic is generally used as the supplementary capacity criterion. In this respect, the agreements with the NETHERLANDS and the UNITED STATES reiterate the clause to be found in the Bermuda Agreement. For the purpose of comparison with subsequent agreements the clause as adopted in the two Finnish treaties may be quoted here in full:

"... The right to embark or to disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the present Annex shall be applied in accordance with the general principles of orderly development to which both contracting parties subscribe and shall be subject to the general principle that capacity should be related:

a) to traffic requirements between the country of origin and the countries of destination;

b) to the requirements of through airline operation; and

c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services." 91)

The corresponding clauses contained in the agreements with SWEDEN, NORWAY, and DENMARK (terminated) are essentially identical with the above quotation with the minor exception, however, that the word 'and' underlined in the latter is replaced with the word 'or' which certainly makes more sense 92)

Despite certain variations in wording, the corresponding clauses contained in the agreements with CZECHOSLOVAKIA and SWITZERLAND nevertheless are essentially uniform with the original formula quoted above. As to the 'and/or' variation the former agreement uses the word 'and' while in the latter the word 'or' has been preferred. The CZECHOSLOVAK agreement goes on to state

---

91) Underline supplied. - The NETHERLANDS and the UNITED STATES, Annex, Section VII (in both of the agreements).

92) The translations of these three agreements in the UNTS are incorrect at this specific point. In the original texts, the Finnish word 'tai' and the Swedish, Norwegian and Danish word 'eller', both equivalent to 'or', are used.

expressly that the traffic requirements of the area through which the airline passes shall be determined after taking account of "the degree to which local and regional services satisfy the existing traffic requirements" 93). In the SWISS agreement, the sub-paragraphs (a) and (b) of the original clause quoted above are replaced with the following text:

"(1) A la demande de traffic en provenance ou à destination du territoire de la partie contractante qui a désigné l'enterprise ou les enterprises;

(2) Aux exigences d'une exploitation économique des services convenus;" 94).

Although these drafting variations in the CZECHOSLOVAK and SWISS agreements would hardly mean any change in substance, they may have the advantage of being more explicit.

As pointed out by Cheng 95), the Bermuda-type formulation of the clause in question involves the inherent contradiction that national third-country traffic, which already is included in the primary capacity criterion, will be taken into account twice in computing the total amount of capacity to be offered. Yet this anomaly has been removed in the subsequent agreements with the UNITED KINGDOM, MALTA, ROMANIA and SPAIN which apply the following wording:

"... carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of States other than that designating the airline ..." 96).

This formulation thus accommodates exactly the traffic which is not included in the primary capacity criterion, that is to say extra-partes third-country traffic and fifth-freedom third-country traffic.

With respect to sub-paragraphs (a) to (c) in the

---

93) CZECHOSLOVAKIA, Annex, Section III (d)(3).
94) SWITZERLAND, Article 3(d)(1) and (2) as reproduced in the As.kok.sop.sarja, No. 9/1959, p. 79. - The UNTS translation reads:
" (1) The requirements of traffic coming from or destined for

./.

Bermuda-type clause quoted above, the agreements with the UNITED KINGDOM, MALTA and SPAIN lay down the following variation:

" (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;

(b) traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and

(c) the requirements of through airline operation." 97)

Sub-paragraph (a) has thus been brought into line with the modification to the description of the primary capacity criterion introduced in the same agreements 98).

The ROMANIAN agreement reiterates the above clause identically in other respects but inserts before the term 'through airline operation' in sub-paragraph (c) the qualifying word 'economical' 99).

While all the other Finnish bilateral air transport agreements incorporating a Bermuda-type supplementary capacity clause provide for taking account of local and regional services in general, the four agreements now in question attache this condition to such services only to the extent to which they are established by airlines of states comprising the area. On the other hand, all of these states must be considered. The change of order between sub-paragraphs (b) and (c) as compared with the original Bermuda formulation suggests, as Cheng has put it in another connection 100), that the parties intend to establish a

---

./. the territory of the Contracting Party which designated the airline or airlines;
(2) The requirements of economic operation of the agreed services;"

95) Op.cit., p. 420.

96) Article 7(3) in the UNITED KINGDOM, MALTA and ROMANIA; Article 8(3) in SPAIN.

97) Article 7(3) in the UNITED KINGDOM and MALTA; Article 8(3) in SPAIN.

98) Supra p. 161.

99) Article 7(3) in ROMANIA

100) Op.cit., p. 422.

very rigid hierarchial order in this particular respect.

Under the agreement with FRANCE, the carriage of fifth-freedom third-country traffic is allowed within the limits of the primary capacity based on national traffic:

"In addition, the airlines designated by each Contracting Party may, within the limit of the over-all capacity stipulated in the preceding paragraph, satisfy the requirements of traffic between the territories of third States lying on the agreed routes and the territory of the other Contracting Party." 101)

Extra-partes third-country traffic is thus excluded. But even the fifth-freedom third-country traffic may be carried on a fill-up basis only, within the limit set by the primary capacity criterion. The agreement goes on to provide that 'additional capacity over and above that mentioned in paragraph 1 above may be provided whenever it is warranted by the traffic requirements of the countries affected by the said services' 102). The 'capacity mentioned in paragraph 1' could hardly be interpreted to mean anything else than the total capacity adapted to the requirements of national traffic. It would appear, therefore, that additional capacity for the carriage of fifth freedom traffic may not be provided in parallel with the primary capacity even though the traffic demands of the countries affected by the said services would per se require increased fifth freedom capacity. In other words, the provision relative to additional capacity does not intend to modify the original inclusive nature of the fifth freedom traffic.

The agreement with AUSTRIA, while applying third-country traffic other than national third-country traffic as supplementary

---

101) FRANCE, sub-paragraph 2, Article XV(1). - UNTS translation.

102) FRANCE, Article XV(2). - Paragraph (1) deals with the primary capacity criterion and with the fill-up fifth-freedom third-country traffic in sub-paragraphs 1 and 2 respectively.

capacity criterion on the lines of, for instance, the agreements with the UNITED KINGDOM and MALTA, introduces certain particular qualifications as to the relation between the different traffic streams:

" 4. Both Contracting Parties agree to recognize that fifth freedom is complementary to the traffic requirements on the routes between the territories of the Contracting Parties, and at the same time is subsidiary in relation to the traffic requirements of the third and fourth freedom between the territory of the other Contracting Party and a country on the route." 103)

In computating the total capacity to be offered by the designated airlines of either contracting party under the AUSTRIAN agreement, the following limitations should thus be observed:

(1) The capacity to be allocated to fifth freedom traffic should be less than the capacity relative to national inter-partes traffic. Furthermore, its should not exceed the fill-up level regarding the capacity offered on the same stages by the designated airline(s) of the other contracting party. Of these two limitations the lesser one would determine the maximum capacity applicable to the fifth freedom carriage.

(2) Would however the sum total of the maximum capacity for fifth freedom traffic arrived at under item (1) above and of the capacity for extra-partes third-country traffic upon which no specific limitations have been imposed, equal or exceed the capacity reserved under the primary capacity criterion for national traffic, it should then be reduced respectively so as not to deprive national traffic of its primary nature. As the distribution of the two concurrent traffic streams within the limits of the supplementary capacity would seem to have no practical consequences, it may be left to this short remark.

---

103) AUSTRIA, Article 4(4). - Underlines supplied.

The operation of the qualifications referred to above might be illustrated as follows:

Capacity Criterion	Qualifications as to the Distribution of Capacity	
	Special	General
I. PRIMARY: National Traffic (a) Inter-Partes (b) Third-Country	 NIL NIL NIL	Minimum Amount: More than 50 per cent of total capacity
II. SUPPLEMENTARY: Third-Country Traffic Other Than National	NIL	Maximum Amount: Less than 50 per cent of total capacity
(a) Extra-Partes Third-Country Traffic	NIL	Would the sum (a) + (b) equal or exceed the amount of national traffic, it must then be reduced respectively
(b) Fifth-Freedom Third-Country Traffic	Maximum Amount (whichever is lesser of the following): (1) Less than the capacity for the traffic under I.(a). (2) Fill-up amount to the capacity offered by the designated airline(s) of the other contracting party for the carriage of 3rd and 4th freedom traffic on the same stages	Would the sum (a) + (b) equal or exceed the amount of national traffic, it must then be reduced respectively

It should be finally pointed out that, in connection with the supplementary capacity criterion, reference to the general principles of orderly development and the general conditions incorporated in sub-paragraphs (a) to (c) of the Bermuda-type clause have been completely omitted from the AUSTRIAN agreement.

(iii) Distribution and Control of Capacity.

As mentioned before, some of the Finnish bilateral air

transport agreements do not at all contain provisions on capacity. But even with respect to agreements of this kind, the Finnish aeronautical authorities may regulate capacity through a back door. Under the 1968 Aviation Order [104], any holder of a Finnish licence for scheduled air services shall, regardless of the nationality of the holder, submit their time-tables and route schedules, and any modifications thereto to the National Board of Aviation for approval. Pursuant to this arrangement, the Board may, at least to some extent, unilaterally regulate the capacity to be provided by a foreign designated carrier. Actually, a similar unilateral method is adopted in the agreement with BULGARIA as the sole means of capacity regulation. Under this agreement, "(t)he designated airlines of either Contracting Party shall submit to the aeronautical authorities of the other Contracting Party for approval ... their complete timetable of the services specifying the frequencies and the type of the aircraft to be used, as well as other similar information relating to the operation of the agreed services." [105] The information thus obtained would provide all particulars for the computation of the capacity offered [106]. Furthermore, this information shall be submitted in advance for each traffic period, and the respective authorities shall also be informed of all modifications of the data [107]. A unilateral mechanism for the determination and continuous control of capacity is thus established.

In the agreement with HUNGARY, the capacity to be offered is determined in the agreement itself. This has been done

---

104) Article 91(2). - See also supra p. 50.

105) BULGARIA, Article 4.

106) That is to say routes, type of aircraft, different seating and cargo arrangements, and frequencies.

107) BULGARIA, Article 4.

by prescribing the maximum frequency on a weekly basis [108]. Flights outside the normal schedule are subject to special permission according to the pertinent national regulations [109].

The agreements with FRANCE, AUSTRIA, PORTUGAL and the GERMAN DEMOCRATIC REPUBLIC apply a system of predetermination of capacity by agreement between the governments. The FRENCH agreement lays down rules as to the determination of total capacity and the distribution thereof to be followed by the aeronautical authorities of both countries in the operation of the agreed routes. An agreement between the said authorities is thus merely implied. The AUSTRIAN and the PORTUGUESE agreements provide identically more in point that "the capacity to be offered and the frequency of the services on the specified routes shall be discussed, agreed upon and reviewed from time to time between the aeronautical authorities of the two Contracting Parties." [110] Under the PORTUGUESE agreement, the additional capacity to be offered whenever an agreed service is operated via intermediate points and/or to points beyond, shall likewise be agreed upon between the said authorities [111]. Both the FRENCH and the PORTUGUESE agreements insist on an equal distribution of capacity, as far as possible, between the designated airlines [112]. In the former, there is also reiterated the condition already incorporated in the capacity clause that "the total capacity placed in operation on each route shall be adapted to reasonably foreseeable requirements"[113]. The AUSTRIAN agreement gives no such particulars in addition to its main capacity clause. Under the agreement with the GDR, the capacity shall be agreed

---

108) HUNGARY, Annex, Section IV: "The frequency of flights on these routes of the designated airlines of either Contracting Party shall altogether not exceed a maximum of two flights a week."
109) HUNGARY, Article 4.
110) AUSTRIA, Article 4(5); PORTUGAL, Article 7(5).
111) PORTUGAL, Article 7(9).
112) FRANCE, Article XVI(2); PORTUGAL, Article 7(4).
113) FRANCE, Article XVI(1).

upon by the aeronautical authorities of the contracting parties "in taking into account their mutual interests" [114]. But furthermore, the timetables of the agreed services as well as the types of aircraft with the seat and cargo capacity of each type to be used shall be submitted by the designated airlines for approval to the said authorities prior to the commencement of the operations [115].

Generally, the capacity thus determined and distributed must not be exceeded by the respective airlines of their own. Under the FRENCH and PORTUGUESE treaties, however, the designated airlines may, in the event of unforeseen traffic demands, agree among themselves on "appropriate measures to meet such temporary increase in traffic" [116] or to "such temporary increases of capacity as are necessary to meet the traffic demand" [117]. In this respect, the FRENCH agreement seems to be more flexible as the measures to be taken are not necessarily confined to an increase in capacity. Furthermore, while the same agreement embraces "unforeseen or temporary" increase in traffic, the PORTUGUESE agreement confines the application of the exceptional measures to "unexpected traffic demands of a temporary character". Thus the FRENCH agreement seems to involve even foreseeable temporary increase in traffic, such as seasonal or otherwise regular peaking, as well as unforeseen traffic growth of a more permanent nature, which are excluded under the PORTUGUESE agreement. On the other hand, under the FRENCH agreement the designated airlines shall immediately report on the agreement thus arrived at to the aeronautical authorities of their respective countries which may consult together if they see fit. The PORTUGUESE agreement contains no equivalent to

---

114) The GDR, Article 5(2).
115) Ibid., Article 6.
116) FRANCE, Article XVI(1)(2).
117) PORTUGAL, Article 7(6).

this provision.

These two agreements regulate further the transfer of capacity between the contracting parties in the event either of them would not wish to use all or part of the capacity allocated to it [118]. The transfer shall be made by agreement entered into between the contracting parties under the PORTUGUESE, and between their aeronautical authorities under the FRENCH treaty. The rights thus transferred may be recovered at any time, subject to a reasonable advance notice. Under an express provision in the PORTUGUESE treaty, the capacity transferred may be recovered, within the discretion of the party who had transferred the rights, even in part. Nothing would seem, however, to speak against a similar interpretation of the FRENCH clause which is silent in this particular respect.

A further feature of interest in the same two treaties is the role of the designated airlines in the operation of capacity. Thus under the FRENCH treaty the conditions of operation of the agreed services shall be agreed upon between the said airlines. Such an agreement, based on the shares in capacity allocated, shall specify the frequency of services, the organisation of time-tables and the general conditions of operation [119]. The PORTUGUESE agreement provides in rather general terms for consultations between the airlines for the purpose of arriving at a "formula of cooperation" on a specified route or part of it [120]. Apart from the operation of capacity, the formula of cooperation may contemplate pooling of the services. While the FRENCH stipulation does not require that the routes are served by the airlines of the both contracting parties, the PORTUGUESE clause is expressly confined to a specified route or part of it

---

118) FRANCE, Article XVI(3); PORTUGAL, Article 7(7).
119) FRANCE, Article XVI(4).
120) PORTUGAL, Article 7(8).

thus served. In both the FRENCH and the PORTUGUESE treaties the agreement or formula thus arrived at shall be submitted for approval to the aeronautical authorities of both countries concerned [121]. Though evident without mention, the FRENCH clause nevertheless states expressly that any changes in such agreements shall be similarly submitted for approval.

Under the agreement with AUSTRIA, the designated airlines of each contracting party shall submit for approval to the aeronautical authorities of the other party not later than thirty days prior to the inauguration of services on the specified routes the flight schedules and the types of aircraft to be used [122]. This applies likewise to later changes. But in due time before the submission of the flight schedules, the airlines of both parties "shall use their best efforts to agree on the matters of capacity to be provided and the frequency of the services to be operated as well as the timetables concerned" [123]. Furthermore, a summary of the discussions, approved by both airlines concerned, shall be transmitted to the aeronautical authorities of both parties [124]. The discussions and endeavours to reach an agreement seem to be conducted between and by the airlines even with respect to routes or stages operated solely by the designated airlines of one party. Would the airlines fail to reach an agreement, the summary of discussions would provide the aeronautical authorities with useful information for their decisions and agreements.

Predetermination of capacity may also be made by agreement between the designated airlines. The agreements with CZECHOSLOVAKIA, the USSR (1955-superseded), POLAND (1963) and

---

121) FRANCE, Article XVI(5); PORTUGAL, Article 7(8).
122) AUSTRIA, Article 4(6). - In special cases, the time limit may be reduced by agreement between the said authorities.
123) AUSTRIA, Article 4(7).
124) Ibid.

the USSR (1972) represent this type of predetermination. In the USSR (1955-superseded) agreement which grants the rights to the contracting parties "in equal measure" [125] there is provided that "(a)ll technical and commercial questions relating to flights by aircraft, in particular the fixing of flight schedules ... shall be dealt with in a separate agreement between Aero O/Y and Aeroflot" [126]. While the CZECHOSLOVAK agreement speaks in this respect of "(t)he capacity for routes where airlines of both Contracting Parties operate" [127], the POLISH (1963) clause refers to "(t)he conditions of operating the agreed services, and especially those relating to the capacity and frequency of services, the schedules as well as the conditions of commercial and technical cooperation" [128].

The agreement between Aero O/Y and Aeroflot seems to have been good without any governmental approval. The corresponding arrangements reached under the agreement with POLAND - (1963) are, however, subject to the approval of the aeronautical authorities "if it is required under their national regulations" [129]. The agreement with CZECHOSLOVAKIA, under which these arrangements are always "subject to the approval of the competent aeronautical authorities of both countries" [130], goes on to provide that, in the event of disagreement between the airlines, the competent aeronautical authorities of the contracting parties shall endeavour to reach a satisfactory agreement [131]. And, in the last resort, recourse shall be had to the general procedure for arbitration under the agreement [132]. The SOVIET (1972)

---

125) The USSR (1955-superseded), para. 1 of Article 1.
126) Ibid., para. 4, Article 2. - The airlines are designated directly in the agreement.
127) CZECHOSLOVAKIA, Annex, Section V.
128) POLAND (1963), Article 5(2).
129) Ibid., Article 5(3).
130) CZECHOSLOVAKIA, Annex, para. 1 of Section VI.
131) Ibid., Annex, para. 2 of Section VI.
132) CZECHOSLOVAKIA, Annex, para. 3 of Section VI.

clause takes the agreement between the designated airlines for granted: inter alia "all questions relating to commercial co-operation, in particular the fixing of schedules, the frequencies, types of aircraft ... which have been agreed upon between the designated airlines", shall be submitted for approval to the aeronautical authority of the contracting party whose national laws and regulations so require [133].

As evident from the preceding discussion, a continuous control of capacity is rather a built-in mechanism in the systems involving predetermination of capacity either unilaterally, or by agreement between the governments. But even where the capacity is determined in the air transport agreements themselves, a control mechanism is normally included, or at least implied. Thus under the agreement with HUNGARY, "the designated airlines ... shall regularly and as well in advance as possible provide each other with timetables ... and other relevant information concerning their operation" [134].

Among the agreements based on predetermination of capacity by arrangement between the airlines, only the treaty with CZECHOSLOVAKIA provides expressly revision of capacity from time to time in accordance with the requirements of traffic [135]. In the absence of such express stipulation in other agreements, the review of capacity would be a matter of consultation and agreement under the general terms and conditions laid down therein.

In the Bermuda-type agreements, the control of capacity is, instead of a rigid system of predetermination, put into practical effect by providing for ex post facto review thereof

---

133) The USSR (1972), Article 3(3). - The airlines are even in this agreement directly designated.
134) HUNGARY, Article 5(1).
135) CZECHOSLOVAKIA, Annex, Section V.

on the basis of the relevant principles governing capacity. Among the Finnish bilaterals, only the agreement with the UNITED STATES contains a clause identical with the original Bermuda formulation. In this agreement, the control of capacity is specifically emphasized in the event of unilateral changes of intermediate points in third countries by either contracting party. Would the aeronautical authorities of the other party, having regard to the principles governing capacity, find the interests of their airline(s) prejudiced by the carriage by the airline(s) of the first contracting party of traffic between the territory of the second contracting party and the new point in the territory of a third country, the authorities of the two contracting parties shall consult with a view to arrive at a satisfactory agreement.

The treaties with the NETHERLANDS, SWEDEN, NORWAY, and DENMARK (terminated), however, do not contain any consultation clauses. This circumstance should certainly not be interpreted so as to exclude the review and control of capacity, because in the practice of states consultation is the basic procedure for ensuring the implementation of and satisfactory compliance with treaty provisions. This would be even more true in respect of the Nordic countries, having regard to the traditionally easy and frequent consultation and close cooperation between their respective authorities at almost all levels of bureaucracy.

Some of the more recent Bermuda-type agreements contain, in addition to an ECAC/SC-type general consultation clause, particular provisions intended to facilitate the exercise of capacity control. Thus the agreement with SWITZERLAND provides that, in the course of the consultations, the aeronautical authorities shall, in particular, take into account traffic statistics relating to the agreed services [136]. Furthermore,

136) SWITZERLAND, Article 11(a).

they shall supply each other, on request, with statistics indicative of the traffic on the agreed services [137]. The equivalent to the latter provision in the BRITISH and the MALTHESIAN agreements refers expressly to the purpose of reviewing the capacity provided on the agreed services [138]. The BRITISH clause stipulates more specifically that such statements of statistics shall include information required to determine the amount of traffic carried by the respective airlines on the agreed services and the origins and destinations of such traffic [139].

It should be noted in this connection that the much favored contemporary 'formulae of cooperation', such as pooling arrangements, between designated airlines of contracting parties tend to reintroduce predetermination of capacity even in Bermuda-type bilateral relations, thus rendering the famous Bermuda principles an empty shell [140]. Because normally these arrangements are not made public, a discussion in more detail thereof is, however, excluded.

(iv) Change of Gauge.

An examination of provisions governing capacity would hardly be complete without mentioning the change of gauge. This concept, introduced the first time in the original Bermuda Agreement [141], may be defined, for instance, as follows:

"(T)he term 'change of gauge' means the operation of one of the agreed services by a designated airline in such a way that one section of the route is flown by aircraft different in capacity from those used on another section" [142].

The conditions imposed upon the change of gauge already in the Bermuda Agreement have been followed more or less closely in subsequent bilateral air transport agreements. They could be enumerated as follows:

---

137) SWITZERLAND, Article 11(b).
138) Article 9 in both the BRITISH and the MALTHESIAN agreements.
139) The UNITED KINGDOM, Article 9.
140) Cheng, op.cit., p. 433.
141) Annex, Section V.
142) CANADA-PERU, February 18, 1954, Article I(d). - ICAO Reg.No. 1539; UNTS No. 5915, Volume 411, p. 63.

(a) The change must be justified by reason of economy of operation;

(b) The aircraft used on the section more distant from the terminal in the territory of the flag-state of the carrier must be smaller in capacity than those used on the nearer section; [143]

(c) The aircraft of smaller capacity shall operate only in connection with the aircraft of larger capacity and shall be scheduled to do so; and their capacity shall be determined with primary reference to this incident;

(d) There must be an adequate volume of through traffic;

(e) The normal capacity provisions shall govern all arrangements made with regard to change of gauge [144].

As pointed out by Adriani, the application of change of gauge has been relatively rare, probably due to the heavy costs connected with permanent stationing of aircraft in foreign countries and the difficulties in maintaining normal utilisation for such aircraft [145]. Thus far no change-of-gauge clause has been incorporated in the Finnish bilateral air transport agreements.

(c) Regulation of Tariffs.

Apart from securing the economic viability of the agreed services, the main function of bilateral regulation of tariffs would appear to be the establishment of rates and fares

---

143) The corresponding provision in certain other agreements is based on the distinction between the section on which less national traffic is carried by the respective airline and the other section. The smaller aircraft should operate on the former section. - E.g., CANADA-PERU, Article VI(c); CANADA-MEXICO, July 27, 1953, Article VI(II).

144) Later on, some additional conditions have been imposed upon the change of gauge.

145) Adriani, op.cit., p. 411.

at reasonable and uniform levels so as to promote economical air transport for the benefit of the travelling public and to eliminate the hazards of free rate competition.

The method most commonly applied in the contemporary regulation of international air tariffs is composed of rate fixing by the airlines through the machinery of the International Air Transport Association (IATA), subject to the approval of their respective governments [146]. In the bilateral air transport agreements, reference is frequently made to the IATA rate fixing machinery, but general principles and more specific rules as to the establishment and operation of tariffs form usually the backbone of the tariff clauses therein incorporated.

Among the simplified agreements concluded by Finland, only the two agreements with the United Kingdom did expressly mention the regulation of tariffs. Under the UNITED KINGDOM (S-1953) agreement, "the corresponding air transport tariffs as used by the other air transport companies maintaining service on this area and being members of the International Air Transport Association" should be applied by the British company operating the route. The UNITED KINGDOM (S-1954) agreement pro-

---

146) For the rate-fixing purposes of IATA, the Traffic Conferences Nos. 1, 2 and 3 are established with respect to specified areas which together cover the whole world. Traffic between those areas is dealt with in joint meetings of the Traffic Conferences concerned. Action on any matter concerning fares and rates may be taken only upon the unanimous affirmative vote of the members represented at any meeting. - Articles I, VI(1) and VII(1) of the Provisions for the Regulation and Conduct of the IATA Traffic Conferences, Act of Incorporation, Articles of Association, Rules & Regulations of International Air Transport Association, 1967, pp. 57, 61 and 63.

As mentioned before, the mediatorial role of the ECAC during the open rate situations caused by the failure to reach unanimous fares agreements at IATA Traffic Conferences has gained importance. - See supra p. 79.

Though most of the fares and rates proposals are adopted by the governments, many may also be modified before final implementation, or directly rejected. - See, for instance, Annual Report of the Council - 1974, ICAO Doc 9127, p. 20.

vided that "the relevant fares and rates charged should be in accordance with the relevant resolution of the International Air Transport Association". The difference between these two clauses would appear to be that while the former would have applied also in open rate situations, the latter would not. No further provisions as to the regulation of tariffs were incorporated in either of these two agreements. Under the UNITED STATES (S) and FRANCE (S) agreements, the regulations concerning tariffs may have been included in the conditions to be agreed upon between the United States airline and the Finnish authorities, or in the Protocol concluded between the French and the Finnish airline companies respectively.

Provisions relative to the regulation of tariffs [147] are included in all of the post-war ordinary bilateral air transport agreements of Finland with the exception, however, of the treaty with ICELAND which is completely silent in this respect. All of the treaties regulating tariffs lay down more or less elaborate procedures for the establishment of tariffs. With the exception of the agreements with the NETHERLANDS, the USSR (1955-superseded) and FRANCE, these treaties also formulate general principles to be followed in this respect.

The Tariff Agreement may have, to certain extent, complemented or replaced tariff clauses with respect to bilateral treaties concluded between Finland and other states parties to the said Agreement. In the five next subsections, however, the original tariff clauses in the respective bilateral agreements are focused upon. The implications of the relevant Articles of the Tariff Agreement in the contemporary bilaterals are

---

147) While the terms "fares and rates" or "rates" figure generally in the earlier agreements, the expression "tariff" appears to be established by the HUNGARIAN agreement and onwards.

thereafter examined separately in subsection (vi) below.

(i) Scope of Tariff Regulation.

Prior to the agreement with PORTUGAL, no definition of the term "tariff" or equivalents thereto was introduced in the Finnish bilateral air transport agreements. Some of the precedent agreements, however, provide for the establishment of the tariffs together with "the rates of agency commission applicable" [148]. Adhering to Article 2 (1) of the Tariff Agreement, the treaty with PORTUGAL and some subsequent agreements lay down the following definition:

"In the following paragraphs, the term "tariff" means the prices to be paid for the carriage of passengers, baggage and freight and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail." [149]

The agreements with the NETHERLANDS, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, the USSR (1955-superseded), SWITZERLAND, LUXEMBOURG, HUNGARY and FRANCE do not specify the scope of application of the tariff clauses which thus shall apply to all the agreed services. The agreement with the UNITED STATES refers, in conformity with the original Bermuda formulation, to the carriage by the airlines of either contracting party "between points in the territory of Finland, and points in the territory of the United States" [150], thus excluding third-country traffic to or from the territory of either party and extra-partes third-country traffic. Beginning with the agreement with POLAND (1963), all the more recent treaties adhere

---

148) The UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA and MALTA. - Agency commission rates which are not expressly referred to in the corresponding Article 7 (2) of the ECAC/SC are considered an important part of the tariff structure and particularly valuable for inclusion with a view to the open rate situations. - See the Handbook on Administrative Clauses in Bilateral Air Transport Agreements, ICAO Circular 63-AT/6, 1962, p. 109.

149) Identical definition also in the agreements with ROMANIA and SPAIN.

150) The UNITED STATES, Section IX (B) of the Annex.

to the formulation adopted in Article 7(1) of the ECAC/SC and in Article 2 (2) of the Tariff Agreement, thus restricting the scope of tariff regulation to the carriage by the airlines of one party to or form the territory of the other party [151]. Under this wording, extra-partes traffic as well as national third-country traffic would be excluded.

(ii) General Principles Governing Tariffs.

Apart from the agreements with the NETHERLANDS, the USSR (1955-superseded) and FRANCE which are silent in this respect, all the other Finnish bilaterals lay down certain general principles for the regulation of tariffs. The agreement with HUNGARY adheres to the principle of equality: the tariffs in respect of the specified routes or any part thereof "shall not differ from those valid and internationally employed on the same routes" [152]. With slight variation in wording, all of the other treaties provide that the tariffs shall be established at reasonable levels. In harmony with the Bermuda Agreement wherein this principle was originally introduced, it could be interpreted to mean more specifically application of "the cheapest rates consistent with sound economic principles" [153]. Examples of the factors to be considered in this respect are also enumerated in conjunction with the general principle. For the purpose of illustration, the clause incorporated in the more recent agreements may be quoted here as follows:

"The tariffs ... shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, and the tariffs of other airlines." [154].

---

151) POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the USSR (1972), the GDR and SPAIN.

152) HUNGARY, Article 5(2).

./.

In addition to the factors above enumerated, "characteristics of each service, such as speed and comfort" are referred to in some agreements [155]. The agreements concluded with SWITZERLAND and LUXEMBOURG provide that the tariffs shall be "fixed at reasonable level, due regard being paid to economy of operation [156], reasonable profit and the characteristics of each service, such as speed and comfort." [157] But even in the absence of an express reference to "all relevant factors", a deliberate exclusion of factors other than those enumerated should not be presumed.

(iii) Procedures for Establishment of Tariffs.

As noticed before, the agreement with ICELAND contains no regulations on tariffs. In the treaty with the USSR (1955-superseded), "the transportation rates" were bracketed together with capacity and a bundle of other technical and commercial questions to be dealt with by agreement between Aero O/Y and Aeroflot [158], the two airlines designated in the treaty. No particular rules of procedure nor general stipulations concerning settlement of disputes were, however, laid down in that

---

./. 153) Para. (1) of the Resolving Clause in the Final Act of the Civil Aviation Conference, held at Bermuda, 15 January to 11 February, 1946, reproduced, inter alia, in Shawcross and Beaumont, On Air Law, Volume II, 1966, p. 239.

154) POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the GDR and SPAIN. - The formulation is identical with Article 7(1) of the ECAC/SC and Article 2(2) of the Tariff Agreement.

Regarding the tariffs of other airlines, the AUSTRIAN agreement refers more specifically to those "on the same routes", and the agreement with the GDR to "the international tariff" of the other airlines. But this would seem to be the inherent meaning of the clause even without express mention.

155) The UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA and the USSR (1972).

In the treaties with SWEDEN, NORWAY and DENMARK (terminated), the reference to "all relevant factors" is replaced by the

./.

treaty. It would appear, therefore, that in the event of disagreement between the airlines, tariffs could have been established only by recourse to the normal procedures for settlement of disputes available under international law [159]. At this point it would also be appropriate to mention that even in the absence of any tariff regulation binding upon two states parties to a bilateral air transport agreement, their national laws and regulations may nevertheless provide for the approval of the competent national authorities of any tariff charged by the airlines of the other party for carriage within the territory of the first party [160]. Given further the almost universal acceptance of the tariffs arrived at through the IATA rate-fixing machinery, it would be safe to maintain that generally no completely free determination of international air tariffs does exist.

./. provision that due regard shall be paid "particularly" to the factors enumerated.

From the agreements with the UNITED STATES and CZECHOSLOVAKIA, the express reference to speed and comfort is omitted. The latter agreement does not mention the tariffs of other airlines either, while in the agreement with the USSR (1972) the qualifying term "on the same routes" is thereupon superimposed. According to the officially published Finnish text of the Soviet clause it would appear that the express terms "due" (regard) and "all" (relevant factors) are omitted therefrom; but this would certainly mean no change in substance.

156) As pointed out by Cheng, op.cit., p. 445 note 50 in fine, economy of operation implies some objective standard, while cost of operation is purely subjective to the individual operator.

157) SWITZERLAND, Article 4(a); LUXEMBOURG, Article 3.

158) The USSR (1955-superseded), Article 2(4).

159) That is to say, in the first place negotiations and agreement between the contracting parties.

160) In law, the sole absence of regulations in a treaty cannot be interpreted to mean a waiver by a state of its sovereign right to control tariffs charged for carriage within its territory. - With respect to Finland, tariffs to be charged by any holder of a Finnish licence for scheduled air services are subject to the approval of the National Board of Aviation (para. 2, Article 91, of the 1968 Aviation Order).

In all the other agreements, more elaborate procedures for the establishment of tariffs are prescribed. Among the early agreements, the treaty with the UNITED STATES follows closely the original Bermuda-pattern, while the other offer considerable variation in both wording and substance. The more recent treaties adhere generally either to Article 7 of the ECAC/SC or to Article 2 of the Tariff Agreement [161].

With the exception of the agreement with the UNITED STATES, the normal procedure is composed of two elements: (i) agreement between the designated airlines of both contracting parties; and (ii) approval by the aeronautical authorities of both contracting parties of the tariffs thus agreed upon.

Generally, the agreement between the designated airlines shall be arrived at in or after consultation with "any airlines of any third country" [162], or simply with the "other airlines" [163] operating over the whole or part of the route. Such an agreement shall furthermore, whenever possible, be reached "through the rate-fixing machinery of the International Air Transport Association" [164], or in more general terms "in accordance with usual practice in the international air services" [165]. The use of the procedures of IATA would generally satisfy the requirement for third-airline consultation. Apart from IATA open rate situations, specific third-airline consultation would thus find application primarily with respect to non-IATA airlines concerned.

---

161) ECAC/SC type clauses in POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, MALTA, BULGARIA and the GDR; Tariff Agreement type clauses in PORTUGAL, ROMANIA and SPAIN.

162) FRANCE.

163) The NETHERLANDS and all the agreements enumerated in supra note 126. - In contrast with the French clause, this formulation, identical with Article 7(2) of the ECAC/SC and Article 2(3) of the Tariff Agreement, includes also other airlines of the contracting parties than the designated airlines. The ECAC/SC formulation "the other airlines" as com-

./.

Under a minority of the agreements, however, due regard shall be paid to [166] or "also to" [167] the recommendations made by the IATA which are thus rather equalled with the other relevant factors to be considered in determining the tariffs. In all these agreements, specific third-country-airline consultation is prescribed exclusively for open rate situations, either in general [168], or confined to routes operated by both designated airlines [169]. In conjunction with the latter type of provision, the consultation is restricted to "an airline of a third country".

A majority of the agreements prescribing third-airline consultation either in general or confined to the open rate situations make it a mandatory part of the procedure [170], while only four agreements require its application only "when necessary" [171]. No third-airline consultation nor reference to the IATA machinery are provided for in the treaties with CZECHOSLOVAKIA or the USSR (1972), where an agreement between

---

./. pared with "other airlines" in the Tariff Agreement would seem to require consultation with all the other airlines concerned, while the latter would not.

164) This is the ECAC/SC formulation. The treaties with PORTUGAL, ROMANIA and SPAIN which adhere to Article 2(3) of the Tariff Agreement use, identically therewith, the following wording: "... by the use of the procedures of the International Air Transport Association for the working out of tariffs". Though more sophisticated perhaps, it is the very same thing.

165) YUGOSLAVIA, Article 7(2).

166) SWEDEN, NORWAY and DENMARK (terminated).

167) SWITZERLAND and LUXEMBOURG.

168) Ibid.

169) SWEDEN, NORWAY and DENMARK (terminated).

170) The NETHERLANDS, SWITZERLAND, LUXEMBOURG, POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and SPAIN.

171) SWEDEN, NORWAY, DENMARK (terminated) and FRANCE.

the designated airlines is rather implied [172], nor in the agreements with HUNGARY [173] or the GDR. Nevertheless, pursuant to the general principles relative to the establishment of tariffs laid down elsewhere therein, an obligation to take account of the tariffs of other airlines exists even under these four agreements. On the other hand, the sole absence of an express reference to the IATA procedures would not preclude the agreement between designated airlines members of IATA from being arrived at through that channel.

With the exception of the UNITED STATES' agreement, the submission of the tariffs for approval to the aeronautical authorities is merely implied in the early agreements [174]. But beginning with the agreement with LUXEMBOURG, an express stipulation to that effect is included in all subsequent treaties. In contrast with the LUXEMBOURG treaty, the latter prescribe also a specific period for the submission. In the agreement with FRANCE and in three agreements subsequent thereto [175], this period is thirty days before the proposed date of introduction of the tariffs, in the USSR (1972) agreement sixty days and in all of the remaining treaties ninety days respectively [176].

---

172) Under an express provision in Section V of the Annex to the Czechoslovak treaty, the capacity shall be determined through direct consultation between the airlines concerned. In Section IV only the general principles governing tariffs are laid down. Section VI the goes on to provide that "(a)ny Agreement relating to the provisions of the Section IV and Section V is subject to the approval of the competent aeronautical authorities of the both countries". As the next following paragraph of Section VI deals with "disagreement between the airlines as to the fixation of tariffs or determination of capacity", the conclusion may be safely drawn that an agreement between the designated airlines is the procedure intended for the initial phase in the establishment of tariffs.
The USSR (1972) agreement takes such agreement for granted while providing that the tariffs agreed upon between the designated airlines shall be submitted for approval to the aeronautical authority whose national laws and regulations so require.

173) In the HUNGARIAN agreement this omission is almost balanced with the provision that the tariffs shall not differ from

./.

For special cases, however, it is provided that the period may be reduced, subject to the agreement of the aeronautical authorities. The agreement with the USSR (1972) provides for submission of the agreed tariffs for approval to the aeronautical authority of the contracting party only whose national laws and regulations so require. But under all the other treaties dealing expressly with this subject, the submission shall be made unconditionally to the aeronautical authorities of both parties.

None of the early agreements except one lay down specific stipulations as to the acts of approval or disapproval of tariffs proposed [177]. Under the circumstances it would seem recommendable, however, that both the approval and the disapproval should be given expressly and in a reasonable time before the proposed date of introduction of the tariffs. The treaties adhering to Article 7(4) of the ECAC/SC establish a specific term for the notification by one contracting party to the other of its dissatisfaction with any tariff duly proposed [178]. This innovation has been developed further in Article 2(5) of the Tariff Agreement and in the bilaterals adhering thereto so as to include a legal presumption of approval:

./. those valid and internationally employed on the same routes. - Article 5(2) in the HUNGARIAN agreement.

174) The NETHERLANDS, SWEDEN, NORWAY, DENMARK (terminated) and SWITZERLAND.

175) POLAND (1963), the UNITED KINGDOM and YUGOSLAVIA. Also in Article 7(3) of the ECAC/SC.

176) AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the GDR and SPAIN. Also in Article 2(4) of the Tariff Agreement.

177) The NETHERLANDS, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, LUXEMBOURG and FRANCE. - The exception: the UNITED STATES.

178) During the first 15 days of the 30 days' period laid down for the establishment of the date of submission under the agreements with POLAND (1963), the UNITED KINGDOM and YUGOSLAVIA; and during the first 30 days of the 90 days' period under the agreements with AUSTRIA, BULGARIA and MALTA respectively. Under the POLISH (1963) clause, the notification shall be made by the aeronautical authorities of one party to the said authorities of the other and not between the conracting parties themselves.

"This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty days from the date of submission, in accordance with paragraph 4 of this Article [179], these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph 4, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty days." [180]

The agreement with the USSR (1972) whereunder the submission of tariffs for approval is mandatory only with respect to the aeronautical authority whose national laws and regulations so require, allows the legal presumption of approval being applied even to the said authority of one party alone [181]. In the agreement with ROMANIA, the first two sentences of the model clause quoted above are replaced with the provision that the approval shall be given within thirty days from the date of submission, in accordance with the preceding paragraph [182]. This formulation would seem to suggest that, in the absence of an express approval and disapproval at the end of the term, the tariffs proposed should be considered as disapproved. In the same paragraph, however, the last sentence of the model clause [183] is reiterated word by word. This again would lead to the anomaly that while the original term for the notification of disapproval may be reduced, the term for the approval may not. It would thus appear that the true intention of the drafters of the ROMANIAN clause is not perfectly clear.

---

179) In para. 4, the minimum period of ninety days before the proposed date of introduction of the tariffs is laid down.

180) Similar clause in the agreements with PORTUGAL, the GDR and SPAIN.

181) The USSR (1972), Article 4(2). - The Soviet clause does not refer to express approval nor provide for the reduction of the term for the notification of dissatisfaction.

182) ROMANIA, Article 8(5).

183) "In the event ..." etc.

By the complete or modified approval of the proposed tariffs, the normal procedure will end. But in the event of any relevant failure therein, additional regulation may be called for. The different situations foreseen in the respective Finnish bilaterals could be classified as follows:

(i) the designated airlines cannot agree on any of the tariffs concerned;

(ii) for some other reason a tariff cannot be established by agreement between the designated airlines;

(iii) one contracting party gives, in accordance with the provisions of the treaty, the other contracting party notice of its dissatisfaction with any tariff proposed; and

(iv) one aeronautical authority gives under the provisions of the treaty the other aeronautical authority notice of its disapproval of any such tariff.

Various combinations of these failure situations are introduced in the respective treaties. In any one of the situations included, the question of the determination of the tariff in dispute is referred to the aeronautical authorities of the contracting parties.

In the early agreements except two [184], reference is made only to the first incident (i) [185]. In addition thereto, two agreements mention either the non-approval of the tariffs by the aeronautical authorities of either party [186], or dissatisfaction expressed by one contracting party with the tariff proposed [187]. Those agreements adhering to Article 7(4) of

---

184) The UNITED STATES and SWITZERLAND.

185) The NETHERLANDS, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA and LUXEMBOURG. - The term used in the agreements with the NETHERLANDS and CZECHOSLOVAKIA is "disagreement between the airlines" which would seem to be more specific than the wording "if the designated airlines cannot agree" as used in the other agreements within this group.

186) SWITZERLAND, Article 4(b). - The wording "if the aeronauti-

./.

the ECAC/SC [188] mention expressly the situations (i), (ii) and (iii) with the exception, however, that under the agreement with POLAND (1963), the notice of dissatisfaction shall be given by the aeronautical authorities of one party to the aeronautical authorities of the other party. All of the more recent agreements except one [189] bracket the first two incidents together under the larger wording "if a tariff cannot be agreed" and include also the last incident (iv) [190]. Under the USSR (1972) agreement, where the situations are not specifically enumerated, those mentioned in (i), (ii) and (iv) above would apply in the first place pursuant to the rules of procedure laid down in this treaty.

The measures to be taken by the aeronautical authorities of the contracting parties in the event of any failure specified are described in various ways. The early agreements provide in this respect that the aeronautical authorities shall endeavour to reach "agreement" [191], or "a satisfactory agreement" [192], or to find "a satisfactory solution" [193] or merely "a solution" [194]. The term "solution" would seem to embrace even conciliation by the authorities in order to find an acceptable formula for the agreement between the airlines. Since any dissatisfactory agreement could hardly be acceptable for the aeronautical authorities, the term "satisfactory" would appear to be

---

./. cal authorities of either Contracting Party do not approve" would seem to suggest the inclusion of both express disapproval and omission of express approval.

187) FRANCE, Article XVII(3).

188) POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA and MALTA.

189) The USSR (1972).

190) PORTUGAL, ROMANIA, the GDR and SPAIN.

191) The NETHERLANDS.

192) CZECHOSLOVAKIA.

193) SWEDEN, NORWAY, DENMARK (terminated) and FRANCE.

194) SWITZERLAND and LUXEMBOURG.

understood as a concession in the opposite direction. In other words, it emphasizes a kind of compromise where reasonable account should be taken of all relevant factors, among them the interests of the designated airlines as well as those of the travelling public. Under the more recent treaties, the aeronautical authorities shall "endeavour to determine the tariff by mutual agreement" [195]. In harmony with Article 2(6) of the Tariff Agreement, some of these treaties provide that this shall be done "after consultation with the aeronautical authorities of any other State whose advice they consider useful" [196]. In the USSR (1972) agreement, however, disputes arising as to the determination of tariffs are brought directly under the general clause concerning settlement of disputes [197].

In the event that the aeronautical authorities cannot agree on the approval of any tariff duly submitted to them, or on the determination, in any of the situations of failure specified in the respective agreements, on any tariff, the dispute shall be settled in accordance with the general provisions governing settlement of disputes. In a majority of the Finnish bilaterals this is also expressly stipulated in the tariff clauses. But even in the absence of such specific provision [198], the result will be much the same pursuant to the general clauses on the settlement of disputes regarding the interpretation and application of the treaty [199].

---

195) This is the Tariff Agreement type of wording applied in the agreements with PORTUGAL, ROMANIA, the GDR and SPAIN. The ECAC/SC model Article uses the following formulation: "shall try to determine the tariff by agreement between themselves". This wording is used in POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA and MALTA.

196) PORTUGAL and SPAIN. - Not in ROMANIA or the GDR.

197) The USSR (1972), Article 14. - Under this Article, all disputes shall be settled in the first place by negotiations between the aeronautical authorities of the parties and, if they fail, through diplomatic channels.

198) The NETHERLANDS, POLAND (1963) and the GDR. - For the

./.

The procedure for the establishment of tariffs laid down in the treaty with the UNITED STATES follows closely the pattern adopted in the Bermuda Agreement and differs thus essentially from the formulae discussed above. It would be safe to attribute this feature to the lack of power with the Civil Aeronautics Board of the United States to fix rates to be charged for the carriage of persons and property by air on international services of United States' airlines [200]. Under this treaty, the normal procedure is composed of two stages: (i) direct submission by the designated airlines of the tariffs proposed to the aeronautical authorities of both contracting parties for approval; and (ii) approval of the tariffs by the said authorities.

./. USSR (1972) system, see the preceding paragraph of the present thesis.

199) As mentioned before, the USSR (1955-superseded) agreement does not contain a general clause for the settlement of disputes either.

200) "CAB direct statutory authority over the rates charged by American carriers in foreign air transportation is practically nonexistent. The only substantive power, and a minor one rarely used, derives from Section 1002(f) of the (Civil Aeronautics) Act (of 1938) which enables the Board to disallow discriminatory charges. Section 412 requires that all agreements to which any American carrier is a party be submitted to the CAB for approval; and by virtue of Section 414, such approval places the carriers beyond the reach of the anti-trust laws, in acting under the terms of the approved agreements. The necessity of the American carriers to gain CAB approval of their participation in the IATA framework and in the agreements reached thereunder, presents the CAB with an indirect means of influencing and exercising control over foreign air transportation. By imposing conditions on present and future approval of IATA agreements and by retaining the right to end a temporary approval, the Board gained a degree of authority which Congress had denied it in direct form."
Bebchick, The International Air Transport Association and the Civil Aeronautics Board, 25 J.A.L.C. (1958), pp. 11-12.
The main provisions of the Civil Aeronautics Act of 1938 were subsequently re-enacted in the Federal Aviation Act of 1958.

The minimum period for the submission of tariffs is thirty days before the proposed date of introduction. This period may even here be reduced in particular cases by agreement between the aeronautical authorities concerned.

Would one of the contracting parties be dissatisfied with any rate thus proposed, it shall so notify the other within the first fifteen days of the period mentioned above. The contracting parties shall then endeavour to reach agreement on the appropriate tariff.

Under the present circumstances, when necessary powers to regulate the international tariffs referred to above have not yet been conferred upon the aeronautical authorities of the United States, the matter may develop in two different ways, depending on whether or not an agreement can be reached before the expiry of the period prescribed in connection with the submission of tariffs. Would an agreement be arrived at, each contracting party shall use its best efforts to cause such agreed tariffs to be put into effect by its airline(s). In the event of disagreement, however, the contracting party raising the objection is entitled to prevent the inauguration or continuation of the respective service at the tariff in dispute. As pointed out by Cheng, rightly as it would seem, the contracting party raising the objection would have the same right whenever the other party would fail in its efforts to put an agreed rate into operation [201], even though this is not expressly stated in the treaty.

For the event that the powers referred to above would be conferred upon the aeronautical authorities of the United States in future, the treaty formulates different rules. In this case, each of the contracting parties should endeavour

201) Cheng, op.cit., p. 450.

to prevent any tariff proposed by one of its airlines from becoming effective, if that tariff would be considered as unfair or uneconomic by the aeronautical authorities of that state. In the event of dissatisfaction duly notified, the course of action would again depend on whether or not an agreement could be reached within the term prescribed in connection with the submission of tariffs. Would such agreement be arrived at, then each contracting party should exercise its best efforts to put such tariff into effect as regards its airline(s). But in the case of disagreement, the proposed rate might go into effect provisionally pending the settlement of the dispute. The aeronautical authorities of the home-country of the airline concerned would, however, be empowered to suspend the application of the tariff in dispute, if they saw fit.

In the last resort, if the aeronautical authorities of the two contracting parties could not agree within a reasonable time on the tariff in dispute, the question shall be submitted, upon the request of either, by both contracting parties to the International Civil Aviation Organization for an advisory report. Each party shall likewise use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

(iv) Validity of Tariffs.

In many of the more recent Finnish bilateral air transport agreements, the coming into force of any tariff is expressly made subject to the approval of the aeronautical authorities of both contracting parties [202]. In the event of disagreement or dissatisfaction, the parties concerned will thus have under these

202) SWITZERLAND, HUNGARY, POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, and MALTA. - Not in PORTUGAL, ROMANIA, the USSR (1972), the GDR, or SPAIN.

agreements the legal duty to prevent the new tariff from coming into effect pending the final settlement of the dispute [203]. For the transitional period, there is provided in the treaty with SWITZERLAND that the tariffs already in force shall be maintained [204]. Under the agreement with FRANCE, the contracting party making known its dissatisfaction shall have the right to require the other party to maintain the tariffs previously in force [205]. But the agreement with POLAND (1963), and the five agreements next to it contain the clause adopted in Article 7(7) of the ECAC/SC:

"The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article."

In some of the more recent treaties, however, the qualification of the tariff being established in accordance with the provisions of the same Article is attached to the previous tariff [206], but in the agreement with ROMANIA to the new tariff exclusively. These refinements certainly widen the scope of application of the provision though in opposite directions. In the agreement with the USSR (1972), no equivalent to this proviso is incorporated.

Under these rules, the question might arise whether or not a previous tariff would continue in force even over and after the expiry of the term originally prescribed for its validity. In legal theory, this question has been answered in affirmative[207]. The formula adopted in Article 2(8) of the Tariff Agreement and

---

203) Cheng, op.cit., p. 451.
204) SWITZERLAND, Article 4(c).
205) FRANCE, sub-paragraph 3, Article XVII(3).
206) PORTUGAL, the GDR and SPAIN, adhering to Article 2(8) of the Tariff Agreement.
207) See, for instance, Cheng, op.cit., p. 452.

in the bilaterals adhering thereto would seem to confirm the basic justification of this point of view as they state:

"Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve months after the date on which it otherwise would have expired." 208)

On the other hand, the wordings used in the various provisions 209) would seem generally to preclude any tariff, which would have expired before the initial submission of the new tariffs for approval, from being reenforced. It would also appear that, in the absence of an express stipulation, no limitations may be imposed upon the continuance in force of the previous tariffs save by special arrangement between the contracting parties.

The exceptional arrangement in the treaty with the UNITED STATES involving provisional application of tariffs proposed pending the final settlement of a dispute has already been mentioned 210). Under the other agreements containing tariff clauses no new service may be inaugurated unless there is in force a tariff applicable thereto.

(v) Control of Tariffs.

Control of the compliance with tariffs established under bilateral air transport agreements is normally exercised by the aeronautical authorities of the both contracting parties under their national laws and regulations. No stipulations on this subject are generally included in the agreements themselves. Among the Finnish bilaterals, the one concluded with AUSTRIA seems to form the exception that confirms the rule.

---

208) PORTUGAL, ROMANIA, the GDR and SPAIN. - No equivalent to this provision in the USSR (1972).

209) "the tariffs already in force", SWITZERLAND, Article 4(c); "the tariffs previously in force", FRANCE, sub-paragraph 3, Article XVII(3); "shall remain in force", ECAC/SC, Article 7(7); "shall not be prolonged", PORTUGAL, Article 8(8), and the Tariff Agreement, Article 2 (8).

210) Supra p. 194.

As evident from the previous discussion, the tariff clause in the AUSTRIAN agreement follows closely the ECAC/SC formulation. But two paragraphs have been added to the standard provisions [211]. According to the first additional paragraph, the aeronautical authorities of each contracting party shall use their best efforts to insure that the rates charged and collected conform to the rates filed with either contracting party. Furthermore, the said authorities shall endeavour to insure that no airline rebates any portion of such rates, by any means, directly or indirectly. Payments of excessive sales commission to agents, and the use of unrealistic currency conversion rates are expressly prohibited under this strict control.

Under the second additional clause in the AUSTRIAN agreement, each contracting party undertakes, unless otherwise agreed between the parties, to use its best efforts to "insure that any rate specified in terms of the national currency of one of the Contracting Parties will be established in amount which reflects the effective exchange rate (including fees or other charges) at which the airlines of both Contracting Parties can convert and remit the revenues from their transport operations into the national currency of the other Contracting Party" [212]. Although unique among the Finnish bilateral regulations, this proviso nevertheless illustrates the apparent trend towards an ever increasing governmental control over the international civil air transport business and its every detail.

---

211) AUSTRIA, Article 8(8) and (9).
212) AUSTRIA, Article 8(9).

(vi) Effect of Tariff Agreement upon Finnish Bilaterals.

The above discussion would seem to confirm the statement of the drafters of the Tariff Agreement, that the establishment of tariffs for scheduled international air services is governed in different ways by various bilateral air transport agreements or is not provided for at all between states [213]. In the Preamble to the Tariff Agreement, two parallel guidelines are laid down for the removal of these drawbacks: (i) the principles and procedures for the establishment of tariffs should be uniform; and (ii) use should be made, wherever possible, of the procedures of the IATA.

Consistently with these guidelines, the Tariff Agreement has a dual effect upon the regulation of tariffs between any two states parties thereto [214]:

(a) It establishes the tariff provisions to be applied when no bilateral agreement is in force between the two states concerned to cover any particular service, or when a relevant bilateral agreement contains no tariff clause; this could be called the enforcement effect.

(b) It replaces the tariff clauses in any existing bilateral agreement for so long as the Tariff Agreement remains in force between the two states concerned; this could be called the replacement effect.

At present, the Tariff Agreement is in force for Finland and thirteen other countries, of which eight states have relevant bilateral air transport agreements with Finland [215].

Let us now suppose that scheduled air services would be operated between Finland and any one of the remaining five states parties to the Tariff Agreement by airlines of the re-

---

213) Preamble to the Tariff Agreement.

214) Article 1 of the Tariff Agreement.

215) These eight states are: Austria, France, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom. - For more details, see Appendix IV.

spective countries [216]. Pursuant to the enforcement effect, the clauses incorporated in the Tariff Agreement would apply to such services. Conclusion of a bilateral air transport agreement without any tariff clause between the two states concerned would not change the situation in this respect. Thus no difficulties would seem likely to arise as to the enforcement effect.

Depending on the correlation between the original stipulations and those of the Tariff Agreement, the replacement effect may either enlarge or restrict the scope of tariff regulation. Thus, for instance, tariffs for extra-partes traffic and national third-country traffic, previously governed by the original tariff clauses in the agreements with the NETHERLANDS, SWEDEN, NORWAY and FRANCE are now excluded from bilateral regulation. On the other hand, the previous lack of regulation as to the principles or procedure may be remedied. Inclusion of general principles in the agreements with the NETHERLANDS and FRANCE, and of a definition of the term "tariff" in a bundle of agreements may be referred to as examples of this incident. Furthermore, the different rules of procedure may be replaced by a completely uniform set of provisions involving variable degrees of improvement. Regarding the replacement effect, the question may, however, arise whether or not the additional clauses concerning control of tariffs in the AUSTRIAN agreement would have been suspended by the Tariff Agreement. According to the guidelines set in the Preamble to the Tariff Agreement, the uniformity aimed at would appear to be confined to the principles

---

216) Scheduled air services are actually being maintained by Finnair between Finland and Belgium, and by Finnair and SAS between Finland and Denmark. Because there is no bilateral agreement between Finland and Belgium and the agreement with DENMARK has been terminated, these services are covered by the Tariff Agreement.

and procedures for fixing the tariffs. Whereas the control of tariffs already established would thus not fall within the scope of the said Agreement, the question would seem to be answered in negative.

The tariff clauses incorporated in the treaties with PORTUGAL and SPAIN are identical with that of the Tariff Agreement. Consequently, the former would not in any way be affected, if the latter would cease to be in force between Finland and either of the two other countries.

In the course of the discussion in the preceding subsections (i) to (v), the relevant clauses of the Tariff Agreement have already been focused upon in detail. It should be added, however, that a special arbitral procedure for tariff disputes is laid down in Article 3 of the Tariff Agreement. It would be applied in the event no bilateral air transport agreement between any two states concerned would exist, or when a relevant bilateral agreement would not include provisions for the settlement of disputes. All of the relevant Finnish bilateral agreements with states parties to the Tariff Agreement contain a particular clause for the settlement of disputes. Thus for the time being, the special procedure would find application only in respect of the scheduled air services maintained between Finland, on the one hand, and Belgium and Denmark respectively, on the other. Rules as to the settlement of disputes concerning the interpretation or application of the Tariff Agreement itself are laid down separately in Article 4 thereof [217].

---

217) Articles 3 and 4 are dealt with in more detail in the next section (d) of this thesis.

(d) Settlement of Disputes.

From the very nature of the international civil air transport business it would seem to follow that, apart from purely technical and commercial questions, any legal disputes arising in conjunction therewith should be settled as quickly and efficiently as possible. Given also the manifold and often vague provisions in the bilateral air transport agreements, on the one hand, and the prevalent protectionist policies of states, on the other, it would appear that the clauses governing settlement of disputes may perfectly well deserve a place among the key provisions. Thus far there is no information available of the true frequency and nature of the disputes settled at the different judicial levels. It nevertheless may be presumed that a multitude of minor legal discrepancies are settled through direct consultation between the aeronautical authorities of the states concerned without recourse to the legal procedures proper. But only a few occasions are known in which disputes arosen of the interpretation or application of a bilateral air transport agreement have been referred to arbitration [218]. It would also seem that in by far more numerous occasions such an agreement, after a failure to reach a solution by negotiation, has been simply denounced by the party making the complaint. This situation certainly must be regretted, because the use of the settlement procedures would favourably further stability in bilateral relations and reduce friction by replacing the one-sided and often aggravated national arguments with more elaborate and impartial legal reasoning.

---

218) E.g., the France-United States Air Transport Arbitration, December 22, 1963, and the Italy-United States Air Transport Arbitration, July 17, 1965. - For the texts of the awards, see 3 International Legal Materials 668 (1964), and 4 International Legal Materials 974 (1965) respectively.

In contrast with the simplified agreements and the ordinary agreement with the USSR (1955-superseded) which are silent in this respect, all of the other Finnish bilateral air transport agreements contain stipulations on the settlement of disputes.

(i) Scope of Application.

All the general clauses governing settlement of disputes to be found in the Finnish bilateral air transport agreements refer to any dispute between the contracting parties relating to the interpretation or application of the agreement. A majority of the clauses mention in this respect expressly also the Annex[219]. The agreements with the NETHERLANDS, the UNITED STATES and LUXEMBOURG contain, apart from an Annex, also separate schedule or schedules of routes. The question might then arise whether or not controversies in the interpretation or application of the schedules would be excluded from the normal procedure. But as explained before [220], the agreement proper, the annex and the route schedules are all integral parts of the agreement. The general clauses for the settlement of disputes which refer only to the interpretation or application of the agreement [221], must thus be understood to apply equally to the agreement proper and to the annex or schedule, as the case may be. Similarly, as nothing in the agreements with the NETHERLANDS, the UNITED STATES and LUXEMBOURG would seem to indicate a deliberate exclusion of the route schedules, the settlement-of-disputes clause would apply thereto.

The AUSTRIAN agreement refers to "any dispute with

---

219) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, ICELAND, LUXEMBOURG, POLAND (1963), YUGOSLAVIA, PORTUGAL and the USSR (1972).

220) Supra p. 132.

221) HUNGARY, FRANCE, the UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, ROMANIA, the GDR and SPAIN.

respect to matters covered by this agreement or any modification thereto" [222]. Since modifications become integral parts of the original agreement, an express mention thereof is superfluous and must be understood merely as declaratory of the principle already established in law. On the other hand, the wording of the AUSTRIAN clause would seem to imply even disputes other than those involving solely interpretation or application of the agreement.

Disputes arising of the determination of tariffs are referred to a special procedure in the agreement with the UNITED STATES and are thus excluded from the sphere of application of the general clause. But whenever there is no such special stipulation nor indication to the contrary, disputes arising of the interpretation or application of tariff provisions in a bilateral agreement shall be settled in accordance with the general settlement-of-disputes clause therein incorporated [223]. The situations in which Article 3 of the Tariff Agreement would become applicable to tariff disputes between two states parties to that Agreement have already been referred to before [224].

(ii) Direct Negotiation for Agreement.

Almost all of the general settlement-of-disputes clauses in the Finnish bilaterals prescribe consultation or negotiation between the contracting parties as the first step of the procedure. Generally, no particular rules are laid down in this respect. Under the FRENCH agreement, however, the consultations shall be conducted between the aeronautical authorities or between the governments of the contracting parties, and in accordance with the rules governing consultation in general. It would thus appear that such consultations should begin within thirty

---

222) AUSTRIA, Article 11(1).

223) In a majority of the ordinary Finnish bilaterals, express

./.

days from the date of receipt by either contracting party of the request for consultation made by the other party [225]. Furthermore, any agreement eventually arrived at during the consultations should be confirmed at least by exchange of diplomatic notes [226].

The agreements with HUNGARY, POLAND (1963), BULGARIA, ROMANIA, the USSR (1972) and the GDR provide direct negotiations between the aeronautical authorities concerned. Would the said authorities fail to reach agreement, the dispute shall then be settled "between the Contracting Parties" [227] or "through diplomatic channels" [228]. But as no rules are laid down to cover a disagreement between the contracting parties, negotiation and a possible agreement thus remain the sole ordinary means for the settlement of disputes under these agreements [229].

(iii) Advisory or Arbitral Proceedings.

With the exception of the agreements with the six socialist countries mentioned before [230], all of the Finnish bilateral air transport agreements proper dealing with the subject prescribe advisory proceedings or arbitration as the second and final step of the procedure. Generally, this phase may be commenced either unilaterally at the request by either

---

./. reference to the general clause is made in conjunction with the provisions dealing with the determination of tariffs. In the agreement with the USSR (1972), any failure in the determination of tariffs is brought directly under the general settlement clause. - For more details, see supra p. 191.

224) Supra p. 200.

225) FRANCE, Article VII(2).
226) Ibid., Article VII(3).
227) POLAND (1963).
228) HUNGARY, BULGARIA, ROMANIA, the USSR (1972) and the GDR.
229) The parties would, of course, be free to agree on any procedure for the settlement of the dispute, if the negotiations would have proven to be abortive.
230) See the last paragraph of subsection (ii) above.

party to the other, or by agreement between the parties concerned.

The general settlement-of-disputes clauses in the treaties with the UNITED STATES, CZECHOSLOVAKIA, ICELAND, FRANCE, YUGOSLAVIA and AUSTRIA refer to an arbitral tribunal as the sole element for arbitration. Similarly, the special clause concerning settlement of tariff disputes in the UNITED STATES' agreement designates the ICAO to the sole arbitral body. Under all these clauses, unilateral recourse to arbitration is provided for, either expressly or merely by implication in conjunction with the provisions governing the constitution of the arbitral tribunal [231]. While generally no qualifications are laid down as to the form or mode of the request for arbitration, the general clause in the treaty with the UNITED STATES requires in this respect a diplomatic note, and the ICELANDIC agreement a writ through diplomatic channels [232] which is not necessarily the same thing.

Under the treaties with SWEDEN, NORWAY and DENMARK (terminated), the arbitral procedure shall be initiated by agreement between the two contracting parties concerned. In the first place, arbitral tribunal or any other person or body are referred to but if the contracting parties would so desire, any dispute may also be submitted to the Council of ICAO. Article 3 of the Tariff Agreement provides for the reference by mutual agreement of any dispute for decision to some person or body or, at the request of either party, by agreement to an arbitral tribunal. No qualifications as to the form or conclusion of the agreement are laid down in these treaties.

---

231) Expressly indicated in FRANCE and AUSTRIA and in the tariff disputes clause in the UNITED STATES.

232) The UNTS translation into English in not quite correct. The official Swedish text does not mention a diplomatic note but a writ through diplomatic channels ("på diplomatisk väg överlämnat en skrivelse").

Apart from the two orthodox groups discussed above, certain intermediate or mixed variations also exist. Thus in the treaties with the NETHERLANDS and LUXEMBOURG, the Council of ICAO is designated as the normal arbitral body to which a dispute may be referred, as it would appear, unilaterally by the request of either party to the other [233]. But by agreement between the parties, the dispute may be referred alternatively to an arbitral tribunal, or to some other person or body. The treaties with the UNITED KINGDOM, MALTA, PORTUGAL and SPAIN provide, in the first place, for reference of the dispute to some person or body by agreement between the parties. In the event of disagreement, however, the matter may, at the request of either party, be submitted for decision to an arbitral tribunal. Such a request shall be noticed through diplomatic channels. Under the SWISS treaty, disagreement in respect of designation of a special arbitral tribunal or any other person or body to decide the dispute, or of the composition of the tribunal entitles each contracting party unilaterally to refer the dispute to the Council of ICAO.

The both clauses in the treaty with the UNITED STATES aim expressly at an advisory report only. But they provide further that each party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report. As pointed out by Cheng, advisory reports of this kind "are, according to international practice, in all but name arbitral awards" [234].

The clause incorporated in the agreement with CZECHOSLOVAKIA provides, in the first place, for submission of

---

233) In such case where the arbitral body would already exist, it would seem appropriate and even necessary to deliver the request, together with the receipt issued by the defendant party, also to that body.

234) Cheng, op.cit., p. 458.

disputes to an arbitral tribunal for an advisory report. It goes then on to state that the contracting parties undertake to comply with the decision given. Considering this formulation it would seem that arbitration proper and arbitration award are contemplated rather than merely an advisory report. The practical consequences would, however, be much the same irrespective of the interpretation adopted.

In all the other agreements containing a clause for arbitration, there is also an express undertaking of the both parties to comply with the decision of the arbitral body. The same effect would seem to have also the provision in Article 3 of the Tariff Agreement that all the decisions of the arbitral tribunal shall be final. In the agreement with AUSTRIA, the following exceptional wording is introduced:

"Any decision or award of the arbitral tribunal shall have the effect of the decisions referred to in Article 86 of the (Chicago) Convention." 235)

As the other incidents dealt with in Article 86 of the Chicago Convention would seem not to apply, the AUSTRIAN proviso would appear to be interpreted to mean that the decisions of the arbitral tribunal shall be final and binding.

In the FRENCH treaty there is also stipulated that "(i)f and so long as either Contracting Party fails to comply with the arbitral awards, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of the present Agreement to the Contracting Party in default" 236). In customary international law, however, the situation would be much the same even in the absence from a treaty of any clause equivalent to that quoted above. It should also be noted that regardless of such limitation, suspension or

---

235) AUSTRIA, Article 11(3).
236) FRANCE, Article IX(5).

revocation of rights and privileges, the party in default would be bound to all of its duties and obligations arising out of the agreement [237].

(iv) Designation and Constitution of the Advisory or Arbitral Elements.

Unless designated directly in the treaty itself, the person or body whom the dispute should be referred to shall be specified by agreement between the parties. No particular rules of procedure have been laid down in this respect. The treaties with the NETHERLANDS, SWEDEN, NORWAY, DENMARK (terminated) and SWITZERLAND leave the composition of even the arbitral tribunal completely dependent on the agreement between the parties. But all of the other Finnish bilaterals which include proceedings before an arbitral tribunal, as well as Article 3 of the Tariff Agreement, lay down rules and procedures to be followed in constituting such tribunal.

Under all these treaties, the arbitral tribunal shall be composed of three arbitrators. Generally, each of the parties has to nominate one arbitrator, and the third arbitrator shall be agreed upon by the two so nominated. The treaty with CZECHOSLOVAKIA, however, fails to prescribe how the third arbitrator shall be appointed. In the absence of an express delegation it would appear that the third arbitrator should be appointed by agreement between the two governments. Certain time limits also are prescribed for the appointment of the arbitrators. The two national abritrators shall thus be nominated usually within a period of two months [238] or sixty days [239],

---

237) See Cheng, op.cit., pp. 385 and 386, and p. 464, where Cheng refers to the principles of "res judicata" and "inadimplenti non est adimplendum".
238) The UNITED STATES, ICELAND, FRANCE and AUSTRIA.
239) The UNITED KINGDOM, YUGOSLAVIA, MALTA, PORTUGAL, SPAIN and Article 3 of the Tariff Agreement.

but under the agreement with CZECHOSLOVAKIA within one month. Under the bilateral agreements, this period shall be counted from the date of receipt by either contracting party from the other of a notice requesting arbitration by an arbitral tribunal, but under Article 3 of the Tariff Agreement from the date of the agreement of the other party to the request for arbitration by such tribunal. For the appointment of the third arbitrator, periods of one or three months, or thirty or sixty days are prescribed in the respective treaties. These time limits are construed in various ways [240].

Specific safeguards are necessary in the event that the contracting parties would be in default in the nomination of their national arbitrators and wherever an agreement on the appointment of the third arbitrator could not be reached. Thus all the arbitral tribunal clauses in the Finnish bilaterals, as well as Article 3 of the Tariff Agreement designate a person who, in the event of a failure in the constitution within the respective periods thereof, is empowered to complete the tribunal. In the treaty with ICELAND, these powers are conferred upon the President of the International Court of Justice. All of the other treaties, however, designate correspondingly the President of the Council of ICAO. The YUGOSLAV treaty goes on to provide that if the President of the ICAO Council "is a national of either Contracting Party, the

---

240) The UNITED STATES and CZECHOSLOVAKIA: three months from the date of the original request for arbitration by an arbitral tribunal; AUSTRIA: one month after the first period of two months for the appointment of the national arbitrators; ICELAND and Article 3 of the Tariff Agreement: one month or sixty days respectively from the nomination of the second arbitrator (the ICELANDIC clause reads: "...from the date when they", that is to say the two national arbitrators, "were appointed", which is essentially the same thing); YUGOSLAVIA: thirty days; FRANCE: one month; the UNITED KINGDOM, MALTA, PORTUGAL and SPAIN: sixty days. The periods in the six last mentioned treaties would seem to be understood similarly to be counted from the date of the nomination of the second arbitrator, which actually is the earliest possible date for the appointment of the third arbitrator.

Vice-President of that Council, who is a national of a third State, may be requested to make the aforesaid appointments" [241]. The general arbitration clauses in the treaties with the UNITED STATES and CZECHOSLOVAKIA are silent as to the completion of the tribunal with respect to the two national arbitrators. The request to complete the tribunal may be made unilaterally by either of the contracting parties.

Certain qualifications as to the nationality of the third arbitrator are laid down in some treaties. While the agreements with the UNITED STATES, AUSTRIA and ICELAND require that the third arbitrator shall not be a national of either contracting party, the FRENCH treaty provides that the third arbitrator shall be a national of a third state [242]. In the agreements with YUGOSLAVIA, the UNITED KINGDOM, MALTA, PORTUGAL and SPAIN, as well as in Article 3 of the Tariff Agreement, the qualification that the third arbitrator shall be a national of a third state relates only to third arbitrators appointed by the President of the ICAO Council.

The agreements with ICELAND and FRANCE place the third arbitrator always as the chairman of the tribunal, while the treaties with the UNITED KINGDOM, MALTA, PORTUGAL and SPAIN, as well as Article 3 of the Tariff Agreement prescribe that position only to third arbitrators appointed by the President of the Council of ICAO. But in the absence of any relevant provision or agreement to the contrary, the chairman of the arbitral tribunal may be elected or agreed upon by the arbitrators among themselves.

---

241) YUGOSLAVIA, Article 13(3).

242) The difference between these two formulations would seem to be in that while under the FRENCH wording the third arbitrator always must possess the nationality of any third state, even a person without nationality would qualify under the former treaties.

(v) Rules as to Procedure, Provisional Measures and Costs.

Unless otherwise provided for, the international judicial institutions are, under international law, empowered to establish their own procedure including the determination of their place of meeting, and shall reach their decision by a majority vote of the members of the institution [243]. Under the FRENCH agreement, wherein an express provision generally declaratory of the said principles is incorporated, the contracting parties may agree even otherwise on the establishment of the rules of procedure and the determination of the place of meeting of the tribunal [244]. In Article 3 of the Tariff Agreement, a similar express provision is introduced with respect to the rules of procedure [245].

In the FRENCH agreement, an express undertaking by the parties to comply with any provisional measures ordered in the course of the proceedings is incorporated. It would appear that this stipulation directly extends the legal obligations of the parties beyond those otherwise applicable. In international law, interim measures indicated by arbitral tribunals have normally the legal status of recommendations only. But under the FRENCH treaty any such indication would be legally binding upon the parties.

Some of the arbitration clauses in the Finnish bilaterals provide also for equal division of the expences of the arbitral tribunal [246]. In the AUSTRIAN agreement, the fees and expences of the arbitrators are expressly included in

---

243) Cheng, op.cit., p. 463.

244) FRANCE, Article IX(3).

245) No mention of the place of meeting included.

246) The UNITED STATES and ICELAND. The SWISS arbitration clause under which a dispute may be referred to an arbitral tribunal or any other person or body, or to the ICAO Council, provides for "equal division of the costs of the arbitral procedure".

the expences of the arbitral tribunal to be equally shared by the parties. The FRENCH treaty provides only that each of the parties shall pay the remuneration of the chairman appointed. Under the YUGOSLAV treaty, each contracting party shall pay the costs of the arbitrator appointed by it, while the remaining costs of the arbitral tribunal shall be borne by the contracting parties equally.

In the absence of any indication to the contrary, recourse should be had to the principles generally applicable to the division of expences between parties before international arbitral tribunals. According to these principles, each party shall generally bear its own costs and share the expences of the tribunal equally with the other party [247].

(vi) Settlement of Disputes Concerning Tariff Agreement.

Article 4 of the Tariff Agreement formulates rules for the settlement of disputes concerning the interpretation or application of the said Agreement itself. Among states parties to the Agreement, recourse may be had to the procedure prescribed in Article 4 without prejudice to the provisions governing settlement of disputes under a bilateral agreement or Article 3 of the Tariff Agreement. It would thus appear that disputes arising of the determination of tariffs between two states parties to the Agreement could be decided also through the channel established in Article 4 thereof provided, however, that the interpretation or application of the Agreement itself would be directly at issue. The disputes contemplated in Article 4 may be between two or more states parties to the Agreement.

In the first place, the parties concerned shall endeavour to settle the dispute by direct negotiations. This having failed,

---

247) See Cheng, op.cit., p. 464.

the dispute shall, at the request of one of the parties concerned, be submitted to arbitration. The organisation of the arbitration shall be agreed upon between the parties within six months from the date of the request for arbitration. If the parties are unable so to agree, any one of them may refer the dispute to the International Court of Justice. Such request shall be made in conformity with the Statute of the Court.

(e) Termination of Agreement.

The provisions contained in bilateral air transport agreements as to their termination may hardly offer any major or complex legal problems. Given the tendencies prevalent in bilateral practice to avoid judicial settlement of disputes by simply denouncing the agreement, or to press the other contracting party for modifications thereto by threat of denunciation, it nevertheless would seem justified to place the stipulations relating to termination of agreement among the key provisions of bilateral air transport agreements.

All the simplified agreements of Finland were concluded on a provisional basis [248] and did not lay down any specific provisions as to their termination. No particulars are made public as to the actual modes for their termination either. In contrast therewith, all of the ordinary Finnish bilaterals are of indefinite duration. In the agreement with POLAND (1963) this is expressly stated:

"The present Agreement shall be valid for an unlimited period." [249]

---

248) The UNITED STATES (S): "pending the conclusion of an air services agreement between the two Governments" and "on a provisional basis"; the UNITED KINGDOM (S-1953) and (S-1954): "until further notice"; no indication in FRANCE (S).

249) POLAND (1963), Article 15.

The agreements with the USSR (1955-superseded), HUNGARY and the USSR (1972) provide expressly for the continuance in force of the agreement until denounced. In all the other agreements, however, this is merely implied through the absence of any definite period of validity.

As no specific conditions are laid down therefor, termination of an agreement is completely within the discretion of each contracting party. In a majority of the agreements the freedom of termination is further emphasised by the express provision that a notice to terminate the agreement may be given "at any time". The denunciation shall be made by notification of either party to the other party of its intention to terminate the agreement. While generally no further qualifications are laid down in this respect, some of the treaties prescribe that the notification shall be in writing [250], or delivered through diplomatic channels [251]. In the absence of any express provision, established rules of international law require that an act terminating a treaty shall be carried out through an instrument communicated to the other party [252]. If such an instrument would not be signed by the Head of State, Head of Government, or Minister for Foreign Affairs, the representative of the state communicating it may be called upon to produce full powers [253].

Under all the ordinary Finnish bilaterals a relevant denunciation terminates the treaty twelve months, or one year after the date of receipt of the notice by the other party [254].

---

250) SWITZERLAND.

251) HUNGARY, the USSR (1972) and the GDR.

252) Cf., Article 67(1) of the Vienna Convention on the Law of Treaties.

253) Ibid., Article 67(2). - "Full powers" mean here a document emanating from the competent authority of a state designating a person or persons to represent the state for accomplishing an act with respect to a treaty. - Article 2(1)(c) of the said Convention. ./.

In accordance with an express indication in all of the treaties except those concluded with the USSR (1955-superseded), SWITZERLAND, POLAND (1963) and the USSR (1972), the notice of denunciation may be withdrawn by agreement between the contracting parties before the expiry of the period specified. In international law, states are free to agree upon their mutual relations as they see fit [255]. Thus a denunciation could be similarly withdrawn also under the four agreements lacking an express stipulation to that effect. Moreover, nothing would prevent the parties from re-enforcing a treaty even after its formal termination by giving their agreement the necessary retroactive effect, though a new treaty may be preferred in practice.[256] A unilateral revocation of a notice of denunciation by the complaint state would, however, be invalid.

In harmony with Article 12 of the ECAC/SC, specific rules for the determination of the starting date of the notice period are laid down in a host of treaties [257]. Under these rules, the notice of denunciation shall be simultaneously communicated to the ICAO. In the absence of acknowledgement of receipt by the other contracting party, notice shall be deemed to have been received a specified number of days [258] after the receipt of the notice by the ICAO. Although not expressly provided for, any agreement on withdrawal of a notice

---

./. 254) **One year in the UNITED STATES, SWITZERLAND and FRANCE; twelve months in all the other agreements.**

255) See the Report of the International Law Commission on the Second Part of its Seventeenth Session 3-28 January, 1966, and on its Eighteenth Session 4 May - 19 July, 1966. - UN General Assembly, Official Records - Twenty-First Session, Supplement No. 9 - A/6309/Rev. 1), p. 91.

256) Ibid., p. 43.

257) The NETHERLANDS, the UNITED STATES, LUXEMBOURG, FRANCE, the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and SPAIN.

258) Fifteen days in FRANCE; fourteen days in all of the other agreements enumerated in supra note 257.

previously communicated to the ICAO would appear to be similarly communicated.

Regardless of the provisions contained therein, a treaty may be terminated by agreement between the contracting states at any time and under such terms and conditions as they think fit. Thus the treaties with POLAND (1938) and the USSR (1955-superseded) were terminated by agreement between the parties in conjunction with the conclusion of new agreements without reccurse to the denunciation procedure incorporated therein [259].

Among the ordinary Finnish bilaterals thus far only the agreement with DENMARK has been formally denounced. This incident will be dealt with in more detail in Chapter VIII below.

As pointed out by Cheng, denunciation of bilateral air transport agreements is in the whole infrequent, mainly for the reason that "the disappearance of an agreement from a State's treaty network can easily cause serious dislocation in its international services" [260].

---

259) For details of the termination of the treaty with POLAND (1938), see supra p. 118.
The USSR (1955-superseded) agreement was terminated by Article 16(2) of the USSR (1972) treaty under which the previous agreement would cease to be in force after the entry into force of the new agreement.

260) Cheng, op.cit., p. 487.

C H A P T E R V I I - SUPPLEMENTARY STIPULATIONS

In addition to the key provisions, several supplementary stipulations are usually considered necessary by states for the purposes of the bilateral regulation. A majority of the ordinary Finnish bilateral air transport agreements lay down a considerably uniform set of provisions. Special circumstances, such as the absence of multilateral air regulation binding on both parties, or an essential difference between their political and economic systems may, however, in particular cases call for additional regulation.

For the purposes of the present thesis, the supplementary stipulations may be focused upon under three main headings according to their subject matter: (a) Inauguration of agreed services; (b) Operation of agreed services; and (c) Operation of the bilateral agreement itself.

(a) Inauguration of Agreed Services.

Under the present bilateral regulation, no scheduled international air service may be inaugurated unless all the basic components essential for its operation are duly established. But otherwise any agreed service may be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted. This is also expressly stipulated in almost all of the ordinary Finnish bilateral air transport agreements [1]. In the agreements with the NETHERLANDS, the UNITED STATES and CZECHOSLOVAKIA there is, however, pro-

---

1) Not in the following agreements: the NETHERLANDS, the USSR (1955-superseded), SWITZERLAND, HUNGARY and the USSR (1972).
Beginning with the agreement with POLAND (1963), the ECAC/SC type wording "at any time" has replaced the CSF type wording referred to in the text.

vided that the agreed services shall be placed in operation as soon as the contracting party to whom the right has been granted has authorised an airline or airlines for the route [2]. But nothing in the other agreements would seem to indicate that the right to operate the agreed services would be transformed into a duty by the act of designation of an airline.

The establishment of most of the basic components referred to above has already been discussed in Chapter VI [3]. In this context it thus remains only to examine the acts of designation and authorisation of airlines to operate the agreed services.

(i) Designation of Airlines.

In all the simplified Finnish bilateral agreements, the airline to be operating the agreed services was individually indicated in the agreement itself. With respect to the ordinary agreements, concluded to govern the agreed services on the specified routes on a more permanent basis, a separate act of designation is generally provided for. Only in the agreements with the USSR (1955-superseded) and the USSR (1972), the airlines of the respective countries are designated directly in the treaties.

Under the agreements with LUXEMBOURG and HUNGARY, each contracting party "shall designate" an airline or airlines. It would appear, however, that a condition precedent to the inauguration of the services is contemplated rather than a duty to be complied with immediately and irrespective of an actual intention to commence the operation of the route.

---

2) The UNTS English translations of the treaties with SWEDEN, NORWAY and DENMARK (terminated) seem to be incorrect while indicating that the agreed services shall be placed in operation. The authentic Finnish, Swedish, Norwegian and Danish texts use a wording equivalent to "may be placed in operation".

3) Specification of routes, grant of rights, determination of capacity and tariffs.

As to its legal nature, the designation of an airline is purely a unilateral act of a state. Under the agreements with HUNGARY and the USSR (1972) each of the parties may, subject to certain conditions, refuse to accept the designation of an airline accomplished by the other party or a designated airline respectively [4]. A majority of the agreements also entitle the parties, in specified cases, to refuse to grant an operating permit to an airline duly designated by the other party, or to withhold such permit. But this does not mean that the act of designation would require the consent of the other party thus constituting a contract. The specific grounds laid down for such refusal or withholding should more properly be understood as qualifications for the airlines to be designated. Consequently, the refusal of acceptance or the withholding of an operating permit should be construed as objections against a designation accomplished in breach of the agreed qualifications. In the agreements adhering to the ECAC/SC formulae the term "designated airline" is defined to mean an airline which has been designated and authorised. This definition should not be interpreted to mean that an act of designation would be completed only by the authorisation of the airline concerned by the other contracting party. In other words, adaptation of terminology to practical purposes is involved rather than a matter of substance [5]. Even in the case that an airline is designated outright in a bilateral agreement, the fact remains that the designation is made unilaterally by the respective parties [6]. But the incorporation of the designation in the agreement proper would seem to have the effect of precluding

---

4) HUNGARY, Article 2(4); the USSR (1972), Article 11(2).

5) It would certainly have been more in point to use some other expression to indicate an airline both designated and authorised. "Operational airline", for instance, could have done well.

6) The USSR (1955-superseded), Article 2(1-3); the USSR (1972), Article 3(1-2).

the grantor-state from raising objections against such designation.

On the basis of the various stipulations in the Finnish bilateral air transport agreements, the act of designation could be defined as a notification by one party to the other of its decision [7] to choose an individually indicated airline to operate, in whole or in part, the agreed services on the specified routes. Under the YUGOSLAV treaty, however, the right to designate an airline is conferred upon the aeronautical authorities of the respective states who also shall communicate the designation to the aeronautical authorities of the grantor-state. A majority of the agreements provide expressly that the designation shall be in writing [8]. The treaties with LUXEMBOURG and POLAND (1963) direct the aeronautical authorities of the contracting party designating the airline to notify the designation in writing to the aeronautical authorities of the grantor-state [9]. But in the absence of such express provisions, any other relevant form of communication between states would also qualify [10].

In the agreements with AUSTRIA and MALTA the right is reserved to each contracting party, by written notification to the other contracting party, to withdraw the designation of an airline and to designate another [11]. In the treaty with the USSR (1955-superseded) wherein the airlines were directly designated, the following stipulation was incorporated:

---

7) In the treaty with LUXEMBOURG the following wording is used: "... the airline which it intends to designate ..." -Article 15(b), underline supplied.

8) The UNITED STATES, LUXEMBOURG, HUNGARY, POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the GDR and SPAIN.

9) In these two agreements the right to designate the airlines is conferred upon the contracting parties.

10) See Cheng, op.cit., p. 360.

11) AUSTRIA, Article 3(3); MALTA, Article 3(6).

"Each Contracting Party reserves the right to designate another of its airlines to make the aforesaid flights. In this event it shall communicate to the other Party in writing the name of the airline and shall furnish proof that the said airline is entitled under its laws to operate international air services."[12)]

From the unilateral nature of the act of designation it follows that, even in the absence of an express provision, each contracting party may at any time withdraw a designation and substitute another of its airlines for any one previously designated [13)].

(ii) Operating Permit.

All the simplified Finnish bilateral air transport agreements are silent as to the question of operating permit. It may, however, be reasonably presumed that the requirement for such authorisation must have been included in the conditions precedent to be agreed upon between the airline concerned and the competent authorities of the grantor-state. But all of the ordinary Finnish bilaterals except three impose expressly upon each contracting party the duty, subject to certain conditions, to issue an operating permit to the airlines designated by the other contracting party [14)]. In a majority of these agreements, the said duty is further emphasised by providing that the issuance must be done "without delay", or "without undue delay" on receipt of the designation. In the agreements with CZECHOSLOVAKIA, the USSR (1955-superseded) and the USSR (1972) which do not expressly deal with the issuance

---

12) The USSR (1955-superseded), Article 2(5). - It may not be quite clear from the wording of this paragraph whether double designation also was included. In the absence of an express authorisation, however, the question would seem to be answered in negative.

13) See also Cheng, op.cit., p. 360.

14) Under the agreements with YUGOSLAVIA and MALTA this duty is conferred directly upon the aeronautical authorities of the contracting parties.

of the permission, the requirement for such authorisation is clearly enough implied in conjunction with the stipulations concerning withholding and revocation of operating permission.

Normally, two types of conditions precedent to the grant of an operating permit are introduced in the ordinary Finnish bilaterals: (i) requisite qualifications for the airlines designated; and (ii) qualifications as to the ownership and control of such airlines.

With the exception of the agreements with the USSR (1955-superseded), HUNGARY and YUGOSLAVIA, all of the ordinary agreements provide, despite some variation in wording identically in substance, that an airline designated by one contracting party may be required by the aeronautical authorities of the other contracting party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations of that state [15]. The material scope of these laws and regulations is generally not specified. But in the FRENCH agreement the laws and regulations are described as those applicable to the operation of commercial air services on international routes [16]. The more recent agreements adhering generally to Article 2(3) of the ECAC/SC refer similarly to the laws and regulations governing the operation of international air services. This would also seem to be the normal intention of the parties to bilateral air transport agreements. The functional scope of the respective laws and regulations could thus be limited so as to embrace the technical and commercial qualifications for the airlines concerned [17].

---

15) Under the UNITED STATES' agreement, the operations in the U.S. Zones in Germany and Austria were further subject to the approval of the competent military authorities. The occupation regime in these areas having been terminated, this provision has only historical significance.

16) FRANCE, Articles III and XII(2).

17) See Cheng, op.cit., p. 374.

While the agreements with SWEDEN, NORWAY, DENMARK (terminated) and ICELAND refer more specifically to the laws and regulations "in force", a majority of the other agreements limit the scope of the laws and regulations contemplated to those "normally" [18] or "normally and reasonably" [19] applied by the aeronautical authorities of the grantor-state [20]. In the more recent agreements which adhere more or less closely to Article 2(3) of the ECAC/SC, the additional qualification is introduced that the application of the laws and regulations shall also be in conformity with the provisions of the Chicago Convention [21] or with principles such as those laid down therein [22] or, more generally, with international practice [23].

Any failure by a designated airline to meet the requisite qualifications thus prescribed would seem to entitle the aeronautical authorities of the grantor-state to refuse to grant the operating authorisation, or to take such other measures as may be provided for in their national laws and regulations.

The question of ownership and control of the designated airlines gains importance through the circumstance that under

---

18) The NETHERLANDS, the UNITED STATES, CZECHOSLOVAKIA, SWITZERLAND, LUXEMBOURG and FRANCE (FRANCE only with respect to the first two freedoms of the air).

19) FRANCE (with respect to the commercial rights only), POLAND (1963), the UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the USSR (1972), the GDR and SPAIN.

20) As to the transit rights, however, the FRENCH agreement refers to the application of such laws and regulations by the grantor-state. In the agreement with CZECHOSLOVAKIA, no reference is made to the contracting party or its aeronautical authorities in this connection.

21) POLAND (1963), the UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and SPAIN.

22) The GDR who is not a party to the Chicago Convention.

23) The USSR (1972).

bilateral air transport agreements the rights are exchanged between states parties thereto but exercised generally by airlines. Thus for protectionist reasons states tend to eliminate the engagement in the operation of the agreed services of airlines substantially owned and effectively controlled by third states or their nationals. In harmony with Article 7 of the CSF model agreement, the early Finnish agreements lay down the following stipulation:

"Each contracting party reserves the right to withhold or revoke the exercise of the rights specified in the Annex to this Agreement by an airline designated by the other contracting party in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of the other contracting party ... " [24].

It is thus not expressly stipulated that the grant of an operating permit may be refused. It would, however, make little sense to grant an operating authorisation only to be immediately revoked. And refusal to grant the operating permit would presumably be the normal way of withholding the exercise of the rights specified. Thus the conclusion may hardly be avoided that the original grant of an operating permit may be refused correspondingly.

Some of the early treaties provide more in point that the contracting parties reserve the right to withhold or revoke the operating permit [25]. The more recent agreements which generally adhere to Article 2(4) of the ECAC/SC use the following wording: "Each contracting party shall have the right to refuse to grant the operating authorisations ..." [26].

---

24) The NETHERLANDS, Article 7. - Similar clause also in the UNITED STATES and CZECHOSLOVAKIA. - The agreement with FRANCE provides for withholding or revocation of the commercial rights only, while the transit rights which are granted quite separately therein, remain immune from such consequences. FRANCE, Articles XIII(1) and XIV(1).

25) SWEDEN, NORWAY, DENMARK (terminated), the USSR (1955-superseded), SWITZERLAND, ICELAND and LUXEMBCURG. ./.

Apart from the right directly to refuse to grant an operating authorisation, the alternate right to impose conditions upon the exercise by a designated airline in failure of the rights specified is provided for in the more recent agreements [27]. The choice of the conditions is left completely within the discretion of the grantor-state [28].

As may be evident from the above discussion, the early agreements insist generally that substantial ownership and effective control be vested in nationals of the contracting party designating the airline. The agreement with the USSR (1955-superseded) refers in this respect to nationals or agencies of the contracting party designating the airline [29], the SWISS treaty to nationals of either contracting party [30], and the HUNGARIAN agreement to the contracting party designating the airline or its institutions, competent organs or nationals[31]. In harmony with Article 2(4) of the ECAC/SC, the more recent agreements suggest invariably that substantial ownership and effective control shall be vested in the contracting party designating the airline, or in its nationals [31a].

Under the HUNGARIAN agreement a special procedure must be followed prior to a refusal to accept a designation of an airline, or a withholding of the grant of rights, or imposition of conditions on the exercise of operating rights [32]. In the first place, a notice in writing must be given to the other contracting party of such proposed

---

./. 26) POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the GDR and SPAIN. - The agreements with HUNGARY and the USSR (1972) refer in this respect to refusal to accept "the designation of an airline", or "an airline" respectively, and to withholding of the grant of the rights specified, or of the operating authorisation respectively.

27) HUNGARY, FRANCE, POLAND (1963), the UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the USSR (1972), the GDR and SPAIN. - Also in Article 2(4) of the ECAC/SC. - In the FRENCH agreement, only the commercial rights are involved in this respect.

28) "... as it may deem necessary ..."

29) The USSR (1955-superseded), Article 4.

30) SWITZERLAND, Article 7. - As pointed out by Cheng, it would be rare for a state to refuse permission to a foreign airline merely on account of the factor that it were substant-

action stating also the grounds therefor. As the second phase, consultation between the aeronautical authorities of the contracting parties is provided for. Would no agreement have been reached within thirty days [33], then the action proposed may be taken. A similar procedure is prescribed also in the YUGOSLAV and AUSTRIAN treaties for the refusal to grant the operating permit [34]. The prior notice is, however, replaced with a request for consultations. Furthermore, instead of prescribing a maximum period for the consultation, these two agreements provide that the consultation shall begin within a period of twenty days from the request therefor.

It has been maintained in legal theory that a holding of more than fifty per cent of the share capital of an airline company would generally satisfy the requirement for substantial ownership [35]. In harmony with this point of view, the term "majority ownership" is introduced in the agreement with YUGOSLAVIA [36]. From the parallel qualification of effective control it would seem to follow, however, that a majority national ownership alone would not suffice unless a majority of the votes also would be secured thereby. Similarly, the requirement for effective control would seem to preclude an airline from qualifying wherever the actual powers derived from substantial ownership were, in virtue of trusteeship or otherwise lawfully, conferred upon nationals of a third state.

./. ially owned by nationals of that state. The formulation of the SWISS clause would thus appear to be unnecessarily particular. - See Cheng, op.cit., p. 377.

31) HUNGARY, Article 2(4). 31a) FRANCE and onwards.

32) HUNGARY, Articles 2(4) and 3(5).

33) The period shall be counted from the date upon which the initial notice would, in the ordinary course of transmission, be received by the contracting party to whom it is addressed.

34) YUGOSLAVIA, Article 4(3); AUSTRIA, Article 5(2).

35) Cheng, op.cit., p. 378.

36) YUGOSLAVIA, Article 4(1).

It may be noted also that the qualifications of substantial national ownership and effective control are not absolute requirements but may be invoked or omitted by the grantor-state within its own discretion [37]. Thus among other states Finland has accepted the consortium airline Scandinavian Airlines System which is neither substantially owned nor effectively controlled by any one of its national partners.

(b) Operation of Agreed Services.

It is an inherent feature in the operation of international air services that, apart from the flight operations proper, various technical, commercial and administrative functions also must be performed in the territory of more than one state. Given the established principle of territorial sovereignty of states, different legal problems are then likely to arise in connection with such operations. Therefore, a variable number of provisions intended to cover such issues between states are usually incorporated in their bilateral air transport agreements.

Among the simplified Finnish bilaterals only the agreement with the UNITED KINGDOM (S-1953) dealt expressly with this subject: the British airline company designated should, while exercising flight operations on the Finnish territory, follow the instructions and orders of the Finnish Office of Civil Aviation. But in all other respects the conditions as to the operation of the agreed services under this and the other simplified agreements were to be separately agreed upon between the airlines designated and the competent authorities of the respective grantor-states, or between the national airlines subject to the approval of the said authorities.

---

37) Cheng, op.cit., p. 377.

The provisions as to the operation of the agreed services incorporated in the ordinary Finnish agreements may, for the purposes of the present thesis, be examined in accordance with their subject matter as follows: (i) Compliance with local laws and regulations; (ii) Revocation and suspension of operations; (iii) Customs duties and similar charges; (iv) Direct transit traffic; (v) Financial and administrative arrangements; (vi) Flight operations; and (vii) Other arrangements.

(i) Compliance with Local Laws and Regulations.

Pursuant to the territorial sovereignty of states established in international law, any state may apply its national laws and regulations to and require compliance therewith from foreign subjects within its territory. Provisions like the following incorporated in the agreement with the GDR should therefore be regarded merely as declaratory of that general principle:

"The designated airlines, their aircraft and crews shall, in the territory of the other State, comply with the laws and regulations relating to air transport as well as with the general laws and regulations in force in that territory." 38)

In harmony with Article 11 of the Chicago Convention, Article 6(a) of the CSF model agreement provides for the application of national air regulations to the aircraft of all contracting parties without distinction as to nationality, and for the compliance therewith by such aircraft. Among states

---

38) The GDR, Article 8(1). - A similar position should be accorded also to the stipulations in the agreements with HUNGARY and the GDR which, while providing for the application of the national laws, rules and regulations of one contracting party in general to the aircraft of the designated airlines of the other contracting party and to the passengers, crew, luggage, cargo and mail of such aircraft, indicate the national air regulations as well as the entry and clearance regulations as those especially applicable. - HUNGARY, Article 6; the GDR, Article 8(2).

parties to the Chicago Convention, this issue would be covered anyway by Article 11 thereof. A corresponding provision nevertheless is incorporated in a majority of the ordinary Finnish agreements [39]. Adapted to bilateral relations, a typical "Finnish" clause reads as follows:

"The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline designated by the other Contracting Party." [40]

The national treatment ensured in this typical clause and its prototypes is replaced in the agreement with YUGOSLAVIA with most favoured foreign airline treatment:

"A fair treatment shall be accorded to the airlines of both Contracting Parties in respect of operation of the agreed services and no difference shall be made by the Contracting Parties between the airlines designated by the other Contracting Party and foreign airlines on their respective territories." [41]

As it would appear, equal treatment of national airlines, on the one hand, and foreign airlines, on the other, would not necessarily be called for under this formulation.

In all of the Finnish bilaterals which contain a clause governing the application of national air regulations, another provision relating to the compliance with national entry and clearance regulations also is incorporated. A majority of these

---

39) Not in the following: the UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and SPAIN. - Not in the ECAC/SC either.

40) CZECHOSLOVAKIA, Article 6(a). - In the agreements with FRANCE and POLAND (1963) express reference is made also to the laws and regulations relating to stay in the territory of the grantor-state. As declaratory of the general principle of territorial sovereignty of states, this refinement means no change in substance.

41) YUGOSLAVIA, Article 9(3). - This provision applies equally to the clause governing the entry and clearance regulations to be discussed below.

agreements [42] follow more or less closely the wording of Article 13 of the Chicago Convention and its equivalent in Article 6(b) of the CSF model agreement. A clause typical to this majority group of agreements may be quoted here as follows:

"The laws and regulations of one contracting party as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine shall be complied with by or on behalf of the passengers, crew and cargo of aircraft used by the designated airline or airlines of the other contracting party upon entrance into, departure from or while within the territory of the first party." [43]

Despite a basic difference in drafting, the corresponding clause to be found in the agreements belonging to the minority group [44] is essentially identical in substance with the above quotation. In both groups, minor variations from the standard pattern may be recorded. Thus an express reference to the laws and regulations relating to the stay in the territory of the grantor-state is made in almost all of the agreements [45]. In some treaties, the laws and regulations as to the admission to or departure from the territory of the grantor-state of mail [46], or luggage [47] are also expressly indicated. While a majority of the agreements reiterate invariably the list of regulations enumerated as examples in the above quotation, in some of them certain features are added, omitted or replaced

---

42) The NETHERLANDS, the UNITED STATES, CZECHOSLOVAKIA, the USSR (1955-superseded), SWITZERLAND, HUNGARY, POLAND (1963), YUGOSLAVIA, the USSR (1972) and the GDR.

43) The NETHERLANDS, Article 6(b).

44) SWEDEN, NORWAY, DENMARK (terminated), ICELAND, LUXEMBOURG and FRANCE.

45) Not in the following: the NETHERLANDS, the UNITED STATES, CZECHOSLOVAKIA, the USSR (1955-superseded), HUNGARY, the USSR (1972) and the GDR.

46) SWITZERLAND, POLAND (1963), YUGOSLAVIA, the USSR (1972) and

47) HUNGARY and the GDR. the GDR.

with other features [48]. Furthermore, the express reference to the compliance with the laws and regulations by third persons on behalf of passengers, crew, luggage, cargo or mail is omitted from certain agreements [49]. Under the general principle of territorial sovereignty of states, however, none of these refinements would mean a change in substance.

(ii) Revocation and Suspension of Operations.

In section (a) of this Chapter the situations have already been focused upon wherein the original grant of an operating permit may be refused or conditions imposed upon the exercise of the rights granted or the operating permit. But even after the commencement of the actual operation of the agreed services, the functions of the designated airlines of either contracting party remain under the legal control of the other contracting party. The requirement for a valid operating permit throughout the operations is clearly implied in almost all of the Finnish bilateral air transport agreements, and must be similarly presumed in respect of the remainder. Regulations governing the unilateral acts of revocation or suspension of the operations are incorporated in all the Finnish bilaterals. While the early agreements follow generally the pattern suggested in Article 7 of the CSF model agreement, the more recent agreements adhere similarly to Article 3 of the ECAC/SC. For our present

48) The USSR (1955-superseded): currency added - entry, clearance and immigration omitted; SWITZERLAND: entry and clearance replaced with formalities; HUNGARY: export, import and exchange added - entry, clearance and immigration omitted; FRANCE: passports omitted (they would presumably be covered anyway by the entry and clearance regulations); POLAND (1963) entry, clearance and immigration omitted - quarantine replaced with medical formalities; YUGOSLAVIA: currency added; the USSR (1972): currency and health added - entry, clearance and immigration omitted; the GDR: export, import and exchange added - entry, clearance and immigration omitted.

49) The USSR (1955-superseded), SWITZERLAND, HUNGARY, POLAND(1963) YUGOSLAVIA, the USSR (1972) and the GDR.

purposes, the relevant provisions may be examined under three headings: 1. Grounds; 2. Measures; and 3. Procedure.

1. Grounds.

The three different grounds generally provided for the unilateral action prescribed may be discussed below separately.

1.1. Defect in National Ownership and Control of a Designated Airline.

A relevant defect is established in any case where one contracting party is not satisfied that substantial ownership and effective control of an airline designated by the other contracting party are vested in that contracting party or in such nationals or other subjects as may be prescribed in the respective treaties [50]. Under the agreement with the USSR (1955-superseded), this was the sole ground on which unilateral regulatory measures prescribed therein could be undertaken.

1.2. Failure of a Designated Airline to Comply with the Laws and Regulations of the Grantor-state.

In the early agreements, the laws and regulations contemplated are specified by reference to the individual Article governing the application of and compliance with national air regulations, and entry and clearance regulations in the respective treaties [51]. In harmony with Article 3(1)(b) of the ECAC/SC, the more recent agreements [52] refer in this respect more generally to "the laws or regulations" of the grantor-state. Thus the scope of the latter provision would appear to be, at least in principle, wider than in the early agreements.

---

50) See supra p. 225. - The more recent agreements adhere in this respect to Article 3(1)(a) of the ECAC/SC suggesting that substantial ownership and effective control be vested in the contracting party designating the airline or in nationals of such contracting party.

51) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, ICELAND and LUXEMBOURG. - See also supra pp. 228 - 231.

52) HUNGARY and onwards. - In the agreement with the GDR the laws and regulations of the other contracting party govern-

./.

1.3. Failure of a Designated Airline to Perform its Obligations under the Agreement.

The wording of the above subtitle reiterates the CSF-type formulation to be found generally in the early agreements[53]. The more recent agreements which generally adhere to the formulation of Article 3(1)(c) of the ECAC/SC, refer to cases where an airline otherwise fails to operate in accordance with the conditions prescribed under the agreement [54]. As it would appear, the latter formulation may be more specifically confined to the operation of the agreed services, while under the former also failures of a more general nature would qualify.

1.4. Specific Stipulations.

Among the early treaties, the agreement with the UNITED STATES equals a failure of the government designating the airline to comply with the laws and regulations or to perform its obligations under the treaty with similar failure of the airline. In the same agreement, an additional ground for the unilateral action prescribed is indicated: a failure of the airline or the government to fulfil the conditions under which the rights are granted in accordance with the agreement and its annex.

2. Measures.

In case of any relevant defect or failure described above, the party complaint may unilaterally put into effect such consequence as may be prescribed in the treaty. According to the early agreements, revocation either of the rights specified [55], or of the operating permit [56] is provided for

---

./. ing "entry into, departure from or flights over, as well as the operation of aircraft used in international air services within the territory of that other Contracting Party" are particularly emphasised. - The GDR, Article 4(1)(b).

53) The agreements enumerated in supra note 51), and the agreement with YUGOSLAVIA.

54) HUNGARY and onwards except YUGOSLAVIA.

55) The agreements with the NETHERLANDS, the UNITED STATES and CZECHOSLOVAKIA.

56) SWEDEN, NORWAY, DENMARK (terminated), the USSR (1955-superseded), SWITZERLAND, ICELAND and LUXEMBOURG.

in this respect. A set of three alternate consequences is most commonly prescribed in the more recent agreements [57]: (i) Revocation of the operating authorisation; (ii) Suspension of the exercise of the rights specified; and (iii) Imposition of such conditions as may be deemed necessary by the party complaint on the exercise of those rights.

Some of the more recent agreements, however, introduce different combinations of the standard consequences. Thus the treaty with YUGOSLAVIA provides solely for revocation, temporarily or definitively, of the operating permit [58]. Under the AUSTRIAN agreement, the measures to be taken are limited to revocation of or imposition of conditions upon the operating permission [59]. According to the agreement with HUNGARY, a defect in national ownership and control may be invoked for revocation of the grant of the operating rights, or for imposition of conditions on the exercise of these rights [60]. In other respects, suspension of or imposition of conditions on the exercise of the said rights are provided for in this treaty [61]. Under the agreement with FRANCE, only the commercial rights may be affected. A defect in national ownership and control entitles to revocation of the commercial rights, or to imposition of conditions upon the exercise of such rights [62].

---

57) POLAND (1963), the UNITED KINGDOM, BULGARIA, MALTA, PORTUGAL, ROMANIA, the GDR and SPAIN.

58) YUGOSLAVIA, Article 4(1) and (2). - In practice, a temporary revocation would be very much the same as suspension of the exercise of the rights specified. Imposition of conditions other than a period for the temporary revocation would, however, be excluded.

59) AUSTRIA, Article 5(1). - Even here a temporary revocation of the operating authorisation, which must be considered permissible, would have the practical effect of suspension of the rights granted. This may have been implied in the title of this Article which reads: "Revocation and Suspension" (underline supplied), although suspension is expressly mentioned nowhere in the text of the Article.

60) HUNGARY, Article 2(4).

61) HUNGARY, Article 3(4).

62) FRANCE, Article XIII(1).

On the two other grounds, restriction or suspension of the exercise of the commercial rights, or imposition of conditions thereupon may be undertaken [63]. The agreement with the USSR (1972) provides for revocation of the operating authorisation, or imposition of conditions on the exercise of the operating rights in the event of a defect in national ownership and control [64]; on the two other grounds, the exercise of the rights specified may be suspended or conditions imposed thereupon [65].

Generally, the right to take the measures prescribed in the respective treaties belong to the contracting parties. This is also expressly indicated in a majority of the agreements. In the treaties with YUGOSLAVIA and MALTA, however, the exercise of this right is delegated to the aeronautical authorities of the contracting parties.

3. Procedure.

The consultation procedures prescribed in the agreements with HUNGARY, YUGOSLAVIA and AUSTRIA which have already been discussed before [66], apply equally to measures taken after the inauguration of the agreed services. The standard clause governing similar consultations in the more recent agreements reads as follows:

"Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringement of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party. In ...". [67]

---

63) FRANCE, Article XIII(2).

64) The USSR (1972), Article 11(2).

65) The USSR (1972), Article 11(3).

66) Supra pp. 225 - 226.

67) ROMANIA, Article 4(2). - Similar clause in POLAND (1963), the UNITED KINGDOM, BULGARIA, MALTA, PORTUGAL, the GDR and SPAIN.

Under the YUGOSLAV treaty, the right to immediate action is confined to revocation of the operating permit. The corresponding clauses in the agreements with AUSTRIA and the USSR (1972) do not extend the right of immediate action to all the consequences indicated therein [68].

With only a few exceptions [69], all of the treaties which contain a consultation clause similar to that quoted above prescribe also a period of time for the commencement of the consultation: the consultation shall begin within twenty days from the date of the request made by either contracting party therefor.

In the absence of an express provision calling for consultation, the position would, however, be much the same. In international law, the parties to a treaty may not take immediate unilateral action which could adversely affect the rights of the other contracting party under the treaty, unless under an express authorisation binding upon both parties, or unless the action proposed would be justified as a retaliatory or preventive measure against a breach by the other party of its treaty obligations [70]. It should also be noted that according to general principles of international law, provisions of any treaty must not affect the freedom of action of a contracting party in case of war, whether as belligerent or neutral, nor in the event of national emergency declared by that party [71].

---

68) AUSTRIA: immediate action limited to withholding or revocation of the operating permission; the USSR (1972): immediate action provided only for suspension of the exercise of the operating rights or imposition of conditions thereupon in case of a failure of the designated airline to comply with the laws or regulations of the granter-state or to operate in accordance with the conditions prescribed in the treaty.

69) POLAND (1963) and the UNITED KINGDOM.

70) See Cheng, op.cit., p. 482, and Castrén, Suomen Kansainvälinen Oikeus, 1959, p. 322.

71) See Cheng, op.cit., p. 483, and Castrén, op.cit., pp. 254-255. Cf., Article 89 of the Chicago Convention.

(iii) Exemption from Customs Duties and Other Charges.

Given the practical necessity to facilitate and expedite operation of the agreed services, the question of customs duties and other similar charges relative to aircraft and their equipment and supplies gains importance in bilateral air commerce. Among states parties to the Chicago Convention, this question is regulated in the larger context of international air navigation in general. Under Article 24 of the said Convention, aircraft on a flight to, from, or across the territory of another contracting state shall be admitted temporarily free of duty, subject to the customs regulations of the state. Equipment and supplies [72] carried and retained on board such aircraft in the territory of another contracting party shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Admission, free of customs duty, is also accorded in respect of spare parts and equipment imported into the territory of a contracting state for incorporation in or use on an aircraft of another contracting state engaged in international air navigation [73].

The matter is nevertheless regulated more specifically in all the ordinary Finnish bilateral air transport agreements. The clauses incorporated therein are based generally on the model formulae of the CSF or ECAC/SC. The retrograde development involved in certain respects in the model formulae as compared with Article 24 of the Chicago Convention is thus equally present in the corresponding Finnish provisions. None of the latter, however, contain a reservation regarding the multilateral stipulation. Between Finland and her bilateral

---

72) Fuel, lubricating oils, spare parts, regular equipment and aircraft stores. - Article 24(a) of the Convention.

73) Article 24(b) of the Convention.

treaty partners parties to the Chicago Convention [74], Article 24 thereof should thus be understood to constitute the minimum standard that may have been confirmed or extended but not restricted by the respective bilateral clauses [75].

1. Aircraft, and Materials Retained on Board Aircraft.

In harmony with Article 4(c) of the CSF model agreement, most of the early Finnish bilaterals do not expressly deal with duty-free admission of the aircraft [76]. Under these agreements, aircraft operated by the designated airlines of one party on international services in the territory of the other party would thus be covered by Article 24(a) of the Chicago Convention. But otherwise an equal treatment is accorded expressly to aircraft and their equipment and supplies retained on board. The aircraft exempt is defined in two different ways. In some agreements the aircraft of the designated airlines operated on the agreed services are contemplated [77]. The more recent agreements, however, adhere almost invariably to the wording of Article 4(1) of the ECAC/SC while referring to aircraft operated on international services by the designated airlines of either contracting party [78]. Wider in scope, the latter definition would include, for instance, aircraft making technical stops or being diverted [79].

The equipment and supplies exempt under the early agreements are fuel, lubricating oils, spare parts, regular equipment and aircraft stores [80]. In the agreement with

---

74) See Appendix IV.

75) See also Cheng, op.cit., p. 339.

76) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA and ICELAND.

77) The USSR (1955-superseded), SWITZERLAND, LUXEMBOURG and the USSR (1972).

78) HUNGARY and onwards except the USSR (1972). - The BULGARIAN clause would seem to take nothing for granted while referring more specifically to international air services (underline supplied).

79) Handbook on Administrative Clauses in Bilateral Air Trans-

./.

HUNGARY, tools and installations are specifically enumerated in addition to the standard list [81]. The formulation adopted in the more recent treaties, however, differs from the early clauses, apart from the express inclusion thereby of food, beverages and tobacco in the aircraft stores exempt, mainly through the total omission of spare parts [82] from the standard list. Thus under almost all of the more recent treaties, spare parts would be exempt pursuant to Article 24(a) of the Chicago Convention [83].

In those of the early agreements which do not deal with the admission, free of duty, of aircraft, the equipment and supplies exempt are supposed to be introduced and retained on board civil aircraft of the airlines of the contracting parties authorised to operate the agreed services [84]. But otherwise the scope of the equipment and supplies exempt is determined through the description of the aircraft exempt [85].

In the individual agreements, the duties and charges involved are described in various ways. In addition to customs duties and inspection fees which are almost invariably mentioned,

---

./. port Agreements, ICAO Circular 63-AT/6, p. 56.

80) The ICAO-approved definitions of the terms "spare parts" and "stores" are the following:

"Spare parts. Articles of a repair or replacement nature for incorporation in an aircraft, including engines and propellers."

"Stores. Articles of a readily consumable nature for use or sale on board an aircraft during flight, including commissary supplies."

-Lexicon of Terms Used in Connection with International Civil Aviation, ICAO Doc 8800, Vol. II, Third Edition, 1971, pp. 65 and 66.

81) HUNGARY, Article 9(1).

82) FRANCE and onwards. - Spare parts are, however, included in the agreement with the USSR (1972).

83) FRANCE and onwards except the USSR (1972) and the GDR (who is not a party to the Chicago Convention).

84) For a list of these agreements, see supra p. 238, note 76.

85) "... on board such aircraft ..."

"similar duties or charges" [86], "other duties or taxes" [87], or "other similar charges" [88] are expressly indicated in a majority of the agreements [89]. Given the broad terms used, however, no essential difference may be disclosed between the various formulations.

In some agreements, the exemption of the aircraft is expressly made conditional on its re-exportation [90], or excluded if it is disposed of in the territory of the grantor-state [91]. But even in the absence of such express stipulations, the condition of re-exportation would seem to be clearly implied in all the other treaties dealing with the subject, as well as in Article 24(a) of the Chicago Convention. All of the treaties make the exemption of equipment and supplies similarly conditional on their retaining on board aircraft up to such time as they are re-exported. Given this condition, it could be maintained that supplies used or consumed on flights over the territory of the grantor-state would not be exempt. With only one exception [92], however, all of the Finnish agreements exempt expressly such equipment and supplies even though they would be used or consumed on such flights. In some of the agreements, equipment and supplies otherwise exempt are expressly excluded in case they are disposed of in the territory of the grantor-state [93], or alienation of exempt goods is expressly prohibited [94]. Given the prerequisite of retaining on board the materials up to their re-exportation, such exclusion or prohibition would seem to be clearly implied even without an express indication.

---

86) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated) and LUXEMBOURG. - Also in Article 4(c) of the CSF model agreement.

87) FRANCE, POLAND (1963), AUSTRIA and SPAIN. - Also in Article 4(1) of the ECAC/SC.

88) The UNITED KINGDOM, YUGOSLAVIA, BULGARIA, MALTA, PORTUGAL,

./.

2. Imported or Uplifted Materials.

The operational needs of international air services may often require importation into the territory of a state of equipment and supplies for incorporation in or use on aircraft of another state. Among states parties to the Chicago Convention, the duty-free admission of spare parts and equipment thus imported is subject to compliance with the regulations of the state concerned [95]. All the ordinary Finnish bilaterals also regulate such import.

In harmony with Article 4(b) of the CSF model agreement, almost all of the early Finnish treaties extend their scope of regulation to fuel, lubricating oils and spare parts [96]. In some of the treaties, "other materials" [97], or "tools, regular equipment, installations and stores" [98] are additionally included. The more recent agreements, which generally adhere to Article 4(2) of the ECAC/SC, refer in this respect to aircraft stores, spare parts, and fuel and lubricants [99]. Under some

---

./. ROMANIA and the GDR.

89) Other variations:
-CZECHOSLOVAKIA and ICELAND: customs, inspection fees or similar charges.
-The USSR (1955-superseded): customs duties, taxes and other charges.
-SWITZERLAND: customs duties and other duties and charges.
-HUNGARY: all customs duties, taxes and charges.
-The USSR (1972): customs duties, inspection fees and all other duties and charges.

According to legal theory a charge, in contrast to a tax, is a compensation fixed unilaterally by a state or another public body for a tangible benefit obtained by the payee from the community. - Rytkölä, Merenkulkumaksut (Shipping Charges), 1958, p. 2 (in the English Summary at p. 92).

90) POLAND (1963), Article 6(1).

91) The USSR (1955-superseded), Article 5(1); and the USSR (1972), Article 8(3).

92) FRANCE and POLAND (1963).

93) The USSR (1955-superseded) and the USSR (1972).

94) HUNGARY, Article 9(3).

95) Article 24(b) of the Chicago Convention.

96) From the NETHERLANDS to HUNGARY. - In the SWISS agreement,

./.

treaties, however, "regular equipment" [100], or "regular airborne equipment" [101] also are included and treated equally with spare parts. In the agreements with the USSR (1972) and the GDR, advertising materials are expressly added to the standard set laid down in the ECAC/SC model article.

More specific conditions are laid down to govern the acts of introduction or uplifting of materials to be exempt or otherwise benefitted. The early agreements require in this respect generally that such materials be introduced into or taken on board aircraft in the territory of one contracting party by the other contracting party or its nationals. The materials shall also be intended solely for use by aircraft of that other contracting party, or of its airlines [102]. In some cases, introduction or uplifting of the materials by or on behalf of an airline designated by the other contracting party is exclusively provided for; and the materials must be intended solely for use by the aircraft of that particular airline [103]. The agreement with HUNGARY, wherein use of the materials in the aircraft of the designated airline of one contracting party is provided for, does not specify by whom they shall be introduced into the territory of the other contracting party [104].

./. lubricating oils are omitted.

97) The USSR (1955-superseded), Article 5(2).

98) HUNGARY, Article 9(2).

99) FRANCE and onwards.

100) POLAND (1963), Article 6(2)(b).

101) ROMANIA, Article 5(2)(b).

102) The NETHERLANDS and SWITZERLAND. - The agreements with the UNITED STATES and CZECHOSLOVAKIA do not include uplifting of materials.

103) SWEDEN, NORWAY, DENMARK (terminated), the USSR (1955-superseded), ICELAND and LUXEMBOURG (uplifting included only in ICELAND and LUXEMBOURG).

104) HUNGARY, Article 9(2).

In the more recent agreements, the conditions are laid down distinctly for each category of the materials. With respect to aircraft stores the condition is thus prescribed that they are taken on board in the territory of either contracting party for use on board aircraft engaged in an international service of the other contracting party [105]. Under a majority of these agreements, however, only stores uplifted for use on board outbound aircraft are included [106]. This refinement has the effect of excluding uplifting of duty-free stores for use on an internal leg of an inward flight [107]. All of the agreements except the GDR restrict expressly the application of the clause to stores uplifted within limits fixed by the authorities of the grantor-state [108]. The determination of such limits is, however, a direct consequence of territorial sovereignty of states. The position would thus be much the same even in the absence of such express reference, as is the case with the agreement with the GDR. The conditions relative to spare parts require that they are entered into the territory of either contracting party for the maintenance or repair of aircraft used on international services by the designated airlines of the other contracting party [109]. In the agreement with POLAND (1963), introduction of spare parts and regular equipment is included, apart from maintenance or repair, also for the operation of such aircraft [110]. The inclusion of fuel and lubricants is under the express condition that they are destined to supply aircraft operated on international services by the

---

105) FRANCE and onwards. - Also in Article 4(2)(a) of the ECAC/SC.

106) The UNITED KINGDOM, YUGOSLAVIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and the GDR.

107) See ICAO Circular 63-AT/6, p. 58.

108) Also in Article 4(2)(a) of the ECAC/SC.

109) FRANCE and onwards. - Also in Article 4(2)(b) of the ECAC/SC.

110) POLAND (1963), Article 6(2)(b).

designated airlines of the other contracting party [111]. Under some treaties, however, the clause applies only to fuel and lubricants destined to supply such outbound aircraft [112]. This description would exclude from the sphere of application of the clause supplies of fuel and lubricants uplifted on an inward international journey for use on an internal flight to another airport [113]. Under all the more recent agreements, fuel and lubricants are expressly included even when they are to be used on the part of the journey performed over the territory of the grantor-state [114]. The advertising materials referred to in the agreements with the USSR (1972) and the GDR shall be "introduced into the territory of either contracting party by the designated airline of the other contracting party exclusively for use on its own services", or concern "the activities of the designated airlines within the limits fixed by the laws and regulations of the Contracting Party concerned" respectively.

The benefits accorded under these conditions in respect of the equipment and supplies specified are described in the early agreements generally by reference to national and most-favored-nation treatment [115], or to national airline and most-favored-foreign-airline treatment [116] with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered. Under the SWISS agreement, a total

---

111) FRANCE, POLAND (1963), YUGOSLAVIA, AUSTRIA, the USSR (1972) and SPAIN. - Also in Article 4(2)(c) of the ECAC/SC.

112) The UNITED KINGDOM, BULGARIA, MALTA, PORTUGAL, ROMANIA and the GDR.

113) See ICAO Circular 63-AT/6, p. 58.

114) FRANCE and onwards. - Also in Article 4(2)(c) of the ECAC/SC.

115) LUXEMBOURG. - Also in Article 4(b) of the CSF model agreement.

116) The NETHERLANDS, the UNITED STATES, CZECHOSLOVAKIA, SWEDEN, NORWAY, DENMARK (terminated) and ICELAND.

117) Omitted.

exemption is granted from import duties, while regarding other duties and charges the same treatment is prescribed as for materials introduced on board national aircraft engaged in international services [118]. The agreements with the USSR (1955-superseded) and HUNGARY accord exemption from "customs duties, taxes and other charges", or from "all taxes, duties and charges" respectively. Under all the more recent agreements, exemption from the same duties and charges is accorded as prescribed for aircraft, and equipment and supplies retained on board with the exception, however, of charges corresponding to the service performed [119].

In some agreements [120], the benefit of exemption is granted under the express condition that goods exempt shall, unless used or incorporated in due course, be exported or re-exported. Alienation of goods exempt is also expressly prohibited in one agreement [121]. It would appear, however, that the condition of exportation or re-exportation or non-alienation is clearly implied even in the absence of such express stipulations.

As pointed out by Cheng [122], the discrepancy between the CSF-type provision and Article 24(b) of the Chicago Convention consists in their treatment of spare parts. Under the former, spare parts would no longer be necessarily exempt from customs duty and must be directly imported by the other contracting party or its nationals. On the other hand, national regulation in Finland provides for exemption from import duties and other duties and charges, inter alia, of fuel

---

118) SWITZERLAND, Article 5(b).

119) FRANCE and onwards. - For the duties and charges contemplated here, see supra p. 240.

120) The NETHERLANDS and HUNGARY.

121) HUNGARY, Article 9(3).

122) Cheng, op.cit., p. 337.

and spare parts introduced on Finnish aircraft engaged in international services [123]. The national or national airline treatment accorded in the CSF-type Finnish clauses would thus inure similar exemption in Finnish territory to the states parties to such agreements.

3. Unloading and Customs Control.

The exemption granted in Article 24(a) of the Chicago Convention with respect to materials introduced on board aircraft does not apply to any quantities or articles unloaded, except in accordance with the customs regulations of the grantor-state which may require that the materials shall be kept under customs supervision. In harmony with their contemporary CSF model clause [124], a majority of the early Finnish treaties are silent in this particular respect [125]. Under the agreement with the NETHERLANDS, goods thus exempt may only be unloaded with the approval of the customs authorities of the state concerned [126]. The HUNGARIAN treaty provides that the goods exempt are, subject to adequate customs control, at the disposal of the designated airline owning these goods [127].

In general adherence to Article 5 of the ECAC/SC, all of the more recent agreements except one [128] provide that the regular airborne equipment, as well as the materials and supplies retained on board aircraft, may be unloaded in the territory of the grantor-state only with the approval of the customs authorities of that state. In such case, the goods unloaded may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

---

123) Tullilaki (the Customs Act), Articles 65 and 90(25).

124) Article 4(c) of the CSF model agreement.

125) The UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, ICELAND, LUXEMBOURG and the

./.

The admission, free of customs duty, of spare parts and equipment under Article 24(b) of the Chicago Convention is likewise subject to compliance with the regulations of the state concerned. These regulations may also provide that the articles shall be kept under customs supervision and control. A majority of the early Finnish agreements which contain a CSF-type exemption clause are silent in this respect. In the agreements with the NETHERLANDS and HUNGARY, however, such materials are put under the same rules that govern customs control of exempt goods introduced on board aircraft [129]. With only a few exceptions, all of the more recent agreements provide that imported or uplifted materials exempt thereunder may be required to be kept under customs supervision or control [130]. The agreement with POLAND (1963) makes the customs control conditional on the circumstance that is is required in the national laws and regulations of the grantor-state [131]. Under the agreement with the GDR, the provision on customs supervision or control does not directly cover the advertising materials exempt. It may be recalled, however, that the exemption in respect of such materials is granted expressly within the limits fixed by the laws and regulations of the contracting party concerned. Thus the omission would not necessarily mean a deliberate exclusion of customs supervision or control of advertising materials. It should also be noted in this context that an omission from a treaty of reference to functions normally and

---

./. USSR (1955-superseded).

126) The NETHERLANDS, Article 4(d).

127) HUNGARY, Article 9(4).

128) FRANCE and onwards except the USSR (1972).

129) See supra p. 246.

130) The UNITED KINGDOM and onwards. - Not in FRANCE.

131) POLAND (1963), Article 6(3).

reasonably exercised by states pursuant to their territorial sovereignty cannot be interpreted as a waiver, unless an express indication to that effect.

(iv) Direct Transit Traffic.

Only three of the Finnish bilaterals do specifically regulate direct transit of passengers, baggage and cargo. In harmony with Article 6 of the ECAC/SC, the agreements with POLAND (1963) and AUSTRIA provide that passengers in direct transit across the territory of either contracting party shall be subject to no more than a very simplified control. The agreement with SPAIN insists on the arrangement of such control "in a way as simplified as possible" [132]. Under all these agreements, baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes [133].

(v) Financial, Commercial and Administrative Arrangements.

In the operation of scheduled international air services, questions arising from financial settlements, transfer of funds from one country to another, stationing of personnel in foreign countries or co-operation between airlines of different countries may require specific regulation between states.

Financial matters may be governed by regional multilateral conventions or bilateral clearing agreements. In a number of the Finnish bilateral air transport agreements, specific provisions on financial matters nevertheless are incorporated. All of the agreements concluded between Finland and socialist countries except CZECHOSLOVAKIA and BULGARIA deal with this subject. Under the agreements with the USSR (1955-

---

132) SPAIN, Article 7.
133) Also in Article 6 of the ECAC/SC.

superseded) and the USSR (1972), among other matters, the financial settlements shall be agreed upon between the designated airlines. According to the latter treaty, such agreement is subject to the approval of the aeronautical authority of the contracting party whose national laws and regulations so require. In some other agreements, reference is made to "all financial questions that may occur" between the designated airlines as a result of their operations [134], or to the "accounts and payments" between such airlines [135], or to "(a)ll payments arising from the implementation of the present Agreement" [136]. A majority of these agreements prescribe that such questions shall be settled in accordance with the agreements in force between the contracting parties and under their pertinent dispositions [137], or in accordance with the relevant payments agreement between the contracting parties [138]. In the agreement with POLAND (1963), the parallel condition is laid down that the settlement shall be in accordance with the currency regulations in force in the territories of the contracting parties [139]. As pointed out by Cheng, this condition must be implied in all similar clauses even in the absence of an explicit stipulation provided, however, that such currency regulations must not amount to an actual stultification of the concession [140]. In the agreements with YUGOSLAVIA and ROMANIA [141], a general duty is imposed upon the designated airlines of either contracting party to comply, in their commercial and financial activities in the territory of the other contracting party, with the laws and regulations of that

---

134) HUNGARY, Article 14.
135) POLAND (1963), Article 11.
136) The GDR, Article 14.
137) HUNGARY, Article 14.
138) POLAND (1963), the USSR (1972) and the GDR.
139) POLAND (1963), Article 11.
140) Cheng, op.cit., p. 354.
141) YUGOSLAVIA, Article 8(2); ROMANIA, Article 9(2).

party.

In a majority of the more recent agreements, a right of free transfer of the excess of receipts over expenditure is granted by each contracting party to the designated airlines of the other contracting party [142]. This right is, however, confined to such surplus receipts that are earned by the designated airlines of one contracting party in the territory of the other contracting party in connection with the carriage of passengers, mail and cargo [143]. The transfer shall be accomplished in accordance with the official rate of exchange. The agreement with ROMANIA provides additionally that whenever the payments system between the contracting parties is governed by a special agreement, this agreement shall apply [144]. In the agreement with the USSR (1972) the concession is described in somewhat wider terms as follows:

"(2) Each Contracting Party grants to the designated airline of the other Contracting Party the right of transfer to its Head Office of the excess of receipts over expenditure achieved from the air services.

(3) The sums of money referred to above shall be transferred freely, and such transfers shall not be subject to any kind of taxation or any other restrictions." [145]

As a novelty in the Finnish bilateral practice, immunity from taxation and social security charges is granted reciprocally by a separate agreement [146] concluded between Finland and the USSR in conjunction with their bilateral air transport agreement of 1972. The recipients of the said benefit are the two airlines designated in the USSR (1972) agreement, and their national employees. The exemption covers the income and profit earned

---

142) The Finnish clauses thus differ from their model Article 8 of the ECAC/SC wherein the contracting parties merely undertake to grant such free transfer to each other.

143) As it would appear, the right of free transfer would not necessarily be restricted to the operation of the agreed services.

144) ROMANIA, Article 9(1). - Also in Article 8 (second sentence) of the ECAC/SC.

./.

by the said airlines for sale of air transportation and for operation of air services, as well as their property in the territory of the other contracting state. With respect to the personnel, exempt are their respective salaries.

In order to expedite their commercial and technical operations, airlines engaged in international air services tend to station their necessary pesonnel in the territories of foreign countries relevant to their operations. The relatively strict control maintained by certain countries regarding the admission into their territories of foreign nationals would, in the absence of adequate regulation, cause practical difficulties in this respect. Thus in a majority of the bilateral air transport agreements concluded between Finland and socialist countries [147], the right to maintain in the territory of the other contracting party specified personnel is mutually granted to the designated airlines of the respective parties. In the both SOVIET agreements this grant is made expressly on the basis of reciprocity. Certain qualifications as to the personnel admitted and their functions are laid down in a majority of these treaties. The USSR (1955-superseded) agreement did include only representatives sent "in order to deal with matters concerning air transport and the servicing of aircraft" [148]. In the agreement with the USSR (1972), the term "representations" is used without further qualification [149]. Apart from the

---

./. 145) The USSR (1972), Article 6. - Translation from the officially published Finnish text by the present author.

146) The Agreement on Mutual Exemption from Taxes and Social Security Charges of Airlines and their Personnel, done in Helsinki, May 5, 1972. - The Finnish Statute Book (Treaty Series), No. 36/1972.

147) The USSR (1955-superseded), HUNGARY, BULGARIA, ROMANIA, the USSR (1972) and the GDR.

148) The USSR (1955-superseded), Article 8.

149) The USSR (1972), Article 12(1).

representations of the designated airlines, also their "other personnel" [150], or "technical and commercial staff" [151], or "technical and administrative ... and commercial personnel" [152] are admitted under the agreements with HUNGARY, BULGARIA and ROMANIA respectively. The agreement with the GDR refers exclusively to "a representation comprising technical and commercial personnel" [153]. Under the HUNGARIAN treaty both the representatives and other personnel, but under the agreements with BULGARIA and ROMANIA only the technical and commercial staff, or the technical and administrative personnel respectively must be required for the operation of the agreed services. The same requirement applies under the agreement with the GDR to the representation personnel. The commercial personnel admitted distinctly under the ROMANIAN treaty must be required for traffic promotion.

In some of the treaties, qualifications are laid down also in respect of the nationality of the representatives and other personnel admitted. Thus under the agreement with the USSR (1955-superseded), the representatives and the crew members of the aircraft operating on the agreed services must be citizens of Finland and the USSR respectively. In the USSR (1972) agreement, however, this requirement is thus far mitigated that the said persons shall be nationals of the contracting parties [154]. Under this treaty, the representation employees, as distinguished from the representatives proper, shall be designated by each airline among nationals of their own country [155]. The number of such employees shall be fixed in accordance with the production requirements of the respective airline [156]. Under the

---

150) HUNGARY, Article 12.
151) BULGARIA, Article 9.
152) ROMANIA, Article 10.
153) The GDR, Article 15(1).
154) The USSR (1972), Article 12(2).
155) The USSR (1972), Article 12(3).
156) Ibid.

agreements with HUNGARY and the GDR, the representation personnel admitted shall consist of nationals of either contracting party [157].

The both SOVIET agreements restrict the right to maintain representatives and personnel in the territory of the other contracting party to specified airports and cities. Under the USSR (1955-superseded) agreement, the airports and cities were individually indicated [158]. In consequence of the more flexible route structures therein introduced, the USSR (1972) agreement localizes the concession in more general terms to the cities and airports served on scheduled services by aircraft of the designated airlines [159]. But the principle remains nevertheless the same.

Under both the BULGARIAN and the ROMANIAN treaties, the aeronautical authorities of both contracting parties shall render all possible assistance to the airline representations in performing their duties [160].

Some of the agreements concluded between Finland and socialist countries provide specifically for technical and commercial co-operation between the designated airlines. Under the both SOVIET agreements and the treaty with POLAND (1963), specified questions relating to mutual co-operation shall be agreed upon between the designated airlines [161]. According to

---

157) HUNGARY, Article 12; the GDR, Article 15(2). - In the latter agreement, the following formulation is used: "nationals of the one or of the other or of both of the Contracting Parties".
No qualifications as to the nationality of the flight crews are laid down in these two treaties. The agreements with BULGARIA and ROMANIA do not at all regulate the nationality of airline personnel.

158) The airports of Helsinki and Moscow (Vnukovo) were originally indicated, but under the 1967 Amendment the airports and cities of Helsinki, Moscow and Leningrad.

159) The USSR (1972), Article 12(1).

160) BULGARIA, Article 9; ROMANIA, Article 10.

161) The agreements between the designated airlines are intended to govern "all technical and commercial questions relating

./.

the treaties with POLAND (1963) and the USSR (1972), such agreements are subject to the approval of the aeronautical authorities of the contracting parties if so required under their national laws and regulations [162]. In the HUNGARIAN agreement, the following clause is incorporated:

"In the interest of both Contracting Parties their respective aeronautical authorities would urge the designated airlines to cooperate closely on all matters related to operations." [163]

Still another form of co-operation, this time at the governmental level, is singled out for special regulation in the agreement with the USSR (1972):

"Each Contracting Party shall ensure the provision in adequate quantities and at reasonable prices, or cooperate to the import into its territory for the airline of the other Contracting Party of fuel and lubricants of the brand, quality and specification required by this airline." [164]

(vi) Flight Operations.

Among states parties to the Chicago Convention, the technical framework of international air navigation is set forth quite satisfactorily in the Convention proper and the Annexes thereto. In the early Finnish bilaterals, as well as in some of the agreements concluded more recently between Finland and

---

./. to flights by aircraft" under the USSR (1955-superseded) agreement; "all technical and commercial questions relating to services performed by aircraft and to carriage of passengers, baggage, cargo and mail on the agreed services, as well as all questions concerning commercial co-operation, in particular fixing of time-tables, frequency, types of aircraft, technical maintenance of aircraft and financial settlements" under the USSR (1972) agreement; and "the conditions of operating the agreed services ... as well as the conditions of commercial and technical co-operation" under the treaty with POLAND (1963).

162) POLAND (1963), Article 5(3); the USSR (1972), Article 3(3).

163) HUNGARY, Article 5(3).

164) The USSR (1972), Article 8(4). - Translation from the officially published Finnish text by the present author.

socialist countries, provisions more or less directly connected with the flight operations proper are nevertheless incorporated [165].

An express grant to the designated airlines of either contracting party of the right to use the airports available for international air services in the territory of the other contracting party is incorporated only in the agreements with LUXEMBOURG and HUNGARY [166]. Apart from the treaty with LUXEMBOURG, a similar concession regarding ancillary air navigation facilities is expressly provided for in a few agreements concluded between Finland and socialist countries [167]. Otherwise such right is merely implied in the provisions governing the fees and other charges for the use of airports and facilities, or left unregulated in the bilateral agreements. In the absence of bilateral regulation, the provisions of Article 15(1) of the Chicago Convention would, among states parties to the Convention, satisfactorily meet the needs for the safety and expedition of the agreed services in this respect. And, as pointed out by Cheng, the omission of any reference to the use of airports and other facilities in any air transport agreement could have no other meaning than that the right to their use should, even without the Chicago Convention, be implied respectively [168].

Specific regulation of matters concerning the safety of flight, distress, and emergency landings or other accidents is incorporated in some [169] of the Finnish bilaterals concluded

---

165) At the time of the conclusion of the agreements with the NETHERLANDS and the UNITED STATES, Finland had not yet adhered to the Chicago Convention. On the other hand, the USSR, HUNGARY and BULGARIA were at the time of the conclusion of their bilaterals with Finland not yet parties to the Convention, while the GDR is still a non-party thereto. - For details, see APPENDIX IV.

166) LUXEMBOURG, para. 1 of the Annex; HUNGARY, Article 3(2)(a).

167) The USSR (1955-superseded), HUNGARY, the USSR (1972) and the GDR. - These provisions are examined below in this subsection.

168) Cheng, op.cit., p. 329. ./.

with socialist countries. Among the technical and commercial questions relating to flight by aircraft to be dealt with in a separate agreement between the designated airlines under the treaty with the USSR (1955-superseded), inter alia flight safety and the servicing of aircraft have been singled out for special mention. In the agreement with the USSR (1972), however, the questions relative to the safety of traffic and the responsibility for the operation of the services [170] are dealt with in great detail in Annex II to the treaty. In paragraphs 1 and 2 of Annex II the following general provisions are laid down:

"1. The Contracting Parties undertake to take all necessary measures to ensure the safe and efficient operation of the agreed services. For this purpose, each Contracting Party shall provide for the aircraft of the airline designated by the other Contracting Party all communications, navigation and the other services necessary to operate the agreed services.

2. The information and assistance provided in accordance with the terms of this Annex by each Contracting Party shall be sufficient to meet the reasonable requirements for flight safety of the aircraft of the airline designated by the other Contracting Party." [171]

In order to ensure the safety of flight on the agreed services, the both SOVIET agreements provide that each contracting party shall place at the disposal of the other party [172] such technical aids and services as are necessary for the performance of the flights. Furthermore, each contracting party shall communicate to the other party particulars of these aids and services as well as of the airports which may be called at, and the routes to be followed in its own territory [173]. While

---

./. 169) **The USSR (1955-superseded), HUNGARY, YUGOSLAVIA, the USSR (1972) and the GDR.**

170) The USSR (1972), Article 5(2).

171) Translation from the officially published Finnish text by the present writer.

172) In the agreement of 1972, aircraft of the other contrac-

./.

the treaty with YUGOSLAVIA is silent in this respect, under the agreements with HUNGARY and the GDR each contracting party guarantees to the designated airline or airlines of the other contracting party the use of all services and installations available for the safety and regularity of civil aviation [174].

Distress and aircraft accidents are governed by Articles 25 and 26 of the Chicago Convention and by Annexes 12 and 13 thereto. Only a few of the Finnish bilaterals allude to these subjects. The treaties with YUGOSLAVIA and the GDR provide in identical terms that each contracting party shall give to the aircraft of the other contracting party, if in distress over its territory, the assistance which it would render to its own aircraft [175]. Under the YUGOSLAV treaty, this duty is extended also to the search for a missing aircraft. In gerenal adherence to Article 25 of the Chicago Convention, the agreement with HUNGARY [176] prescribes that such measures of assistance shall be rendered as may be found practicable by the contracting party on whose territory the distress occurs. Under the

---

./. ting party are mentioned as the direct recipients of this concession.

173) Annex II to the USSR (1972) agreement contains in its Articles 3 to 6 more detailed provisions on the supply of information. It further regulates the following subjects:
-Flight Plans and Air Traffic Control Procedures (Articles 7 to 11);
-Aircraft Equipment (Articles 12 and 13);
-Flight and Air Traffic Control Procedures (Article 14);
-Telecommunications Equipment (Article 15); and
-Search and Rescue Operations (Article 16).

174) HUNGARY, Article 7; the GDR, Article 9.
In the individual agreements dealing with this subject, examples of the facilities and services concerned are set forth as follows:
-radio aids and meteorological services (the USSR (1955-superseded), Article 3; the USSR (1972), Article 5(1); and the GDR, Article 9; in the treaty with the GDR, the more particular term "radio communications and radio navigation aids" is substituted for the standard term "radio aids".);
-visual aids (the both SOVIET agreements);
-air traffic control aids (the USSR (1972)); and

./.

HUNGARIAN treaty each contracting party shall also permit, subject to the control by its own authorities, the representatives of the authorities and/or of the designated airlines of the other contracting party to visit the place and to provide such measures of assistance as may be necessitated by the circumstances [177]. In this respect the agreement with the USSR (1972) provides solely that the aeronautical authorities of the contracting parties shall, whenever necessary and as far as possible, co-operate actively to ensure search and rescue operations relating to aircraft [178].

Stipulations concerning aircraft accidents and accident investigation are set forth in five agreements[178a]. The incident covered thereby is described as a "forced landing by or damage or disaster to an aircraft" [179], or "emergency landing or accident" [180], or, in harmony with Article 26 of the Chicago Convention, as "an accident to an aircraft involving death or serious injury or indicating serious technical defect in the aircraft or air navigation facilities" [181]. Under the both agreements with the USSR, urgent assistance shall be rendered by the contracting party in whose territory the accident occurs to the crew and passengers injured in the accident. All practicable measures shall also be taken in order to rescue and protect the mail, baggage and cargo on board, as well as the aircraft itself [182]. In addition to duties generally

---

./. -fire and crash equipment and ground facilities (the GDR).

175) YUGOSLAVIA, Article 11(1); the GDR, Article 16(1).

176) HUNGARY, Article 13(1).

177) HUNGARY, Article 13(1).

178) The USSR (1972), Article 16 of Annex II.

178a) The USSR (1955-superseded), HUNGARY, YUGOSLAVIA, the USSR (1972) and the GDR.

179) The USSR (1955-superseded), Article 9; the USSR (1972),

./.

similar to those mentioned above, the treaty with HUNGARY charges the contracting party in whose territory the accident occurs with the duty to reforward, as soon as possible, with their own transport the mail, luggage and cargo carried on board the aircraft; the costs thereby incurred shall be borne by the airline in whose interest such service has been rendered.

The both SOVIET agreements alone charge the contracting party in whose territory the accident occurred [183], or its aeronautical authorities [184] with the duty to notify immediately the other party [185], or its aeronautical authorities [186] thereof. A similar duty should, however, be assumed implicite even under those agreements which are silent in this particular respect. Under all the agreements dealing with the subject, it rests with the contracting party in whose territory the accident occurred to institute an inquiry into the circumstances and causes thereof [187]. The agreement with HUNGARY, however, confines the duty of instituting an inquiry to such cases where serious damage is caused to the aircraft or to its equipment, or death or personal injury has occurred, or serious material loss involved.

In harmony with Article 26 of the Chicago Convention, all the five treaties dealing with accident investigation stipulate that observers designated on behalf of the aircraft involved shall be given the opportunity to attend the inquiry.

./. Article 13(1).

180) HUNGARY, Article 13(2).

181) YUGOSLAVIA, Article 11(2); the GDR, Article 16(2).

182) The aircraft is not mentioned in the 1955-superseded agreement.

183) The USSR (1955-superseded), Article 9.

184) The USSR (1972), Article 13(1).

185) The USSR (1955-superseded), Article 9.

186) The USSR (1972), Article 13(1).

187) In the agreements with HUNGARY and the USSR (1972), this duty is vested directly in the aeronautical authorities of the contracting party concerned.

In the individual agreements, however, different rules are set forth relative to such designation. The powers of designation may thus be conferred upon the state in which the aircraft is registered [188], or upon the other contracting state [189] or its aeronautical authorities [190], or upon the contracting party to which the aircraft belongs [191]. In the HUNGARIAN clause there is specifically emphasised, that the aeronautical authorities of the other contracting party shall, simultaneously with the opening of the inquiry, be invited to appoint the observers.

Under all the five treaties concerned, the report and findings of the inquiry shall be communicated to the other contracting party. In addition to this, the USSR (1972) agreement charges the aeronautical authorities of the contracting parties with the duty, within the limits set by their own laws and regulations, to deliver to each other the documents and particulars relative to the occurrence [192].

The question of fees and other charges for the use of airports and facilities is dealt with mainly in the early agreements [192a]. In harmony with Article 4(a) of the CSF model agreement, some treaties [193] assure explicitly the right of the contracting parties to impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities [194]. In the other treaties alluding to this subject, similar right is merely implied:

---

188) The GDR, Article 16(2). - This is not necessarily the other contracting party, e.g., in case of a leased aircraft of third nationality.
189) The USSR (1972), Article 13(2). - This formulation would exclude a third state in which a leased aircraft is registered.
190) HUNGARY, Article 13(3).
191) The USSR (1955-superseded), Article 9(2); YUGOSLAVIA, Article 11 (2). - As it would appear, this slightly ambiguous wording should be understood to mean the other contracting party, be it the state of registry or not.
192) The USSR (1972), Article 13(2).
192a) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK-(terminated), CZECHOSLOVAKIA, SWITZERLAND, ICELAND, ./.

"Each Contracting Party agrees that the charges which it may impose on airline of the other Contracting Party for the use of its airports and other facilities ..." 195)

As no mention is made to the charges that the contracting parties may permit to be imposed upon each other's airlines 196), the above wording would appear to be in discrepancy with the obligations of the same parties under Article 15(2) of the Chicago Convention. In this respect, the agreement with LUXEMBOURG refers quite correctly to the charges imposed on the respective airlines without specifying by whom they may have been levied 197). Among states parties to the Convention, however, Article 15(2) thereof would prevail over a restrictive bilateral stipulation.

A majority of the agreements dealing with airport and facility charges prescribe that they shall not be higher than would be paid for the use of such airports and facilities by national aircraft of the grantor-state engaged in similar inter-

---

./. LUXEMBOURG, HUNGARY, YUGOSLAVIA, the USSR (1972) and the GDR.

193) The NETHERLANDS, the UNITED STATES and CZECHOSLOVAKIA.

194) As pointed out by Cheng, the term "public airports" should be interpreted to mean no more than the reference in Article 15 of the Chicago Convention to airports "open to public use" and facilities "provided for public use". - Cheng, op.cit., pp. 331 and 332.

The agreement with the UNITED STATES refers more specifically to public airports and other facilities under the control of the grantor-state. Thus airports and facilities in the territory of either contracting party which are under the authority of a third state would be excluded thereunder. - See also Cheng, op.cit., p. 332.

195) ICELAND, Article 4(a). - In some treaties, however, the following variations are introduced:
-"Charges" replaced with "taxes, duties and other fees" in the agreement with HUNGARY, and with "duties and other fees" in the treaty with the USSR (1972);
-"Other facilities" replaced with "technical equipment and other facilities", or "air navigation facilities and other technical installations", or "en route technical equipment and other facilities" in the agreements with HUNGARY, YUGOSLAVIA and the USSR (1972) respectively.

196) That is to say, for instance, charges for the use of privately owned and operated airports and facilities.

197) LUXEMBOURG, Article 4(a).

national services [198]. Under the YUGOSLAV agreement, the maximum level of the charges is established by reference to charges levied on foreign airlines engaged in similar international services [199]. The agreement with the USSR (1972) provides that the charges shall be levied in accordance with the tariffs and rates applied to international services by the competent authorities of each contracting party [200]; they shall not, however, be higher than the corresponding duties and fees levied upon airlines of third countries [201]. Under the HUNGARIAN treaty, the charges shall be fixed in accordance with the tariffs established by the authorities having competency on the territory of the respective airport [202]. The level of the charges as compared with those levied on national aircraft or aircraft of third countries is thus left undetermined in the HUNGARIAN clause.

In conformity with Article 5 of the CSF model agreement, principally the early Finnish agreements provide that certificates of airworthiness, certificates of competency and licences issued or rendered valid by one contracting party shall be recognised as valid by the other party [203]. Under all of the treaties dealing with this subject except three [204], the concession is good exclusively for the purpose of operating the specified routes and the agreed services. The both SOVIET agreements and the treaty with HUNGARY do not set forth such qualification. In addition to the documents already mentioned above, the both SOVIET agreements include also certificates of registration and other aircraft documents prescribed by the aeronautical authorities of the parties and radio station licences, and the agreement with HUNGARY all other documents issued or rendered valid

---

198) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, SWITZERLAND, ICELAND and LUXEMBOURG.

199) YUGOSLAVIA, Article 8(3).

200) The USSR (1972), Article 7(1). ./.

by one contracting party. Though it would be clear without express mention, in some treaties [205] the condition is set forth that the documents to be thus recognised shall be in force.

None of the Finnish bilateral clauses governing recognition of documents does refer to the requirement of conformity with the ICAO standards referred to in Article 33 of the Chicago Convention [206]. Like their model clause in the CSF, the Finnish clauses would thus constitute a waiver of the said condition with respect to the operations thereby covered.

Under a majority of the treaties which regulate the recognition of documents, each contracting party reserves the right to refuse to recognise, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another state [207]. In the treaties with LUXEMBOURG and FRANCE, however, the word "issued" is substituted for the word "granted". Instead of indicating "another state" as the grantor of the documents, reference is made in the agreements with HUNGARY and the USSR (1972) to the other contracting party, and in the FRENCH treaty to the other contracting party or a third state.

./. 201) The USSR (1972), Article 7(2).

202) HUNGARY, Article 8.

203) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA, the USSR (1955-superseded) ICELAND, LUXEMBOURG, HUNGARY, FRANCE, YUGOSLAVIA and the USSR (1972). - Certificates of competency are not mentioned in the YUGOSLAV agreement.

204) The USSR (1955-superseded), HUNGARY and the USSR (1972).

205) The UNITED STATES and FRANCE.

206) See Cheng, op.cit., p. 343.

207) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA and ICELAND. - Also in Article 5 of the CSF model agreement.

In legal theory, the question has been raised whether the term "granted" should be interpreted to mean merely "issued" or "issued or rendered valid", and how far the term "another state" would contemplate either any third state apart from the two contracting parties, or the other contracting party and any other state [208]. Considering these questions, it should be borne in mind that the reservation clause refers to a prior undertaking by the parties to recognise the documents and must, therefore, be interpreted consistently therewith. The documents covered by the undertaking are to be issued either by the other contracting party or a third state respectively. Thus it would appear that the most satisfactory interpretation would involve the identification of the term "granted" with the term "issued", and the inclusion of both the other contracting party and any third state in the term "another state". Under this interpretation, the variations introduced in the reservation clauses of the treaties with LUXEMBOURG and FRANCE would mean no change in substance as compared with the standard formulation. Each contracting party would thus be entitled to require, for the purpose of flight above its territory, that its own nationals engaged in the operations of the other contracting party be in possession of certificates of competency and licences granted by the first party itself. But the reservation clauses set forth in the agreements with HUNGARY and the USSR (1972), while referring exclusively to documents granted by the other contracting party, would not apply to documents issued by a third state and rendered valid by the other contracting state.

In the both SOVIET agreements and the treaties with HUNGARY and YUGOSLAVIA provisions on carriage on board aircraft

---

208) See Cheng, op.cit., pp. 343 and 344.

of one contracting party on flights in the territory of the other contracting party of certificates of registration and related aircraft and crew documents also are incorporated. While in the YUGOSLAV treaty reference is made to "valid documents normally applied in the international air services" [209], in the HUNGARIAN agreement the documents are specifically enumerated. In addition to all the documents mentioned in Article 29 of the Chicago Convention, the HUNGARIAN clause includes mail manifest and special permissions prescribed for certain loads [210]. The both SOVIET agreements, while enumerating certain documents, refer additionally to other aircraft documents prescribed by the aeronautical authorities of the contracting parties and, as regards the crew, to "the prescribed documents".

In the both SOVIET agreements and the treaty with the GDR there is a provision equivalent to Article 20 of the Chicago Convention. The aircraft of the designated airlines of either contracting party shall, on flights in the territory of the other contracting party, carry the identification marks of their state prescribed for international flights [211].

(vii) Other Arrangements.

Prevention of spread of disease and exemption from seizure or detention are the subjects of regulation in a few of the Finnish bilaterals. In the treaties with HUNGARY and the GDR, the following clause is incorporated:

"The Contracting Parties undertake to carry out all those sanitary and preventive actions on arrival and departure

---

209) YUGOSLAVIA, Article 10(2).

210) HUNGARY, Article 10(1). - Certificates of registration and certificates of airworthiness may be incorporated in one single document according to the national regulations of either contracting party (HUNGARY, Article 10(2)).

211) The USSR (1955-superseded), Article 6; the USSR (1972), Article 9(1); the GDR, Article 7 (this clause refers more particularly to nationality and identification marks).

of the aircraft which are compulsory under the international rules on the prevention of the spreading of contageous diseases." 212)

Among the Finnish bilaterals the HUNGARIAN treaty alone contains the following provision:

"Aircraft of either of the Contracting Parties cannot be seized or detained on the territory of the other Contracting Party for any reason whatsoever, subject to the pertinent regulations of international conventions being in force." 213)

(c) Operation of the Treaty.

Various stipulations in bilateral air transport agreements deal directly with the operation of the treaty itself. The provisions governing the coming into force and termination of the respective Finnish bilaterals, as well as adaptation thereof to multilateral conventions have already been discussed before 214). The regulations set forth regarding registration and implementation of the treaties, as well as compliance with and modification of treaty provisions are examined in more detail in this section below.

(i) Registration.

Articles 81 and 83 of the Chicago Convention prescribe registration with the Council of ICAO of aeronautical agreements concluded by states parties to the Convention. Specific rules for such registration have been adopted by the Council on April 1, 1949 215). According to them, any registration pursuant to Article 83 of the Convention shall be effected as soon as possible after execution by the parties to the agreement and, in any event, forthwith upon its coming into force 216). Any

212) HUNGARY, Article 6(2); the GDR, Article 8(3). - Since the adherence of Hungary in 1969 to the Chicago Convention, this particular subject in the Fenno-Hungarian bilateral relation is covered also by Article 14 of the Convention.

213) HUNGARY, Article 15. - Cf., Article 27 of the Chicago Convention.

./.

modification in the parties, terms or scope of an agreement thus registered shall be registered in the same manner as the original agreement [217].

In harmony with the CSF model agreement, almost all of the early Finnish air transport agreements and the treaty with YUGOSLAVIA deal expressly with registration [218]. A typical clause incorporated in the agreement with the NETHERLANDS may be quoted here as follows:

"This agreement and all contracts connected therewith shall be registered with the International Civil Aviation Organization." [219]

Some minor variations of this formula also are introduced. While the agreement with SWITZERLAND does refer to the agreement proper and any subsequent arrangement, in the FRENCH treaty communication to the ICAO for registration solely of the agreement and its annex is provided [220]. The treaty with YUGOSLAVIA prescribes more specifically notification to the ICAO of "the Agreement and its Annex, modifications which may be made, as well as information on its eventual termination" [221]. But regardless of the more or less restricted wording of the bilateral registration clauses and even in the absence of any provision on the subject, Finland as a party to the Chicago Convention has a duty to register with the Council of the ICAO

./. 214) Supra pp. 124 - 125, 128 - 129 and 213 - 216.

215) Rules for Registration with ICAO of Aeronautical Agreements and Arrangements, Doc 6685, C/767, 6/4/49. - Amended on May 16, 1974.

216) Ibid., Article 4.

217) Ibid., Article 5.

218) From the NETHERLANDS up to and inclusive FRANCE with the exception, however, of the USSR (1955-superseded) and HUNGARY. - Also in Article 8 of the CSF model agreement; the ECAC/SC do not allude to this subject.

219) The NETHERLANDS, Article 8.

220) SWITZERLAND, Article 9; FRANCE, Article X. - While stipulating that the registration shall be "with the Council of the

./.

all air transport agreements and arrangements concluded by her with any other state or an airline or a national of any other state. The special agreements to be arrived at under certain bilateral treaties between the designated airlines of the two contracting parties would not be registrable under the present rules [222].

(ii) Control of the Operation of the Treaty.

Apart from the more specific function of consultation as an integral part of certain procedures under bilateral air transport agreements [223], it gains importance as a general means for the control of implementation and operation of the treaty provisions. In all of the Finnish agreements except six [224] there is a general consultation clause incorporated.

The purpose of the consultation is described in various ways. In the early agreements, reference is made generally to the observance of the principles and the implementation or application of the provisions set forth in the treaty [225]. In general adherence to Article 9 of the ECAC/SC, the more recent agreements prescribe consultation with a view to ensuring the implementation of and satisfactory compliance with the provisions of the agreement and the annex(es) or schedule(s) thereto, as the case may be [226].

./. International Civil Aviation Organization set up by the Convention on International Civil Aviation signed at Chicago on 7 December 1944", the agreement with LUXEMBOURG would seem to take nothing for granted. - Article 9 of the treaty with LUXEMBOURG.

221) YUGOSLAVIA, Article 16.

222) E.g., the USSR (1955-superseded), Article 2(2); and the USSR (1972), Article 3(3).

223) E.g., the procedures for the settlement of disputes, determination of capacity or tariffs, revocation or suspension of the operating permit, and modification of the treaty.

224) Not in the following: the NETHERLANDS, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA and the USSR (1955-superseded).

225) The following variations may be recorded:

./.

With only one exception, all of the agreements which contain a general consultation clause prescribe that such consultations shall be conducted between the aeronautical authorities of the contracting parties. In the FRENCH treaty "the competent authorities" are referred to correspondingly [227]. A majority of the agreements provide that the consultations shall be conducted "from time to time" and "in a spirit of close cocperation". In a few treaties, however, the regularity and frequency [228], or flexibility [229] of the consultations are more specifically emphasised.

Some of the relevant treaties also set forth provisions on the procedure for the consultations. Thus the agreements with HUNGARY and YUGOSLAVIA prescribe that the authorities shall enter into consultations at the request of either authority. The agreements with FRANCE, the UNITED KINGDOM and MALTA refer in this respect to the contracting parties themselves, either of which may make the request. In these three agreements, as well as in the treaty with YUGOSLAVIA a time-limit also is laid down for the commencement of the consultations. They shall thus beging within thirty days from the receipt of the request

---

./. -The UNITED STATES, Section VIII of the Annex: achievement of close collaboration in the observance of the principles and the implementation of the provisions outlined in the agreement and its annex;
-SWITZERLAND, Article 11(a): to ensure that the principles of the agreement are being applied and its purposes achieved satisfactorily;
-ICELAND, Article 3: observance and implementation of the principles laid down in the agreement and the annex thereto;
-LUXEMBOURG, Article 11: the application and proper carrying out of the principles laid down in the agreement and the annex thereto;
-HUNGARY, Article 16: to ensure the observance of the principles and the fulfilment of the provisions set forth in the agreement;
-FRANCE, Article VII: consultation concerning the interpretation, application or modification of the agreement.

226) From POLAND (1963) onwards up to and inclusive SPAIN.

227) FRANCE, Article VII. ./.

under the FRENCH treaty, but within sixty days under the other three agreements unless an extension of this period is agreed upon at the appropriate level.

The HUNGARIAN treaty imposes explicitly upon the aeronautical authorities of the contracting parties the duty to exchange such information as is necessary for the purpose of the consultation [230]. It is also prescribed therein that the aeronautical authorities of either contracting party may initiate direct negotiations with each other in all questions relating to the agreement and/or to its annex [231].

Under the agreement with the USSR (1972), the practical arrangements and implementation of the agreement including the both annexes thereto shall be agreed upon between the aeronautical authorities of the contracting parties [232].

In a majority of the Finnish bilaterals, certain basic terms are specifically defined for the purpose of the respective agreements. These definitions, which shall generally apply unless the context otherwise requires, are discussed below one by one.

(1) The term "Convention" means the Chicago Convention and includes any Annex adopted under Article 90 thereof and any amendment of the Annexes or the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both contracting parties [233].

./. 228) The UNITED STATES: the consultations shall be regular and frequent; in the agreement with ICELAND, frequent consultation and collaboration are provided for.

229) FRANCE: "at any time"; the GDR: "when necessary".

230) HUNGARY, Article 16.

231) HUNGARY, Article 17(1).

232) The USSR (1972), Article 15(2).

233) The UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and SPAIN. - Under the agreement with MALTA, the

./.

(2) The term "aeronautical authorities" is defined by indicating individually for each party the competent authorities. Adaptation to future changes is accomplished by providing that the term may mean also any person or body authorized to perform any functions exercised at the time by the authorities indicated, or similar functions [234].

(3) Generally, the term "designated airline" is defined as an airline designated and authorized in accordance with the specific provisions in the respective agreement [235]. The definitions set forth in the agreements with the UNITED STATES, HUNGARY and FRANCE, however, require only designation of an airline and notification thereof to the other contracting party [236]. Under the LUXEMBOURG agreement, notification in writing by the party concerned of its mere intention to designate an airline will confer upon that airline the status of designated airline for the purpose of the treaty [237]. In the treaty with the USSR (1972), reference is made to the airlines designated in accordance with Article 3 of the treaty to operate services on the agreed routes [238].

(4) The term "territory" is defined either by reference

./. **Annexes and amendments are included so far as they have "become effective or been ratified by both Contracting Parties".**

234) The UNITED STATES, and from LUXEMBOURG (inclusive) onwards. As the competent authority for Finland, the National Board of Aviation is indicated in the treaties with the GDR and SPAIN. Pursuant to the substitution clause, the Board is, for the time being, the competent aeronautical authority for Finland under all the preceding definitions as well.

235) POLAND (1963), the UNITED KINGDOM, YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA, the GDR and SPAIN.

236) The agreements with the UNITED STATES and HUNGARY require notification in writing, while the FRENCH treaty does not prescribe qualifications as to the form of the notification.

237) LUXEMBOURG, Article 15(b).

238) The USSR (1972), Article 1(b). - The airlines of the both parties are designated directly in Article 3 of the treaty.

to the definition laid down in Article 2 of the Chicago Convention [239], or by specific formulation, mostly on the following lines:

"The term 'territory' in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty of that State." [240]

In a few agreements, the airspace above the land and water territories [241], or the internal waters and the airspace thereover [242] are expressly included. But it must be said at once that, in international law, internal waters as well as the airspace superincumbent the land and water territories of a state are deemed to include in the territory of that state even without a special mention [243].

(5) The terms "air service", "international air services", "airline" and "stop for non-traffic purposes" are defined in certain agreements by reference to the meaning assigned thereto in Article 96 of the Chicago Convention [244] or, as regards the term "international air service", by specific stipulation consistent with paragraphs (a) and (b) of the said Article [245].

(6) In the agreement with YUGOSLAVIA, the term "agreed service" is specifically defined as "any scheduled air services performed by aircraft for public transport of passengers, cargo and mail on the routes referred to in the Annex to the present Agreement" [246]. This general definition is, however, complemented with the more specific description that scheduled international air services on the routes to be specified in accordance with

---

239) The UNITED STATES and LUXEMBOURG.

240) YUGOSLAVIA, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and SPAIN. - The definition set forth in the treaty with the UNITED KINGDOM is otherwise identical with the above quotation but does refer additionally to the land areas and territorial waters under the protection or trusteeship of the state concerned.

241) HUNGARY, the USSR (1972) and the GDR.

242) The USSR (1972), Article 1(c).

243) The question of the upper limit for territorial airspace is,

./.

the appropriate section of the annex to the agreement are thereafter called "the agreed services" [247]. In the agreement with the GDR, the same thing is expressed more in point: "the term 'agreed services' means the scheduled international air services operated by the designated airlines of Contracting Parties on the routes specified in the Annex to the present Agreement" [248].

In harmony with Article 1 of the ECAC/SC, the more recent agreements define the term only by indirect deduction as follows:

"Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate Part of the Annex to the present Agreement. Such services and routes are hereafter called 'the agreed services' and 'the specified routes' respectively. ..." [249]

In the HUNGARIAN agreement, the term "specified routes" is specifically defined as the air routes specified in the Annex to that agreement [250].

(iii) Modification.

From the legal capacity of a treaty as a contract [251] it follows that it may be modified only by mutual consent of the parties, unless otherwise provided for in the treaty it-

---

./. however, still unsolved.

244) The UNITED STATES, LUXEMBOURG, the UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and SPAIN.

245) HUNGARY, Article 1(c).

246) YUGOSLAVIA, Article 1(d).

247) YUGOSLAVIA, Article 2(1).

248) The GDR, Article 2(d).

249) SPAIN, Article 2(1). - With slight variations in wording, similar clauses are incorporated also in the following agreements: POLAND (1963), the UNITED KINGDOM, AUSTRIA, BULGARIA, MALTA, PORTUGAL, ROMANIA and the USSR (1972). - The treaty with FRANCE introduces an indirect definition of the term "agreed services" exclusively.

250) HUNGARY, Article 1(e). - The term "specified services" is defined by indirect deduction in Article 2(1).

./.

self [252]. With the exception only of the agreement with the USSR (1955-superseded) which did not at all deal with modification, all of the Finnish bilateral air transport agreements prescribe modification of the treaty provisions by mutual agreement. In a majority of the early agreements, modification of the annex or schedule is provided for exclusively [253]. Some agreements prescribe the one and same procedure for amending both the agreement proper and its annex or schedule [254]. All the other agreements distinguish in this respect between the different parts of the treaty [255]. In the absence of any relevant provision to govern amendments, the parties are free to choose the procedure therefor by mutual agreement [256].

The scope of the modification clauses is described, apart from simply mentioning the agreement and/or its annex or schedule, by reference to "the terms of this Agreement" [257], "any provision of the present Agreement" [258], or "any provision of the present Agreement including the Schedule annexed thereto" [259] respectively. Regarding the annex or schedule, more

---

./. 251) According to a definition introduced by Castel, treaties are conventions or contracts between the sovereign powers of two or more states concerning various matters of interest. - Castel, International Law, 1965, p. 814.

252) According to Article 13 of the agreement with the UNITED STATES, the unilateral changes allowed thereunder in the routes described in the schedule attached shall not be considered as modification of the Annex. - See supra p. 138.

253) The NETHERLANDS, the UNITED STATES, SWEDEN, NORWAY, DENMARK (terminated), CZECHOSLOVAKIA and SWITZERLAND. - Modification of the annex or schedule shall be made under these treaties by agreement between the competent authorities or aeronautical authorities of the contracting parties, subject to confirmation by an exchange of diplomatic notes. It is therefore to be inferred that modifications of the agreement proper have to be negotiated and effected through diplomatic channels. - See Cheng, op.cit., p. 475.

254) ICELAND, LUXEMBOURG, FRANCE and the UNITED KINGDOM.

255) HUNGARY and onwards up to and inclusive SPAIN.

256) The agreement with the USSR (1955-superseded) was modified twice by exchange of diplomatic notes: Article 1(1) on February 7, 1964; and Article 8 on May 23, 1967. - The Finnish Statute Book (Treaty Series) No. 8/1964 and ./.

particular descriptions also are introduced: modification of "the routes or conditions set forth in the present Annex" [260], "any of the stipulations in the Annex" [261], or "the air routes as well as any provision of the Annex" [262]. In the treaties with YUGOSLAVIA and MALTA, the clauses governing the modification of the annex are extended to the making of additions thereto [263].

The requirement for consensus inevitably calls for consultation. In the agreement with FRANCE, consultation between the competent authorities of the contracting parties for the provision of modifications to the agreement is expressly included in the general consultation clause [264]. Under the corresponding clauses in the treaties with the UNITED KINGDOM, YUGOSLAVIA and MALTA, the aeronautical authorities of the contracting parties shall "also consult when necessary to provide for modification" of the agreement proper and/or the annex or schedule thereto [265]. These three agreements also prescribe consultation, whenever either of the contracting parties considers it desirable to modify any stipulation of the agreement. Such special consultations shall be conducted in accordance with the general consultation procedure under the treaty with the UNITED KINGDOM, but in accordance with distinct consultation clauses set forth for the purpose of modification under the treaties with YUGOSLAVIA and MALTA [266]. In the agreement with SWITZERLAND, the follow-

---

./. No. 38/1967 respectively.

257) HUNGARY, Article 18(1).

258) From YUGOSLAVIA onwards up to and inclusive SPAIN.

259) The UNITED KINGDOM, Article 13.

260) The NETHERLANDS and the UNITED STATES.

261) SWEDEN, NORWAY and DENMARK (terminated).

262) HUNGARY, Article 18(2).

263) YUGOSLAVIA, Article 14(2); MALTA, Article 13(2). - According to the Annexes to these two agreements, the aeronautical authorities of the contracting parties shall agree on the

./.

ing sole modification clause is incorporated:

"Modifications of the schedules of routes shown in the annex to this Agreement may be agreed between the aeronautical authorities of the Contracting Parties." 267)

In all the other agreements dealing with modification, specific rules are laid down for the consultation procedure.

Under the special modification clauses calling for consultation, the request therefor may be made unilaterally by either contracting party. With respect to the modification of the agreement proper, the treaties with HUNGARY, YUGOSLAVIA and MALTA prescribe that the request shall be made through diplomatic channels 268). Under the individual clauses, consultation shall be conducted between the contracting parties 269), or their competent authorities 270) or, more specifically, between their aeronautical authorities 271). In harmony with Article 10 of the ECAC/SC, the more recent agreements provide generally that, while either contracting party may request consultation with the other contracting party, the consultation may be conducted between the aeronautical authorities 272). With only one exception 273) all of the special modification clauses calling for consultation prescribe a time-limit within which the con-

---

./. specification of the traffic points originally left open, as well as of the commercial rights to be exercised apart from those directly indicated. Additions of this kind are to be considered as acts of execution of the treaty and would, therefore, fall outside the scope of the modification clause without an express provision.

264) FRANCE, Article VII.

265) The UNITED KINGDOM, Article 11(1); YUGOSLAVIA, Article 12(1); and MALTA, Article 11(1).

266) The UNITED KINGDOM, Article 13; YUGOSLAVIA, Article 14; and MALTA, Article 13.

267) SWITZERLAND, Article 11(c). - Pursuant to this Article, Schedule II of the Annex has been subsequently amended twice by correspondence between the aeronautical authorities of Finland and Switzerland. The date for the coming into force of the modifications has been agreed upon by the same

./.

sultation shall begin [274]. Under the treaties with YUGOSLAVIA and MALTA this period may be prolonged by agreement between the aeronautical authorities of the contracting parties. While in the early agreements no provision is set forth as to the mode for the conduct of the consultation, the more recent agreements prescribe generally that it may be through discussion or by correspondence [275].

Under those of the more recent treaties which prescribe different procedures for the modification of the agreement proper, on the one hand, and of the annex or schedule, on the other, modifications to the annex or schedule may be made generally by direct agreement between the competent aeronautical authorities of the contracting parties [276]. According to the treaties with YUGOSLAVIA and MALTA, modification of the annex is included in the general consultation programme. The aeronautical authorities of either contracting party who consider it desirable to

---

./. correspondence. These modifications were made on February 10/13, 1960 (effective by February 10,1960), and on January 20/March 4, 1967 (effective as of March 4, 1967). - The modifications have been published in the Finnish Statute Book (Treaty Series) as notifications of the Ministry for Foreign Affairs, No. 11/1960 and No. 62/1967 respectively.

268) HUNGARY, Article 18(1); YUGOSLAVIA, Article 14(1); and MALTA, Article 13(1). - But even in the absence of such express provision, this would be the normal way to initiate consultation between states.

269) ICELAND, HUNGARY, POLAND (1963) and the GDR.

270) The NETHERLANDS, the UNITED STATES and CZECHOSLOVAKIA.

271) SWEDEN, NORWAY, DENMARK (terminated) and LUXEMBOURG.

272) AUSTRIA, BULGARIA, PORTUGAL, ROMANIA, the USSR (1972) and SPAIN.

273) HUNGARY, where no time limit is provided for.

274) Within sixty days from the date of the request for the consultation.

275) AUSTRIA, BULGARIA, PORTUGAL, ROMANIA, the USSR (1972) and SPAIN.

276) HUNGARY, POLAND (1963), AUSTRIA, BULGARIA, PORTUGAL, ROMANIA, the USSR (1972), the GDR and SPAIN.

modify or to make any addition to the provisions of the annex, may, however, at any time request special consultations with the aeronautical authorities of the other contracting party. Such consultations shall begin not later than sixty days, or such longer period as may be agreed between the aeronautical authorities, from the date of the request [277].

Modifications agreed upon between the contracting parties or their aeronautical authorities come into force generally when they have been confirmed by an exchange of diplomatic notes [278]. In the treaty with LUXEMBOURG, similar confirmation is expressly prescribed only regarding interdepartmental agreements concerning modification of the annex [279]. From this formulation the conclusion should not be drawn that interdepartmental agreements affecting the treaty sensu stricto could be effected otherwise than by confirmation by an exchange of diplomatic notes. Under a majority of the agreements which prescribe different procedures for the modification of the agreement proper and of the annex or schedule thereto, confirmation by an exchange of diplomatic notes is provided for modifications to the agreement proper, while amendments of the annex or schedule enter into force merely upon notification through diplomatic channels [280]. The agreement with HUNGARY provides that modification of the agreement proper shall be recorded in an exchange of diplomatic notes and shall come into force after both contracting parties have notified each other that the formalities required by the constitution of each contracting party

---

277) YUGOSLAVIA, Article 14(2); MALTA, Article 13(2).

278) As pointed out by Cheng, interdepartmental agreements which have to be confirmed through normal diplomatic channels amount to no more than recommendations. - Cheng, op.cit., p. 476.

Actually, the term "recommendation" is used in the modification clauses in the agreements with the NETHERLANDS, the UNITED STATES and CZECHOSLOVAKIA. E.g.: "When these author-

./.

have been accomplished [281]. As regards modifications to the air routes or any provision of the annex to the HUNGARIAN treaty, a date for their implementation shall be mutually established by the aeronautical authorities of the contracting parties. The amendments shall then come into force by an exchange of notes through diplomatic channels [282].

Under the treaties with YUGOSLAVIA and MALTA, any modification of the agreement proper shall become effective when the contracting parties notify to each other the accomplishment of ratification or approval thereof, in accordance with their respective constitutional requirements [283]. Modifications or additions to the annex shall, under the same two treaties, be brought into effect by a written arrangement between the aeronautical authorities of the contracting parties. Such arrangement shall also specify the date of application of the amendment and shall not be contrary to the principles established in the respective treaties [284]. In the agreements with POLAND (1963) and the USSR (1972), confirmation by an exchange of diplomatic notes is prescribed equally for the entry into force of modifications to the agreement proper and the annex(es) thereto [285].

./. ities mutually agree on new or revised conditions affecting the Annex, their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes." (The UNITED STATES, Article 10).

279) LUXEMBOURG, Article 13.

280) AUSTRIA, BULGARIA, PORTUGAL, ROMANIA, the GDR and SPAIN.

281) HUNGARY, Article 18(1).

282) HUNGARY, Article 18(2).

283) YUGOSLAVIA, Article 14(1); MALTA, Article 13(1).

284) YUGOSLAVIA, Article 14(2); MALTA, Article 13(2).

285) POLAND (1963), Article 14(3); the USSR (1972), Article 15(3) and (4).

C H A P T E R V I I I - THE DENMARK - FINLAND CAPACITY DISPUTE [1]

When in November 1966 the Finnair Oy decided to order two DC-8-62 CF aircraft for the commencement of scheduled air services across the North Atlantic to New York [2], the bilateral treaty network established already almost twenty years ago secured to the Finnish airline quite liberal options as to the routes, rights and capacity [3]. Given the modest traffic generating capacity of Finland for such a service, the right to augment fifth freedom traffic at the busy intermediate points Copenhagen and Amsterdam was no doubt essential for the economic viability of the new services.

Under the agreement with DENMARK (terminated), the government of Finland was granted the right to conduct air transport services by one or more airlines designated by the Finnish government, inter alia, on the air route Helsinki - Copenhagen, via intermediate points and points beyond, in both directions [4]. Apart from the rights of transit and of stops for non-traffic purposes, the designated Finnish airline would enjoy the right to embark and disembark in international traffic passengers, mail and cargo at the points enumerated on the route thus specified [5]. The capacity provisions set forth in the treaty followed the liberal Bermuda-pattern. Thus the contracting parties agreed that:

(a) the traffic capacity provided by the airlines of

---

1) General sources for this Chapter: Press releases of the Finnish Ministry for Foreign Affairs of November 21 and 27 and December 2 and 23, 1969, and of January 30, February 17, March 19, 23 and 25, May 9 and 13, and June 6, 1970.

2) Finnair Annual Report for 1967/68, p. 14.

3) The treaties with the UNITED STATES, the NETHERLANDS and

./.

either contracting party should bear a close relationship to the traffic demand;

(b) in the operation by the designated airlines of routes served by both contracting parties, the interests of the other contracting party should be taken into consideration so as not to affect unduly the services provided by the latter on all or part of such route;

(c) the primary objective of the agreed services should be the provision of capacity adequate to the traffic demands between the country of which the airline was a national and the country of ultimate destination of the traffic;

(d) the right to embark or to disembark on the specified points and routes international traffic destined for and coming from third countries should be applied in accordance with the general principles of orderly development of air transportation to which both contracting parties subscribed, and should be subject to the general principle that the traffic capacity should be related:

1. to traffic requirements between the country of origin and the countries of destination;

2. to the requirements of through airline operation;

3. to the traffic requirements in the areas through which the airline passed after taking account of local and regional services [6].

In the absence from the DANISH (terminated) treaty of more specific regulations as to the determination of the capacity to be offered, it is to be presumed that the control of capacity

---

./. DENMARK (terminated) were all concluded in 1949.

4) DENMARK (terminated), Section I of the Annex.

5) DENMARK (terminated), Section II of the Annex.

6) DENMARK (terminated), Section III of the Annex.

was based on 'ex post facto' review.

In March 1968, the Finnair Oy filed with the aeronautical authorities of the United States their application for a permission to operate scheduled air services on the route Helsinki - Copenhagen - Amsterdam - New York and vice versa with a frequency of six weekly return flights [7]. During the operational year 1968/69, sales offices were opened by Finnair at New York, Boston, Detroit, Philadelphia and San Francisco to promote the new service [8].

Apart from the United States' and Icelandic airlines, the consortium airline SAS had been theretofore the principal carrier of the scheduled North Atlantic air traffic originating in or destined for Finland. In the early years, the North Atlantic route had been a true "gold-line" for the Scandinavian company [9]. At the time when Finnair entered into the picture, the SAS services to North America were expanded considerably. Apart from services to Montreal, Chicago, Seattle/Tacoma and Los Angeles, the consortium maintained in the peak season not less than thirty-three weekly return flights to New York including, inter alia, daily non-stop services between Copenhagen and New York [10]. In addition to these, five weekly pure freight return services also were operated to New York by the company [11]. In the fierce competition over the North Atlantic, the SAS placed the eighth or nineth among some twenty airline companies sharing the market [12].

Given these circumstances, it is not surprising that the news of the Finnair plans were received less enthusiasti-

---

7) Finnair Annual Report for 1967/68, p. 15.
8) Finnair Annual Report for 1968/69, p. 9.
9) Press interview with Mr. Knut Hagrup, Director General of the SAS. - Hufvudstadsbladet, April 15, 1973.
10) Mårtensson, "Trafikflyget", Ett År i Luften (Flygets Årsbok 1969-1970), 1969, p. 342.
11) Ibid.
12) Ibid., p. 345.

cally by the SAS. Consequently, the deliberations on the issue of Finnair Oy joining the SAS were intensified both within the Nordic Council and at Nordic meetings at the governmental level, initiated and advocated principally by the SAS-countries [13]. But even otherwise pressures were used by the same countries against the Finnish project. On July 12, 1968, the aeronautical authorities of Denmark requested consultation with their Finnish counterparts on the interpretation of the air transport agreement so far as the planned Finnair service via Copenhagen was concerned.

The argument put forward by the Danish authorities was that the Finnish airline tried to carry an unreasonably great part of the traffic moving between Scandinavia and North America. Therefore, limitation of the frequency of the Finnair services to two weekly return flights in the summer season and one weekly return flight in the winter season was proposed by the Danes. According to the Finnish point of view, the SAS had already for two decennies enjoyed a major part of the income from the North Atlantic air traffic involving Finland. It could also be reasonably presumed that even in the continuation the SAS would secure a considerable share in the air traffic market between Finland and North America. On the Finnish side, however, a compromise was proposed admitting limitation on a yearly basis of the number of passengers and the volume of freight to be carried. An agreement could not be reached between the parties and the consultations which had been subsequently transferred to the ministries-for-foreign-affairs level were closed.

On March 12, 1969, the government of Denmark decided to denounce the air transport agreement as of April 1, 1970. Furthermore, the traditional pooling agreement concerning the

---

13) See supra pp. 70 - 72.

transborder air services between Finnair and SAS was denounced by the latter company as of April 1, 1969 [14]. The operating permit for the proposed Finnair service was granted by the Danish aeronautical authorities until March 31, 1970, only.

On a Finnish initiative, the deliberations between the two governments now took the form of negotiation to a new agreement. The talks began on December 2, 1969, at Copenhagen. In accordance with an agreement between the governments of Denmark and Norway, an observer from the Norwegian Ministry of Communications also took part in the discussions. Following these opening talks a compromise proposal was prepared by Finland on the lines previously indicated by her. Delivered on December 10, 1969, this proposition was turned down by Denmark only nine days later. The discussions were resumed on January 28, 1970, at Helsinki and continued on February 16, 1970, at Copenhagen. Apart from the extent to which Finnair Oy should be entitled to enjoy commercial rights at Copenhagen on its New York services and the income connected therewith, also the income earned by the SAS from the air services between Finland and third countries became a crucial point of the talks. Final propositions were presented by both parties but no agreement nevertheless could be reached. The negotiations between the official delegations of the two states were considered as closed.

On March 19, 1970, a revised proposition was made by a diplomatic note by Denmark suggesting conclusion of a new air transport agreement under which Finnair Oy would have been entitled, apart from the frequencies previously offered by Denmark with full commercial rights at Copenhagen, to one weekly return service between Helsinki and New York with commercial

---

14) According to Mr. Knut Hagrup, Director General of the SAS, the expansion of the Finnair network had caused imbalance

./.

rights at Oslo. This grant would, however, have been subject to the condition that Finland would conclusively waive her rights under the relevant air transport agreement with NORWAY to air services calling at New York. Furthermore, Finland would have had to abstain from claiming any additional rights between the SAS-countries and New York. This proposal which meant a considerable extension of the dispute over and above the opening positions, was rejected by Finland at the beginning of June 1970.

Since the termination of the air transport agreement between Finland and Denmark by March 31, 1970, the Finnair services calling at Copenhagen and the SAS services between Denmark and Finland have been operated pursuant to provisional grant of operating permits by the competent authorities of the respective countries. While the frequency of the Finnair service to New York via Copenhagen was restricted by Denmark to three weekly services in the summer season and one weekly service in the winter season as originally suggested by Denmark, no restrictions were imposed by Finland upon the services proposed by the SAS.

It is in a way discouraging to note that during the course of events no action was taken by either party to submit the dispute to arbitration in accordance with the settlement-of-disputes clause set forth in the treaty [15]. In the absence thus far of exact and complete information of the discussions and proposals it is, however, premature to try to figure out the possible outcome of an actual arbitration procedure. In

---

./. in the pooling relationship to the detriment of the SAS. The shares were about 70 per cent for Finnair and 30 per cent for SAS. - Press interview, Hufvudstadsbladet, April 15, 1973.

15) DENMARK (terminated), Article 9.

other words, it still remains obscure how far the Danish claim for frequency limitation should be considered more compatible with the then relevant capacity clause than the actual capacity initially put into operation by Finnair.

The SAS-countries did thus at last carry out their original claim. Yet the outcome, however bad, may not have been too detrimental to Finland either. The ever important European services of the Finnish airline calling at Copenhagen remained intact, and the lost frequencies on the New York route could be operated anyway via Amsterdam or even non-stop. The disadvantage of having to operate the services on a provisional basis after the termination of the treaty and without the traditionally close co-operation between the two airlines concerned may affect the both parties equally. The interregnum has now lasted since 1970 without any signs of worsening of the situation. It may be reasonably presumed, therefore, that the chances for a conciliation of the views may have improved gradually so as to allow the conclusion of a new air transport agreement between the two countries in a not too distant future.

C H A P T E R I X - FUTURE TRENDS IN SUPERSONIC ERA

Apart from the temporary operation of a few short routes between Finland and Sweden by Kar-Air Oy [1], the Finnish scheduled international air transport business has been the exclusive domain of Finnair Oy. Consequently, the expansion of the Finnish bilateral air transport treaty network has been most closely connected with the fortunes of the major airline company. In the early years, this expansion was directed predominantly by the needs of industry and commerce and, to a certain extent, of political institutions, for improved communication lines [2]. More recently, however, in step with the rapid growth of international air tourism, pleasure air travel has gained increased importance in the development of the international route network of the Finnair Oy [3]. Given the introduction recently of wide-bodied, high capacity jet aircraft in the company's fleet, it may be reasonably presumed that this trend will continue in order to get the empty seats filled.

Because of the peripheral geographical location of Finland, many of her bilateral treaty partners have heretofore hesitated to operate reciprocating services to this country. Thus more often than not the Finnish airline has found itself in the position of a pioneer and innovator in blazing new trails in the sky [4]. But once the traffic potential of the new services has built up so as to make the routes economically viable, Finnair has generally been forced to fall back on pooling agreements thus sharing the grapes of the success achieved with their foreign competitors [5]. It has been estimated in 1972 that the

---

1) See supra pp. 103 and 105.
2) The Finnair Story, 1973, p. 58.
3) Ibid., p. 59. - E.g., the agreements with PORTUGAL and SPAIN.
4) The Finnair Story, 1973, p. 74.
5) Ibid.

number of passengers carried on scheduled international air services from and to Finland will grow from 0.595 million in 1970 to 1.012 - 1.413 million in 1980, to 1.590 - 2.940 million in 1990 and to 2.300 - 5.200 million in 2000 [6]. Correspondingly, the combined volume of mail and freight carried is estimated to grow to 46 - 68, to 108 - 310 and to 250 - 1,400 thousands of tonnes in 1980, 1990 and 2000 respectively [7]. Given this estimated growth of traffic potential [8], it could be reasonably expected that the willingness of foreign carriers to put in operation their bilaterally agreed reciprocating services to and from Finland will correspondingly increase.

In European context, the bilateral agreements already in force or merely concluded cover the most part of the present Finnair scheduled international air services. They also would seem to offer reasonable prospects of developing the services within this continent. Furthermore, the routes and rights secured bilaterally by Finland would establish a sound basis for possible negotiations with third countries for future extension of the existing services to points beyond the present European turnstiles. A comparison between the established network of treaties, on the one hand, and of services maintained, on the other, would suggest most logically the conclusion by Finland of bilateral air transport agreements with Belgium, Denmark and Italy respectively.

Speaking of long-haul services, the stated Finnish intention is to establish a non-stop service to the West Coast

---

6) Selvitys Valtakunnallisesta Lentoliikenteestä (VALTSU), 1972, pp. 85 and 87.

7) Ibid., p. 105.

8) In these estimates, account has not been taken of the future international air services traversing Finland, for instance, to the Far East or the USSR pursuant to possible new international agreements. - Ibid., p. 4.

of North America, and to extend this service from Helsinki to the Far East [9]. Such a service could be operated along great circle routes through Helsinki thus reducing most effectively the distance and travelling time [10]. East of Helsinki, the service is thought to be operated either along the trans-Siberian route or via Peking to Tokyo. In this context, it has been maintained that the favorable location of Helsinki on great circle routes connecting important far-away places in East, West or South would drastically transform the established position of Helsinki as a hinterland terminal into a notable junction and transit station in intercontinental air services [11]. As it would appear, this may be generally true only provided that the inbound and outbound legs would form a reasonably direct line along the one and same great circle route traversing Helsinki [12]. The restrictions that are or may be imposed upon supersonic flight over densely populated areas could, however, force foreign carriers to draw their routes across the high seas or less sensitive lands, where supersonic services may be operated unimpededly. This possibility would, at least provisionally, improve the Finnish position as compared with most of the central European states. It should be borne in mind, however, that the deficiencies in the first generation of SST aircraft may be remedied quite rapidly in step with the progress of flight technology to be reasonably expected. The present fears and restrictive views concerning supersonic flight would thus render obsolete and the need for route diversion come

---

9) Press interview with Mr. G. Korhonen, Director General of the Finnair Oy. - Uusi Suomi, February 6, 1969, p. 14.

10) Ibid.

11) The idea of Helsinki as a notable junction and transit station in international air services was introduced originally in 1924 by Mr. Bruno Lucander, one of the founders of Finnair (then Aero O/Y). The Helsinki-centric route network then proposed involved air lines from Helsinki to continent-

./.

to an end.

A comparison between the planned Finnair long-haul service and the relevant bilateral air transport agreements of this country reveals considerable gaps in the necessary treaty network. Under the agreement with the UNITED STATES, the sole traffic point available for the Finnish designated airline in the territory of the United States is New York [13]. No bilateral agreement does exist between Finland and Canada. According to a preliminary information [14], the agreement with the PEOPLE'S REPUBLIC OF CHINA will grant to the Finnish designated airline the right to fly to Peking from the North, that is to say through the Soviet territory, and further to points beyond. Under the agreement with the USSR (1972), however, the Finnish route is drawn along a southern line through the Near East and South Asia (Afghanistan, Pakistan, India and Iran) and beyond to third countries [15]. A service between Helsinki and Peking along the northern way across the Soviet territory cannot be based on the Transit Agreement either as long as the USSR is not a party thereto. And furthermore, there is thus far no bilateral agreement between Finland and Japan [16].

./. al European centers via Sweden and the United Kingdom, to Germany via the Baltic states, and to Asia via Leningrad and across the Black Sea and the Caspian Sea. - The Finnair Story, 1973, pp. 7 and 15.

12) This would be the case, for instance, with the following routes: New York - Helsinki - Calcutta or Bangkok; Paris or London or Copenhagen - Helsinki - Peking - Tokyo; and Seattle - Helsinki - Zanzibar. - For more details, see Uusi Suomi, February 6, 1969, p. 14.

13) Finland - over a North Atlantic route to New York, via intermediate points, in both directions. - The UNITED STATES, para. 2 of the Schedule.

14) Press interview with Mr. G. Korhonen. - Uusi Suomi, December 18, 1974, p. 8.

15) The USSR (1972), Part I of Annex I. - See also supra p. 137. It should be noted also that Finland's desire to operate the Far East service along the trans-Siberian route was made public already prior to the negotiations for the 1972 ./.

Given these circumstances and the complex political factors involved, it would appear that Finland still has to face tough negotiations with the United States, Canada, the USSR and Japan before the planned intercontinental service may be inaugurated. Similarly, the southern route would involve negotiations with several countries along the route in order to secure for the Finnish airline all the intermediate commercial stops necessary to make the service economically viable. According to Finnair, the company has no intention to operate the southern route, because the other direction is considered, if for no other reason than geographical, the most natural and economical for Finland [17].

In the advent of the supersonic era, it may be of interest to note the positive attitude to supersonic transport aircraft taken up by Mr. G. Korhonen, Director General of the Finnair Oy. According to a press interview in February 1969 [18]. Mr. Korhonen's personal opinion was that the SST aircraft were a possible target for the company. There would then be a smaller aircraft to fill as compared with jumbo-jets. It would also be possible to use speed as a competitive asset against the more spacious accommodations of the jumbos. In Mr. Korhonen's opinion, it was not impossible that Finnair would operate SST aircraft on intercontinental long-haul services by the end of the Seventies. Regarding the Finnish airline, the main

---

./. agreement with the USSR. Obviously the Finnish proposal was turned down by the USSR. - See Helsingin Sanomat, February 15, 1970, p. 22 ("Lentoliikenneneuvottelut Käynnistyvät Moskovassa").

16) Preliminary and inofficial talks between the two countries were conducted in 1975; they will be continued on an official basis in 1976. - The Finnish National Board of Aviation, Yearbook 1975, p. 18.

17) Uusi Suomi, December 18, 1974, p. 8.

18) Uusi Suomi, February 6, 1969, p. 14.

economic problem with the SST would be that the share of capital costs in the company's total expenditure would grow increasingly because of the huge capital investment involved. This again would require a constantly maximised utilisation of the SST fleet.

It is true that since the interview referred to above, the Nordic Council has taken a negative stand relative to supersonic flight over land by civil aircraft. The inauguration of scheduled SST services has also been considerably delayed. But thus far no restrictions have been imposed upon supersonic flight in the territory of the USSR. Given this fact and the Finnish plans for a Far East service through Soviet territory, it might be quite possible that some time in the Eighties a Finnish SST service will be run along the trans-Siberian route between Helsinki and Tokyo.

C H A P T E R X - CONCLUSIONS

In the preceding Chapters, the legal framework and individual provisions of the Finnish bilateral air transport agreements have been scrutinised in detail. An attempt has also been made to disclose the determinants and other underlying factors affecting the Finnish international air transport policy as far as scheduled services are concerned. It now remains to sum up and evaluate the findings and to draw the conclusions thus available.

1. During the Paris regime, when civil aviation still was very modestly developed in Finland, the few international air lines leading from and to Finland were operated mainly on a provisional basis pursuant to unilateral government regulation. Accordingly, bilateral arrangements were entered into by Finland only exceptionally, either for the purpose of setting forth general regulations to govern international air navigation in the absence of relevant multilateral rules [1], or in order to meet certain more specific needs in aerial intercourse between two states [2]. Typical of these pioneer days as it may be, not even a special bilateral agreement on scheduled services as suggested in the 1936 general air navigation treaty between Finland and Estonia was ever concluded. Actually, it was not until 1938 when the very first bilateral air transport agreement proper was entered into by Finland [3]. Under the circumstances of the Second World War, however, the application of this treaty was suspended shortly after its coming into force. Therefore,

---

1) ESTONIA.

2) The 1920 Dorpat Peace Treaty; the 1922 Helsinki Treaty; and the UNITED KINGDOM (1925) Agreement.

3) POLAND (1938-superseded).

though formally terminated only in 1964, this prototype agreement did never gain that practical significance it otherwise would have deserved.

Apart from unilateral grant of operating permits, the opening up of the post-war air connections from and to Finland was accomplished in a few cases pursuant to simplified bilateral agreements of a provisional and temporary nature. The build-up of the post-war Finnish network of bilateral air transport agreements proper began as late as by 1949, when six successive agreements were concluded. After a more tranquil decade with only three new agreements, the development was speeded up by the introduction in 1960 of pure jet aircraft in the fleet of the Finnish flag carrier. Thus during the Sixties in all nine new agreements were entered into by Finland, followed by further nine in the early Seventies (up to 1975). While one out of the post-war ordinary agreements has been terminated [4], and one superseded by a new agreement [5], the relevant Finnish agreements count at present twenty-five. Four of the most recent agreements, however, were not yet in force nor published at the time of the closure of the present thesis [6].

Geographically, the contemporary bilateral treaty network of Finland includes most of the European states proper, and a few states in North America, Asia and the Near East. Among the present Finnish treaty partners there are fifteen market-economy countries and ten countries with centrally planned economies. All of the treaty partners except the German Democratic Republic are at present parties to the Chicago Convention [7].

---

4) DENMARK (terminated).

5) The USSR (1955-superseded).

6) GREECE, the FEDERAL REPUBLIC of GERMANY, TURKEY and the PEOPLE'S REPUBLIC of CHINA (by February 29, 1976).

7) See Appendix III.

2. No individual provision in the Finnish bilateral air transport agreements may be branded as being of a specific Finnish design or origin. It is evident that, on the contrary, the Finnish agreements proper do generally follow the standard pattern of formulation and contents applied at each time in European state practice. Thus not only the original model formulae but also most of the subsequent variations and refinements made thereto are reproduced quite scrupulously in the Finnish clauses. Though small in number, the ordinary Finnish bilaterals thus reflect, as in a nutshell, the legal developments perceivable in the by far more numerous agreements of many major European states.

The prototype agreement with POLAND (1938-superseded) did follow the generally uniform pattern established at the time in European bilateral practice. Typical of this agreement may be the total absence of stipulations to govern specification of rights and regulation of capacity. Given the extraordinary nature of the early air services, as well as the very modest seating and cargo capacity of the vintage airliners and their even in other respects limited performance, this state of affairs is not surprising. Apart from the grant of routes, the main bulk of provisions incorporated in this agreement were dealing with questions of an administrative nature.

The four simplified agreements were all concluded by exchange of diplomatic notes. As a common feature they had the one-sided grant by one contracting party to an individually indicated airline of the other contracting party of the right to operate scheduled air services on a specified route. Otherwise the simplified agreements did not show a noteworthly uniform pattern. The regulations therein incoroporated were very sparse. While generally the route was individually indicated,

stipulations as to specification of rights or regulation of capacity were only exceptionally laid down. In other respects the particular conditions were set forth in very general terms, or merely by reference to a separate arrangement already made between the national airlines or to be negotiated with the competent authorities of the grantor-state by the airline indicated.

The early post-war ordinary Finnish agreements follow generally the pattern laid down in the Chicago Standard Form model agreement, while most of the more recent agreements adhere to the ECAC Standard Clauses. Within and between these two main groups, however, there are a few agreements of a mixed or of a more independent composition.

3.1. The method most commonly applied in the Finnish agreements to route exchange is double-tracking, or some other closely related branch of visual reciprocity. With the exception of a few agreements which introduce rigid route structures, and of a host of generally more recent agreements with orthodcx flexible route structures, the routes specified in a majority of the Finnish agreements are of a rather mixed composition. No completely semi-flexible nor free route structures are thus far included. Under a majority of the Finnish treaties, the route structures are of a non-abridgeable nature.

Consistently with the hinterland terminal location of Finland, mostly through services to points beyond the respective grantor-states are provided for. Terminating services with intermediate points, or direct terminating flights also are frequently prescribed in the route schedules. Thus far no preternational nor extranational services are to be found among the Finnish schedules.

3.2. Generally, all the first five freedoms of the air are granted directly in the respective agreements. In exceptional cases, however, transit rights are not at all mentioned [8], or are granted on a more general basis to the aircraft of the contracting parties [9], or to the designated airlines for the operation of scheduled international air services [10]. In the agreement with the USSR (1972), the second freedom is granted directly but the first one only subject to the agreement between the aeronautical authorities of the contracting parties. Another special feature in this SOVIET agreement is the right to carry beyond-point third-country traffic in transit across the territory of the grantor-state and to stop over therein, subject to the agreement between the aeronautical authorities of the contracting parties [11].

With respect to commercial rights, in some of the more recent agreements only the third and the fourth freedoms are granted directly, while the grant of the fifth freedom is referred to the aeronautical authorities of the contracting parties for agreement [12].

As it would appear, delegation of powers by the contracting parties to their respective aeronautical authorities has the practical effect of securing a more flexible operation of the agreed services.

3.3. Under a majority of the ordinary Finnish agreements, regulation of capacity is based on one or more of the general principles introduced originally in the Bermuda capacity clauses:

---

8) CZECHOSLOVAKIA, the USSR (1955-superseded) and HUNGARY.

9) FRANCE.

10) The GDR. - This wording would include services even other than the agreed services. The arrangement may be explained by the fact that the GDR is not a party to the Transit Agreement.

11) With the exception of the USSR, Yugoslavia, Romania, the GDR, and the People's Republic of China, transit rights are secured at present to the designated airlines of Finland

./.

(i) close adjustment of transport capacity to traffic requirements; (ii) fair and equal opportunity for both parties to operate the agreed services; and (iii) safeguarding of mutual interests on common routes.

A majority of the ordinary Finnish bilaterals that regulate capacity lay down particular criteria for the actual provision thereof. In the most cases, national traffic is applied as the primary capacity criterion, and third-country traffic other than national third-country traffic as the supplementary criterion.

With respect to determination and control of capacity, a majority of the Finnish agreements adhere to the Bermuda system based on general principles, capacity criteria and ex post facto review. In a minority group of agreements, concluded for the most part with states with centrally planned economies, predetermination of capacity by agreement between the governments, or between the designated airlines, or by direct specification in the agreement of the frequency of the services are provided for respectively.

Two of the ordinary Finnish agreements [13] do not at all regulate capacity. In these cases, the Finnish National Board of Aviation may, at least to some extent, unilaterally regulate the transport capacity to be provided by the foreign designated carrier. This may be done by using the powers conferred upon the Board under the national laws and regulations to consider time-tables and route-schedules submitted to it for approval.

./. and her bilateral treaty partners parallelly by the Transit Agreement. - See Appendix III.

12) YUGOSLAVIA, AUSTRIA, MALTA, PORTUGAL, ROMANIA and the USSR (1972).

13) ICELAND and LUXEMBOURG.

A similar unilateral procedure forms actually the sole method available for capacity regulation under the agreement with BULGARIA. This arrangement involves prior submission to the aeronautical authorities of the grantor-state for approval of specified information suitable for the computation and control of capacity.

Thus far no change-of-gauge clauses are incorporated in the Finnish agreements.

3.4. Relative to the establishment of tariffs, reference is generally made in the Finnish bilaterals to the IATA rate-fixing machinery. General principles and more specific rules as to the procedure nevertheless form the backbone in most of the Finnish tariff clauses. Typical of the respective clauses is the steady progress, step by step, from the relatively simple rules in the early agreements towards more and more elaborate regulations. Not even the introduction of Article 7 of the ECAC Standard Clauses could stop this development which led finally to the conclusion of the multilateral Tariff Agreement.

In contrast with the early agreements whereunder the tariff clauses were generally applicable to all of the agreed services, the more recent agreements adhere to the formulation of Article 7(1) of the ECAC Standard Clauses or of Article 2(2) of the Tariff Agreement which exclude extra-partes and national third-country traffic. According to the general principle incorporated in most of the original Finnish tariff clauses, the rates shall be established at reasonable levels. This test of reasonableness should be interpreted to mean more specifically application of the cheapest rates consistent with sound economic principles. Generally, the Finnish tariff clauses do not deal with control of the compliance with tariffs established. In the treaty with AUSTRIA, however, compliance with the rates

filed with either contracting party, prohibition of rate-rebating, and application of true and effective national currency exchange rates to tariffs are specifically provided for.

From the enforcement effect of the Tariff Agreement it follows that, while there are no relevant air transport agreements between Finland, on the one hand, and Belgium, or Denmark, on the other, the provisions of the Tariff Agreement shall apply to the scheduled air services maintained at present between Finland and the two other states by their respective airlines. Pursuant to the replacement effect, Article 2 of the Tariff Agreement shall apply, instead of the original tariff clauses, to the scheduled services based on the respective bilateral air transport agreements between Finland and eight other European states parties to the said Agreement [14].

At this point, it is of interest to compare more generally the degree of uniformity achieved by the method of recommended model clauses, on the one hand, and by the method of multilateral enforcement or replacement as adopted in the Tariff Agreement, on the other. Our preceding examination of those Finnish bilateral stipulations which adhere either to the Chicago Standard Form or to the ECAC Standard Clauses has shown numerous subsequent variations develop in practice to the model clauses originally recommended. Thus instead of a homogeneous pattern of treaties with exactly uniform provisions, a great variety of deviations and refinements have been adopted. More often than not there has been, as it would appear, no significant nor even sensible reason for the modification. The effect achieved by the multilateral method amounts, on the contrary, to a complete uniformity of the respective clauses. From the future point of view, it would seem quite possible, and advisable

---

14) These states are: Austria, France, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom. - It should

./.

too, for that matter, to restore the diluted uniformity of the agreements multilaterally on the lines of Article 1 of the Tariff Agreement.

3.5. With only one exception [15], all of the ordinary Finnish bilaterals lay down rules as to the settlement of disputes arising between the contracting parties relative to the interpretation or application of the respective agreements. Exceptionally, tariff disputes are excluded from the general procedure and brought under special rules [16]. According to a basic difference in the organisation of the settlement procedure, the Finnish agreements may be divided into two main groups. A majority of the agreements concluded with socialist states [17] prescribe in the first place negotiation between the aeronautical authorities of the contracting parties. In the event of failure to reach an agreement, the dispute shall then be settled through diplomatic channels. Under all the other Finnish agreements dealing with the subject, abortive consultations or negotiations between the contracting parties or their aeronautical authorities shall be followed by arbitral or advisory proceedings. In the more recent agreements, the particulars of the procedure are set forth in various ways, generally, however, on the lines of Article 13 of the ECAC Standard Clauses.

The procedure for settlement of tariff disputes laid down in Article 3 of the Tariff Agreement would apply at present to rate disputes relating to the scheduled services between

---

./. be noted, however, that the respective tariff clauses in the agreements with PORTUGAL and SPAIN are identical with Article 2 of the Tariff Agreement.

15) The USSR (1955-superseded).

16) The UNITED STATES.

17) HUNGARY, POLAND (1963), BULGARIA, ROMANIA, the USSR (1972), and the GDR.

Finland and Belgium or Denmark referred to in supra paragraph 4 of this section. While all of the relevant Finnish bilaterals with states parties to the Tariff Agreement contain a general clause for settlement of disputes, Article 3 of the Tariff Agreement would not become applicable in respect thereof. As the bilateral clauses governing settlement of disputes show considerable variation, it would appear as had the drafters of the Tariff Agreement spoiled an excellent opportunity to bring tariff regulation as a whole under uniform rules.

Among states parties to the Tariff Agreement, recourse may be had to the procedure prescribed in Article 4 thereof without prejudice to the provisions governing settlement of disputes under a bilateral agreement or under Article 3 of the Tariff Agreement. Disputes arising of determination of a tariff between two states parties to the Tariff Agreement could thus be decided alternatively through the channel established by Article 4 provided, however, that interpretation or application of the Tariff Agreement itself would be directly at issue.

3.6. All of the post-war ordinary Finnish agreements are of indefinite duration. In the absence of specified conditions as to their termination, all the agreements may be denounced at any time under the rules set forth for that purpose. According to the Finnish agreements, the notice period is twelve months or one year.

Denunciation of bilateral air transport agreements may be in the whole infrequent. It would appear, however, that in the event of a severe enough conflict of interests between two bilateral treaty partners, recourse to judicial settlement may be neglected because of the easy way of denouncing the agreement. This actually was what happened in the Denmark - Finland dispute

discussed in Chapter VIII above.

4. The supplementary stipulations in the Finnish bilateral air transport agreements follow for the most part relatively closely the model formulae laid down either in the Chicago Standard Form, or in the ECAC Standard Clauses. Among the more recent agreements which adhere generally to the latter model clauses, those concluded with socialist states do, however, not infrequently incorporate also clauses of Chicago Standard Form origin. Clauses concerning compliance with local laws and regulations, or airport and facility charges, may be mentioned here as examples of this feature.

Typical of the agreements concluded with certain socialist states, especially the USSR, HUNGARY, YUGOSLAVIA and the GDR, is the incorporation therein of administrative clauses in addition to the standard set of provisions. These additional clauses deal, on the one hand, with matters regulated multilaterally in the Chicago Convention. Thus stipulations concerning use of airports and facilities, display of marks, certificates and documents to be carried on board aircraft, flight safety, distress, accident investigation, sanitary and preventive measures, or seizure and detention of aircraft are incorporated in various combinations. With respect to the agreements with the USSR (1955-superseded), HUNGARY, and the GDR, this feature is to be referred to the fact that, at the time of the conclusion of their respective agreements with Finland, the said countries were not parties to the Chicago Convention [18]. But otherwise there would seem to be no further explanation than the possible desire to secure regulation of the subjects concerned even in

---

18) The GDR is still a non-party to the Convention.

the event the Convention would cease to be in force between the parties concerned. On the other hand, additional clauses are incorporated to govern settlement of payments in accordance with the general Payments Agreements in force between the respective states, or maintenance of representations in the territory of the other contracting state, as well as nationality and number of such personnel. Still another feature typical of this group of agreements is their silence relative to adaptation to general multilateral conventions.

5. It may be concluded that the legal framework which governs in the Finnish bilateral air transport agreements the exchange of routes and rights, offers to the designated airlines of both Finland and her respective treaty partners equal and quite reasonable opportunity to operate international air services. The intermediate points frequently included in the route schedules support effectively the economic viability of the agreed services. And the abundant through services to points beyond the respective grantor-states secure for the parties good prospects for a further expansion of their route-network. This favourable picture is even more reinforced by the liberal Bermuda-type capacity clauses incorporated in a majority of the most important Finnish agreements.

Given the heretofore unfavourable geographical location of Finland and the relatively weak traffic generating potential of this country as compared with most of her treaty partners, it would thus appear that more advantages have been gained than traded away by Finland in bilateral air transport negotiations. This outcome could, at least to certain extent, be referred to the relatively small size of the Finnish flag carrier [19]. It

---

19) It has been maintained that this feature has generally re-./.

should be borne in mind, however, that secret Memorandums of Understanding not infrequently involved even in the Finnish bilateral practice, co-operative arrangements between the airlines concerned, such as pooling agreements, and parallel non-aviation arrangements between governments may considerably change the picture. Therefore, a true balance sheet taking into account all relevant factors cannot be drawn to confirm or overrule our present view of an obvious Finnish success.

6. By now, in the advent of the Supersonic Era, the Finnish network of bilateral air transport agreements is almost saturated as far as the European continent is concerned [20]. Given the introduction recently of wide-bodied, long-range jet airliners in the fleet of the Finnish flag carrier, and the stated Finnish intention to expand their intercontinental operations, it is to be reasonably expected that the future Finnish treaty activities will turn mainly to countries outside Europe. This could, at least to certain extent, carry with it variations to the relatively uniform pattern of provisions heretofore established in the Finnish bilateral practice. It also remains to see, how far the speculations on increased bilateral bargaining power for Finland in consequence of her location on certain important great-circle routes connecting metropolies in East and West will come true, and how far that possible improvement will coincide favorably with the conclusion of new agreements.

./. strained the foreign competitors from reacting very strongly to the appearance of Finnair in their areas of operation. - The Finnair Story, 1973, p. 74.

20) In the European context, Finland could be reasonably expected to conclude in the near future air transport agreements with Belgium, Denmark and Italy.

Regarding intercontinental air services, Finland may gain in bargaining power also through her membership in the European Civil Aviation Conference. As mentioned before, activities pursued by this organisation, intended originally for internal regional development of civil aviation, have shown more recently an obvious tendency to turn outwards in order to protect and foster the common interests of the member states against outside competition. Despite its possible short run advantages for individual member states, this development must, however, be regretted. By extending the inherent protectionist attitudes of states to a regional level, it may result in a future compartmentalisation of international civil air transport so as to make sound economic operation of the world air routes increasingly difficult, if not impossible [21].

In closing the present legal examination of the bilateral air transport agreements of one small country, let me therefore express as the hope and certainty that decision-makers at all levels, be it then governmental, regional, intercontinental or even global, would act with vision and insight in the spirit of the Chicago Convention so as to foster and fortify friendship and understanding among the nations and peoples of the world, avoiding friction and promoting that international co-operation upon which the peace of our planet depends.

---

21) See Wassenbergh, Post-War ..., 1962, p. 170.

A P P E N D I X I. (i)

BASIC STATISTICS OF ECONOMIC FACTORS: INTERNATIONAL COMPARISON

Country	Rank	Population 1974 (millions)	Rank	Per Capita Gross Domestic Product 1973 (U.S. dollars)	Rank	Passenger Cars per 1,000 Inhabitants 1971	Value of Bilateral Trade Finland's 1973 (U.S. dollars, millions)			
							Rank	Imports	Rank	Exports
FINLAND	23	4.68	11	3,720	13	163	-	--	-	--
Austria	20	7.53	12	3,550	12	177	12	77.4	12	43.5
Bulgaria 1)	18	8.63	19	1,420	..	..	24	3.6	24	5.8
Czechoslovakia 2)	13	14.69	14	2,180	16	82	17	21.7	17	14.5
China, People's Republic of 1)	1	824.96	27	170	..	..	19	18.3	20	10.6
Denmark	22	5.05	5	5,460	7	231	7	135.7	6	163.6
France	6	52.51	7	4,900	4	260	6	139,6	7	156.9
German Democratic Republic 2)	12	17.17	15	2,100	15	90	16	22.9	15	24.1
Germany, Federal Republic of	4	62.04	4	5,610	5	239	2	728.0	4	371.3
Greece	16	8.96	20	1,790	21	30	23	5.0	16	20.4
Hungary 2)	15	10.48	17	1,520	20	39	18	19.8	19	12.3
Iceland	27	0.22	8	4,870	8	222	22	6.9	21	9.2
Luxembourg 3)	25	0.36	6	5,200	2	296	11	101.4	10	81.5
Malta	26	0.32	23	831	14	155	..	..	..	..
the Netherlands	14	13.54	10	4,410	10	211	8	128.3	9	154.5
Norway	24	3.99	9	4,780	11	206	9	118.2	8	156.7
Poland 2)	9	33.69	18	1,500	22	23	13	68.2	14	31.4
Portugal	17	8.78	22	1,250	18	72	14	36.2	18	13.5
Romania 1)	11	21.03	24	810	..	..	20	14.2	23	7.3
Spain	8	35.22	21	1,750	17	81	15	31.4	13	43.3
Sweden	19	8.16	3	6,140	3	290	1	770.5	2	574.2
Switzerland	21	6.44	1	6,190	6	233	10	103.9	11	74.8

(continued)

Turkey [4]	7	38.27	26	540	23	4	25	2.9	22	8.0
the United Kingdom	5	55.97	13	3,100	9	219	4	438.6	1	736.7
the United States	3	211.89	2	6,170	1	443	5	204.1	5	169.9
the USSR [1]	2	252.06	16	1,580	..	..	3	541.5	3	449.5
Yugoslavia	10	21.15	25	792	19	42	21	10.9	25	4.5
States which may conclude in the future bilateral air transport agreements with Finland:										
Belgium [3]	-	9.77	-	4,650	-	212	-	101.4	-	81.5
Canada	-	22.48	-	5,410	-	321	-	22.2	-	22.9
Italy	-	55.36	-	2,510	-	209	-	89.4	-	74.7
Japan	-	109.67	-	3,760	-	100	-	126.4	-	30.5

1) Information of the number of passenger cars not available; the GDP figure is for 1972.

2) The figures of passenger cars and GDP are for 1973 and 1972 respectively. The number of passenger cars per 1,000 inhabitants has been calculated by the present author on the basis of the total number of passenger cars for the country concerned and the population in the same year, as found in the source material.

3) The figures for exports and imports are common to Luxembourg and Belgium.

4) The number or cars is for 1970.

Sources:

Population	-United Nations, Monthly Bulletin of Statistics, January 1976, Volume XXX, No. 1, Estimates of Mid-year Population, pp. 1-4.
Per Capita Gross Domestic Product	-United Nations, Yearbook of National Accounts Statistics 1973, Volume III, 1975, Estimates of Total and Per Capita GDP Expressed in U.S. Dollars, pp. 3-8.
	-World Bank Atlas, Population, Per Capita Product and Growth Rates, 1974, Per Capita Gross National Product at Market Prices - Amount (1972) and Average Annual Growth Rates (1960-1972 and 1965-1972), p. 7.
	-OECD Economic Surveys, Finland, December 1975, Basic Statistics: International Comparisons, supra p. 52.
Passenger Cars per 1,000 Inhabitants	-OECD Economic Surveys, Finland, December 1975, Basic Statistics, International Comparisons, supra p. 52.
	-United Nations, Statistical Yearbook 1974, Motor Vehicles in Use, pp. 435-441. See also note 2) above.
Value of Bilateral Trade Finland's	-Yearbook of Nordic Statistics 1974, Tables 84 and 85, pp. 122-125.

A P P E N D I X II. (i)

Scheduled International Air Services Maintained by the Finnair Oy in the Winter Season from November 1, 1975, to March 31, 1976.

Routing (v.v.)	Flight No.	Frequency	Aircraft
Helsinki - STOCKHOLM	AY 783/784	D.	CVS
	AY 789/788	D.	"
	AY 781/782	D. ex 7.	"
	AY 785/786	D. ex 6.	"
Helsinki-Turku-Maarianhamina-STOCKHOLM	AY 661/ -	D. ex 7.	CV4
	AY - /668	D. ex 6.	DC9
Helsinki-OSLO	AY 797/798	D. ex 6.	CVS
Helsinki-STOCKHOLM-OSLO	AY 793/794	D.	DC9
Helsinki-GOTHENBURG-AMSTERDAM	AY 841/846	D.	CVS
Helsinki-HAMBURG-AMSTERDAM	AY 853/854	D.	"
Helsinki-COPENHAGEN	AY 801/802	1.2.5.6.	DC9
Helsinki-Turku-COPENHAGEN	AY 813/814	D.	CVS
Helsinki-COPENHAGEN-BUDAPEST	AY 753/754	3.	DC9
	AY 755/756	5.	"
Helsinki-COPENHAGEN-ZURICH	AY 862/863	D.	CVS
Helsinki-BERLIN (SCHÖNEFELD)-PRAGUE	AY 771/772	4.7.	DC9
Helsinki-FRANKFURT	AY 821/822	D.	CVS
Helsinki-WARSAW-VIENNA (1)	AY 761/762	1.6.	DC9
Helsinki-BRUSSELS-PARIS (2)	AY 873/874	D.	CVS
Helsinki-LUXEMBOURG-MALAGA	AY 893/894	6.	"
Helsinki-LONDON	AY 831/832	D.	" (3)
Helsinki-MOSCOW	AY 704/705	2.5. (4)	CVS
		2.5.7. (5)	"
Helsinki-LENINGRAD	AY 712/713	1.4.	"
Turku-STOCKHOLM	AY 603/606	D.	DC9
Turku-STOCKHOLM (one way)	AY 607/ -	D. ex 6.	"
Vaasa-UMEÅ-SUNDSVALL (6)	AY 634/637	D. ex 7.	CV4
Helsinki-FRANKFURT (one way)	AY/LH 823	D.	DC9
FRANKFURT-HAMBURG-Helsinki	AY/LH 824	D.	"
Helsinki-COPENHAGEN-AMSTERDAM-NEW YORK	AY 101/102	4.	D10
Helsinki-AMSTERDAM-NEW YORK	AY 103/104	1.	"
		3.5. (ret. 3.6.)	D8S

(continued)

Helsinki-NEW YORK	AY 105/106	6. (ret. 5.) 2. (7)	D8S "
Freight:			
Helsinki-FRANKFURT-DUESSELDORF (8)	AY/LH 047) LH/AY 047)	2.3.5. (ret. 3.4.6.)	D6B
Helsinki-AMSTERDAM (one way) Helsinki-LONDON (HEATHROW) via AMSTERDAM (one way)	AY 030) AY/BE 030)	4.6.	"
AMSTERDAM-Helsinki via LONDON (HEATHROW) (one way) LONDON (HEATHROW)-Helsinki (one way)	AY 031) AY/BE 031)	5.7.	"
Helsinki-STOCKHOLM	AY 057/058	3.4.5.6.	D9F

Freight is carried also on flights No. AY 101/102, 103/104 and 105/106 already mentioned above.

(1) No local traffic on the stage WARSAW-VIENNA v.v.
(2) No local traffic on the stage BRUSSELS-PARIS v.v.
(3) D9S 1.3.-31.3.1976.
(4) Until 17.1.1976.
(5) 18.1.-31.3.1976.
(6) No local traffic on the stage UMEÅ-SUNDSVALL v.v.
(7) 16.12.1975-13.1.1976.
(8) No local traffic on the stage FRANKFURT-DUESSELDORF v.v.

Explanations:

CVS = Super Caravelle
CV4 = Convair-440 Metropolitan
DC9 = Douglas DC-9-10
D9F = Douglas DC-9-15
D9S = Douglas DC-9-50
D8S = Douglas DC-8-62 CF
D10 = Douglas DC-10-30
D6B = Douglas DC-6B
FOREIGN POINTS WRITTEN IN CAPITAL LETTERS

D. = Daily
D. ex = Daily except
1. = Monday
2. = Tuesday
3. = Wednesday
4. = Thursday
5. = Friday
6. = Saturday
7. = Sunday
AY = Finnair Oy
LH = Lufthansa
BE = British Airways
ret. = return service

S o u r c e : Finnair Time-table 1.11.1975 - 31.3.1976.

A P P E N D I X III.

T A B L E OF THE POST-WAR FINNISH BILATERAL AIR TRANSPORT AGREEMENTS PROPER AND THEIR RELATION TO THE CHICAGO ACTS

Status by February 29, 1976

STATE	BILATERAL AGREEMENT WITH FINLAND Date of signature	CHICAGO CONVENTION In force: 1947-04-04 Deposit of ratification or adherence	TRANSIT AGREEMENT In force: 1945-01-30 Notification of acceptance	TRANSPORT AGREEMENT In force: 1945-02-08 Notification of acceptance	Member of ECAC
The NETHERLANDS	1949-02-25	1947-03-26	1945-01-12	1945-01-12	X
The UNITED STATES	1949-03-29	1946-08-09	1945-02-08	---	
- Finland	---	1949-03-30	(below)	---	X
SWEDEN	1949-04-26	1946-11-07	1945-11-19	1945-11-19	X
NORWAY	1949-08-24	1947-05-05	1945-01-30	---	X
DENMARK	1949-08-26 Terminated 1970-03-31	1947-02-28	1948-12-01	---	X
CZECHOSLOVAKIA	1949-07-13	1947-03-01	1945-04-18	---	
The USSR	1955-10-19 Superseded	1970-10-15	---	---	
- Finland	---	(above)	1957-04-09	---	X
SWITZERLAND	1959-01-07	1947-02-06	1945-07-06	---	X
ICELAND	1960-03-10	1947-03-21	1947-03-21	---	X
LUXEMBOURG	1961-08-15	1948-04-28	1948-04-28	---	X
HUNGARY	1962-02-13	1969-09-30	1973-11-15	---	
FRANCE	1962-10-12	1947-03-25	1948-06-24	---	X
POLAND	1963-06-10	1945-04-06	1945-04-06	---	
The UNITED KINGDOM	1965-03-25	1947-03-01	1945-05-31	---	X
YUGOSLAVIA	1968-01-18	1960-03-09	---	---	
AUSTRIA	1969-06-04	1948-08-27	1958-12-10	---	X
BULGARIA	1970-03-19	1967-06-08	1970-09-21	---	

(continued)

MALTA	1970-09-17	1965-01-05	1965-06-04	---	
PORTUGAL	1971-06-14	1947-02-27	1959-09-01	---	X
ROMANIA	1971-06-30	1965-04-30	---	---	
The USSR	1972-05-05	1970-10-15	---	---	
The GERMAN DEMOCRATIC REPUBLIC	1973-01-30	---	---	---	
SPAIN	1973-05-30	1947-03-05	1945-07-30	---	X
GREECE (1)	1974-05-17	1947-03-13	1945-09-21	1946-02-28	X
The FEDERAL REPUBLIC OF GERMANY (1)	1974-05-21	1956-05-09	1956-06-08	---	X
TURKEY (1)	1975-03-25	1945-12-20	1945-06-06	1956-06-06	X
The PEOPLE'S REPUBLIC OF CHINA (1)	1975-10-02	1946-02-20	---	---	

(1) Not yet in force.

S o u r c e s :
- Annual Report of the Council - 1974, ICAO Doc 9127, pp. 103 - 106 (Appendix 1)
- ECAC Doc ECAC/INT. S/8, 1975, pp. 1-2.
- The Finnish Statute Book, Treaty Series
- The Finnish National Board of Aviation, Working Paper MA/1976-01-29 (List of Finnish Bilateral Air Transport Agreements).

A P P E N D I X IV.

EFFECT OF THE TARIFF AGREEMENT UPON BILATERAL AIR TRANSPORT RELATIONS OF FINLAND

Status by 1976-05-06

STATE	TARIFF AGREEMENT Deposit of ratification or approval	BILATERAL AGREEMENT WITH FINLAND Date of signature	EFFECT	
			Enforcement	Replacement
FRANCE	1967-08-04	1962-10-12		X
PORTUGAL	1968-03-08	1971-06-14		X (1)
IRELAND	1968-03-15	NIL		
The UNITED KINGDOM	1968-04-04	1965-03-25		X
F I N L A N D	1968-04-30	---	---	---
Entry into force of the Tariff Agreement	1968-05-30	---	---	---
The NETHERLANDS	1968-11-21	1949-02-25		X
SPAIN	1969-02-14	1973-05-30		X (1)
BELGIUM	1969-12-02	NIL	X (3)	
AUSTRIA	1971-03-08	1969-06-04		X
GREECE	1971-05-31	1974-05-17		
SWEDEN	1972-06-07	1949-04-26		X
NORWAY	1972-06-07	1949-08-24		X
DENMARK (2)	1972-06-07	NIL	X (3)	
The REPUBLIC OF CYPRUS	1973-10-26	NIL		

(1) The tariff clauses in the bilateral agreements with PORTUGAL and SPAIN are identical with Article 2 of the Tariff Agreement.

(2) The bilateral agreement of August 26, 1949, with DENMARK was terminated as of April 1, 1970.

(3) Scheduled air services are maintained by the Finnish flag carrier to and from Belgium and Denmark on temporary permits.

ITALY who has signed the Tariff Agreement on August 5, 1968, has not yet ratified nor approved this treaty.

S o u r c e s : - The Finnish Statute Book, Treaty Series, No. 84/1968

- Oral information to the author by Secretary, Miss Liisa Leppänen, Finnish Ministry for Foreign Affairs, on May 6, 1976, of the status of the Tariff Agreement.

LIST OF ABBREVIATIONS

Act of 1923	The Finnish Air Navigation Act (in Finnish: Ilmailulaki) of May 25, 1923.
Act of 1964	The Finnish Aviation Act (in Finnish: Ilmailulaki) of December 11, 1964.
Chicago Convention	The Convention on International Civil Aviation done at Chicago on December 7, 1944.
CSF	Standard Form of Agreement for Provisional Air Routes adopted by the International Civil Aviation Conference at Chicago on December 7, 1944.
Control Order	Statutory Order on the Control of the Land and Water Territory and Airspace of Finland of 1963.
ECAC	The European Civil Aviation Conference.
ECAC/SC	Standard Clauses for Bilateral Agreements, developed by ECAC at its Third Session in 1959.
Finnair	Aero O/Y, or Finnair Oy.
IATA	The International Air Transport Association.
ICAN	The International Commission for Air Navigation.
ICAO	The International Civil Aviation Organization.
JALC	Journal of Air Law and Commerce.
LN	The League of Nations.
LNTS	The League of Nations' Treaty Series.
Ministry of CPW	The Finnish Ministry of Communications and Public Works (in Finnish: Kulkulaitosten ja yleisten töiden ministeriö).
OECD	The Organization for Economic Co-operation and Development.
Order of 1937	The Finnish Air Navigation Order (in Finnish: Ilmailuasetus) of March 12, 1937.
Order of 1968	The Finnish Aviation Order (in Finnish: Ilmailuasetus) of August 23, 1968.
Paris Convention	The Convention relating to the Regulation of Aerial Navigation dated October 13th 1919.
PICAO	The Provisional International Civil Aviation Organization.

Tariff Agreement	The International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services, done at Paris on July 10, 1967.
Transit Agreement	The International Air Services Transit Agreement, done at Chicago on December 7, 1944.
Transport Agreement	The International Air Transport Agreement, done at Chicago on December 7, 1944.
UN	The United Nations.
UNTS	The United Nations' Treaty Series.

N o t e :

The Finnish bilateral air transport agreements are referred to in the text generally by indicating in capital letters the name of the foreign state party to the agreement concerned.

Regarding the agreements concluded with the United States, the Union of Soviet Socialist Republics, and the United Kingdom, the abbreviations "the US", "the USSR", and "the UK" are used respectively.

The simplified agreements are indicated with an "S" after the name of the country, e.g. FRANCE (S).

Whenever more than one bilateral agreement are concluded by Finland with the one and same country, the year of signature of the respective agreement is added to distinguish the individual agreements, e.g. the USSR (1972).

Superseded or otherwise terminated agreements are indicated with addition of the respective term to the name of the country, e.g. the USSR (1955-superseded), or DENMARK (terminated).

SELECTED BIBLIOGRAPHY

BOOKS

Air Laws and Treaties of The World, Volume I, 1965

Anderson, S.V.: The Nordic Council - A Study of Scandinavian Regionalism, 1967.

Autere, T.: Oikeus ilmatilan käyttöön siviili-ilmailutarkoituksessa rauhan aikana (Rights in Aviation - An International Survey of the Legal Aspects of the Air Space in Peacetime Civil Aviation, With Special Reference to Finnish Law), 1965.

Castel, J.-G.: International Law Chiefly as Interpreted and Applied in Canada, 1965.

Castrén, E.: Suomen kansainvälinen oikeus, 1959.

Cheng, B.: The Law of International Air Transport, 1962.

Cooper, J.C.: Explorations in Aerospace Law, 1968. Ed. Vlasic, I.A.

Davies, : A History of the World's Airlines, 1967 (reprint with corrections).

Finnair Oy: The Finnair Story, 1973.

Helsingin Seutukaavaliitto & Kanta-Hämeen Seutukaavaliitto & Varsinais-Suomen Seutukaavaliitto:
Selvitys valtakunnallisesta lentoliikenteestä (VALTSU), 1972.

Institute of Air and Space Law / McGill University:
- Yearbook of Air and Space Law 1965, printed in 1967.
- Yearbook of Air and Space Law 1967, printed in 1970.

Jakobson, M.: Finnish Neutrality - A Study of Finnish Foreign Policy Since the Second World War, 1969 (Second Printing).

Janarmo, K.W.: Varhaisilmailumme 1753 - 1919, 1963.

Karhumäki, N.: Karhunahas, 1959.

Lødrup, P.: Luftrett, 1962.

McDougal, M.S., Lasswell, H.D., and Vlasic, I.A.:
Law and Public Order in Space, 1964 (Second Printing).

Meyer, A.: - Freiheit der Luft als Rechtsproblem, 1944.
- Le Cabotage Aérien, 1948.

National Planning Office:
The Present State of Tourism in Finland and Plans for its Development
Series A:17, 1965.

Nylen, T.: A Study of the Draft Swedish Civil Aviation Act of 1955, a Thesis, McGill University, 1956.

Kustannusosakeyhtiö Otava:
Otavan Iso Tietosanakirja (Encyclopedia Fennica), Volume 8, 1964.

Pillai, K.G.J.: The Air Net, 1969.

The Population Research Institute of Finland:
Population and Development in Finland, 1973.

The Department of State (USA):
Proceedings of the International Civil Aviation Conference, Volumes I and II, 1948.

Rytkölä, O.: Merenkulkumaksut (Sipping Charges), 1958.

Shawcross and Beaumont:
On Air Law, 1966 (Third Edition).

Thornton, R.L.: International Airlines and Politics, 1970.

Wagner, W.J.: International Air Transportation as Affected by State Sovereignty, 1970.

Wassenbergh, H.A.:
- Post-War International Civil Aviation Policy and The Law of the Air, 1962 (Second Revised Edition).
- Aspects of Air Law and Civil Air Policy in the Seventies, 1970.

McWhinney, E., and Bradley, M.A., ed.,
The Freedom of the Air, 1968.

ARTICLES

Bebchick, L.: "The International Air Transport Association and the Civil Aeronautics Board", 25 JALC (1958).

Binaghi, W.: "The International Civil Aviation Organization (ICAO) after Twenty Years", Institute of Air and Space Law/McGill University, Yearbook of Air and Space Law 1967.

Blomstedt, Y.: "A Historical Background of the Finnish Legal System", Uotila, J., ed., The Finnish Legal System, 1966.

Cooper, J.C.: - "Legal Problems of Spacecraft in Airspace", as reprinted from Festschrift für Otto Riese, 1964, in Vlasic, I.A., ed., Cooper, Explorations in Aerospace Law, 1968.

- "State Sovereignty in Space: Developments 1910 to 1914", as reprinted from Beiträge zum internationalen Luftrecht: Festschrift für Alex Meyer, 1954, in Vlasic, I.A., ed., Cooper, Explorations in Aerospace Law, 1968.

- "The International Air Navigation Conference, Paris 1910", as reprinted from JALC, Volume 127 (1952), in Vlasic, I.A., ed., Cooper, Explorations in Aerospace Law, 1968.

Editorial: "Suomeen lentävät yhtiöt", Ilmailu, Volume 2, 1972.

Fauchille, P.: "Le domaine aérien et le régime juridique des aérostats", Revue Générale de Droit International Public, Volume 8, 1901.

Friis, E.J.: "Finnair on the North Atlantic", Esso Air World, Volume 21, No. 5.

? "Kar-Air, A Story of Finnish Enterprise", reprint from Esso Air World, Volume 23, No. 1, 1970.

Latchford, S.: "The Right of Innocent Passage in International Civil Air-Navigation Agreements", Department of State Bulletin, Volume 11, 1944.

Loy, F.E.: "Bilateral Air Transport Agreements: Some Problems of Finding a Fair Route Exchange", McWhinney & Bradley, ed., The Freedom of the Air, 1968.

Lund, U.: "Topical Problems Facing the Central Administration of State-owned Companies", State Owned Companies in Finland 1974.

Merkikoski, V.: "The System of Government", Uotila, J., ed., The Finnish Legal System, 1966.

Mårtensson, S.: "Trafikflyget", Ett År i Luften (Flygets Årsbok 1969-1970), 1969.

Nylen, T.: "Scandinavian Co-operation in the Field of Air Legislation", 24 JALC (1957).

Olsson, C.: "The Organisation of Business and the Right of Establishment", Uotila, J., ed., The Finnish Legal System, 1966.

Pajunen, V.I.: "Kun Finnair tuomittiin", Helsingin Sanomat, August 1, 1971.

Riesch, E.: "Das erste Luftfahrtabkommen der Welt", Archiv für Luftrecht, Volume 10, 1940.

Roper, A.: "Note by the Secretary General on the Origin of the Air Convention of 13th October 1919, its Progressive Extension from 1922 to 1928 and the Problem of its Revision", as reproduced in the Minutes of the Sixteenth (Extraordinary) Session of the ICAN, 1929 (Drafts), Annex A.

Salovius, K.R.: "Statens övervakande och understödjande av den civila luftfarten i Finland", Nordisk Administrative Tidskrift, 1935.

Temmes, K.J.: "Siviili-ilmailuhallintomme ja sen kehittämistavoitteet", Tekniikka, Volume 6, 1971.

Tuuk Adriani, P. van der:
"The 'Bermuda' Capacity Clauses", 22 JALC (1955).

Warner, E.P.: "The International Convention for Air Navigation and the Pan American Convention for Air Navigation: A Comparative and Critical Analysis", Air Law Review, Volume 3, 1932.

DOCUMENTS

ECAC
- Resolution No. 1, as reproduced in the Yearbook of Air and Space Law 1965.
- Eighth Intermediate Session, Report, ECAC Doc ECAC/INT. S/8, 1975.

FINNISH NATIONAL BOARD OF AVIATION
Working Paper MA/1976-01-29 (List of Finnish Bilateral Air Transport Agreements).

IATA
- Act of Incorporation, Articles of Association, Rules & Regulations of International Air Transport Association, Ninth Publication, 1967.
- World Air Transport Statistics, No. 15, 1970.

ICAN
- Convention relating to the Regulation of Aerial Navigation dated 13th October 1919, printed in 1937.
- The Minutes of the Sixteenth (Extraordinary) Session of the ICAN, 1929 (Drafts): Minutes No. 79, Second Sitting of 11th June 1929.
- Official Bulletins:

No. 16, 1929; No. 20, 1932; No. 21, 1933; No. 22, 1934; No. 25, 1937; No. 27, 1940.

ICAO
- Annual Reports of the Council from 1949 to 1974, especially the following:

1970, Doc 8918; 1972, Doc 9046; 1973, Doc 9085; 1974, Doc 9127.

(continued)

ICAO (continued)

- Doc 5230, A2-EC;
- ECAC Eighth Triennial Session 1973, Report, ICAO Doc 9062, ECAC/8;
- Handbook on Administrative Clauses in Bilateral Air Transport Agreements, ICAO Circular 63-AT/6, 1962;
- Handbook on Capacity Clauses in Bilateral Air Transport Agreements, ICAO Circular 72-AT/9, 1965;
- Lexicon of Terms Used in Connection with International Civil Aviation, ICAO Doc 8800, Volume II, Third Edition, 1971;
- Report by the Council to Contracting States on the Definition of a Scheduled International Air Service and the Analysis of the Rights Conferred by Article 5 of the Convention, ICAO Doc 7278-C/841;
- Rules for Registration with ICAO of Aeronautical Agreements and Arrangements, ICAO Doc 6685, C/767, 6/4/49 (amended on May 16, 1974);
- Aeronautical Agreements and Arrangements, Doc 8853-LGB/278, and Supplements.

LEAGUE OF NATIONS TREATY SERIES
UNITED NATIONS TREATY SERIES

The respective Volumes and Nos. for the individual treaties referred to in the text are indicated in the correspondingfootnotes.

NORDIC COUNCIL

- Nordic Council, 19th Session 1971, Minutes of the Sixth Meeting on February 17, 1971, and Supplements;
- Nordtrans, Nordisk Utredningsserie (Nordic Reports Series), No. 1969:13;
- Report of the Nordic Ministerial Council on the Nordic Cooperation, Decmber 1975; Nordic Council Doc C 1/1976;
- Recommendations:
  - No. 16/1971 (Prohibition on Supersonic Aircraft in the Nordic Countries);
  - No. 8/1972 (Alleviations for Scheduled Internordic Air Services on Short Routes);
  - No. 28/1973 (Establishment of Transversal Air Services in the Northern Parts of the Nordic Countries);
- Nordic Council & Nordic Statistical Secretariat: Yearbook of Nordic Statistics 1974, printed in 1975.

PUBLICATIONS

OECD — OECD Economic Surveys - Finland, December 1975 (printed in 1976).

UNITED NATIONS

- Monthly Bulletin of Statistics, January 1976, Volume XXX, No. 1;
- Statistical Yearbook 1974;
- Yearbook of National Accounts Statistics 1973, Volume III, 1975.

WORLD BANK — World Bank Atlas: Population, Per Capita Product and Growth Rates, 1974.

OFFICIAL FINNISH DOCUMENTS AND PUBLICATIONS

ARCHIVES OF THE FINNISH MINISTRY FOR FOREIGN AFFAIRS

- Note of November 2, 1920, by the Danish Embassy at Helsinki to the Finnish Minister for Foreign Affairs;
- Note No. 200 by the Chargé d'Affair of the United Kingdom in Finland, Mr. H.M. Bell, to the Finnish Minister for Foreign Affairs on July 26, 1919;
- Note of July 24, 1923, by the British Minister at Helsinki, Mr. Ernest Rennie, to the Finnish Minister for Foreign Affairs, UAM No. 32/1936 K.D. 1923 25/7/1923.

COMMITTEE REPORTS

- No. 11/1937 Siviili-ilmailun hallinnon järjestelystä ehdotusta tekemään asetetun komitean mietintö (Report of a Committee Appointed to Prepare a Proposal on the Organisation of Civil Aviation Administration);
- No. 13/1938 Ilmaliikenneyhtiön perustamisesta ehdotusta tekemään asetetun komitean mietintö (Report of a Committee Appointed to Prepare a Proposal on the Establishment of an Air Services Company).

FINNISH PARLIAMENT

- Hallituksen esitys Eduskunnalle ilmailulaiksi, 1923 (Government Bill to the Parliament on Aviation Act, 1923);
- Hallituksen esitys Eduskunnalle Kar-Air Oy:n ulkomaisten ja kotimaisten lainojen vakuudeksi annettavasta valtion takauksesta, 1963 vuoden valtiopäivät, No. 5 (Government Bill to the Parliament on a State Guarantee for the Foreign and Domestic Debts of the Kar-Air Oy, 1963 Diet, No. 5);
- Hallituksen esitys Eduskunnalle ilmailulainsäädännön uudistamiseksi, 1963 vuoden valtiopäivät, No. 61 (Government Bill to the Parliament on the Reform of Aviation Legislation, 1963 Diet,

No. 61);
- Question No. 28, 1965 Diet.

MINISTRY OF FINANCE

Taloudellinen katsaus 1975 (Economic Survey 1975)

FINNISH NATIONAL BOARD OF AVIATION

- Yearbook 1975;
- Yearbook 1976;

FINNISH CENTER FOR PROMOTION OF TOURISM

- Matkailun vuosikirja 1972/73 (Yearbook of Tourism 1972/73);
- Matkailun vuosikirja 1974 (Yearbook of Tourism 1974).

N o t e : The Finnish Statute Book and the Finnish Statute Book, Treaty Series, The numbers of the individual laws and treaties referred to in the text are indicated in the respective footnotes.

MISCELLANEOUS LEGAL MATERIALS

Conférence Internationale de Navigation Aérienne, Paris: Procès-verbaux des Séances et Annexes, 1910;

The France-United States Air Transport Arbitration Award of December 22, 1963, International Legal Materials, Volume 3, 668 (1964);

The Italy-United States Air Transport Arbitration Award of July 17, 1965, International Legal Materials, Volume 4, 974 (1965);

Report of the International Law Commission on the Second Part of its Seventeenth Session 3 - 28 January, 1966, and on its Eighteenth Session 4 May - 19 July, 1966; United Nations General Assembly, Official Records, Twenty-First Session, Supplement No. 9, A/6309/Rev. 1.

OTHER MATERIALS

FINNISH MINISTRY FOR FOREIGN AFFAIRS

Press Releases of November 21 and 27, and of December 2 and 23, 1969; of January 30, February 17, March 19, 23 and 25, May 9 and 13, and June 6, 1970;

FINNAIR OY
- Charter of October 29, 1946, with amendments;
- Press Releases of 1963 ("Finnair 40, 1923-1963"), of July 1967, and of September 1971;
- Annual Reports from 1959 to 1974/75;

KAR-AIR OY - "40 Years of Finnish Aviation 1925-1965", 1964;
- Press Release of 1967;
- Annual Reports for 1967, 1967/68 and 1969/70.

PRESS INTERVIEWS IN FINNISH NEWSPAPERS WITH

Aitio, P., then Finnish Minister of Communications, Uusi Suomi, February 11, 1970;

Hagrup, K., Director General of the Scandinavian Airlines System (SAS), Hufvudstadsbladet, April 15, 1973;

Korhonen, G., Director General of the Finnair Oy, Uusi Suomi, February 6, 1969; January 12, 1972; and December 18, 1974;

Temmes, K.J., Director General of the Finnish National Board of Aviation, Uusi Suomi, January 11, 1972;

Todorov, P., Chairman of the Tourism Committee of the Bulgarian Council of Ministers, Hufvudstadsbladet, February 18, 1972.

NEWS ARTICLES IN FINNISH NEWSPAPERS

Helsingin Sanomat, February 15, 1970 ("Lentoliikenneneuvottelut käynnistyvät Moskovassa");

Uusi Suomi: June 30, 1971; January 28, 1976; and February 23, 1976.

= o = o = o =