A GUIDE FOR DRAFTING BILATERAL AIR TRANSPORT AGREEMENTS IN CANADA

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RÉSUMÉ

L'auteur présente d'abord un survol historique de l'aviation civile au Canada, de même que les démêlés juridiques internationaux suscités par l'aéronef. L'évolution rapide de l'aviation au cours des dernières décennies a généré plusieurs concepts de droit international. L'accent est mis sur l'importance des accords bilatéraux canadiens en matière d'aviation civile.

L'auteur fait une description poussée des formules de rédaction appliquées aux différents articles des accords bilatéraux aériens intervenus entre le Canada et d'autres pays. Lorsque certaines questions sur lesquelles portent les accords bilatéraux méritent d'être approfondies, comme les tarifs et la capacité (passagers et marchandises), des explications supplémentaires sont données.

Enfin, la thèse se veut un guide systématique des techniques de rédaction dans lequel sont examinées tour à tour chacune des clauses des accords bilatéraux aériens engageant le Canada. Pour mieux illustrer son propos, l'auteur a multiplié les exemples.

ABSTRACT

First, the author proposes an historical survey of civil aviation in Canada, as well as the international legal intricacies introduced by the aircraft. The rapid evolution of aviation during the last decades has generated numerous concepts of international law. The emphasis is put on the importance of bilateral air transport agreements in Canada.

The author provides a lengthy description of the drafting formulas applied to the different articles of bilateral air transport agreements signed between Canada and other countries. When certain matters discussed into the bilateral agreements require more developments, as for instance tariffs and capacity (of passengers and goods), additional explanations are given.

Finally, the thesis is a guide that systematically covers the techniques of drafting, in which are reviewed, successively, each provision of the bilateral air transport agreements signed by Canada. The author illustrates his subject with many examples.

PREFACE

The objective of the following thesis is to offer a consolidated guide for drafting bilateral air transport agreements in Canada. Since no guide of this type has ever been written, the author believes it is an appropriate subject for a master thesis in law to be submitted to the Institute of Air and Space Law (McGill University).

It is impossible to name every person who contributed to the presentation of the thesis, nevertheless the author is grateful to the Canadian Transport Commission (International Air Transport Branch) for helping him in his research, especially to Dr. Joseph Gertler for his valuable and enthusiastic contribution.

Also, the author wants to thank Ms. Lynn Riendeau for her great help and her patience in typing the manuscript; Mr. Bruce Cooper for his editorial assistance; and the members of the Institute and Centre of Air and Space Law.

Because of the confidential nature of some documents, they cannot be quoted here. Also, to preserve the confidentiality of certain data, the author had to screen out some elements. Nonetheless, it does not impede on the good comprehension of the topics.

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INTRODUCTION

Throughout history, transportation has been seen as the backbone of empires and large countries. Rome spread from a single city over half of Europe and the entire coast of the Mediterranean because of the potential provided by a superior road system. The collapse of the Roman Empire and the decay of the roads which followed led directly to Europe's fall into the Dark Ages that took a long time to recover from. It took as long in 1830 to travel from Britain to Rome as it did in 55 BC.

Water transport was the prime factor in the development of the colonial empires of France and England, and North America was opened up to opportunity by transportation across the Atlantic and the vast inland river transportation system within the continent.

Canada owes its existence to the railroad, which was the price of Confederation and the means by which it extended from sea to sea. Transportation has remained a vital element in Canada's development. When World War II broke out in 1939, a week was needed to convene Parliament to deal with the crisis; today the same thing would take but a day because of air transport. The rapid development of air transport in Canada has been possible in a large part because of the rapid advances in the technology in that

field. The situation changed from virtually no air transport to scheduled jet service in only three decades.

Aviation law in Canada has had to be flexible to deal with these rapid advances. This applies not only to domestic regulation but international regulation as well. Many different countries are necessarily involved in the efficient operation of air transport and smooth international regulation depends upon smooth relations between nations and the effective development of Canadian aviation involved establishing understanding between Canada and the other countries.

The main purpose of this thesis is to explain where the bilateral air transport agreements come from, in what context they have been negotiated and most importantly how they are drafted in Canada..

CHAPTER I: HISTORICAL SURVEY

A. Major Trends in the Development of International Negotiations of BATAs

1. Chicago Conference

From November 1 to December 7, 1944, representatives from fifty-four nations attended the Chicago Conference, convened by US President Roosevelt. "The purpose of the Conference was to design a blueprint for the worldwide regulation of postwar international civil aviation."[1]

In its attempts to reach agreement on the economic regulation of postwar international civil aviation, the Conference was nearly unsuccessful. In fact, the Conference failed to create commercial freedom on a multilateral basis. "In this field the views of the key nations, represented at Chicago, were too far apart to make agreement possible".[2]

The fundamental problem to be resolved at the

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1. Haanappel, P.P.C., *Pricing and Capacity Determination in International Air Transport - A Legal Analysis of International Air Fares and Rates*, Kluwer Law and Taxation Publishers, The Netherlands (1978), rev. ed. 1984, 210, at p. 9.

2. *Ibid.*

Chicago Conference was how to prepare States to "adopt multilateral rules limiting airspace sovereignty rather than through bilateral means, in order to obtain commercial freedom of the air - i.e. freedom of air transport."[3] The commercial freedom of the air which now exists is called the "five freedoms", *i.e.*

1. the privilege to fly across the territory of a State without landing;
2. the privilege to land for non-traffic purposes;
3. the privilege to put down passengers, mail and cargo, taken on in the territory of the State whose nationality the aircraft possesses;
4. the privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
5. the privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such

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3. Merckx, A.L., "New Trends in the International Bilateral Regulation of Air Transport", (1982) 17 European Transport Law, 107-148, at p. 108.

territory.[4]

The exchange of all five freedoms of the air for scheduled international air services on a multilateral basis was included in the *International Air Transport Agreement* produced by the Chicago Conference.[5] Unfortunately this Agreement never became effective due to a lack of ratifications. The Chicago Conference only succeeded in the multilateral exchange of the first two freedoms of the air, *i.e.* the right of overflight and technical stops.[6]

In addition to the *International Air Transport*

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4. *Matte, N.M., Treatise on Air-Aeronautical Law*, ICASL, McGill University (Montréal), The Carswell Co. Ltd., Toronto, 1981, 832, at p. 143. For more details on the "five freedoms", see also Cheng, B., *The Law of International Air Transport*, Stevens and Sons Ltd., London, 1962, 726, at pages 9 to 17; Guillot, J., *L'économie du transport aérien: libertés de l'air et échanges de droit commerciaux*, LGDJ, Paris, 1970, 239, at pp. 17 *et seq.*. Also, a limpid synthesis on the "freedoms of the air" is found in Monlaü, M.B., *Le transport aérien en Afrique noire francophone et les accords bilatéraux franco-africains*, LL.M. Thesis submitted to McGill University (IASL), August 1975, 319, at pp. 152 to 158. (Unpublished). See *infra*, note 132.

5. See the text of this Agreement in Matte, N.M., *ibid.*, at pp. 629 to 632.

6. For scheduled international air services this exchange was done in the *International Air Services Transit Agreement* (cf. Matte, N.M., *ibid.*, at pp. 626 to 629). For non-scheduled international air services, the first two freedoms of the air are exchanged in Art. 5, Para. 1 of the *Chicago Convention*.

Agreement, and the *International Air Services Transit Agreement*, the Chicago Conference produced the *Convention on International Civil Aviation* (the *Chicago Convention*) which created the ICAO;[7] the *Interim Agreement on International Civil Aviation* which created PICAO;[8] the *Draft Technical Annexes* to the Convention; and a *Standard Form of Agreement for Provisional Air Routes*.[9]

2. Bermuda I

The Chicago Conference had not been a success: far from it. The delegates, because they were not able to resolve many economic issues concerning international civil aviation that would have been through a multilateral agreement, relegated the task of economic regulation to bilateral

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7. *I.e.* the International Civil Aviation Organization.

8. The Provisional ICAO; it functioned from June 6, 1945 until April 4, 1947.

9. See *International Civil Aviation Conference*, Chicago, Nov. 1 - Dec. 7, 1944, Final Act and Appendices, ICAO Doc. 2187. See also the *Proceedings of the International Civil Aviation Conference* 42, Chicago, Ill., Nov. 1 - Dec. 7, 1944; Washington 1948, US Dept. of State Publ. 2820; 2 vols., XVI-774 pp.; and XVII-734 pp.

air transport agreements (BATAs). The BATAs then regulated the exchange of third, fourth and, particularly, fifth freedom traffic rights, as well as air transport capacities, frequencies and tariffs.

Nevertheless, the conferees provided guidelines for future government negotiators. A model for the exchange of commercial air rights was included in the Chicago Conference's Final Act: the *Standard Form of Agreement for Provisional Air Routes.*[10]

The airlines themselves founded the International Air Transport Association (hereinafter referred to as IATA) in April 1945.[11] This private organization was created to coordinate international air fares and rates, known as the "IATA ratemaking machinery".[12]

But by far the most influential factor, from the point of view of the long-term development of international civil aviation and the future drafting of BATAs, was the signing of the *Bermuda I Agreement* between the UK and the USA, commonly referred to as *Bermuda I.* This bilateral agreement was signed at the end of the Bermuda

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10. *Ibid., Proceedings* at pp. XVI-128-29.

11. International Air Transport Operators Conference, Havana (April 16-19, 1945).

12. *Infra* pp. 120 *et seq.*

Conference, held from January 15 to February 11, 1946.

Bermuda I is essentially the result of American and British acceptance of the *International Air Services Transit Agreement*, including the principles incorporated in the *Final Act of the Bermuda Conference* together with the bilateral agreement and a detailed *Annex to Agreement*.[13] This bilateral agreement served *mutatis mutandis* as an example for the majority of BATA's that followed over the next three decades.[14] It provided for the exchange of certain predetermined air service routes between the two countries.

The *Bermuda I Agreement* followed the *Standard Form* set up at the Chicago Conference. There were fourteen articles which defined the conditions for operating air services between the territories of both

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13. See the *Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland*, February 11, 1946, hereinafter cited as *Bermuda I*, in *Annexes and Final Act of the Civil Aviation Conference held at Bermuda*, January 15 - February 11, 1946, TIAS 1507, 3 UNTS 253; see also Cooper, J.C., *Explorations in Aerospace Law*, ed. I.A. Vlasic, McGill University, Montréal, 1968, 480, at p. 383; see also Annex I.

14. It was even referred to as the "Magna Carta of international aviation" in "The Perils of No Policy on International Aviation", (16 August 1976) Business Week, at p. 104.

Contracting Parties. It also sets out the procedure for modifying the *Annex*, after consultation. Finally, any disagreement between the two governments on the Agreement or the Annex would be referred to the PICAO or its successor for an advisory opinion.

Bermuda I was possible because of an important compromise.[15] The USA accepted governmental tariff control and the UK accepted the idea that airlines themselves would fix capacity and the frequencies of flights.

> The U.S.A. was willing to accept tariff control which developed into a ratemaking system whereby tariffs for scheduled international air services[16] are originally predetermined through the IATA ratemaking machinery and are then subject to governmental approval. The U.K., on the other hand, gave up its preference for predetermination of capacity, which means that under *Bermuda I* system each Party is free to determine the capacity and frequence of its airlines according to the principles set out in the *Bermuda Final Act* and subject to an *ex post facto*[17] review by governments.[18]

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15. See Stoffel, A.W., "American Bilateral Air Transport Agreements on the Threshold of the Jet Transport Age", (1959) 26 JALC, 119-136, at page 122.

16. See Guldimann, W., "The Distinction Between Scheduled and Non-Scheduled Air Services", (1979) 4 Annals of Air and Space Law (AASL), 135-149.

17. *Infra* pp. 98 *et seq.*

18. Merckx, A.L., *op.cit., supra* note 3, at pp. 109-110.

Bermuda I inspired numerous bilateral negotiations which have resulted in similar agreements between other countries: for example the UK and France agreement signed in London, February 28, 1946; a BATA between the USA and France concluded in Paris, March 27, 1946; and also between France and Portugal, signed in Lisbon, April 30 of 1946. These are only a few of the very first bilateral treaties that followed *Bermuda I*.

On September 19, 1946, the Americans and British issued a joint statement proclaiming the Bermuda Agreement as the model for all BATA's to be concluded by them. "In practice, however, the Americans remained faithful to the Bermuda principles longer than the British":[19]

> Ce fut un succès dans la politique aérienne bilatérale des États-Unis (...). Quant à la Grande-Bretagne, le succès fut moins éclatant. Elle conclut un certain nombre d'accord (sic) dont certains contiennent des clauses restrictives des droits commerciaux notamment l'accord avec l'Argentine du 17 mai 1946 et aussi l'accord avec les Pays-Bas. Dans ces accords les fréquences sont fixées en fonction de la charge payante et les capacités divisées également pour chaque

19. Haanappel, P.P.C., "Bilateral Air Transport Agreements - 1913-1980", (1980) 5 International Trade Law Journal, 241-267, at p. 247. See *British Air Transport in the Seventies*, Report of the Committee of Inquiry into Civil Air Transport, Appendix 5 (The Edwards Report 1969).

partie.[20]

3. Bermuda II

On June 22, 1976, the United Kingdom denounced *Bermuda I*. The termination of the Agreement was to take effect one year later, on June 22, 1977. After this year, during which the UK and the USA negotiated, the new *Bermuda II Agreement* was signed and entered into force on July 23, 1977.[21]

The Minister (Commercial) of the British Embassy in Washington, D.C., Lord Thomas E. Bridges pointed out:

> The great advantages of termination were that both sides had to make a new start, to consider completely novel approaches to the whole of our bilateral civil aviation relations, to take proper account of all the enormous changes which had taken place in the thirty years since Bermuda I, and to consider the kind of framework which we both needed for the future. And it also means that we had the spur of knowing that there were exactly 12 months to do the

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20. Coulibaly, S., *Les accords des Bermudes et les accords bilatéraux des Etats membres du traité de Yaoundé*, LL.M. Thesis submitted to McGill University (IASL), March 1978, 296, at p. 37. (Unpublished).

21. *Air Services Agreement between the Government of the U.S.A. and the Government of the U.K.*, July 23, 1977, hereinafter cited as *Bermuda II*, TIAS 8641, 28 UST 5367. See Annex II for the text of this agreement.

job.[22]

The British denunciation of *Bermuda I* had been caused by a dissatisfaction concerning the capacities offered by American and British air carriers over North Atlantic. The UK authorities claimed that the traffic portion of the American carriers (Pan Am and TWA) exceeded the one of the British carrier (British Airways).[23] The initial goal of the British was to obtain intergovernmental predetermination of capacity and frequency but they did not succeed. Nevertheless, the capacity regulation in *Bermuda II* is more restrictive than that found in

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22. Bridges, T.E., "Bermuda II and After", (1978) 3 Air Law, 11-16, at p. 12.

23. This problem of capacity is very accurate now in the UK-Canada consultations. See *infra*, p. 181. A Minister of the British Embassy in the U.S.A. emphasizes:

> In London we felt these difficulties applied particularly over the question of capacity on the North Atlantic routes. The decline in traffic prospects following the Middle East conflict, the rise in fuel costs and the international recession had combined to cause severe problems on the North Atlantic between 1974 and 1976. In those difficult years we experienced the use of capacity as the main competitive tool on the route. That was wasteful in terms of fuel and financially harmful for the airlines. It was strongly felt in London that the absence of any provision in the old Agreement to prevent such abuses was a serious flaw.

Ibid., at p. 11.

Bermuda I.[24]

> While basically tracking the Bermuda I provisions on the setting of transatlantic rates and on flight frequencies, Bermuda II imposed limitations on carrier capacity related to the traffic requirements of the two countries, through-service airline operation requirements, and the traffic requirements of intermediate areas. It also restricted all but two transatlantic routes to service by a single U.S. and a single U.K. carrier, and sharply curtailed U.S. carriers' fifth freedom rights. With these types of provisions, Bermuda II substantially constricted the relatively liberal economic arrangement established by its 30-year old predecessor.[25]

Thus, the principal matters at issue were: first, capacity control; second, routes; third, the issue of single versus dual or multiple designation; fourth, tariff control; and fifth, charter linkage.[26]

Bermuda II includes provisions on

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24. *Bermuda II*, art. 11. "Bermuda I was (...) essentially a pro-competitive agreement" in Gray, R.R., "The Impact of Bermuda II on Future Bilateral Agreements", (1978) 3 Air Law, 17-22, at p. 17. See also Lowenfeld, A.F., "The Future Determines the Past: Bermuda I in the Light of Bermuda II", (1978) 3 Air Law, 2-10, at p. 5.

25. Sion, L.G., "Multilateral Air Transport Agreements Reconsidered: The Possibility of a Regional Agreement Among North Atlantic States", (1981) 22 VJIL, 155-218, at p. 164.

26. At the same time, many subsidiary issues were worked on intensively, such as provisions covering customs duties, charges for the use of airports and air navigation facilities, remission of airline earnings, aviation security, the settlement of disputes, etc.

> charter air services: it's an innovation compared to *Bermuda I*.[27] The charter rules in U.S. became more liberal; the concept of "country of origin"[28] was applied first, in provisions of some specific arrangements on international charters,[29] and later in charter provisions merely included in BATA's.[30]

But it was not easy to agree on all the matters debated. The ultimatum, 22nd of June, quickened the pace of the negotiations.

> The compulsion to reach agreement by this time was very strong. Neither side by then wanted to extend the old Agreement. Both had been making detailed contingency plans should there be a breakdown in direct services between the two countries. The UK had detailed plans for services to the States via Canada and the Bahamas. The US had plans for services to the UK via the Continent of Europe.[31]

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27. See in *Bermuda II*, art. 14 and Annex 4.

28. See *infra*.

29. The US signed "Memorandum of Understanding on Non-Scheduled Air Services" with many European countries, and also more formal "Bilateral Non-Scheduled Air Services Agreements" with Canada (TIAS 7824), Yugoslavia (TIAS 7819), and Jordan (TIAS 7954).

30. See *infra* pp. 160 *et seq*.

31. See Shovelton, W.P., "Bermuda 2 - A Discussion of its Implications. Negotiations and Agreement", [Feb. 1978] Aeronautical Journal, 51-54, at p. 52. This article contains detailed explanations of the five main issues negotiated. See also, Haanappel, P.P.C., "Bermuda 2: A First Impression", (1977) 2 AASL, 139-149; Magdelénat, J.-L., "Le transport aérien en 1977: espoirs d'éclaircies dans un ciel nuageux", *ibid.*, 151-162.

Finally, *Bermuda II* never had the influence as a model for other BATAs that its predecessor had.[32] The provisions were too detailed and the US aviation policy under the new Carter Administration wanted economic decisions to be left to the determination of individual airlines and to the free forces of the marketplace.

> (...) the Carter Administration, became heavily committed to a more freely competitive international aviation policy than the one expressed in *Bermuda 2*. Whereas *Bermuda 2* espouses a policy which is - because of its detailed treatment of certain subject matters and because of its restrictions on North Atlantic capacity and designation - somewhat more restrictive than that of *Bermuda 1*, the Carter Administration's policy was infinitely more liberal than was *Bermuda 1*. Under this policy of 'deregulation', Governments play a minimal role in the economic regulation of air

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32. Mr. van der Tuuk Adriani (Ex-Director - Bureau of Political Affairs Netherlands Civil Aviation Service) has his own explanation for that:
> (Bermuda II) may therefore well have a snowball effect, and by that set a pattern for airpolitical thinking as did the Bermuda I. There is however a major difference. (...)Bermuda I was copied to a large extent because countries felt safe to do so, even if they had not or not yet a clear and concrete reason for it. Now, after thirty years of post war aviation, there is hardly any country that has no civil aviation interests of its own to defend.

in van der Tuuk Adriani, P., "Some Observations on the Newly Born Bermuda II", (1977) 2 Air Law, 190-193, at p. 192.

transport.[33]

President Carter announced on 21 August, 1978, the new *U.S. Policy for the Conduct of International Air Transportation Negotiations*. According to that, it was time for liberalization and "deregulation". For this reason, *Bermuda II* has been liberalized by amendments, through *Exchanges of Notes*, concerning passenger fares, charter services, route structure, designation of airlines and cargo services.[34]

4. Liberalization and Deregulation

Following the Carter Administration's "new US International Aviation Policy", Congress passed the *Airline Deregulation Act of 1978*,[35] which made significant changes in the areas of fare, route, and exit/entry regulation. This Act "a) dismantle(d) the regulatory umbrella which has traditionally shielded the industry from

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33. Haanappel, P.P.C., *Pricing and Capacity Determination in International Air Transport*, *op. cit.*, *supra* note 1, at p. 41.

34. TIAS 8964 (1978); TIAS 8965 (1978); TIAS 9231 (1978); TIAS 9722 (1979); TIAS 10059 (1980).

35. Pub. L. No. 95-504, Oct. 24, 1978, 92 Stat. 1705 (codified in several sections of 49 USC).

the competitive influences of the marketplace, and b) abolish(ed) the Civil Aeronautics Board altogether by 1985."[36] The cornerstone of this new approach to the US international air transport was the belief that "the function of economic policy is to serve consumers rather than protect producers, and that the best way to do that is by promoting competition at home and abroad (...)":[37]

> Reliance on market forces is the rule, rather than the exception, in other sectors of the economy. The Department of Transportation argued that increased competition would lead to lower prices and improved service without subjecting the industry to destructive competition or excessive concentration, and without subjecting passengers to the dangers of unsafe operations.[38]

World air policy can be distinguished in:

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36. Dempsey, P.S., "The Rise and Fall of the Civil Aeronautics Board - Opening Wide the Floodgates of Entry", (1979) 11 Transportation Law Journal, 91-185, at p. 93.

37. Kahn, A., "The Changing Environment of International Air Commerce", (1978) 3 Air Law, 163-174, at p. 165. Mr. Kahn, a pro-deregulation professor of economics, was appointed by the Carter Administration as the Chairman of the CAB in June 1977. This resulted in the Board adopting a policy favouring deregulation and its own elimination.

38. Brief of the Department of Transportation in Improved Authority to Witchita Case, *et al.* (on file with the CAB in Docket 28848, April 27, 1978), quoted in Dempsey, P.S., *op.cit.*, *supra* note 36, at p. 124.

a) the policy supported by the most powerful States of the free world;

b) the "closed" policy of the communist world; and

c) the policy of the third world, the developing countries.

Obviously, the US is among the countries of the first category. It is an important leader in international aviation. Therefore,

> The year 1978 (...) constitutes a turning point in the air political situation in the World: the US, as the biggest and most influential aviation country adopted the 'deregulation policy' for international air transportation regulation. The US did so by proclaiming that such policy would give everybody an equal opportunity to compete and would thus be for the benefit and in the interest of all countries. The US free-enterprise-pro-competition philosophy became a new factor in international aviation policy. It was a fresh gust of wind through the befogged, opaque air space, which turned the weather cock. It was experienced as a tailwind by some States, as a headwind by others.[39]

The US moved towards an "open skies" regime for international air services. The keypoints of an "open

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39. Wassenbergh, H.A., "Aviation Policy and a New International Legal Order", (1981) 4 Air Law, 169-176, at p. 170; Dubuc, C.E. and Jones, A.D., "Significant Legislative Developments in 1979 in the Field of Aviation Law", (1980) 45 JALC, 921-960, at pp. 942 to 945.

skies" bilateral air agreement are:

a) unlimited multiple designation of airlines;

b) liberal route grant for services from/to the homeland of the carrier, *i.e.* US airlines may serve foreign countries from any point in the US, via any intermediate point and to any beyond point;

c) free determination by the designated airlines of capacity, frequencies and types of aircraft to be used;

d) no distinction between freedom categories;

e) encouragement of low tariffs, *i.e.* tariff competition in a fair marketplace and the promotion of low-cost transportation options, without reference to the ratemaking machinery of IATA;

f) charter freedom, *i.e.* cheap charter air services governed by the "country of origin" rule;[40]

g) freedom to do business in each other's

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40. For more on the "country of origin" concept, see Wassenbergh, H.A., *Public International Air Transportation Law in a New Era*, Kluwer Law and Taxation Publishers, The Netherlands, (distributed in USA by Fred B. Rothman & Co.), 1976, 165, at pp. 49 *et seq.*; see also Annex III.

territory by eliminating discrimination and unfair competitive practices; and

h) minimal governmental interference in tariff matters.[41]

Many governments indicated a willingness to negotiate liberal agreements. Consequently, a substantial number of US liberal agreements were signed after this new trend. "Today, among the more than 70 nations with which the United States has a bilateral air transport agreement, the following nations are among the members of the world community with which the United States has consummated the most liberal of such bilaterals: Belgium, Costa Rica, Fin-

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41. Haanappel, P.P.C., "Bilateral Air Transport Agreements - 1913-1980", *op.cit., supra* note 19, at p. 262; see also Wassenbergh, H.A., "Towards a New Model Bilateral Air Transport Services Agreement?", (1978) 3 Air Law, 197-209, at p. 198; Wassenbergh, H.A., "Liberal Bilateral Air Agreements Between the U.S. and Europe and Their Impact on Latin America", (1979) 4 AASL, 367-383, at pp. 369 to 376. I also refer the reader to three texts which give detailed and clear explanations on the characteristics of the liberal bilaterals: Merckx, A.L., "New Trends in the International Bilateral Regulation of Air Transport", op.cit., supra note 3, at pp. 120 to 129; Driscoll, E.J., "Deregulation - The U.S. Experience", (1981) 9 International Business Lawyer, 154-159; Callison, J.W., "Airline Deregulation - Only Partially a Hoax: The Current Status of the Airline Deregulation Movement", (1980) 45 JALC, 961-1000.

land, Israel, Jordan, Jamaica, South Korea, Thailand,[42] Taiwan, and Singapore".[43] Changes in United States agreements with the Philippines, Germany, the Netherlands, Australia, New-Zealand, and Brazil introduced significant liberal features. "Even the U.S.-U.K. bilateral, *Bermuda II* has since been liberalized."[44] "Ironically, it is the British, the principal opponents of U.S. free market proposals at Chicago, who are leading this drive towards US-style deregulation."[45]

"In brief, the United States has embarked on a major effort to liberalize the international aviation legal framework as embodied by its many bilateral aviation agreements."[46] The impact of the deregulation has gone beyond markets involving, either domestically or interna-

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42. See Annex IV as a model of *US Standard "Post 1977" Agreement*.

43. Dempsey, P.S., *Deregulation, Discrimination & Dispute Resolution in International Aviation: Turbulence in the Open Skies*, D.C.L. Thesis submitted to McGill University (IASL), March 1986, 427, at p. 19. (Unpublished).

44. *Ibid.*, and see *supra* note 34.

45. Sion, G.L., *supra* note 25, at p. 176.

46. Bogosian, R.W., "Aviation Negotiations and the U.S. Model Agreement", (1981) 46 JALC, 1007-1037, at p. 1019.

tionally, the US.

> It is simplistic, therefore, to argue that the United States is forcing its model language on other countries. In recent negotiations, while striving for more liberal agreements ultimately, the United States has discussed limited market protection, phasing of changes in pricing and other ideas that will allow each side to adjust to change. For example, (...) (t)he United States-Philippine agreement which was signed in 1980 is (...) a step forward for the American pro-competitive philosophy. The pricing provisions of the agreement give airlines considerable flexibility to explore the supply-demand function, while both governments retain power to curb overly-adventurous excursions from the norm.[47]

Finally, what were the effects in the early days of the US deregulation?

> The main effect of deregulation is to direct competition to tariffs, which implies market extension and therefore an increase in total capacity.
>
> What is the result for United States air transport? Internationally, the market of US airlines is dwindling. This is inevitable, but does not necessarily mean deterioration. The United States market is now being opened up much more widely than formerly to foreign competition. Too widely, some of the opponents of deregulation in the United States are now saying. (...)
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> But deregulation seems to have served United States air transport well by giving its international carriers a feeder network that was formerly not very well

47. *Ibid.*, at pp. 1019 and 1020.

developed.[48]

B. Air Policy in Canada and the Historical Perspective

Now that we have surveyed the history of international air policies, the Canadian situation in its historical perspective will be briefly scrutinized. Emphasis will be layed on the international aspect.

1. The Two Flag Carriers Approach in a "Global Division" Concept

The first bilateral air agreements came into force after the Second World War. One important element of the negotiations concerned the chosen carriers, or the "chosen instruments". Canada already had the example of countries such as France and Britain which had established international air services.[49] Imperial Airways was owned by the British government. In the United States the chosen airline, Pan American, was a private carrier.

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48. Wessberge, E., "Reciprocity in Air Transport Bilaterals: Realities, Illusions and Remedies - Part one: Fair Exchange of Benefits", (28 September 1981), 32 ITA Magazine, 823-826, at p. 825.

49. These services were linked to the mail routes and the colonies.

In Canada, after the war, the government accepted two flag carriers: one government owned, Trans-Canada Airlines (TCA) which became Air Canada in 1964; and one private, Canadian Pacific Airlines (CPA).[50]

An important characteristic of Canadian air policy, besides the two flag carriers approach,[51] was the division of the country.[52] This policy consisted in a cooperative rather than a competitive attitude. The respective areas had to be defined. The viability of services was subject to a regulatory supervision and the "public convenience and necessity" test. This situation evolved into some complex operations.

2. First Steps: First Routes

Between 1945 and 1965, Canada emerged as a major participant in the worldwide network of international air transport. Bilateral agreements were negotiated at the equivalent of one per year during the period, and routes

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50. Re-named CP Air in 1968.

51. Some other countries, such as the United States, Britain and France, also adopted a two or more airline approach, but the large majority still have "single flag carriers".

52. The "global division".

were opened at a very rapid pace.

Let us go back to the decisions over chosen instruments toward the "global division". In the late 1930's and early 1940's, the government had to face policy issues foreseen in the development of this new form of transcontinental and international transport. The Canadian government indicated in 1943 that TCA would be the chosen instrument for future international service: the government assumed responsibility for maintaining a special position and pre-eminent role for TCA.[53]

TCA started scheduled service between Vancouver and Seattle (taken over from Canadian Airways) in September 1937. By the end of 1938, expansion was rapid, with an airmail service between Montréal, Ottawa, Toronto, Winnipeg and Vancouver. The first air link between Toronto and New York was established in May 1941. In 1942, Newfoundland[54] was linked with Canada by air. Thereafter, a full-scale

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53. "TCA became the government owned-airline, organized with Canadian National Railways as the sole shareholder and the new carrier became Canada's "chosen instrument" in the field of civil aviation": in Legal, Economic and Socio-political Implications of Canadian Air Transport, Centre for Research of Air and Space Law, McGill University, Montréal, 1980, 692, at p. 12.

54. Newfoundland was not part of the Canadian Confederation until 1949.

passenger and mail service began between Vancouver and Montréal in November 1949. "Thus, in less than four years, Canada had the beginnings of a vast network of air services with a daily transcontinental service for passengers and connecting all of its principal cities, and, in addition there was a blooming network of international air services."[55]

This approach of a single carrier turned out to be short-lived in practice: erosion of the chosen instrument choice came in 1948 with "a modification of government policy on the status of Canadian Pacific Airlines. While several reasons are given for the change in policy - and most of them are speculative - Canadian Pacific, however, did become the Canadian presence in the Pacific".[56] It began with a designation of CPA in 1949 under bilateral agreements to serve Australia via Honolulu and Fiji after TCA indicated that it had no interest in serving the route. CPA expanded its Pacific service to Japan (under occupation permit) in 1949, with extension to Hong Kong under the bilateral agreement with the United Kingdom. New Zealand was added in 1951. "In the next year the carrier received an unexpected blessing in the Korean conflict and Canadian

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55. *Supra* note 53, at pp. 12-13.

56. *Ibid.*, at p. 24.

Pacific was happy to operate charter flights to assist United Nations operations."[57]

In addition, the carrier achieved entry to Europe by picking up the transatlantic routes to Portugal and The Netherlands under bilaterals concluded with these countries in 1947 and 1948 respectively. Polar service from Vancouver to Amsterdam was initiated in 1955, and service to Lisbon began in 1957. The 1950's also saw the development of CPA's Latin American network largely on its own initiative but with Canadian Government approval: the flights from Toronto to Mexico were extended in 1956 from Mexico to Peru, Chile and Argentina.

In Europe, the Lisbon service was extended to Madrid, and by 1960, with Rome added to its designated points in southern Europe, CPA had developed a system of some seven routes serving 15 routes abroad. Meanwhile TCA, having already entered into the UK and US markets, commenced service to the Caribbean in 1948, utilizing rights secured from Britain in respect of its possessions in the West Indies under the Canada-UK bilateral of 1945: the carrier began services to the Bahamas and Trinidad, and later to Bermuda, Barbados and Jamaica. That was followed by intergovernmental agreements with Ireland, Belgium, the

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57. *Ibid.*

Scandinavian countries, France, Switzerland and Germany: as a matter of fact, "T.C.A. (...) assumed full responsibility for the Canadian Government's Trans-Atlantic Air Service and extended its services from London to Paris in 1952, and from London to Germany (the same year)."[58]

By 1960, TCA was flying to most of Western Europe, including Vienna under special permit since the Austrian bilateral of 1959 never reached signature, and was serving 14 countries or colonies, *i.e.* 8 in Europe, 5 in the Caribbean, and the USA. "(...) the Government of Canada, following the trend of the day, entered into bilateral air transport agreements with many countries. Over 20 such bilateral agreements were negotiated by the Canadian Government in the period of 1945-66".[59]

3. Statements and Improvements

In 1965, the government issued a major statement on international air policy.[60] This statement was designed to establish a framework for the future: it was based on the developments and experience of the previous 20 years.

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58. *Ibid.*, at p. 25.

59. *Ibid.*

60. Department of Transport press release, June 1, 1965.

The Minister of Transport, Hon. J.W. Pickersgill, referring to the emergence of two Canadian airlines on the international scene, made the point that, in the interests of Canada as a whole, these international services should be part of a single, integrated plan instead of being competitive and conflicting.

The 1965 statement reflected this idea in the way that it could be achieved by "amalgamation, partnership, or a clear division of fields of operation".[61] The two airlines agreed that the government's policy objectives would be reached more effectively if they collaborate to establish this clear division of their areas of geographic responsibility. To this extent, each carrier should be allowed to continue to serve all points on existing routes: this was also in accord with a principle enunciated in 1943, that intra-Canadian competition shouldn't exist on the same routes. In the same trend of the 1965 statement, a second policy statement regarding the expansion of transcontinental air services in Canada, was issued in March of 1967.[62] The government

> took the view that based upon the expected growth of the transcontinental route, Canadian Pacific's role could be expanded both in frequency of service and in points

61. *Ibid.*

62. Department of Transport press release, March 27, 1967.

> to be served. He felt this would not hurt T.C.A.'s ability to maintain a profitable service, and he recommended that such an expansion be carried out in such a manner as would permit Canadian Pacific to share in the future traffic growth on the mainline route.[63]

The same Minister of Transport, Hon. Mr. Pickersgill,

> accepted the recommendations of Mr. Wheatcroft[64] and decided that it was in the public interest to allow Canadian Pacific to expand its transcontinental services but at the same time he wished to protect the future economic position of T.C.A. and ensure that the carrier would be able to maintain a profitable position under competent management. The Minister also spoke to the matter of T.C.A.'s public obligations in keeping some unprofitable routes in operation and that it was necessary to ensure that T.C.A. would have a large portion of the trans-continental market in order to provide for the carrier's capital requirements for new aircraft in years ahead.[65]

The consequences of these two statements were:

1) TCA was allocated:

   a) the USA;

   b) the UK (British Isles);

   c) Continental Europe (*i.e.* Western, Northern and Eastern Europe, except for the

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63. *Supra* note 53, at p. 29.

64. Mr. F. Wheatcroft of Great Britain was an advisor appointed in 1958 by the former Minister of Transport, the Hon. Mr. Hees.

65. *Supra* note 53, at p. 29.

Netherlands); and

d) the Caribbean.

2) CP Air received:

a) the whole Pacific area including Australia and New Zealand;[66]

b) the whole continent of Asia;[67]

c) Southern and Southeastern Europe;[68]

d) Latin America;[69] and

e) The Netherlands.[70]

Because neither airline was planning service in Africa at that time, the continent was not allocated. About service to the USA, it was indicated that decisions to choose TCA would be confirmed after completion of negotiations for a new bilateral agreement.

Hence, both airlines were supposed to be regarded as chosen instruments in their respective areas, and were

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66. Well then the carrier operated services from Vancouver to Fiji, Australia (Sydney) and New Zealand (Auckland) via Honolulu.

67. From Vancouver to Hong Kong and Tokyo.

68. From Toronto and Montréal across the Atlantic to Amsterdam, Lisbon, Madrid and Italy.

69. The carrier was still operating services to México, Peru, Chile and Argentina.

70. From Western Canada across the polar route.

expected to cooperate in measures of mutual assistance about sales and joint servicing arrangements, as well as co-operating in provision of "joint advice to the government on bilateral air negotiations".[71] It happened that the cooperation envisaged by the statement remains largely unfulfilled.

In the 1960's, there has been a growth in the exploitation of existing routes. The air relations with the USA were not following the same pattern. The original 1939 *Canada-US Agreement* (as amended) was revised in 1966: it was a major expansion resulting from five years of negotiations. A further set of negotiations began in 1969 and culminated in 1974.

After the agreement with Italy in 1960, only Mexico in 1961,[72] the USSR in 1966, and Czechoslovakia in 1969 were added to the list of new bilaterals. Air relations with independent Jamaica and Trinidad & Tobago were also formalized in 1970. On the other hand, New Zealand gave notice of termination in 1964 after establishing its own service to the USA: as a matter of fact this country never commenced any service to Canada. This ended CP Air's

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71. *Supra* note 60.

72. Mexico formalized existing services with this new agreement.

schedule to Auckland via Sydney, and the bilateral agreement was formally abrogated in 1969.

4. Adjustments Considered

In this period of the mid-sixties, "the problems in Canadian civil aviation became more complex and yet were still basic (...), the airports of the nation became clogged with traffic as the air transport industry took a greater responsibility in the carriage of passengers and goods."[73]

Following the McPherson Royal Commission, a Bill creating the Canadian Transport Commission (hereinafter known as the CTC) was given Royal Assent in February 1967.[74] The Act abolished the Board of Transport Commissioners for Canada, the Canadian Maritime Commission and the Air Transport Board. It replaced them under the umbrella of a single agency, the CTC.

> The CTC was to assume responsibility for the economic planning and research, licensing and regulation of all modes of transportation (...). The Act directs the C.T.C. to establish a special committee for each of the modes of transport, with the Air Transport Committee regulating the function. (...)

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73. *Supra* note 53, at p. 35.

74. *National Transportation Act*, RSC 1970, c. N-17.

> The Minister of Transport still had the duties, obligations, functions or other powers originally granted to him under the *Aeronautics Act*.[75]

The 1960's decade also saw requests by a great deal of countries to renew or initiate negotiations: these countries asked for an access to Toronto. Until then, Toronto had been an inaccessible point to transatlantic carriers:[76] the transoceanic gateways to Canada were Montréal and Vancouver. By 1971, 12 countries had made application for Toronto. This issue was so serious that Federal Republic of Germany (FRG) and The Netherlands announced their decision to abrogate respective agreement with Canada.[77] They alleged that restriction to Montréal was producing a determinant imbalance in reciprocal benefits. But in 1973, when the government issued a new statement on international aviation policy, Italy and FRG had already got access to Toronto. Negotiations with The

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75. RSC 1927, c.3: this act was in substance the same as the *Air Board Act* re-entitled to reflect the abolition of the Air Board and the transference of its function to the Minister of Defence. We can find this act (as amended by S.C. 8 Geo. VI, c.28 (1944), and S.C. 14 Geo. VI, c.23 (1950)) in RSC 1970, c.A-3. *Supra* note 53, at p. 37.

76. Except for BOAC (British Overseas Airways Corporation), later British Airways.

77. Canada-Netherlands Agreement of 1969 and *Canada-Federal Republic of Germany (FRG) Agreement of 1972*.

Netherlands were near to completion.

Indeed, in 1973, the government issued a new policy statement on Canada's role in international civil aviation, building on and replacing the much briefer statements of 1965 and 1967. It was intended to make more explicit and coherent the general principles evolved over the post-war period.

> On November 23rd, 1973 the Minister of Transport announced some revisions to the government's air policy when he tabled, in the House of Commons, a *Statement on Air Policy*[78] which listed the following objectives to ensure safe, efficient and convenient air services to meet the needs of travelling Canadians; to contribute to the economic and social well-being of the country; and to ensure that air services are reasonably balanced to create an atmosphere in which the industry can continue to develop in an efficient and profitable manner without undue burdens on the taxpayer.[79]

One goal this statement wanted to reach is the creation of long-term planning for both designated airlines, and methodical negotiation of bilateral agreements by the government, keeping in mind that Air Canada would remain the pre-eminent carrier.

Thus, the statement had to deal with specific problems which were the short-term purpose for its issuance.

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78. Department of Transport press release, November 23, 1973.

79. *Supra* note 53, at pp. 38 and 39.

A two dimensional problem was more acute: first the very urgent question of foreign airline access to Toronto,[80] and secondly, the necessity to draw up a framework that would resolve the difficulties created by the absence of a clear cut policy on Toronto access, and by issues in connection with the "global division" between Canada's two flag carriers.

It is important to underline that the new statement did not discuss traffic with the United States, *i.e.* the transborder traffic: for the same reasons as in 1965, there were still some ongoing negotiations, and the nature of issues involved with the USA was unique. Also, in the new division of the world, the USA, as before, was set aside pending the outcome of current negotiations.[81] Certain developments were increasingly requiring governmental involvement; there was an emergence of new approaches to basic elements in bilateral agreements and a substantial change to the long-accepted role of IATA in the establishment of more or less uniform fares on international

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80. The guidelines for further negotiations on access to Toronto implied that other international gateways might also be considered: although Toronto applicants were all accommodated through renegotiation of bilaterals, the Government announced in 1976 a Moratorium on new foreign scheduled carrier entry in Toronto International Airport (TIA).

81. *Infra* note 88.

services. One of the most important was the US emphasis on deregulation.[82]

The Air Policies and Principles of the 1973 statement confirmed that:

a) economic viability should continue to be the main consideration in establishing new routes;[83]

b) that the government should continue the practice of recent years and refrain from granting or seeking temporary authorizations for international scheduled services, and authorized a series of bilateral negotiations with a number of foreign countries;

c) that commercial cooperation would be encouraged between the two Canadian flag carriers; and

d) that in the new formulation of the division of the world, each carrier would continue to fly those routes already assigned.

Besides, there were some adjustments in the "global

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82. This turning aimed freedom from fare and capacity controls, and virtual elimination of the traditional distinction between scheduled and non-scheduled services in the USA. *Supra* note 53, at pp. 40 and 41.

83. So that international services would generally not be established only for national prestige.

division". For Asia, the government gave Air Canada Lebanon, India and Pakistan, and left the designation of "certain southeast Asian countries"[84] to be determined in the future on the basis of reciprocal rights available and "prospects for viable round-the-world routes for one or both airlines".[85]

In Latin America, Air Canada received the countries bordering its previously assigned Caribbean area, namely Colombia, Venezuela and the three former Guyanas. Brazil, formerly in CP Air's area of services, was now made open for assignment to either airline or both.

In Europe, CP Air retained South and Southeastern Europe (plus The Netherlands), Air Canada received Yugoslavia and all Warsaw Pact countries. Africa, unallocated in 1965, was assigned to Air Canada except for Morocco, Algeria, Tunisia and either Egypt or Sudan.

CP Air was not favoured by these adjustments. There were erosions of the previous division of the world considering southeast Asia and Brazil. Also, CP Air was further disappointed when the 1974 agreement with the

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84. Thailand, Singapore, The Philippines, Malaysia and Indonesia. See *supra* note 78.

85. It was the first reference to this possibility since adoption of the concept of two chosen instruments. See *supra* note 78.

USA[86] gave 14 of the 17 new transborder routes to Air Canada. The only way for CP Air to counterbalance these disadvantages was by charter operations, where the "global division" does not apply.[87]

Concerning the establishment of priorities for the anticipated new cycle of bilateral negotiations, and subject to the 1973 policy statement, the Government identified through a Cabinet Memorandum 16 countries with which negotiations should be authorized. Some were unfinished business: USA,[88] Japan, Barbados, Fiji, Spain and Lebanon. Others were about regularization of services still based on special permit only: Argentina, Chile and

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86. *Infra* note 88.

87. For instance, CP Air took full advantage of the substantial charter traffic with UK.

88. The Government was also busy in the international field during this period. Several new bilateral agreements were negotiated by Canada and many more were renegotiated bringing the older bilaterals up to date.
Supra note 53, at p. 42. The negotiations on the very complicated US exchange had been in progress since 1969, and were successful in 1974 with three new bilaterals dealing with 1) scheduled services; 2) non-scheduled services (first and only one for Canada); and 3) the preclearance of customs and immigration at airports of departure.

Austria.[89] Certain countries were merely Toronto applicants: France, Netherlands and Switzerland. And other countries were pressing for negotiations: Venezuela, Yugoslavia, Poland and India.

The only negotiations which failed to reach agreement were with Spain,[90] Lebanon, Venezuela and Yugoslavia. On the other hand, the Scandinavians and the Moroccans were added to the list of negotiations. Agreement was reached with Morocco in 1975 but the Scandinavians failed to achieve access to Toronto and subsequently suspended service to Canada. The list was expanded to include Mexico but even after three rounds, no agreement was reached on revision of the 1961 agreement.[91] Nevertheless, agreements were signed with Cuba (in 1975), Finland (in 1977) and Haiti (in 1978). Finally, non-productive rounds were held with Pakistan, Portugal, Greece and Belgium. The three last ones involved access to Toronto.

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89. Where air relations existed between Canada and these countries, but on a day-to-day basis instead of a framed agreement which sanctifies and allows on a more permanent basis the exchange of regular services.

90. However, service by Iberia continued under special permit.

91. This 1961 agreement (as modified in 1971) replaced the agreement of 1953 (as amended).

The adjustment of the UK bilateral, *i.e.* the amendments to include both Western access and a Pacific service for Britain was reached in September 1980, after numerous delays and tedious negotiations.

In conclusion, the review of the "global division" between two non-competitive flag carriers for Canada's international air services, which has been a central issue of every policy statement, affected related issues such as the value and significance for Canada of intermediate and beyond points as trading counters, and the impact on Canadian carriers of access by new foreign carriers to

additional Canadian airports.[92]

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92. With the shakeout in the domestic airline industry virtually complete, the question now to be answered is how Canada's international carriers will fare on the world stage.

Air Canada of Montreal, Canadian Pacific Air Lines Ltd. of Vancouver and Wardair International Ltd. of Edmonton, all operate international scheduled services. Wardair is a small player, serving only the Canada-Britain route, while the other two carriers carve up the globe under a long-standing federal policy, grandly known as "the division of the world".

In the past year both majors have begun to fret under this arrangement, driven by motives which have as much to do with the competition at home as abroad. Air Canada, which occupies the lucrative but saturated North Atlantic routes, has set the pace, manoeuvring for new destinations - specifically South Korea, Taiwan, Thailand and Japan - which is traditional CPAL territory.

But the realignment of ownership - with an agreement by Pacific Western Airlines Corp. of Calgary to purchase CPAL from Canadian Pacific Ltd. of Montreal - could end the international jostling. Analysts think an end to open warfare at home - in the common cause of building up profit - may translate into a hands-off gentlemen's agreement abroad.

French, C., " 'Division of the World' Runs into Snags", (8 December 1986), The Globe and Mail, Toronto, at p. C-5.

CHAPTER II: BILATERAL AIR TRANSPORT AGREEMENTS (BATAs)

A. Definition of a BATA

International air transport is regulated mostly by a series of inter-governmental air traffic agreements which are usually based on a bilateral approach. In the area of domestic air service operations, the government has the power to unilaterally regulate the industry, *i.e.* to determine the market entries and control airline services. It is different in the international context: the government of a country has to obtain the consent or agreement of the other state with which it seeks to establish and operate commercial air services.

First of all, what is a bilateral agreement? *The Encyclopedia of the United Nations and International Agreements* provides this explanation:

> An international term for the oldest form of international written agreements concluded between two countries; known already in antiquity. Up to the 19th century they were, primarily, peace and trade treaties; since the Vienna Congress of 1815 they cover ever more fields of co-operation. In the second half of the 20th century they acquire more frequently the character not only of "country-country" agreements, but of "country-international organization", particularly as regards technical assistance. Simultaneously, a certain limitation has occurred in their number through multilateral treaties, connected with integration

processes.[93]

Both the multilateral[94] and the bilateral[95] approach have their supporters when it comes to the negotiation of international agreements:

> Former CAB Chairman (...) Alfred Kahn has noted that the present state of international air transport calls for a "clear, overarching constitutional settlement" which is "comprehensive" and "organized". Bilateral agreements, because they are flexible and easily renegotiated, promote a certain amount of instability in international air law. A multilateral treaty would be more permanent, less susceptible to change, and therefore norm-creative rather than norm-disruptive.[96]

More precisely, what is a BATA?

> On appelle accords aériens ou "accords relatifs aux services aériens", les accords techniques conclus entre deux Etats, après négociation appropriée entre leurs autorités aéronautiques, pour échanger les libertés de l'air et déterminer les conditions dans lesquelles peuvent s'établir des services aériens entre leurs

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93. Osmanczyk, E.J., *The Encyclopedia of the United Nations and International Agreements*, Taylor and Francis, Philadelphia-London, 1985, 1059, at p. 86.

94. Guillot, J., *supra* note 4, at p. 98.

95. Deak, F., "The Balance-Sheet of Bilateralism", in *Freedom of the Air*, Chapter 11, A.W. Sijthoff/ Leyden, edited by McWhinney, E. and Bradley, M.A., The Netherlands, 1968, 259, at pp. 159 to 173.

96. Sion, L.G., *supra* note 25 at p. 7, quoting Gertler, J.Z., "Order in the Air and the Problem of Real and False Options", (1979) 4 AASL, 93-125, at p. 99.

territoires respectifs.
Dans la conception classique, seuls les services *réguliers* sont visés par les accords aériens.[97]

Thus, commercial air transport services between two sovereign states are governed by a number of provisions included in a bilateral air transport agreement concluded by competent agencies of the two countries. "This is an effective means of regulating competition on international air services".[98] The institutional environment in international air transport is one in which each state has the right to impose, in addition to safety regulations, conditions of entry and other constraints regarding foreign air carrier access to its territory. Evidently, such barriers distort the natural market forces and control to a certain extent the efficiency of air service operations. In this manner, airline competition and regulation in the international field is basically a matter of arrangements and adjustments between states in a bilateral context. "States had become accustomed to entering into complicated bilateral agreements to ensure the entry of the commercial

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97. Naveau, J., *Droit du transport aérien international*, Bruylant, Bruxelles, 1983, 346, at p. 41. Also, to have a survey of what is generally contained in a BATA, in Canada or elsewhere, see pages 41 to 56, 206-207 and 234-235.

98. Wragg, D.W., *A Dictionary of Aviation*, Frederick Fell Publishers, New York, 1973, 286, at p. 31.

aircraft bearing their nationality into the territory of other States and there to enjoy the benefits of commercial intercourse."[99]

B. Content of a BATA in the Canadian Context

1. A General View

For Canada, many characteristics and components of international airline operations are drafted into the BATAs only after having considered pertinent national interests. To understand this premise, it must be recognized that air traffic rights are a "negotiable commodity" with a real or potential value and with obligations attached to them.

First, the exposure of a state's territory to overflights and landings by foreign aircraft raises problems of security. The government must control such flights to protect life and property in Canadian airspace and territory. Also, providing essential technical facilities for international airline operations, such as airports, represents an important consideration in local economic development. Such facilities necessitate high costs, also

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99. Cooper, J.C., *Explorations in Aerospace Law*, *supra* note 13, at p. 237.

the government attempts to reach through its policies a maximization of their utilization. That is why, for example, Canada used Gander for many years as a technical service stop on overseas flights. The Canadian government is not the only country to include such requirements for a mandatory stop in their BATAs. Irish authorities did it with Shannon for transatlantic operations (and it is still in force in many of their BATAs).

Besides technical stops, the Canadian government had to solve the problem of airport congestion in Toronto[100] by using BATA means. However, the attempts to maximize the utilization of its facilities can sometimes not be achieved by simply adding adjustments in the BATAs, especially when the other signatory parties do not want to cooperate. For instance, the political imbroglio concerning Mirabel international Airport was because of the wrong decisions taken and awkward policies adopted by the Canadian

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100. The moratorium imposed on foreign airline access to Toronto International Airport by the Canadian government.

government.[101]

The world-wide services operated by Canadian carriers represent a major item of export (revenues earned abroad, foreign exchange conserved at home, etc.). The government has a vital interest in the effects that the importing and exporting of air transport service has on the national balance of payments. The recent deregulation moves in U.S. and Canada, and the current free trade negotiations can have a significant effect on Canada in these economic terms.

In addition to the foregoing should be added considerations of national prestige. Air transport is often perceived as a symbol of technical and managerial proficiency, of statehood and national maturity. Canada has an especially good reputation in respect to the commercial viability of its aviation industries. The BATAs are a means to preserve such a reputation.

It must be said that published bilateral agreements are only part of the picture. In its Memorandum, *Air Transport: A Community Approach*, the Commission of the

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101. See the economic and political impacts of the airport policies applied to Mirabel International Airport in LeBlanc, M., "Le développement de l'aéroport de Mirabel, les mesures d'accroissement et l'impact de la déréglementation dans l'aviation civile", 4 March 1985, term paper submitted to IASL (McGill University) 38.

European Communities, after pointing to the bilateral agreements linking states, remarked that:

> These bilateral agreements do not always state precisely the real content of the decisions. They are often supplemented by confidential letters of understanding exchanged between the aeronautical authorities of the States concerned. These letters interpret, specify or even modify the provisions of the Agreements. These letters may concern the creation of commercial pools or call for the creation of such pools.[102]

This statement applies very much to the Canadian context. The agreed records of negotiations or consultations and the various letters of exchange often set out details about arrangements that flesh out the formal agreement, which is in many cases merely the skeleton. This can concern capacities, frequencies, designated airlines, airports to be used, how fifth freedom rights are to be exercised and other details which are usually peculiar to the particular bilateral relationship.

> Particulars of nonaviation quid pro agreements, usually expressed in a "confidential memorandum of understanding", are not included in published bilateral air transport agreements. The memoranda of understanding are customarily filed in foreign ministries and are unavailable for

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102. Bulletin of the European Communities, Supplement 5/79, Annex II, pages 27-28, paragraph 35.

public scrutiny.[103]

This particular way of consulting and negotiating is adapted to provide flexibility to the dynamic industry of airline services.

> Arrangements of this kind are very much the practical side of bilateral aviation relations. It is partly because of this and the need to be able readily to change details, sometimes quite frequently, that these elements are put into impermanent and unpublished form. Details, or the effect of the arrangements, are generally well-known to the airlines that operate services governed by them and likewise the effect of the arrangements is passed on to the Civil Aviation Authority when relevant to licence applications it is considering.[104]

2. The Articles and Their Drafting

There is no internationally accepted format for BATAs. The languages used are those of the signatory Parties. In Canada most BATAs are in English, and are subsequently translated into French. They are also translated into an official language of the other Party.

The author Gidwitz enumerates the elements usually

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103. Gidwitz, B., *The Politics of International Air Transport*, Lexington Books, Toronto, 1980, 260, at p. 154.

104. Gardiner, R.K., "United Kingdom Air Services Agreements 1970-1980", (1982) 7 Air Law, 2 to 10, at p. 3.

included in BATAs:

1. Preamble or statement of purpose
2. Choice of languages; if more than one language is used in the agreement, which is governing in case of dispute
3. Definitions - territory, airports, specified routes, all-cargo service, designated airline, revenue passengers, tariff, user charges, and other terms to be used in the agreement and annexes
4. Granting of rights - general statement of principles, referral to specifications in annexes
5. Designation and authorization of airlines
6. Application of laws including jurisdiction over foreign airlines
7. Designation of competent authorities including responsibilities of specific government aviation and other relevant agencies in both countries
8. Mutual recognition of each country's documentation, such as, certificates of airworthiness, crew licenses
9. Documents that must be kept onboard aircraft, including registration, Certificate of Airworthiness, crew licenses, log books, passenger lists, and freight manifests
10. Agreement to adhere to relevant ICAO standards such as navigation aids, registration of agreements and others
11. Procedures to be followed in emergency landings, accidents, or disasters on or over territory of signatory states; access to accident-involved aircraft, crew, passengers, freight; investigation procedures
12. Security procedures
13. Environmental protection and noise abatement procedures
14. Procedures for notification of schedule changes
15. Procedures for commercial operations, such as, maintenance of technical and commercial staff in foreign country (housing, location, and other necessities), issuance of long-term crew

visas, advertising and sales regulations, and remittance of revenues
16. Tariffs and commissions
17. User charges
18. Customs duties, including exemptions for spare parts, fuel lubricants, and food onboard aircraft
19. Flight planning and air control procedures
20. Charter flights
21. Consultations
22. Procedures for amending the agreement
23. Procedures for terminating the agreement.[105]

And she adds:

> Specific route schedules, capacity regulations, and tariff accords are usually included in separate annexes to the main agreement. The order of articles and annexes differs among various agreements. Some governments may prefer to combine, add, or delete certain provisions. According to custom of the signatory governments, air-transport agreements may be concluded as treaties, conventions, agreements, protocols, or exchanges of notes.[106]

The following exemplifies the different modes used in drafting Canadian BATAs. Every element enumerated above will be analysed under the "wording approach" showing exactly how these clauses are written in Canadian BATAs. Because many are drafted the same way, and because there are fifty (50) BATAs that Canada is a party to, some of them have been selected for illustration. They provide a

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105. Gidwitz, B., *supra* note 103, at pp. 153 and 154.

106. *Ibid.*, at p. 154.

complete survey of the contemporary ways of drafting Canadian BATAs. What is intended in the following pages is to present the usual format of drafted BATA provisions followed by significant alternatives.

a) Preamble

The title is usually written as follows: "Agreement Between the Government of Canada and _____ on Air Transport". Occasionally, it is written differently, as with Argentina: "Commercial Air Transport Agreement Between the Government of Canada and the Government of the Argentine Republic".

After that:

> The Government of Canada and _____ hereinafter referred to as the Contracting Parties,
>
> Being parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944,[107]
>
> Desiring to conclude an Agreement on air transport between and beyond[108] their

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107. It must be noted that certain *Chicago Convention* clauses are included in the Canadian BATAs for the sake of completeness, to note differences, if any, and to make them subject to compliance under the Agreement.

108. "Beyond" is used to denote any 5th freedom rights.

respective territories,[109]

[or]

Desiring to conclude an agreement supplementary to the said Convention on air transport between and beyond their respective territories,[110]

[or]

Desiring to conclude an agreement supplementary to the said Convention for the purpose of establishing air services between their respective territories,[111]

In a Canada-U.K. draft paper, the following formula was proposed:

Desiring to provide for adequate, econom-

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109. This formula is included in Canadian BATAs with Greece (20-08-84), India (20-07-82), Morocco (14-02-75), Singapore (12-06-84) and Yugoslavia (16-11-84), among others. For consistency purposes, the author provides references of the Canadian BATAs by indicating the date of signature. Up to 1981, most Canadian BATAs are quoted in the *Canada Treaty Series*, Canadian Government Publications, the Queen's Printer, Ottawa, Canada. Also, the reader should be aware that these BATAs are registered at ICAO, Division of Registration. Finally, additional information and copies of unpublished Canadian BATAs (since 1981) can be obtained at External Affairs, Canada, Economic Law and Treaty Division - Treaty Section (telephone number: (613) 997-1500). This section is in charge of keeping the original signed BATAs, and their publication in the *Canada Treaty Series*: information can be provided by the section staff during the transition time before the publication.

110. This turn of phrase is used with St. Lucia (16-01-84) and Portugal (25-04-47).

111. Used with New Zealand (04-09-85) and Romania (27-10-83).

> ical and efficient air transportation with equitable participation of the airlines of the two countries and without unjust discrimination or unfair or destructive commercial practices,[112]

As a last example, the following elaborate preamble is found in the Belgium-Canada Agreement (25-09-85) (initialled only):

> The Government of Canada and the Government of Belgium, hereinafter referred to as the Contracting Parties:
>
> Being parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944;
>
> Taking into account the Agreement between Canada and Belgium for air services signed at Ottawa, August 30, 1949;
>
> Desiring to enhance air services between and beyond their respective territories and to ensure for their designated airlines fair and equal opportunity to compete in the provision of such air services;
>
> Mindful of the needs and the convenience of the users of air transport services;
>
> Seeking to encourage the continued development of their bilateral relations, in particular in trade and tourism;
>
> Desiring to ensure the highest degree of safety and security in international air transport;
>
> Resolved to conclude a new agreement for

---

112. Some lengthy and involved preambles are contained in the Canada-U.S. BATA (19-08-49) and its further amendments. There is no real need for elaboration of such lofty principles, especially in the preamble.

the purpose of replacing the said Agreement, as amended by the Exchanges of Notes of July 20, 1956 and of January 16, 1984;

Finally, at the end of every preamble is added: "Have agreed as follows:".

b) Definitions

In all Canadian BATAs, definitions are set out under Article I. It starts this way:

> For the purpose of this Agreement, unless otherwise stated:
>
> (a) "Aeronautical Authorities" means, in the case of Canada, the Minister of Transport[113] and the Canadian Transport Commission and, in the case of _____ or in both cases, any other authority or person empowered to perform the functions now exercised by the said authorities;
>
> [and]
>
> (b) "Agreed services" means scheduled[114] air services on the routes specified in the Annex to this Agreement for the transport of passen-

113. Certain functions are within the Minister's powers and these powers will increase with the adoption of the new Canadian transportation law (Bill C-18, *An Act Respecting National Transportation*, First reading, November 4, 1986; Second Session, Thirty-third Parliament, 35 Elizabeth II, 1986).

114. The word "scheduled" is not included in the Canada-Singapore agreement.

gers, cargo and mail, separately[115] or in combination;

[and]

(c) "Agreement" means this Agreement, the Annex attached thereto, and any amendments thereto;

[or]

"Agreement" means this Agreement, the Annex attached thereto, and any amendments to the Agreement or to the Annex;[116]

[or]

"Agreement" means this Agreement, the Annex attached thereto, and any amendments thereto;[117]

[and]

(d) "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, in accordance with Article III of the Agreement, by aircraft different in capacity from those used on another section.

[and]

(e) "Convention" means the Convention of International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof so

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115. To all cargo services.

116. In Canada-Greece and Canada-New Zealand BATAs.

117. In Barbados-Canada's BATA (18-10-85).

far[118] as those Annexes and amendments have been adopted by both Contracting Parties;

[or]

"Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;[119]

[or]

"Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December, 1944 and includes:

(i) any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by both Contracting Parties; and

(ii) any annex or any amendments thereto adopted under Article 90 of that Convention, insofar as such amendment or annex is at any given time effective for those Contracting Parties;[120]

[and]

(f) "Designated airline" means an airline which has been designated and authorized in accordance with Article III of this Agreement;[121]

[and]

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118. The words indicate the possibility of differences filed with ICAO.

119. Used in the Canada-India and Canada-Morocco BATAs.

120. In the Canada-Greece bilateral air agreement.

121. In the Canada-Greece and Canada-Yugoslavia BATAs.

(g) "Tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions[122] under which those prices apply, including prices and conditions for other services performed by the carrier in connection with air transportation, but excluding remuneration and conditions for the carriage of mail;

[or]

"Tariffs" shall be deemed to include all tolls (rates, fares, charges for transportation, classifications, allowances),[123] conditions of carriage, rules, regulations and practices related thereto and conditions for agency and other auxiliary services[124] but excluding remuneration and conditions for the carriage of mail;[125]

[or]

"Tariff" means the price to be charged for the carriage of passengers, baggage and cargo (excluding mail), price related conditions of carriage and charges and conditions for ancillary

---

122. These "conditions" not only refer to conditions of carriage but also include fences.

123. The enumeration in brackets does not appear in the Canada-Romania's BATA.

124. The phrase "and conditions for agency and other auxiliary services", is not included in the Canada-Morocco and Canada-Romania BATAs.

125. This definition of "tariffs" is in the Canada-India's BATA.

services.

[or]

"Tariffs" 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.[126]

[and]

(h) "Territory", "Air service", "International Air Service", "Airline" and "Stop for non-traffic purposes" have the meaning respectively assigned to them in Articles 2 and 96 of the Convention,

[and]

(i) "Stopover" means a deliberate interruption of a journey by a passenger, agreed to in advance by the airline,[127] at a point between the place of departure and the place of

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126. These definitions and those various tariff articles (that will be explored in the following pages) fail to indicate what the differences are, if any, between "tariff" and "price" (or charge, or condition). Some charges and prices do not need to be published in the tariffs branch, but any "tariff" should be. Also, what is the difference between "ancillary" and "auxiliary" services. It seems that all the rates and charges for, and provisions governing all other services which the carrier undertakes or holds out to perform in connection with air transportation should be included in the tariffs. An example of these other services is cargo collection and delivery. It must be showed in the tariffs.

127. "Designated airline" can be used as well.

destination;[128]

[and]

(j) "Intransit traffic" means traffic carried by an airline designated by one Contracting Party on the same aircraft through the territory of the other in a third country;[129]

[or]

"Intransit traffic" means traffic carried by an airline designated by one Contracting Party on the same aircraft through the territory of the other Contracting Party and destined to or originating in a third country.[130]

It must be added that the alphabetical order of words or expressions defined is usually respected in drafting Article I. This section does not cover every word or expression used in the following Articles, only those the Contracting Parties agree there is a need to clarify initially.

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128. It also covers any stopover in the territory of the other Contracting Parties.

129. In Canada-India and Canada-St.Lucia BATAs.

130. Generally, Canadian authorities are not inclined to use this expression. They try not to define "intransit" and let the other Contracting Party suggest its own interpretation.

c) Grant of Rights

This section, usually under Article II[131] of the Canadian BATAs, concerns the exchange of the so-called "freedoms of the air".[132] The following are the different forms used to draft these rights:

> 1. Each Contracting Party grants to the other Contracting Party except as otherwise specified in the Annex[133] the following rights for the conduct of international air services by the airline designated by the other Contracting Party:
>
> (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 for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in

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131. In Article I of the Argentina-Canada BATA (08-05-79).

132. It seems that this terminology originated with the Canadian delegation at the Chicago Conference of 1944: see *Legal, Economic and Socio-political Implications of Canadian Air Transport*, *op.cit.*, *supra* note 53, at page 573.

133. The phrase, "Except as otherwise specified in the Annex", is not included in the Canada-Morocco BATA.

combination.[134]

[or]

1. Each Contracting Party grants to the other Contracting Party, for its designated airline, the following rights specified in the present Agreement for the purpose of establishing and operating scheduled international air services on the routes as specified in the Annex to the Agreement:[135] [(a), (b) and (c) as mentioned above]

[or]

The Contracting Parties grant to each other the rights specified in this Agreement and its Annex with the purpose of establishing the international schedule air services of passengers, mail and cargo either separately or in combination as described in the Schedule of Routes.[136]

[or]

1. Each Contracting Party grants to the other Contracting Party, except as otherwise specified in the Annex, the following rights for the conduct of international air services by the airline designated by the other Contracting Party:

(a) to fly without landing across the territory of the other Contracting Party;

(b) to make stops in the said territory

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134. It is the formula to exchange all traffic rights, *i.e.* 3rd, 4th and 5th. If only 3rd and 4th freedom traffic rights are exchanged, the words, "between the said territories", are used to end this paragraph.

135. In the Canada-Romania BATA.

136. In the Argentina-Canada BATA.

for non-traffic purposes;

(c) to make stops in the said territory for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in combination; and

(d) to carry into and out of the territory of the other Contracting Party with stopover privileges intransit traffic originating in or destined for points in third countries.[137]

[and]

2. Nothing in paragraph 1 of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

The bilateral air agreement between Canada and Greece uses the following wording:

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of international air services by the airline of that other Contracting Party:

(a) the right to fly across its territory without landing;

(b) the right to make stops in its territory for non-traffic purposes.

2. While operating the agreed services on the routes specified in the Annex (hereafter called "the agreed services" and "the specified routes" respectively), the airline designated by each Contracting

137. In the Canada-India BATA.

Party shall enjoy, in addition to the rights specified in paragraph 1 of this Article, and to the extent established in the Annex, the right to make stops in the territory of the other Contracting Party for the purpose of taking on board and discharging international traffic in passengers, cargo and mail, separately or in combination.

The bilateral air agreement between Canada and Singapore contains the four following paragraphs in its Article II:

1. Each Contracting Party grants to the other Contracting Party except as otherwise specified in the Schedule of Routes attached to this Agreement the following rights for the conduct of international air services by the airline designated by the other Contracting Party:

(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 for the purpose of taking up and discharging, while operating the routes specified in the Schedule of Routes, international traffic in passengers, cargo and mail, separately or in combination.

2. Nothing in paragraph 1 of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

3. If because of armed conflict, politic-

> al disturbance or developments or similar serious circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operations of such service, including temporary granting of rights for such time as may be necessary to facilitate viable operations.
>
> 4. All rights granted in this Agreement by one Contracting Party shall be exercised only by and exclusively for the benefit of the designated airline or airlines of the other Contracting Party.

It is interesting to note that the intermediate points or beyond points referred to in these Articles are often only vaguely specified in the Annex or Schedule of Routes. They usually refer to a "liberal geographical description":

> There is probably a simple explanation for the continued or increasing use of such general terms. Flexibility rather than rights, was often the key requirement for intermediate points in negotiations in the seventies and with tighter controls on fifth freedom rights, or in certain areas even without such controls, liberality in granting intermediate or beyond points as route points, may not be so generous as it seems.[138]

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138. Gardiner, R.K., "United Kingdom Air Services Agreements 1970-1980", (1982) 7 Air Law, 2-10, at p. 7.

d) Change of Gauge

In the Canada-India BATA, at Article III, the change of gauge is agreed as follows:

> A designated airline of one Contracting Party may make a change of gauge at any point on the specified route only on the following conditions;
>
> (a) that the substitution is justified by reasons of economy of operation;
>
> (b) that the aircraft operating on the sector more distant from the territory of the Contracting Party designating the airline shall operate only in connection with the airline on the near sector and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the latter; and the capacity of the former shall be determined with primary reference to this purpose;
>
> (c) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where the change of aircraft is made, unless otherwise permitted by the Schedule of routes;
>
> (d) that in connection with any one aircraft flight into the territory in which the change of gauge is made, only one flight may be made out of that territory unless authorized by the Aeronautical Authority of the other Contracting Party to operate more than one flight; and
>
> (e) that the provisions of Article XI of

> the Agreement shall govern all arrangements made with regard to change of gauge.

In other Canadian BATAs such as those negotiated with Barbados, Greece, New Zealand, Portugal, St. Lucia and Singapore, the change of gauge is written as follows:

> A designated airline of one contracting party may make a change of gauge at any point on the specified route only on the following conditions:
>
> (i) that it is justified by reason of economy of operation;
>
> (ii) that the aircraft used on the section of the route more distant from the territory of the Contracting Party designating the airline is not larger in capacity than that used on the nearer section;
>
> (iii) that the aircraft of smaller capacity shall operate only in connection with the aircraft of larger capacity and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity; and their capacity shall be determined with primary reference to this purpose;
>
> (iv) that there is an adequate volume of through traffic;
>
> (v) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where the change of aircraft is made, unless otherwise permitted by the Annex;

(vi) that in connection with any one aircraft flight into the territory of the other Contracting Party, only one flight may be made out of that territory unless authorized by the aeronautical authorities of the other Contracting Party to operate more than one flight;[139] and

(vii) that the provisions of Article XI of the present Agreement shall govern all arrangements made with regard to change of gauge.[140]

In 1978, France and the U.S. had a dispute about the interpretation of their change of gauge arrangement. This dispute had to be settled through the arbitration process as outlined in their bilateral agreement. The arbitration dealt with the asserted right of a U.S. carrier to change to a smaller aircraft at London on the New-York-London-Paris route.[141] This dispute gives an example of how important the wording of BATA's clauses should be clearly drafted to avoid eventual misundertanding that could harm the airline industry.

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139. The paragraphs (v) and (vi) are only included in the Canada-New Zealand and Canada-Singapore BATAs.

140. This paragraph is not in the agreement with Greece.

141. The reader can read the outcome of this arbitration in the article of Gardiner, R.K., *supra* note 138, at p. 9.

e) Designation and Authorization

Usually under Article III or Article IV, we find one of the following phrases on the designation of airlines:

> Each Contracting Party shall have the right to designate, by diplomatic note, an airline to operate the agreed services on the routes specified in the Annex for such a Contracting Party and to substitute another airline for that previously designated.
>
> [or]
>
> Each Contracting Party shall have the right to designate by diplomatic note, an airline or airlines to operate the agreed services on each of the routes specified in the Annex for such a Contracting Party and to substitute another airline for that previously designated.[142]
>
> [or]
>
> 1. Each Contracting Party shall have the right to designate, by Diplomatic Note, an airline or airlines to operate the agreed services and to substitute another airline for that previously designated. Only one airline may be designated for each of the routes specified in the Schedule of Routes attached to this Agreement.
>
> 2. Either Contracting Party may designate the same airline to operate the routes specified in the Schedule of Routes attached to this Agreement.[143]
>
> [or]

142. In the Canada-India BATA.

143. In the Canada-Singapore BATA.

> Each Contracting Party shall have the right to designate an airline, or to substitute therefore another airline, to operate the agreed services by notifying the other Contracting Party by diplomatic note.[144]

This is followed by the next step, the authorization clause:

> 1. Following receipt of a notice of designation or of substitution pursuant to Article IV of this Agreement, the aeronautical authorities of the other Contracting Party shall, consistent with its laws and regulations, grant without delay[145] to the airline so designated the appropriate authorizations to operate the agreed services for which that airline has been designated.
>
> [and]
>
> 2. Upon receipt of such authorizations the airline[146] may begin at any time to operate the agreed services, in whole or in part, provided that [the airline complies with the applicable provisions of this Agreement and][147] the tariffs established in accordance with the provisions of Article XIV of this Agree-

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144. In the Argentina-Canada BATA.

145. Or, "with a minimum of delay", in some other BATAs.

146. Or, "The designated airlines", in the Argentina-Canada BATA.

147. The words in square brackets are not included in certain BATAs, such as the Canada-Romania and Canada-Morocco ones.

ment[148] are in force in respect of such services.

[or]

2. Upon receipt of such authorizations the airline may begin at any time to operate the agreed services, provided that the designated airline fulfills the provisions of this Agreement.[149]

[or]

2. Upon receipt of such authorizations the airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the applicable provisions of the agreement and the tariffs are established in accordance with the provisions of Article XV of this Agreement.[150]

Sometimes, these two steps (designation and authorization) are under the same article. In the Canada-Greece bilateral air agreement, the article is worded as follows:

1. Each Contracting Party shall have the right to designate by a diplomatic note to the other Contracting Party an airline for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designation.

2. On receipt of such a designation by the other Contracting Party, the Aeronautical Authorities of this other Contracting Party shall, subject to the provisions of paragraph 3 of this Article,

148. The provision on authorization in the Argentina-Canada BATA ends here.

149. In the Canada-India BATA.

150. In the Canada-Singapore BATA.

grant without delay to the airline so designated the appropriate operating authorization.

3. The aeronautical authorities of one Contracting Party may refuse to grant the operating authorization referred to in paragraph 2 of this Article, or may impose such conditions as they may deem necessary on the exercise by the designated airline of the rights granted pursuant to Article II, paragraph 2, of this Agreement, in any case where

(a) the airline designated by the other Contracting Party is unable to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the Convention;

(b) these authorities are not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

4. Upon receipt of such authorizations the airline may begin at any time to operate the agreed services, partly or in whole, provided that the airline complies with the applicable provisions of the Agreement and the tariffs established in accordance with the provisions of Article X of this Agreement are in force in respect of such services.

While in the Canada-Yugoslavia bilateral air agreement:

1. Each Contracting Party shall have the right to designate, by diplomatic note, an airline or airlines to operate the agreed services on any route specified in the Annex for such a Contracting Party and to substitute another airline for that previously designated.

> 2. Following receipt of a notice of designation pursuant to paragraph 1 of this Article the aeronautical authorities of the other Contracting Party shall, consistent with its laws and regulations, grant without delay to an airline so designated the appropriate authorizations to operate agreed services for which that airline has been designated.
>
> 3. Upon receipt of such authorizations the airline may begin at any time to operate the agreed services, partly or in whole, provided that the airline complies with the applicable provisions of the Agreement and the tariffs established in accordance with the provisions of Article 12 of this Agreement are in force in respect of such services.

In the following, some observations on the tariff provisions will be provided; it will assist in the understanding of this section.

f) Revocation or Suspension of Authorization

This section of the BATA provides to the aeronautical authorities of the Contracting Parties a right to revoke or suspend an authorization given under the previous article if certain conditions are not respected.

> 1. The aeronautical authorities of each Contracting Party shall have the right to withhold[151] the authorizations referred to in Article V of this Agreement with respect to an airline designated by the

151. The phrase, "To refuse or withhold", is found in some Canadian BATAs.

other Contracting Party, to revoke or suspend such authorizations or impose conditions, temporarily or permanently:

(a) in the event of failure by such airline to qualify before the aeronautical authorities of that Contracting Party under the laws and regulations normally and reasonably applied by these authorities in conformity with the Convention;

(b) in the event of failure by such airline to comply with the laws and regulations of that Contracting Party;

(c) in the event that they are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; and

(d) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

[or]

1. The aeronautical authorities of each Contracting Party shall have the right to revoke or suspend the authorization referred to in Article III of this Agreement with respect to the airline designated by the other Contracting Party, or impose on it conditions, temporarily or permanently in any case where

(a) such airline is unable to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by these authorities in conformity with the Convention;

(b) such airline fails to comply with the

laws and regulations of that Contracting Party;

(c) these authorities are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals;

(d) such airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

[and]

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party in conformity with Article XIX of this Agreement.

[or]

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of thirty (30) days[152] from the date the other Contracting Party receives the request.

Thus, an essential part of this article concerns the "substantial ownership and effective control" of the

152. Some BATAs include a period of sixty (60) days instead of thirty (30).

designated airline(s). The latter must be vested in nationals of the designating Party, the other Party being entitled to block the exercise of the rights granted if this proves not to be the case. This provision was originally included at Chicago in Section 5 of Article I of the International Air Services Transit Agreement, in Section 6 of Article I of the International Air Transport Agreement, and in the Standard Form of Agreement for Provisional Air Routes (par. 7), in order to be able to keep out states which were not parties to those agreements in the event of an airline of such a state being designated by a Contracting Party to exercise the rights granted to that Party by another Contracting Party.[153]

What is a "substantial ownership and effective control"? Mr. Wassenbergh offers this answer:

> "Substantial ownership and effective control" is normally acquired with a minimum of 51% of the shares in the airline, although even, say, 30% could be called a "substantial" participation, depending partly on what powers are accorded under the airline's by-laws. In this latter case, substantial ownership could be vested in more than one State. A noteworthy consequence of this possibility would be that in such a case the airline concerned could exercise the rights granted to several States (...)

153. Wassenbergh, H.A., *Post-War International Civil Aviation Policy and the Law of the Air*, Martinus Nijhoff (2nd edition), The Hague, 1962, 197, at p. 62.

> The intention of the "substantial ownership" clause, therefore, is evidently that substantial ownership can only be vested in one nationality, thereby giving States a weapon with which to protect the exchange of commercial rights according to nationality and on a purely bilateral basis.[154]

In Canada, the issue of effective control relates to

154. *Ibid.*

sections 21 and 22 of the *Air Carrier Regulations*.[155] In that context the following definitions of effective

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155. Sections 21, 22 and 22.1 in Part III of the *Air Carrier Regulations*, Consolidated Regulations of Canada (C.R.C.) 1978, c.3:

CHANGES OF CONTROL, CONSOLIDATIONS, MERGERS, LEASES AND TRANSFERS

21. No person shall enter into a transaction that is intended to or would result in a change of control, consolidation, merger, lease or transfer of any commercial air service or of any air carrier unless he complies with section 22.

22. (1) Any person who proposes to enter into a transaction described in section 21 shall give notice of such proposed transaction to the Committee.

(2) Subject to subsection (4), where section 27 of the National Transportation Act applies to a transaction described in section 21, the provision of that Act shall be complied with.

(3) Subject to subsection (4), where section 27 of the National Transportation Act does not apply to a transaction described in section 21, the provisions of section 27 of that Act shall be complied with as though that section did apply to that transaction, subject to such modifications as the circumstances require, except that the Committee may proceed to investigate the transaction even if no objection is received.

(4) The Committee may, following receipt of notice of a transaction described in section 21, require the person referred to in subsection (1) to file with the Secretary such information and documents as will enable the Committee to determine whether the transaction will unduly restrict competition or otherwise be prejudicial to the public interest.

22.1 (1) Where the Committee does not disallow a transaction that results in a change of control, consolidation, merger, lease or transfer of Class 4 Charter rotating wing commercial air services set out in an air carrier's licence and those commercial air services constitute less than all of the rotating wing aircraft weight group charter authorities specified in that licence, all of that

control are not inappropriate:

a) A person who effectively controls a corporation

(continued from previous page)

air carrier's Class 4 Charter rotating wing authorities specified in that licence shall be cancelled on the issuance of new or amended licences with respect to the services affected by that transaction.

(2) Where the Committee does not disallow a transaction that results in the change of control, consolidation, merger, lease or transfer of Class 7 Specialty - flying training rotating wing commercial air services set out in an air carrier's licence and those commercial air services constitute less than all of the rotating wing aircraft weight group flying training specialty authorities specified in that licence, all of that air carrier's Class 7 Specialty - flying training rotating wing authorities specified in that licence shall be cancelled on the issuance of new or amended licences with respect to the services affected by that transaction.

(3) Subsections (1) and (2) shall cease to have effect on December 31, 1987.

And section 27 of the *National Transportation Act* RSC 1970, c.N-17 as am.:

27. (1) A railway company, commodity pipeline company, company engaged in water transportation, or person operating a motor vehicle undertaking or an air carrier, to which the legislative jurisdiction of the Parliament of Canada extends, that proposes to acquire, directly or indirectly, an interest, by purchase, lease, merger, consolidation or otherwise, in the business or undertaking of any person whose principal business is transportation, whether or not such business or undertaking is subject to the jurisdiction of Parliament, shall give notice of the proposed acquisition to the Commission.

(2) The Commission shall give or cause to be given such public or other notice of any proposed acquisition referred to in subsection (1) as to it appears to be reasonable in the circumstances, including notice to the Director of Investigation and Research under the Combines Investigation Act.

(3) Any person affected by a proposed

and controls that corporation *in fact*.

b) A person who effectively controls a corporation and has the right to elect the majority of the board of directors of that corporation.

The Air Transport Committee[156] provides this classification about "effective control" which can be paraphrased as that control normally exercised by a person (or group of persons) who hold 50% or more of the voting shares of a corporation. Effective control can, however, be

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(continued from previous page)

acquisition referred to in subsection (1) or any association or other body representing carriers or transportation undertakings affected by such acquisition may, within such time as may be prescribed by the Commission, object to the Commission against such acquisition on the grounds that it will unduly restrict competition or otherwise be prejudicial to the public interest.

(4) Where objection is made pursuant to subsection (3), the Commission

(a) shall make such investigation, including the holding of public hearings, as in its opinion is necessary or desirable in the public interest;

(b) may disallow any such acquisition if in the opinion of the Commission such acquisition will unduly restrict competition or otherwise be prejudicial to the public interest;

and any such acquisition, to which objection is made within the time limited therefore by the Commission that is disallowed by the Commission, is void.

(5) Nothing in this section shall be construed to authorize any acquisition of an interest in any other company that is prohibited by any Act of the Parliament of Canada. 1966-67, c.69, s.20.

156. Of the Canadian Transport Commission.

exercised by persons holding less than 50% of the voting shares in some special cases which would be too complex to explain here in detail.

Finally, the term "substantial ownership" is a much more generic term: basically, it can mean anything you define it to mean. A person could have substantial ownership of a corporation even if he holds a small percentage of shares (5% for example). It would depend on many factors including whether or not the shares of the corporation are publicly traded. It would also depend on how diffuse the other shareholdings are.

g) Entry and Clearance

This section of a BATA is related to Articles 11 and 13 of the *Chicago Convention*.[157]

> 1. The laws, regulations and procedures of one Contracting Party relating to the admission to, remaining in,[158] or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the

157. Article 11
Applicability of air regulations
Subject to the provisions of this Convention, the laws and regulations of a contracting State 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 all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State.

and

Article 13
Entry and clearance regulations
The laws and regulations of a contracting State 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 such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

158. In some Canadian BATAs, such as those with Morocco and Yugoslavia, these two words, "remaining in", are omitted.

designated airline of the other Contracting Party upon entrance into, departure from and while within the said territory.

2. The laws and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine[159] shall be complied with by the designated airline of the other Contracting Party and by or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.[160]

3. Passengers in transit across the territory of either Contracting party shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.[161]

[or]

3. The crews registered on the corresponding documents on board the aircraft, of both Contracting Parties, operating the agreed services, shall hold a valid passport or a certificate of crew membership issued in their name.

[or]

1. The airways and the points of overflying the frontier for the routes

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159. The words, "agriculture and health", are found in the Argentina-Canada BATA, instead of the word "quarantine".

160. The Argentina-Canada BATA adds the phrase, "in accordance with the procedures established by the relevant authorities".

161. This paragraph reflects the purposes of the Annex 9 (Facilitation) of the *Chicago Convention*.

specified in the Annex of the present Agreement shall be independently established by each State with respect to its own territory.

2. The laws, regulations and procedures which are applied in the territory of each State relating to the entry, stay and exit of the aircraft engaged in international air navigation as well as the operation and navigation of such aircraft while they are within the limits of that territory shall also be applied to the aircraft of the airline designated by the other Contracting Party.

3. The laws and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by the designated airline of the other Contracting Party and by or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.

h) Recognition of Certificates and Licenses

1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services on the routes specified in the Annex[162] provided that such certificates or licences were issued or rendered valid pursuant to, and in conformity with the standards established under the Convention. Each Contracting Party reserves the right, however, to refuse to

162. The words, "to this Agreement", are added in the Barbados-Canada bilateral air agreement.

recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

The first part of this paragraph concerns Article 33 of the *Chicago Convention*:

Article 33

Recognition of certificates and licenses

Certificates of airworthiness and certificates of competency and licenses issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognized as valid by the other contracting States, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.

The last part of the paragraph 1 above is related to Article 32 of the *Chicago Convention*:

Article 32

Licenses of personnel

(a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered.

(b) Each contracting State reserves the right to refuse to recognise, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.

The second paragraph on recognition of certificates and licenses is usually drafted in one of the following three manners:

> 2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline or in respect of an aircraft operating the agreed services on the routes specified in the Annex, should permit a difference from the standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the aeronautical authorities of the other Contracting Party may request consultations in accordance with Article XIX of this Agreement[163] with the aeronautical authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement in matters regarding flight safety[164] will constitute grounds for the application of Article VI of this Agreement.
>
> [or]

An improvement of the paragraph above is:

> 2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the Aeronautical Authorities of one Contracting Party to any person or designated airline or in respect of an aircraft operating the agreed services on the routes specified in the Schedule of Routes, should permit a

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163. This Article on consultations is discussed in the following pages: see *infra*, pp. 167 *et seq.*

164. The phrase, "in matters regarding flight safety", is omitted in the Canada-Greece bilateral air agreement.

difference from the standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the Aeronautical Authorities of the other Contracting Party may request consultations in accordance with Article XIX of this Agreement with the Aeronautical Authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. If, following such consultations, the Aeronautical Authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety and security standards and requirements in those areas that are equal to or above the minimum standards which may be established pursuant to the Convention, they will notify the Aeronautical Authorities of the other Contracting Party of such findings and the steps considered necessary to bring the safety and security standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to the Convention, and the other Contracting Party shall take appropriate steps to remedy the same. Failure to reach a satisfactory agreement in matters regarding flight safety will constitute grounds for the application of Article VI of this Agreement.[165]

[or]

2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline operating the agreed services on the routes specified in the Annex to this Agreement, should permit a difference from the standards established under the Convention, and which difference has been filed

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165. In the Canada-Singapore BATA.

with the International Civil Aviation Organization, the aeronautical authorities of the other Contracting Party may request consultations with the aeronautical authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement in matters regarding flight safety will constitute grounds for the application of Article VI of this Agreement. In other cases Article XXI of this Agreement applies.

i) Security

This section of a Canadian BATA concerns Article 25 of the *Chicago Convention*:

Article 25

Aircraft in distress

Each contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances. Each contracting State, when undertaking search for missing aircraft, will collaborate in coordinated measures which may be recommended from time to time pursuant to this Convention.

The prevention and the assistance are the premises of the five following paragraphs. The reader should note

that paragraphs 1 and 5 are some "genuine" Canadian additions. The Canadian Government always underlines its particular attention to the safety and security matters.

> 1. The Contracting Parties agree to provide aid to each other as necessary[166] with a view to preventing unlawful seizure of aircraft and other unlawful acts against the safety of aircraft, airports and air navigation facilities and any other threat to aviation security.
>
> 2. Each Contracting Party agrees to observe the security provisions required by the other Contracting Party for entry into the territory of the other Contracting Party and to take adequate measures to inspect passengers and their carry-on items. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for special security measures for its aircraft or passengers to meet a particular threat.
>
> 3. The Contracting Parties shall act consistently with applicable aviation security provisions established by the International Civil Aviation Organization [identified as the International Standards and Recommended Practices on Security and designated as Annex 17 to the Convention to the extent that such security provisions are applicable to the Contracting Parties].[167] Should a Contracting Party depart from such provisions, the aeronautical authorities of the other Contracting Party may request consulta-

166. The words, "as necessary", are not included in the Canadian BATAs with Greece, Portugal and Yugoslavia, among others.

167. The phrase in square brackets is omitted in certain BATAs such as Barbados-Canada and Canada-Singapore.

tions with the aeronautical authorities of that Contracting Party.[168] Failure to reach a satisfactory agreement will constitute grounds for the application of Article VI of this Agreement.

4. The Contracting Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.[169]

5. When an incident, or threat of an incident, of unlawful seizure of aircraft or other unlawful acts against the safety of aircraft, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications intended to terminate rapidly and safely such incident or threat thereof.[170]

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168. It is preferable to add the phrase, "in conformity (or in accordance) with Article XIX of this Agreement", as in the Canada-Singapore BATA.

169. The Multilateral Agreements included here are those signed by both signatory countries of the BATA.

170. These five paragraphs are used in most Canadian BATAs.

j) Airport Charges

This next element in BATAs is taken from Article 15 of the *Chicago Convention*.[171]

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171. Article 15

Airport and similar charges

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher.

(a) As to aircraft not engaged in scheduled international air services, than those that would be paid by its national aircraft of the same class engaged in similar operations, and

(b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.

All such charges shall be published and communicated to the International Civil Aviation Organization: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.

1. The charges imposed in the territory of one Contracting Party on the aircraft of the designated airline of the other Contracting Party for the use of airports and other aviation facilities shall not be higher than those imposed on aircraft of a national airline of the first Contracting Party engaged in similar international air services.

[or]

1. The charges imposed by either Contracting Party for the use of airports and other aviation facilities by the aircraft of a designated airline of the other Contracting Party will be just and reasonable and shall be levied in accordance with the official tariffs uniformly established by the laws and regulations of that Contracting Party and which are uniformly applied to all foreign airlines.[172]

[or]

1. Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed upon all other aircraft engaged in similar international services.[173]

[or]

1. The charges imposed in the Canadian territory on the aircraft of the designated airline of Romania for the use of airports and other aviation facilities shall not be higher than those imposed on aircraft of the designated airline of Canada engaged in similar international

172. In the Canada-Greece BATA.

173. In the Canada-Yugoslavia BATA.

air services.[174]

[and]

2. Each Contracting Party shall encourage consultations between its competent charging authorities and the designated airlines using the services and facilities, and where practicable, through the airlines' representative organizations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made.[175]

[or]

2. The charges and other amounts to be paid for using the airports, the installations and the technical equipment in the territory of the Socialist Republic of Romania shall be levied according to the official level of the tariffs established by the laws and other regulations of the Socialist Republic of Romania which are applied to all the aircraft of the foreign airlines that operate similar international air services.[176]

[and]

3. Neither of the Contracting Parties shall give preference to its own or any other airline over the airline engaged in similar international air services of the other Contracting Party in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways, air traffic services and associated facilities under its control.

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174. In the Canada-Romania BATA.

175. The last sentence could be omitted (as it is in the Barbados-Canada BATA).

176. In the Canada-Romania BATA.

[or]

3. Neither of the Contracting Parties shall give a preference to its own or any other airline over an airline of the other Contracting Party in the application of its customs, immigration, quarantine[177] and similar regulations or in the use of airports, airways and air traffic services and associated facilities under its control.

k) Capacity

Capacity is one of the most important elements to negotiate. The matters discussed above are easier to agree on because the reciprocal advantages are obvious. Capacity is a trickier question: the framework of airline competition has to be well planned by both sides. So the Canadian Government has frequently had disagreements on the inter-

177. It could be written "agriculture and health", instead of "quarantine", as in the Argentina-Canada BATA.

pretation of the capacity clauses.[178]

The term "capacity" refers to the maximum amount of payload (*i.e.* the capacity expressed in metric tons available for sale for the transportation of passengers, baggage, mail and freight), which may be carried in the same direction along the route for which payload is determined, as limited either by available seating or cargo space, or by maximum allowable weight, after allowing for the weight stores and fuel.[179]

Three elements are components of the capacity:

1. Commercial load: it includes passengers, baggage, freight and mail. Anything additional, such as

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178. Canada and U.K. have regular misunderstandings over their respective interpretations of the capacity clauses (see *supra* note 23 of page 6). First, the designated airlines try to solve any disagreements. If this is unsuccessful, the aeronautical authorities must try to solve the problems. It can be done through formal diplomatic channels, or through less formal means, *i.e.* inter-agency exchanges of notes. If both sides continue to stick to their position (often it is for tactical purposes), the mechanism of consultations is triggered.
Another good example is provided by the Canada-Japan relationship where the Japanese authorities have interpreted the capacity clauses in a manner such that they always require the formal approval of the aeronautical authorities. Canada has had to comply with this interpretation even though the same kind of clauses in their BATAs with other countries do not have this meaning.

179. Wassenbergh, H.A., *supra* note 153, at pp. 46 and 47.

fuel, weight of the required stores, equipment necessary for the operation of aircraft, crew members, and any other load which does not come under the above four items, are excluded from the capacity control.

2. Routes: it refers to the routes specified and agreed upon in a bilateral agreement. However, the load carried outside the specified routes is not subject to capacity control by the Contracting Parties to such bilateral agreement.

3. Frequency: it refers to the number of flights, which usually have to be fixed per week in the proportion to the traffic offering.[180]

The purpose of having a capacity clause in a BATA "is to determine the volume of air transport that may be offered by each designated airline, while operating the agreed services".[181] Also, "the capacity clause imposes certain conditions and limitations, in regard to the capacity that can be offered by the designated airlines".[182] The capacity which a designated airline is entitled to offer

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180. Abdulaziz, A., *Bilateral Air Transport Agreements in Libya*, LL.M. Thesis submitted to McGill University (IASL), May 1982, 171, at pp. 134 and 135 (unpublished).

181. *Ibid.*, at p. 136.

182. *Ibid.*

on its routes is composed of two kinds of traffic, *i.e.* the traffic of "third and fourth freedoms", and the traffic of "fifth freedom".

In determining what capacity will be offered by the designated airlines, certain motives must be taken into consideration. The result is likely to fit in a "category" of capacity clause: *Bermuda I*, predeterministic, "false *Bermuda I*", liberal, *ex post facto*, etc.

> ...les diverses techniques d'échange, les différentes positions envisageables aussi bien en théorie qu'en pratique ont été recensées, analysées et répertoriées. Le compromis Anglo-Américain des Bermudes est sans aucun doute l'accord qui a fait couler le plus d'encre. Il n'a pourtant pas été le seul à retenir l'attention des spécialistes du droit aérien: depuis les Bermudes jusqu'à un certain nombre d'accords bilatéraux d'un type tout à fait différent, il existe une série de classifications possibles. C'est ainsi que sont apparus les termes maintenant assez courants d'accords de type *bermudien*, de type *non bermudien*, *à prédétermination des capacités*, ou *sans prédétermination des capacités*, etc. ...[183]

In Canada, the capacity provisions of the agreements concluded are divided into four broad categories:

a) No capacity clauses;

b) Liberal Bermuda-type;

c) Confidential Bermuda-type; and,

d) Pre-deterministic.

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183 Monlaü, M.B., *supra* note 4, at p. 2.

The principles enunciated in most of the Canadian BATAs are:

> 1. There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate the agreed services on the routes specified in the Annex to this Agreement.[184]

This last paragraph and the three following ones are from a *Bermuda I* type Agreement.

> 2. In operating the agreed services, the designated airline of each Contracting Party shall take into account the interest of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same route.
>
> [and]
>
> 3. The agreed services provided by the designated airlines of the Contracting Parties shall bear reasonable relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, cargo and

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184. More explanations on this principle are provided in Cooper, J.C., *supra* note 99, at p. 390.

mail[185] between the[186] territory of the Contracting Party which has designated the airline and the[187] countries of ultimate destination of the traffic.

[and]

4. Provision for the carriage of passengers, cargo and mail both taken up and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principle that capacity shall be related to:

(a) traffic requirements[188] to and from the territory of the Contracting Party which has designated the airline;

(b) traffic requirements[189] of the area

185. Followed by the phrase, "originating from or ultimately destined for the territory of the Contracting Party which had designated the airline(s)", in some BATAs, such as Canada-New Zealand.

186. Followed by phrase, "territories of the Contracting Parties which have designated the airline and the countries of ultimate destination of the traffic", in some BATAs such as Canada-India and Canada-Romania.
[or]
"territories of the Contracting Parties" in the Canada-Greece and Canada-Yugoslavia BATAs, for instance.

187. Followed by the phrase, "territory of the other Contracting Party, taking into account traffic rights agreed to by the Contracting Parties at intermediate points", in some BATAs such as Argentina-Canada.

188. It could be drafted, "priority traffic requirements to ...".

189. Or, "subsidiary traffic requirements of...".

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[190] of through airline operation.

The following paragraph will be added in capacity pre-deterministic BATAs. It may be negotiated through a Memorandum of Understanding or an Exchange of Notes, but the wording will be the same as one of the following:

5. The capacity to be provided on the specified routes shall be agreed between the designated airlines in accordance with the principles laid down in this Article and subject to the approval of the aeronautical authorities of the Contracting Parties. In the absence of an agreement between the designated airlines, the matter shall be referred to the aeronautical authorities of the Contracting Parties which will endeavour to resolve the problem, if necessary, pursuant to Article XIX of this Agreement. Pending an arrangement either at the airline level or between the aeronautical authorities the status quo shall be maintained.

[or]

5. The capacity to be provided on the specified routes, i.e., frequency of services, and type and configuration of aircraft, shall be agreed between the designated airlines in accordance with the principles laid down in this Article and subject to the approval of the aeronautical authorities of the Contracting Parties. In the absence of an agreement between the designated airlines, the matter shall be referred to the aeronautical authorities

190. Or, "complementary requirements of...".

of the Contracting Parties which will endeavour to resolve the problem pursuant to Article XVI of this Agreement.

[or]

5. Except as otherwise specified, neither Contracting Party may unilaterally impose any restrictions on the designated airline of the other Contracting Party with respect to capacity, frequency or type of aircraft employed in connection with services over any of the routes specified in the Annex attached to this Agreement. In the event that one of the Contracting Parties believes that the operation proposed or conducted by the airline of the other Contracting Party unduly affects the agreed services provided by its designated airline, it may without prejudice to the provisions of Article XXI request consultations pursuant to Article XIX of this Agreement.

[or]

5. The capacity to be provided on the specified routes, i.e. frequency of services and type of aircraft, shall be agreed in advance between the designated airlines in accordance with the principles laid down in this Article, and subject to the approval of the aeronautical authorities of the Contracting Parties. In the absence of an agreement between the designated airlines, the matter shall be referred to the aeronautical authorities of the Contracting Parties which will endeavour to resolve the problem pursuant to Article 17 of this Agreement. Pending an arrangement either at the airline level or between the aeronautical authorities, the status quo shall be maintained.

[or]

5. The capacity to be provided on the specified routes, i.e. frequency, aircraft type, configuration, and scheduling of services, shall be agreed between the

designated airlines in accordance with the principles laid down in this Section and subject to the approval of the aeronautical authorities of the Contracting Parties. In the absence of an agreement between the designated airlines, the matter shall be referred to the aeronautical authorities of the Contracting Parties which will endeavour to resolve the problem pursuant to Article XIV of this Agreement. In the absence of an agreement on capacity between the aeronautical authorities, the capacity agreed to at the time of signature of the Commercial Air Transport Agreement.

The following paragraphs are an example of a liberal capacity clause:

1. In the operation by the airline of either Contracting Party of the air services described in the Annex to this Agreement, the interests of the airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

2. The air services made available to the public by the airline operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

3. Services provided by a designated airline under the present Agreement 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 countries of ultimate destination of the traffic. The right to embark or disembark on such services, international traffic destined for and coming from third countries at a point or points on the routes specified in the Annex to this Agreement, 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 ultimate destination of the traffic;

(b) to the requirements of through airline operations; and

(c) to the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

4. The airlines of both Contracting Parties shall, in keeping with the provisions of the preceding paragraphs of this Article, have the freedom to determine the capacity, frequency, scheduling and type of aircraft to be employed in connection with services over any of the routes specified in the Annex. In the event that one of the Contracting Parties believes that the operations conducted by an airline of the other Contracting Party have been inconsistent with the standards and principles set forth in this Article, it may request consultations pursuant to Article XVI of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with said standards and principles.[191]

A strong belief about the free-determination (or liberal) method of capacity regulation is that it restores airline scheduling and marketing decisions to experts with the requisite operational experience, gives the users a far greater voice in the design of the product they are

191. In the Canada-Morocco BATA.

purchasing, increases bilateralism among nations by each party agreeing to share with the other party more of its sovereignty over airline operations, and provides the greatest flexibility for carriers to add or withdraw capacity on short notice without government involvement.

An example of a "false *Bermuda I*" type of Canadian BATA would include similar wording to the first four paragraphs written above, and would have this additional paragraph:

> 5. Before inauguration of the agreed services and for the subsequent changes of capacity, the aeronautical authorities of the Contracting Parties shall agree to the practical application of the principles contained in the previous paragraphs of this Article regarding the operation of the agreed services by the designated airlines.

The following paragraph is an example of a *Bermuda I* which specifies the prohibition of any unilateral restriction:

> 5. Neither Contracting Party may unilaterally impose on a discriminatory basis any restrictions on the airline of the other Contracting Party with respect to capacity, frequency or type of aircraft employed in connection with the agreed services. In the event that one of the Contracting Parties believes that the operation proposed or conducted by the airline of the other Contracting Party unduly affects the agreed services provided by its designated airline, it may request consultation pursuant to Article XVII of this agreement.

1) Statistics and Timetables

One element generally negotiated in Canadian BATAs concerns the exchange of statistics and timetables:

> 1. The aeronautical authorities of both Contracting Parties shall provide each other with monthly statements of statistics on a quarterly calendar basis, including all information required to determine the amount of traffic[192] carried over the routes specified in the Annex[193] to this Agreement and the initial origins and final destinations of such traffic.[194]
>
> [and]
>
> 2. The details of the statistical data to be provided and the methods by which such data shall be provided by one Contracting Party to the other shall be agreed upon between the aeronautical authorities and implemented no later than three (3) months after the designated airline of one or both of the Contracting Parties commences operations, in whole or in part, of agreed services.
>
> [and]
>
> 3. Failure to reach a satisfactory agreement regarding the supply of statistics

192. Or, "of traffic passenger and cargo...", in some BATAs.

193. Or, "in the Schedule of Routes".

194. Or the last part could be drafted: "and the points of embarkation and disembarkation of such traffic on these routes".

may, at the discretion of either Contracting Party, constitute grounds for the application of Article XIX[195] of this Agreement.[196]

[or]

The aeronautical authorities of each Contracting Party shall provide to the aeronautical authorities of the other Contracting Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the operation of the agreed services, including, but not limited to, statements of statistics related to the traffic carried by its designated airline(s) on the agreed services.[197]

[or]

1. The aeronautical authorities of both Contracting Parties shall cause their designated airlines to provide the aeronautical authorities of the other Contracting Party with monthly statements of statistics on a monthly calendar basis, including all information required to determine the amount of traffic carried over the routes specified in the Annex to this Agreement, including flight uplift and discharge of traffic, and if possible, the initial origins and final destinations of such traffic.

[and]

2. The details of the statistical data to be provided and the methods by which such data shall be provided shall be agreed upon between the aeronautical authorities

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195. The consultations mechanism.

196. This is the most common drafting in the Canadian BATAs.

197. As in the Canada-New Zealand BATA.

and implemented not later than three (3) months after designated airline of one or both of the Contracting Parties commence operations, in whole or in part, of agreed services.

[and] in a following Article:

Each Contracting Party shall cause its designated airline to communicate to the aeronautical authorities of the other Contracting Party, as long in advance as practicable prior to the inauguration of the agreed services, the type of service, the type of aircraft to be used, the flight schedules, tariff schedules, and all other relevant information concerning the operation of the agreed services including such information as may be required to satisfy the aeronautical authorities that the requirements of this Agreement are being duly observed. The requirements of this Article shall likewise apply to any changes concerning the agreed services.[198]

[or]

The aeronautical authorities of each Contracting Party shall provide or shall cause its designated airline to provide the aeronautical authorities of the other Contracting Party, upon request, periodic or other statements of statistics related to the quantity of traffic carried and the capacity offered by its designated airline between points on the routes specified in the Annex to this Agreement showing the initial origins and final destinations of the traffic.

[and]

The designated airlines shall submit proposed schedules for acceptance or approval to the aeronautical authorities

198. In the Canada-India BATA.

of both Contracting Parties.[199]

[or]

1. The designated airline or airlines of either Contracting Party shall submit proposed timetables to the Aeronautical Authorities of the other Contracting Party for their approval not later than thirty (30) days prior to the implementation of such timetables. The timetables shall include all relevant information, including the type of aircraft to be used, the frequency of service, the flight schedules and any other information that may be reasonably required.

[and]

2. In special cases, a shorter period may be accepted by the Aeronautical Authorities.

[and] in a following Article:

The Aeronautical Authorities of either Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the application of this Agreement.[200]

Following are some topics upon which data could be requested for such periodic exchange: monthly filings of processing and timeliness considerations; daily information about airport planning; charter itineraries not published in the *Official Airlines Guide*; available seats and

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199. In the Barbados-Canada BATA.

200. In the Canada-Singapore BATA.

available tonnes (to provide uplift ratios required for bilateral negotiations, and to have an estimate of economic viability of a market); the arrival/departure data required to derive traffic flow information; charter types required for international policy studies, determining differentiation within bilateral agreements with other countries; goods carried for administration, cost recovery, planning and monitoring purposes; passenger origins and destinations; daily and hourly details of certain airport activities, such as flight numbers required at major sites or other sites in order to utilize the *Official Airlines Guide* for arrival times, capacity, aircraft type, and route information; final scheduled destinations; revenue passengers and non-revenue passengers required for instance for the calculation of security tax; cargo data required on a traffic flow basis for airport planning, market studies, international studies or bilateral negotiations; rates and fares for market studies; aircraft operations and in-flight services such as employment, wages, aircraft fuel, landing and navigation fees, passenger food and supplies; also, subsidies; expenses; incomes; registration marking; addresses; and etc. ...

The following is a list of countries with which Canada has BATAs in force (or provisionally in force), that

contain articles respecting the provision of statistics:

Argentina	Greece	Peru
Australia	Haiti	Poland
Barbados	India	Romania
Belgium	Israel	Saint Lucia
Brazil	Italy	Singapore
China	Jamaica	Switzerland
Cuba	Japan	Trinidad and Tobago
Czechoslavakia	Morocco	Turkey
Fiji	Mexico[201]	United Kingdom
Finland	Netherlands	U.S.A.
France	New Zealand	U.S.S.R.
Germany	Pakistan	Yugoslavia
	Panama	

The following are countries with which Canada has bilateral agreements which do not contain articles respecting the provision of statistics:

Denmark	Norway	Sweden
Ireland	Portugal	

In addition, this is a list of countries with which Canada has *ad referendum* agreements which contain articles respecting the provision of statistics:

Austria	Spain
Chile	Venezuela

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201. There is no specific article in the Canada-Mexico agreement dedicated to the provision of statistics; however, Article 10, on the subject of capacity, contains a statement which places a requirement on the designated airlines to present any information requested of them for justification of a proposed capacity increase.

m) Customs

This provision of a BATA comes from the Article 24 of the *Chicago Convention*.[202] It demonstrates perfectly the necessity for the Contracting Parties to reach an agreement. Canada has adopted a single common wording for the provisions that exchange such tax waivers. The first of three paragraphs in the Article on customs is worded:

> 1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline of the other Contracting Party to

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202. **Article 24**

Customs duty

(a) Airport 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. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board an aircraft of a contracting State, on arrival in the territory of another contracting State and retained on board on leaving the territory of that State shall be exempt from customs duty, inspection fees or similar national or local duties and charges. This exemption shall not apply to ~~any~~ quantities or articles unloaded except in accordance with the customs regulations of the State, which may require that they shall be kept under customs supervision.

(b) 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 shall be admitted free of customs duty, subject to the compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

the fullest extent possible under its national law from import restrictions, customs duties, sales and excise taxes, inspection fees and other national duties and charges on aircraft, fuel,[203] lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services, as well as printed ticket stock, air way bills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by that designated airline.

[or] a less common wording used in some Canadian BATAs like the one signed with Yugoslavia:

1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, stores and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party operating the agreed services, as well as the usual publicity material distributed without charge by that designated airline or airlines.

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203. A provincial tax on fuel can not be exempted though.

The second paragraph of the common wording is:

> 2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article:
>
> (a) introduced into the territory of one Contracting Party by or on behalf of the designated airline of the other Contracting Party;
>
> (b) retained on board aircraft of the designated airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
>
> (c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;
>
> whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are not alienated in the territory of the said Contracting Party.
>
> [or] as exceptionally in the case of the BATA with Yugoslavia:
>
> 2. The immunities granted by this Article shall apply to the items referred to in paragraph 1 of this Article:
>
> (a) introduced into the territory of one Contracting Party by or on behalf of the designated airline or airlines of the other Contracting Party;
>
> (b) retained on board aircraft of the designated airline or airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;

(c) taken on board aircraft of the designated airline or airlines of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the immunity, provided such items are not alienated in the territory of the said Contracting Party.

The third paragraph though desirable is not essential and is worded either:

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. In such case, they 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.

[or]

3. The regular aircraft equipment and spare parts retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that Contracting Party. In such case this material shall be placed under supervision of the said authorities until it is loaded on board aircraft and is leaving the territory of that Contracting Party or is otherwise disposed of in accordance with Customs regulations.

n) Tariffs

The carrier's tariffs contain the conditions of carriage and constitutes the contract, or part thereof, that binds the carrier and the passenger, shipper or charterer. The setting of tariffs, or pricing, is a major point of discussion that takes place at the international level. What constitutes pricing, also called rate-making, in international air transport? It "means the setting of international air fares, air rates or air tariffs."[204]

> Although the terms are often used interchangeably, strictly speaking the term "fares" relates to the prices to be paid for the air transportation of passengers and their baggage, whereas the term "rates" relates to the prices to be paid for the air transportation of cargo. The wider term "tariffs" means the prices to be paid for the air transportation of passengers, baggage and cargo, and the conditions under which those prices apply, often including prices and conditions for agency and other auxiliary services.[205]

That explanation leads to the definitions and suggestions for the standard bilateral tariff clause developed

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204. *Supra* note 1, at p. 1. It should be noted that "tariffs" is generally a wider notion including not only "rates and fares", but also conditions of carriage, classifications, rules, regulations, practices and services related thereto.

205. *Ibid.*

by ICAO:[206]

Definition of the term "tariff"

1. In the following paragraphs the term "tariff" means the prices or charges to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices or charges apply, including prices or charges and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.

Tariff levels - relevant factors

2. The tariffs to be applied by the designated airline or airlines of a Contracting Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, characteristics of service, commission rates, reasonable profit, and tariffs of other airlines.

Airline responsibility for agreeing on tariffs

3. The tariffs referred to in paragraph 2 of this Article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, after discussion with their respective governments and consultation, if applicable, with other airlines.

Mechanism for agreeing on tariffs

4. Such agreement referred to in paragraph 3 of this Article shall, wherever possible, be reached by the use of the appropriate international rate fixing mechanism.

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206. *Policy and guidance material on international air transport regulation and tariffs*, Doc. 9440, ICAO, 1st edition 1984, 54, at pp. 31 to 33.

Submission of tariffs

5. The tariffs agreed in accordance with paragraphs 3 and 4 of this Article including joint tariff agreements presented by a single airline on behalf of all airlines concerned, shall be submitted for the approval of the aeronautical authorities of both Contracting Parties, together with such justification as the aeronautical authorities of the Contracting Parties may require, at least sixty days before the proposed date of introduction of the tariffs. In special cases this period may be reduced, subject to the agreement of the said authorities.

Approval of tariffs

6. Approval or disapproval shall be given expressly within sixty days from the date of submission. In the event of the period of submission being reduced in accordance with paragraph 5 of this Article, the aeronautical authorities may agree that the period within which approval or disapproval shall be given be reduced accordingly (see Note 1).

[or]

6. Approval may be given expressly. However, if neither of the aeronautical authorities of the Contracting Parties has expressed disapproval of the proposed tariffs within a reasonable period, if possible within thirty days from the date of submission, these tariffs shall be considered approved. In the event of the period for submission being reduced in accordance with paragraph 5 of this Article the aeronautical authorities may agree that the period within which any disapproval must be notified shall also be reduced accordingly.

Duration of established tariffs

7. A tariff established in accordance

with the provisions of this Article shall remain in force until a new tariff has been established. However a tariff shall not be prolonged for more than twelve months after the date on which it otherwise would have expired (see Note 2).

Determination of tariffs in the event of

8. If a tariff cannot be agreed in accordance with paragraphs 3 and 4 of this Article, or if during the period applicable in accordance with paragraph 6 of this Article a notice of disapproval has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves.

Settlement of disputes

9. If the aeronautical authorities of the Contracting Parties cannot determine a tariff in accordance with paragraph 8 of this Article the dispute shall be settled in accordance with the provisions of Article of this Agreement for the settlement of disputes.

Enforcement of tariffs

10. The Contracting Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis (see Note 2).

Notes:

1) Two alternatives for paragraph 6 are shown to take account of the fact that policy and legislative differences

exist among Contracting States on the manner of approval of submitted tariffs.

2) The term "established", occurring in paragraphs 7 and 10, is intended to mean that the tariff has been approved and has entered into force.

This model clause was a step towards multilateralism in the field of international ratemaking. The initiative was taken by the ICAO Assembly during its Twenty-First Session, held at Montréal in September and October, 1974. The *Standard Bilateral Tariff Clause* has been approved by the ICAO Council, on 8 March 1978, after fairly extensive studies. "ICAO Council opted for the first alternative and adopted (...) a language intended as a guideline to States, for optional use and adaptation to particular situations."[207]

A more important step in the determination of international tariffs has been the creation of a multilateral ratemaking system by IATA also known as the IATA Tariff Conferences or Tariff Coordinating machinery. The first recognition of this ratemaking machinery was in the

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207. Azzie, R., "Second Special Air Transport Conference and Bilateral Air Transport Agreements", (1980) 5 AASL, ICASL (McGill University), 3-15, at p. 10.

Bermuda I.[208] It is organized on a regional basis, and participating member airlines must establish the fares unanimously. However, since 1978, numerous carriers, among them several American airlines, withdrew from the IATA Tariff Conferences: they have implemented new fares on their own.[209]

Given these facts, IATA, as the world's principal airline industry association, still plays an important role

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208. *Supra* note 15. See Annex I, Article 10. "...the IATA's fare coordination activities had legal effect only so far as they were sanctioned in individual BATAs, so it was the system of bilateral agreements which in fact became the prime source of norms for the economic regulation of international civil aviation", in Sion, G.L., *supra* note 25, at p. 159.

209. On June 9, 1978, the CAB show cause order disapproved the IATA Traffic Conference Provisions and related IATA resolutions, and thus to deprive those activities of immunity from the application of U.S. anti-trust laws.
In Gertler, J., "Order in the Air and the Problems of Real and False Options", (1979) 4 AASL, ICASL (McGill University), 93-125, at p. 97.
Also,
During the mid-1970's, however, cracks began to appear in the IATA structure. Airlines began to voice discontent with the "unanimity rule", under which no fares or rates could become the subject of an IATA Traffic Conference Resolution unless all participants at the Traffic Conference meeting agreed to them. (...) The "private", *i.e.*, non-governmental, multilateral ratemaking system established in 1945 seemed to be on the verge of collapse in the late 1970's.
in Sion, G.L., *supra* note 25, at pp. 183 and 184.

in international airline operations through its ratemaking functions alone.[210]

Beginning with the U.S.-U.K. *Bermuda I* agreement, states have recognized in their bilateral air agreements the role of the International Air Transport Association (IATA) in setting international air fares and rates through its Tariff Coordinating machinery. The Tariff Conferences cover these areas: (1) Western Hemisphere, Greenland, the Hawaiian Islands, (2) Europe, Africa, the Middle East including Iran and (3) Asia, Australia and the Pacific Islands. The decisions on fares and rates reached at these conferences are in the form of resolutions which are in fact agreements among IATA member airlines. These resolutions, however, are subject to approval by the governments concerned.

In Canada,

> Le mécanisme est en gros le suivant. Les pays qui conviennent d'établir des liens aériens désignent des transporteurs, qui s'entendent, dans le cadre de l'IATA,

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210. Additionally, IATA provides its members with a wide-range of services relating, for example, to technical and legal matters; facilitation (customs, immigration, health and other border-crossing procedures and requirements); clearing house for the settlement of inter-airline accounts; standardization of passenger, baggage and cargo handling; interline sales and other agreements or arrangements. IATA also actively participates in the work of the International Civil Aviation Organization in the technical, facilitation and economic fields, with Observer status.

> sur des tarifs et conditions. Chacun les dépose auprès de son gouvernement, plus précisément à la CCT dans le cas du Canada.[211]

However,

> Même si les ententes sont encore en vigueur, le "système" est devenu très flexible et, en fait, la libéralisation est très poussée, sous l'influence des Américains, confirme Harry Atterton, porte-parole de l'IATA (Association du transport aérien international) à Montréal. (...)
>
> De plus, comme l'indique M. Atterton de l'IATA, les gouvernements ne veulent plus faire appliquer les règles avec une poigne de fer comme avant.[212]

Canada presumably recognized the IATA machinery from the early post-war period because of its belief in the merits of a uniform world air transport system and because Canadian authorities had no objection *per se* to industry rate-making in the international field.

From the standpoint of passenger convenience in terms of through fares, it would appear that inter-governmental tariff agreements on a multilateral basis, if they are possible, represent the only alternative to the IATA rate-making procedures.

One explanation of the difficulties impeding IATA

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211. Gauthier, G., "Les agents font plier les compagnies d'avions", (14 June 1986) La Presse, Montréal, p. I-5.

212. *Ibid.*

from applying its tariff structures multilaterally is provided by Mr. Wassenbergh:

> It is obvious that agreements within IATA on multilateral tariff structures which require IATA members to exclude themselves from certain markets will be difficult to achieve. The existence of these discriminatory fare types contribute largely to the decreasing role of IATA as the forum for developing multilateral pricing structures.[213]

Canada's acceptance of the IATA regime has not prevented Canadian airlines from initiating non-IATA fares. The proposals for charter-competitive discount fares on the North Atlantic were approved bilaterally after the IATA traffic conference had failed to agree on their adoption.

As a matter of fact, in the beginning of the 1980's airlines were going through a so-called "tariff revolution":

> The novelty is the inclusion of tariffs in bilateralism. Bilateral agreements, which are already complex in their contents and in the pattern they form, are thus taking on an increased dimension and authority. And the upgrading process is confirmed by new terminology: there is now talk of "tariff rights", an expression which has so far been unusual, is still somewhat strange and was not current in the old

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213. Wassenbergh, H.A., "Reflections on the Sixth Freedom Question", in, see *infra* note 268, The Netherlands Colloq., at p. 194.

IATA multilateral system.[214]

Usually, in Canadian BATAs, recourse to IATA's ratemaking machinery is optional. A majority of the BATAs stipulates that carriers, in determining their tariffs to be submitted to aeronautical authorities for approval, may use or shall use wherever possible (or whenever possible) the ratemaking machinery of IATA. A few BATAs instead refer to "the international body which formulates proposals in this matter". Some do not mention any reference to a ratemaking machinery and delegate it simply to the designated airlines involved, subject to prior governmental approval.

> It is most fortunate that very few bilateral air transport agreements have made the use of IATA's Traffic Conferences compulsory. (...) Bilateral agreements provide for alternate ratemaking procedures in the event of a breakdown of the IATA machinery, non-availability of the machinery or governmental disapproval of IATA tariffs".[215]

Now, what is the contemporary situation of Canada in regard of tariff clauses? To what extent has it changed? In conformity with the deregulation movement in air trans-

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214. Wessberge, E., "Reciprocity in Air Transport Bilaterals: Realities, Illusions and Remedies - Part Two: Tariff Discrimination and the Plurilateral Approach", (5 October 1981), 33 ITA Magazine, 857-861, at p. 857. See also, Jönsson, C., "Sphere of Flying: The Politics of International Aviation", (1981) 35 International Organization (University of Wisconsin), 273-302.

215. Haanappel, P.P.C., *supra* note 19, at p. 256.

portation, Canadian policies concerning the negotiation of the tariff clauses in BATAs depart from the traditional pattern and require new approaches for their implementation and administration.

Until very recently, the bilateral tariff clauses were based on the following main principles:

- Mandatory or optional agreement on tariffs between the designated airlines prior to submission;
- Possibility of using the IATA mechanism;
- Government control over tariffs in the form of single disapproval, *i.e.* the aeronautical authorities of both countries had to accept the tariffs;
- No special provision for tariff matching;
- No distinction between tariffs on third/fourth, and fifth freedom sectors.

The increased emphasis in recent years on market forces and competition in international air relations prompted the introduction of different formulas, like a system of zones of tariff flexibility (subject to "double disapproval") combined with single disapproval of fares outside zones,[216] or extensive tariff matching provi-

216. As with Barbados and St. Kitts (18-11-85).

sions,[217] or a double disapproval system for certain tariffs for 3rd/4th freedom carriage.[218]

It has to be underlined that control and compliance with tariffs established under bilateral air transport agreements are usually exercised by the aeronautical authorities of both Contracting Parties under their own national law and regulations.[219]

In response to new developments and innovative bilateral tariff systems, the Canadian aeronautical authorities have to consider their approach to government controls over tariffs of a new type in the following context:

- Clarification of criteria to determine genuine and *bona fide* matching;
- Evaluation on the basis of experience of relative benefits and disbenefits of different formulas for the establishment of a reference base for tariff zones;
- Monitoring of developments, and fine tuning of the system of travel restrictions associated

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217. With the Netherlands (17-06-74).

218. With Belgium (25-09-85).

219. Martono, K., *Routs, Capacity and Tariff Clauses of Selected Bilateral Air Transport Agreements Concluded by Indonesia*, LL.M. Thesis submitted to McGill University (IASL), February 1980, 245, at p. 174.

with deep discount (charter competitive) fares;

- Application of tariff clauses in a situation of multiple designation of airlines (more than one carrier designated by one or both Parties).

For the future, the Canadian "aeronautical authority", in the meaning of bilateral air agreements responsible for the implementation and administration of bilateral tariff clauses, will study the situation created by these new types of tariff regimes, and will endeavour to approach the matter in a flexible pro-competitive fashion in conformity with government policy.

Despite what has been said above, most of the Canadian BATAs in force are based on the traditional tariff clauses scheme, and a "typical" tariff clause thus would contain *inter alia* the following:

> tariffs shall be established at reasonable levels, due regard being paid to all relevant factors such as cost of operation, reasonable profit, characteristics of service, tariffs of other airlines; tariffs shall be agreed upon between the designated airlines, whenever possible through I.A.T.A.; shall be submitted to the aeronautical authorities of the Contracting Parties at least forty-five days before the proposed date of their introduction; in the absence of Governmental dissatisfaction with the tariffs as filed, they shall come into force on the expiration of the forty-five-day period; in the event of Governmental dissatisfaction the aeronautical authorities of the Contracting Parties shall try to

> determine the tariffs by agreement between themselves and if no agreement is possible, the matter shall be resolved through negotiation or arbitration; in the latter case the previous tariffs shall remain in force until new ones have been established.[220]

Seven examples of tariff clauses included in the Canadian BATAs are now provided. The reader will notice some important or slight differences between the seven alternatives.

1) Canada-Portugal:

> 1. The tariffs for carriage on agreed services to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and, where it is deemed suitable, the tariffs of other airlines for any part of the specified route.
>
> 2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the international tariff coordination mechanism of the International Air Transport Association. Unless otherwise determined in the application of paragraph

220. In *Legal, Economic and Socio-political Implications of Canadian Air Transport, supra* note 53, at p. 549.

4 of this Article, each designated airline shall be responsible only to its aeronautical authorities for the justification and reasonableness of the tariffs so agreed.

3. The tariffs so agreed shall be submitted to and received by the aeronautical authorities of the Contracting Parties at least forty-five (45) days before the proposed date of their introduction; in special cases, a shorter period may be accepted by the aeronautical authorities. If within thirty (30) days from the date of receipt the aeronautical authorities of one Contracting Party have not notified the aeronautical authorities of the other Contracting Party that they are dissatisfied with the tariff submitted to them, such tariff shall be considered to be acceptable and shall come into effect on the date stated in the proposed tariff. In the event that a shorter period for the submission of a tariff is accepted by the aeronautical authorities, they may also agree that the period for giving notice of dissatisfaction be less than thirty (30) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 2 of this Article, or if during the period applicable in accordance with paragraph 3 of this Article a notice of dissatisfaction has been given, the aeronautical authorities will be held in accordance with Article XIX of this Agreement.

5. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 4 of this Article the dispute shall be settled in accordance with the provisions of Article XXI of this Agreement.

6. (a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it

except under the provisions of paragraph 3 of Article XXI of this Agreement.

(b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article or Article XXI of this Agreement.

7. If the aeronautical authorities of one of the Contracting Parties becomes dissatisfied with an established tariff they shall so notify the aeronautical authorities of the other Contracting Party and the designated airlines shall attempt where required, to reach an agreement. If within the period of ninety (90) days from the day of receipt of such notification, a new tariff cannot be established in accordance with the provisions of paragraphs 2 and 3 of this article, the procedures as set out in paragraphs 4 and 5 of this Article shall apply.

8. The aeronautical authorities of both Contracting Parties shall endeavour to ensure that (A) the tariffs charged and collected conform to the tariffs accepted by both aeronautical authorities and (B) no airline rebates any portion of such tariffs by any means.

2) Canada-New Zealand:

1. The tariffs for carriage on agreed services to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, the interests of users, reasonable profit, characteristics of service (such as standards of speed and accommodation) and, where it is deemed suitable, the tariffs of other airlines for any part of the specified

route.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon, if possible, between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the international tariff coordination mechanism of the International Air Transport Association. However, a designated airline shall not be precluded from filing any proposed tariff unilaterally if circumstances so warrant. Unless otherwise determined in the application of paragraph 5 of this Article, or where a proposed tariff has been unilaterally filed, each designated airline shall be responsible only to its aeronautical authorities for the justification and reasonableness of the tariffs so proposed.

3. Any tariffs for an agreed service shall be filed with the aeronautical authorities of both Contracting Parties at least 60 days prior to the proposed effective date unless the aeronautical authorities of both Contracting Parties permit the filing to be made on shorter notice. Any proposed tariff shall be filed by a designated airline with the aeronautical authorities of both Contracting Parties in such form as the aeronautical authorities of each Contracting Party may require.

4. If the aeronautical authorities of one Contracting Party, on receipt of any filing referred to in paragraph 3 of this Article, are dissatisfied with the tariff proposed, they shall so notify the aeronautical authorities of the other Contracting Party within 30 days from the date of receipt of such tariff, but in no event less than 15 days prior to the proposed effective date of such tariff. If notification of dissatisfaction is not given as provided in this paragraph, the tariff shall be deemed to be approved by the aeronautical authorities of the Contracting Party receiving the filing and

shall become effective on the proposed date.

5. If a tariff cannot be established in accordance with the provisions of paragraph 2 of this Article or if during the period applicable in accordance with paragraph 4 of this Article a notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves. Consultations between the aeronautical authorities will be held in accordance with Article XVIII of this Agreement.

6. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 5 of this Article the dispute shall be settled in accordance with the provisions of Article XX of this Agreement.

7. (a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph 3 of Article XX of this Agreement.

(b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article or Article XX of this Agreement.

8. If the aeronautical authorities of one of the Contracting Parties become dissatisfied with an established tariff, they shall so notify the aeronautical authorities of the other Contracting Party and the designated airlines shall attempt, where required, to reach an agreement. If within the period of ninety (90) days from the day of receipt of such notification, a new tariff cannot be established in accordance with the provisions of para-

graphs 2 and 3 of this article, the procedures as set out in paragraphs 5 and 6 of this Article shall apply. In no circumstances however, shall a Contracting Party require a different tariff from the tariff of its own designated airline for comparable services between the same points.

9. The tariffs charged by the designated airline(s) of one Contracting Party for carriage between the territory of the other Contracting Party and the territory of a third State involving also points other than on agreed services shall be subject to the approval of the aeronautical authorities of the other Contracting Party and such third State; provided, however, that the aeronautical authorities of a Contracting Party shall not require a different tariff from the tariff of its own airlines for comparable service between the same points. The designated airlines of each Contracting Party shall file such tariffs with the aeronautical authorities of the other Contracting Party in accordance with their requirements. Approval of such tariffs may be withdrawn on not less than 15 days' notice.

3) Canada-Greece and Canada-Yugoslavia:

1. The tariffs for carriage on agreed services to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and, where it is deemed suitable, the tariffs of other airlines for any part of the specified route.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon between the designated airlines of the

Contracting Parties; such agreement shall be reached, whenever possible, through the international tariff coordination mechanism of the International Air Transport Association. Unless otherwise determined in the application of paragraph 4 of this Article, each designated airline shall be responsible only to its aeronautical authorities for the justification and reasonableness of the tariffs so agreed.

3. The tariffs so agreed shall be submitted to the aeronautical authorities of the Contracting Parties at least forty-five (45) days before the proposed date of their introduction; in special cases, a shorter period may be accepted by the aeronautical authorities. If within thirty (30) days from the date of submission the aeronautical authorities of one Contracting Party have not notified the aeronautical authorities of the other Contracting Party that they are dissatisfied with the tariff submitted to them, such tariff shall be considered to be acceptable and shall come into effect on the expiration of the forty-five (45) day period mentioned above. In the event that a shorter period for the submission of a tariff is accepted by the aeronautical authorities, they may also agree that the period for giving notice of dissatisfaction be less than thirty (30) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 2 above, or, if during the period applicable in accordance with paragraph 3 above a notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of

Article 19 of the present Agreement.

6. (a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph 3 of Article 19 of the present Agreement.

(b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

7. If the aeronautical authorities of one of the Contracting Parties become dissatisfied with an established tariff, they shall so notify the aeronautical authorities of the other Contracting Party and the designated airlines shall attempt, where required, to reach an agreement. If within the period of ninety (90) days from the day of receipt of such notification a new tariff cannot be established in accordance with the provisions of paragraphs 2 and 3 of this article, the procedures as set out in paragraphs 4 and 5 of this Article shall apply.

8. The competent authorities of both Contracting Parties shall endeavour to ensure that (A) the tariffs charged and collected conform to the tariffs accepted by both aeronautical authorities and (B) no airline rebates any portion of such tariffs by any means.

4) Canada-India:

1. The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable

profits, and where it is deemed suitable, the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed by the designated airlines concerned for both Contracting Parties, and such agreement shall, whenever possible, be reached by the use of the procedure of the International Air Transport Association for the working out of tariffs.

3. The tariffs so agreed shall be submitted for the acceptance of the aeronautical authorities of both Contracting Parties at least forty-five (45) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.

4. This acceptance may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 3 of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph 3, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

5. If a tariff cannot be agreed in accordance with paragraph 2 of this Article, or if, during the period applicable in accordance with paragraph 4 of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph 2 the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual agreement.

6. If the aeronautical authorities cannot agree on any tariff submitted to them

under paragraph 3 of this Article, or on the determination of any tariff under paragraph 5 of this Article, the dispute shall be settled in accordance with the provisions of Article XX of this Agreement.

7. (a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of Article XIX of this Agreement.

(b) When tariffs have been established in accordance with the provisions of this Article, those tariffs have been established in accordance with the provisions of this Article or Article XIX of this Agreement.

8. If the aeronautical authorities of one of the Contracting Parties becomes dissatisfied with or wishes to review an established tariff they shall notify the aeronautical authorities of the other Contracting Party and the designated airlines shall attempt where required to reach an agreement. Should the designated airlines fail to agree, the procedures as set out in paragraph 5 and 6 of this Article shall apply.

9. The aeronautical authorities of both Contracting Parties shall endeavour to ensure that (A) the tariffs charged and collected conform to the tariffs accepted by both aeronautical authorities and (B) no airline rebates any portion of such tariffs by any means.

5) Canada-Romania:

1. The tariffs for carriage to and from the territory of the other State shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable

profit, characteristics of service and, where it is deemed suitable, the tariffs of other airlines for any part of the specified route.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the rate-setting procedures of the International Air Transport Association.

3. The tariffs so agreed shall be submitted to and received by the aeronautical authorities of the Contracting Parties at least forty-five (45) days before the proposed date of their introduction; in special cases. a shorter period may be accepted by the aeronautical authorities. If within thirty (30) days from the date of receipt the aeronautical authorities of one Contracting Party have not notified the aeronautical authorities of the other Contracting Party that they are dissatisfied with the tariffs submitted to them, such tariff shall be considered to be acceptable and shall come into effect on the date stated in the proposed tariff. In the event a shorter period for submission of a tariff is accepted by the aeronautical authorities, they may agree that the period for giving notice of dissatisfaction be less than thirty (30) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 2 of this Article, or if during the period applicable in accordance with paragraph 3 of this Article a notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under

paragraph 4 of this Article the dispute shall be settled in accordance with the provisions of Article XVIII of this Agreement.

6. a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph 3 of Article XVIII of this Agreement.

b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article or Article XVIII of this Agreement.

7. If the aeronautical authorities of one of the Contracting Party becomes dissatisfied with or wishes to review an established tariff they shall notify the aeronautical authorities of the other Contracting Party and the designated airlines shall attempt where required to reach an agreement. Should the designated airlines fail to agree, the procedures as set out in paragraphs 4 and 5 of this Article shall apply.

8. The aeronautical authorities of both Contracting Parties shall endeavour to ensure that (A) the tariff charged and collected conform to the tariffs accepted by both aeronautical authorities and (B) no airline rebates any portion of such tariffs by any means.

6) Canada-Singapore:

1. The tariffs for carriage on any agreed service to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operating the service,

characteristics of the service and the interest of users, reasonable profit and, where it is deemed suitable, the tariffs of other airlines operating over all or part of the same route.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the international tariff coordination mechanism of the International Air Transport Association. Unless otherwise determined in the application of paragraph 4 of this Article, each designated airline shall be responsible only to its Aeronautical Authorities for the justification and reasonableness of the tariffs so agreed.

3. The tariffs so agreed shall be submitted to and received by the Aeronautical Authorities of the Contracting Parties at least sixty (60) days before the proposed date of their introduction; in special cases, a shorter period may be accepted by the Aeronautical Authorities. If within forty-five (45) days from the date of receipt the Aeronautical Authorities of one Contracting Party have not notified the Aeronautical Authorities of the other Contracting Party that they are dissatisfied with the tariff submitted to them, such tariff shall be considered to be acceptable and shall come into effect on the date stated in the proposed tariff. In the event that a shorter period for the submission of a tariff is accepted by the Aeronautical Authorities, they may also agree that the period for giving notice of dissatisfaction be less than forty-five (45) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 2 of this Article, or if during the period applicable in accordance with paragraph 3 of this Article a notice of dissatisfaction has been given, the Aeronautical Authorities of the Contracting

Parties shall endeavour to determine the tariff by agreement between themselves. Consultations between the Aeronautical Authorities will be held in accordance with Article XIX of this Agreement.

5. If the Aeronautical Authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 4 of this Article the dispute shall be settled in accordance with the provisions of Article XXI of this Agreement.

6. (a) No tariff shall come into force if the Aeronautical Authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph 3 of Article XXI of this Agreement.

(b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article or Article XXI of this Agreement.

7. If the Aeronautical Authorities of one of the Contracting Parties become dissatisfied with or wishes to review an established tariff, they shall so notify the Aeronautical Authorities of the other Contracting Party and the designated airlines shall attempt where required to reach an agreement. If within a period of 30 days from the day of the receipt of such notification, a new tariff cannot be established in accordance with the provisions of paragraphs 2 and 3 of this Article, the Aeronautical Authorities of both Contracting Parties shall endeavour to determine the tariff by agreement between themselves, and if they cannot reach an agreement, the dispute shall be settled in accordance with the provisions of Article XXI of this Agreement.

7) Barbados-Canada:

1. The tariffs to be applied by the designated airline of the Contracting Party for carriage on agreed services to or from the territory of the other Contracting Party 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 on the same routes.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon between the designated airlines of the Contracting Parties and filed concurrently by both airlines with the aeronautical authorities of both Contracting Parties.

3. The tariffs so agreed shall be submitted by the designated airlines for acceptance of or approval by the aeronautical authorities of the Contracting Parties at least seventy-five (75) days before the proposed date of their introduction; in special cases, a shorter period may be accepted by the aeronautical authorities. If within thirty (30) days from the date of receipt the aeronautical authorities of one Contracting Party have not notified the aeronautical authorities of the other Contracting Party that they are dissatisfied with the tariff submitted to them, such tariff shall be considered to be accepted or approved and shall come into effect on the date stated in the proposed tariff. In the event that a shorter period for the submission of a tariff is accepted by the aeronautical authorities, they may also agree that the period for giving notice of dissatisfaction be less than thirty (30) days. When the reason for an increase in tariffs is related solely to cost increases beyond the control of the airlines such as increased fuel costs or user charges, every effort shall be made by the aeronautical authori-

ties to provide for a shorter period than seventy-five (75) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 2 of this Article, or, if during the period applicable in accordance with paragraph 3 of this Article a notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves within twenty-five (25) days.

5. If a tariff cannot be determined in accordance with paragraph 4 of this Article, then the Contracting Parties shall endeavour to settle the matter within twenty (20) days.

6. Except as provided in paragraph 7 of this Article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have given notice of dissatisfaction in accordance with the provisions of paragraph 3 of this Article.

7. Notwithstanding paragraph 6 of this Article, passenger tariffs filed in accordance with paragraph 3 of this Article shall be permitted to come into effect on the date proposed, unless both aeronautical authorities or Contracting Parties agree otherwise, provided that the said tariffs are

(a) at least seventy (70) percent but not more than one hundred and fifteen (115) percent of the reference fare in effect on the date the tariff is received,

(b) at least forty (40) percent but not more than seventy (70) percent of the said reference fare and are subject to

(i) minimum conditions of fourteen (14) days advance booking and first Sunday minimum stay,

(ii) mandatory ground package, or

(iii) such other travel conditions as may from time to time be agreed upon between the aeronautical authorities, or

(c) first class, premium class tariffs or contract bulk inclusive tour (CBIT) tariffs.

8. For the purpose of paragraph 7 of this Article, the "reference fare" shall be the lowest publicly available unrestricted fare expressed in the currencies of both Contracting Parties for each Canada-Barbados city pair named in the Agreement in effect on the date of signature of the Agreement. The reference fare for each Canada-Barbados city pair shall subsequently be revised automatically effective January 1, April 1, July 1 and October 1 of each year. The revised reference fare shall be determined by multiplying the lowest publicly available unrestricted fares over the previous twelve months by the number of days each fare was in effect and dividing the result by the total number of days in the twelve month period, rounded to the nearest dollar. The provisions of this paragraph shall apply unless the aeronautical authorities of both Contracting Parties otherwise agree.

9. 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 or of Article XXII of this Agreement.

10. The aeronautical authorities of both Contracting Parties shall endeavour to ensure that (a) the tariffs charged and collected conform to the tariffs accepted or approved by both aeronautical authorities and (b) no airline rebates any portion of such tariffs by any means.

As the reader may have noticed, except for Barbados-Canada, the differences among the various tariff clauses are not often of a substantial nature. This work would not have been complete, though, if the reader could not see these differences: they can be in the wording, the time-limits, certain filing conditions, etc.

An important element to remember, (following this lengthy description of the tariff clauses) is that tariffs and capacity are the cornerstone of all bilateral negotiations in the field of commercial aviation. And even though "ICAO is and will probably remain a valuable multilateral forum to discuss and reflect upon worldwide air transport issues, including questions of pricing and capacity determination",[221] and even if the IATA ratemaking machinery is largely used, "it seems that *bilateralism* will remain the major key to the regulation of tariffs and capacity in international air transport."[222]

o) Sales and Transfer of Funds

The most common wording of the first paragraph in regard of sales and transfer of funds is:

221: Haanappel, P.P.C., *supra* note 1, at p. 177.

222. *Ibid.*, at p. 178.

1. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion through its agents. Such airlines shall have the right to sell such transportation, and any person shall be free to purchase such transportation in the currency of that territory or in freely convertible currencies of other countries.

[or] it could be drafted, as with New Zealand:

1. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion through its agents. Such airlines shall have the right to sell such transportation, and any person shall be free to purchase such transportation in the currency of that territory or with the concurrence of such airlines or their agents in freely convertible currencies of other countries.

[or] as with Yugoslavia:

1. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion through its agents, in conformity with the national law of that Contracting Party.

[or] as with Romania:

1. The rules and procedures relating to the sale of air transportation by the designated airline of either Contracting Party in the territory of the other Contracting Party shall be mutually agreed upon by both designated airlines, in accordance with its national laws and subject to the approval of the appropriate authorities of both Contracting Parties.

[or] as with Barbados:

1. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. Each designated airline shall have the right to sell such transportation in the currency of that territory or, at its discretion but subject to national laws and regulations, in freely convertible currencies of other countries and any person shall be free to purchase such transportation in currencies accepted for sale by that airline.

[and]

2. Each designated airline shall have the right to convert and remit to its country on demand funds obtained in the normal course of its operations. Conversion and remittance shall be permitted without restrictions at the foreign exchange market rates for current payments prevailing at the time of submission of the request for transfer and shall not be subject to any charges except normal service charges collected by banks for such transactions.[223]

[or]

2. Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of funds obtained in the normal course of its operations. Such transfers shall be effected in accordance with celevant national regulations relating to foreign currency exchange at the time of the transfer and shall not be subject to any charges except those normally collected by banks for such transactions.[224]

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223. As with Portugal, St. Lucia and Singapore.

224. With India.

[or]

2. Each designated airline shall have the right to convert and remit to its country on demand at the official rate of exchange, the excess of receipts over expenditures achieved in connection with the carriage of passengers, cargo and mail. Conversion and remittance shall be permitted without restrictions at the foreign exchange (market) rates for current payments prevailing at the time of remittance and shall not be subject to any charges except normal service charges collected by banks for such transactions.[225]

[or]

2. Each designated airline shall have the right to convert and remit to its country on demand funds obtained in the normal course of its operations. Conversion and remittance shall be permitted without restrictions at the foreign exchange market rates for current payments prevailing in the country where conversion is effected at the time of submission of the request for transfer and shall not be subject to any charges except normal service charges collected by banks for such transactions.[226]

[or]

2. Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of funds obtained in the course of its operations. Such transfers shall be effected freely on the basis of the foreign exchange rates applicable to current payments prevailing at the time of the transfer and shall be subject only to

225. With Greece.

226. With Yugoslavia.

the respective foreign currency regulations applicable to all countries in like circumstances. The transfer of funds shall not be subject to any charges except those normally collected by banks for such transactions.[227]

[or]

2. Each designated airline shall have the right to convert and remit to its country on demand funds obtained in the normal course of its operations subject to respective foreign currency regulations applicable to all countries in like circumstances. Conversion and remittance shall be permitted without restrictions at the foreign exchange market rates for current payments prevailing at the time of submission of the request for transfer and shall not be subject to any charges except normal service charges collected by banks for such transactions.[228]

[or]

2. Each designated airline shall have the right to convert and remit to its country on demand revenues in excess of sums locally disbursed. Conversion and remittance shall be effected in accordance with the laws and regulations of the Contracting Party concerned, uniformly and reasonably applied, at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance. The transfer of funds shall not be subject to any charges except those normally collected by banks for such operations.[229]

[or]

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227. With Romania.

228. With Barbados.

229. With New Zealand.

> Each Contracting Party grants to the airline of the other Contracting Party the right of free transfer of funds obtained in the normal course of its operations. Such transfers shall be effected on the basis of the foreign exchange market rates for currency payments prevailing at the time of the transfer and shall be subject only to the respective foreign currency regulations applicable to all countries in like circumstances. The transfer of funds shall not be subject to any charges except those normally collected by bank for such operations.[230]

p) Taxation

IATA adopted in 1981 a model tax clause for BATAs:[231]

> In accordance with the International Civil Aviation Organization's Policies on Taxation in the field of International Air Transport:
> a) Income and profits obtained by an airline of one Contracting Party in the territory of the other Contracting Party, derived from the operation of aircraft in international traffic including participation in pool or joint agreements with an airline of the other Contracting Party, shall be exempt from any income tax imposed by the government of that other Contracting Party;
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> b) Each Contracting Party shall exempt an

230. With Morocco.

231. IATA's 47th Sub-Committee Meeting, Montréal, Oct. 8 and 9, 1981.

airline of the other Contracting Party from all forms of taxation on the sale or use of international air transportation including taxes on gross receipts of operators and taxes levied directly on passengers and shippers; and

c) Each Contracting Party shall exempt an airline of the other Contracting Party from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges, property taxes and capital levies on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including beverages, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for or used solely in connection with the operation or servicing of aircraft in international traffic of an airline of such other Contracting Party.

The exemptions provided by this paragraph shall apply to the items referred to above:

i) introduced into the territory of one Contracting Party by or on behalf of an airline of the other Contracting Party;

ii) retained on board aircraft of an airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;

iii) taken on board aircraft of an airline of one Contracting Party in the territory of the other Contracting Party and intended for use in international traffic.

Canadian aeronautical authorities drafted three alternative texts as tax exemption clauses. The first is:

1) Income or profits from the operation of an

> aircraft in international traffic derived by the designated airline of one Contracting Party in the territory of the other Contracting Party, shall be exempt from any income tax and all other taxes on profits imposed by that other Contracting Party.

This is the usual language; see, for instance, Article XIV of Canada-Poland (14-05-76). There is a weakness in this text. The limitation of exemptions only applies to income (profits) that comes from the operation of aircraft in international traffic; meaning that revenues from sales of connecting intra-Canadian services, or from interline sales of any connecting domestic air services, would not be exempted. In practice though, there is no major difficulty since revenues are, in this sense, uneasily separable.

The second and third alternatives are:

2) Income or profits from the operation of air services, derived by the designated airline of one Contracting Party in the territory of the other Contracting Party, shall be exempt from any income tax and all other taxes on profits imposed by that other Contracting Party.

[or]

Income or profits from the operation of aircraft in international traffic derived by an airline, which is resident for purposes of income taxation in the territory of one Contracting Party, shall be exempt from any income tax and all other taxes on profits imposed by the government of the

other Contracting Party.[232]

3) Income or profits from the sale of air transportation derived by the designated airline of one Contracting Party in the territory of the other Contracting Party, shall be exempt from any income tax and all other taxes on profits imposed by that other Contracting Party.

These two alternatives attempt to correct the deficiency noted above. Finally, another wording is used in the Canada-Singapore BATA:

> Revenue obtained by the designated airline of one Contracting Party in the territory of the other Contracting Party from the operation of international air services shall be exempted from taxation to the fullest extent permitted, and in conformity with the conditions established by national law.

q) Stationing of Airline Representatives

These provisions stipulate a permission for Canadian designated airlines to station their own personnel in the other country for the purpose of selling tickets, maintenance of aircraft, etc. Any such provisions are of course reciprocal. Different wordings are used in various Canadian BATAs:

> 1. The designated airline of one Contracting Party shall be allowed, on the basis of reciprocity to maintain in the

232. This wording is used in some Canadian BATAs such as those with Barbados, Morocco, Portugal, Romania and St. Lucia.

territory of the other Contracting Party its representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.

2. These staff requirements may, at the option of the designated airline, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Contracting Party, and authorized to perform such services in the territory of that Contracting Party.

3. Such representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party and consistent with such laws and regulations each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary work permits, employment visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article.

4. Both Contracting Parties shall dispense with the requirement of work permits or employment visas or other similar documents for personnel performing certain temporary services and duties except in special circumstances determined by the national authorities concerned. Where such permits, visas or documents are required, they shall be issued promptly free of charge so as not to delay the entry into the State of the personnel concerned.[233]

[or]

4. Where work permits or employment visas or other similar documents are required and are granted for personnel performing

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233. These last four paragraphs are in Barbados-Canada, Canada-Portugal and Canada-St. Lucia.

certain temporary services and duties, they shall be issued promptly free of charge so as not to delay the entry into the State of the personnel concerned.[234]

[and]

5. The designated airline of one Contracting Party may provide ground handling services for other Airlines operating at the same airport in the territory of the other Contracting Party.[235]

[or] in a different set of four paragraphs:

1. The designated airline of one Contracting Party shall be allowed, on the basis of reciprocity, to maintain in the territory of the other Contracting Party its representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.

2. Such representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party and consistent with such laws and regulations each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary work permits, employment visas or other similar documents to the representatives referred to in paragraph 1 of this Article.

3. Both Contracting Parties shall dispense with the requirement of work permits

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234. Canada-New Zealand has the same paragraphs 1, 2 and 3 (except for a few minor differences in the wording) and ends with this fourth paragraph instead.

235. This fifth paragraph is in Barbados-Canada and Canada-St. Lucia.

or special working visas for personnel performing certain temporary services and duties except in special circumstances determined by the National Authorities concerned. Where such work permits are required, they shall be issued promptly free of charge so as not to delay the disembarkation and entry into the State of the personnel concerned.

4. These staff requirements may, at the option of the designated airline, be satisfied by its own personnel or by using the services of any other competent organization, company or airline operating in the territory of the other Contracting Party, and authorized to perform such services in the territory of that Contracting Party. Notwithstanding this provision, should a designated airline choose not to provide its own ground and ramp handling services, it shall only use the services of an organization approved by the aeronautical authorities of that Contracting Party;[236]

[or] in two different Articles:

Article 14

The designated airline or airlines of each Contracting Party shall be granted on the basis of reciprocity, the right to station representatives and staff required for the operation of the agreed services in the territory of the other Contracting Party. Such representatives and staff shall be nationals of Canada and the Socialist Federal Republic of Yugoslavia and their location and number shall be agreed upon through consultations between the designated airlines of both Contracting Parties and shall be subject to the approval of the competent authorities of both Contracting Parties. Such representatives and staff shall observe the laws and regulations in force of the other

236. Canada-India.

Contracting Party.

Article 15

1. The crew members of the designated airline or airlines of either Contracting Party flying on the specified route shall be citizens of their respective countries. In case the designated airline or airlines of one Contracting Party deem it desirable to utilize crew members of other nationalities including landed immigrants for the operation of agreed services, it or they can do so after approval of the aeronautical authorities of the other Contracting Party.

2. The crews of the designated airline or airlines of one Contracting Party shall, on the basis of reciprocity and as scheduling of the agreed services requires, be permitted temporary sojourn in the territory of the other Contracting Party.[237]

[or] simply in one paragraph of an Article:

Subject to the laws and regulations of each Contracting Party, and on the basis of reciprocity, a designated airline of one Contracting Party will be allowed to maintain on the territory of the other Contracting Party its own representation together with such technical, commercial and operational staff as required for the operation of the agreed services. The Aeronautical Authorities of both Contracting Parties shall render all possible assistance to the above-mentioned representation in the performance of its duties.[238]

[or]

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237. Canada-Yugoslavia.

238. Canada-Singapore. In this case, the ground handling has been agreed upon in an exchange of letters.

The designated airline of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party and generally on the basis of reciprocity, to bring in and maintain in the territory of the other Contracting Party their own managerial, technical, operational and other specialist staff who are required for the provision of air services.[239]

[or]

The designated airline of each Contracting Party shall be granted the right to station representatives and staff required for the operation of the agreed services in the territory of the other Contracting Party. Such representatives and staff shall be citizens or legal residents of Canada or Romania or, by mutual agreement, of a third country if in the employ of the designated airline. Their location and number shall be agreed upon through consultations between the designated airlines of both Contracting Parties and shall be subject to the approval of the aeronautical authorities of both Contracting Parties. Such representatives and staff shall observe the laws and regulations in force of the other Contracting Party.

[or]

The designated airline of one Contracting Party shall have the right to maintain in the territory of the other Contracting Party its representatives and commercial, operational and technical staff as required in connection with the operation of agreed services. These staff requirements may, at the option of the designated airline, be satisfied by its own personnel or by using the services of

239. Canada-Greece.

> any other competent organization, company or airline operating in the territory of the other Contracting Party. Such representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party.[240]

r) Applicability to Charters

Most of the Canadian BATAs cover, essentially, scheduled international air services. Usually non-scheduled (or charter) international air services are performed under the framework of some particular arrangements.[241] "Bilateral air transport agreements govern the operation of "agreed services" on "specified routes". Such "services are defined in Article 96 of the Chicago Convention."[242]

The objectives of the International Civil Aviation Conference convened at Chicago in 1944 were to allow a certain regulation of technical and economic aspects of international air transportation. At the time, charter

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240. Argentina-Canada.

241. See for instance Annex V: the Canada-U.S.A. Charter air bilateral agreement of 1974.

242. Gertler, J., "Custom in International Air Relations", (1985) 10 AASL, 63-81, at p. 76:
"An "agreed service" is a scheduled air service, performed by aircraft, for the public transport of passengers, mail or cargo, which passes through the air space over the territory of more than one state".

services were practically non-existent. The Chicago Convention focused mainly on scheduled air transportation. "Article 5 of the Chicago Convention provided for rights of non-scheduled services,[243] but its ambiguous language has accounted for opposing interpretations which have definitely undermined any uniformity of legislation."[244]

The distinction between scheduled and non-scheduled services becomes more and more difficult with the creation

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243. Each contracting State agrees that all aircraft of the other Contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each Contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.

244. Marx, F., "Non-Scheduled Air Services: A Survey of Regulations on the North Atlantic Routes", (1981) 6 Air Law, 130-151, at p. 132.

of some charters which are executed in conditions very similar to those of the scheduled services. The Canadian Transport Commission will create for 1987 a new type of charter, the "split entity charter".[245] Also the traditional prohibition of "unit toll resale" will be abolished.

245. Various affinity groups will be allowed to charter an aircraft. It should be mentioned that in the U.S., "the CAB (...) allowed the concept of 'split charters' in 1964.": Marx, F., *ibid.*, at p. 136. Right now, Canadian regulations categorize international charter operations into four main types:

An Advance Booking Charter (ABC) is a round-trip international charter originating in Canada operated by one or two licensed air carriers under a contract with a charterer or charterers for the entire passenger seating capacity of the aircraft.

An inclusive Tour Charter (ITC) is a charter under which an air carrier contracts with one or more tour operators to charter the entire passenger seating capacity of an aircraft, for resale by the tour operator(s) at a per seat inclusive tour price that includes charges for transportation, accommodation and tour features, where applicable. Although the passenger's journey must be round trip, not all of the transportation need be performed by an air carrier.

A Common Purpose Charter (CPC) is a return passenger charter originating in Canada where one or more charterers contract for the entire passenger seating capacity of an aircraft in order to provide transportation to and from a significant event or in connection with an educational program.

An Entity Charter is a charter in which the cost of transportation of passengers or goods is paid by one person, company or organization without any contribution from any other person and without any financial obligation or charge being imposed of any passenger as a condition of carriage or otherwise in connection with the trip.

It should be noted that under specific conditions Advance Booking Charter traffic and Inclusive Tour Charter traffic can be commingled on the same flight. See the *Air Carrier Regulations*.

Thus, with "Advance Booking Charters", "Inclusive Tour Charters", "Entity Charters" and "ABC Lite Charters" and numerous "subcomponents", the complexity of the Canadian charter regulations for international services is at its peak. Generally speaking, the fences imposed are 1) the affinity or the appurtenance to a group; and 2) the advance booking.[246]

The charter problem basically involves three issues: first, as discussed above, the distinction (and if so, in what respects) from scheduled services; the type and degree of "fencing" justified to maintain the distinction; and the nature of the regulatory system required, whether by unilateral, bilateral or multilateral agreement.

The fences imposed can be formulated either as the question of whether scheduled services, now offering charter class (or better) fares, require fences against charter competition to maintain viability of their year-round commitments. Also considering the necessary service for the

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246. Gassend, M., *Les nouveaux contextes politique et économique du marché du transport aérien international; pour une politique européenne du secteur du transport aérien*, Thesis submitted to the Faculté de droit et de science politique d'Aix-Marseille, Institut de formation universitaire et de recherche du transport aérien (IFURTA), October 1980, 492, at pp. 263 to 265; see also Wassenbergh, H.A., *Public International Air Transportation Law in a New Era*, *supra* note 40, at pp. 49 *et seq.*

must-go traveller, to what extent the lowering of fares resulting from a more competitive relationship stimulates traffic without diluting yields to the point of threatening the economic stability of the "scheduled" portion of the system.

That is one of the main objectives of unilateral regulation: to maintain the distinction between charters and scheduled services. This is where the fences come in: for instance the advance booking and payment and the one-way travel and minimum stay at destination. These have been the classical fences involved, although the distinction has become blurred with the introduction of charter-class fares on scheduled services, and by progressive weakening of the fences themselves. The purpose of these restrictions is to ensure that charter competition does not prevent an adequate frequency of direct scheduled service from maintaining economic viability. Translated into more specific terms, this means encouraging the non-discretionary, or business traveller, to travel by scheduled services (by means of pre-booking and other requirements that deter him from taking charters) and to allow scheduled and charter services to compete as freely and fairly as possible in serving the leisure travel market.

Any bilateral or multilateral approach should take into consideration the protection of the scheduled services:

"(W)hen ECAC and ICAO were consulting the various governments and aviation agencies in view of drafting the provisions for a multilateral agreement, the criterion used to determine the freedom of charter aviation was the extent to which this freedom would harm the scheduled services."[247]

In the Agreement signed with the U.S.A. (see Annex V), Canada has adopted formulae similar to those adopted in the bilateral agreements on scheduled services, and a bilateral machinery to prevent the substantial impairment of scheduled air transport.

It should be mentioned also that there is no separate consideration of cargo in Canadian international charter policy. "Only Canada provides for the transportation of goods and passengers, while the other treaties limit "traffic" to passengers only."[248]

Finally, in Canadian BATAs we have this type of provision:

> 1. The provisions set out in Articles VII, VIII, IX, X, XI, XII, XIII, XV, XVI

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247. Marx, F., *supra* note 244, at p. 142.

248. *Ibid.*, at p. 148.

and XVII,[249] of this Agreement shall be applicable also to charter flights operated by an air carrier of one Contracting Party into or from the territory of the other Contracting Party and to the air carrier operating such flights.

2. The provisions of this Article shall not be construed to imply any obligation on either aeronautical authority to approve charter flights by any airline of the other Contracting Party.

[or]

2. The provisions of paragraph 1 of this Article shall not affect national laws and regulations governing the right of air carriers to operate charter flights or the conduct of air carriers or other parties involved in the organization of such operations.

The provision on charters could, however, be written in one paragraph:

The provisions set out in Articles 5, 6, 7, 8, 11, 13, 14, 15 of this Agreement shall be applicable also to charter and other non-scheduled flights operated by an airline of one Contracting Party into or from the territory of the other Contracting Party in accordance with the respective regulations of this latter Contracting Party, and to the airline operating such flights.[250]

[or]

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249. In Barbados-Canada, Article VII concerns the laws of the countries; Article VIII: licences; Article IX: security; Article X: charges; Article XII: statistics; Article XIII: customs; Article XV: sales; Article XVI: taxation; Article XVII: staff; and Article XIX: consultations.

250. Canada-Yugoslavia.

> The provisions set out in Articles VI - VIII, XI, XIII and XIV of this Agreement shall be applicable also to charter and other non-scheduled flights operated by an airline of one Contracting Party into or from the territory of the other Contracting Party in accordance with the respective regulations of this latter Contracting Party, and to the airline operating such flights.[251]

s) Consultations, Modifications and Dispute Settlement

The Canadian BATAs present some special features which affect the character of the disputes arising under them and the procedures provided for their prevention and settlement.

> Consultation (...) is used merely as a means either to enable a contracting State to obtain further details about a given situation and, if necessary, to make its own views known to the other Party, or to keep the other Party informed of a given situation so that, if it so wishes, it can make its views known.[252]

The consultation procedure can be used as a dispute prevention measure. This is a very important function in the maintenance of a BATA since "involuntary disruption of

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251. Canada-Morocco.

252. Cheng, B., "The Role of Consultation in Bilateral International Air Services Agreements, as Exemplified by Bermuda I and Bermuda II"; Essays in Honor of Oliver J. Lissitzyn, (1981) 19 Columbia Journal of Transnational Law, 183-195, at p. 190.

international air services because of a breakdown in the interpretation and application of a bilateral air service agreement causes both direct and indirect economic losses, as well as social inconvenience."[253]

Thus, most of the Canadian BATAs contain the following provision:

> 1. In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and of its Annex.
>
> 2. Such consultations shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise agreed by the Contracting Parties.

[and] in another Article:

> If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days[254] from the date of the request. Any modification agreed pursuant to such consultations shall come into force when it has been confirmed by an exchange of diplomatic notes.

[or] in Canada-Romania:

> The appropriate authorities of either

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253. *Ibid.*, at p. 184.

254. It is 90 days in Canada-Yugoslavia.

Contracting Party may request consultations with a view to modifying any provisions of this Agreement and its Annex. Any modification agreed upon with respect to articles of the Agreement shall come into force when the Contracting Parties have notified each other of the compliance with the formalities required by their legislation relating to the coming into force of international agreements.

The Annex to the Agreement may be modified after consultations between the aeronautical authorities. Any agreed modification to the Annex shall come into force after reciprocal confirmation, by an exchange of notes through diplomatic channels. The negotiations relating to the modification of the Agreement and of its Annex must begin within a period of sixty (60) days from the date the request is received.

[and]

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.[255]

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a Tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a

255. The phrase "within a period of sixty (60) days" is added in Barbados-Canada.

notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases the third arbitrator shall be a national of a third State, shall act as President of the Tribunal and shall determine the place where arbitration will be held.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

4. The expenses of the Tribunal shall be shared equally between the Contracting Parties.

5. If and so long as either Contracting Party fails to comply with any decision given under paragraph 2 of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default or to the designated airline in default.[256]

[or]

If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall endeavour to settle it by consultation. Such consultations shall commence as soon

256. In addition to minor differences in the wording, the Canada-Yugoslavia BATA does not include paragraph 5.

as practicable but in any event not later than sixty (60) days from the date of receipt of the request for consultations, unless otherwise agreed by the Contracting Parties. Failure to reach a satisfactory settlement within a further ninety (90) days shall constitute grounds for the application of Article VI of this Agreement, unless otherwise agreed by the Contracting Parties.[257]

[or]

1. Should any dispute relating to the interpretation or application of this Agreement and of the Annex thereto arise, the aeronautical authorities shall in the first place endeavour to settle it through direct negotiations between themselves. In the case such negotiations were not successful the dispute shall be settled between the Contracting Parties.

2. If the Contracting Parties fail to reach a settlement by negotiations, they may agree to submit the dispute to arbitration in accordance with the procedures set forth herein.

3. The arbitration shall be by a tribunal of three arbitrators constituted as follows:

a) one arbitrator shall be named by each Contracting Party within sixty (60) days of the date of delivery by either Contracting Party to the other of a request for arbitration. Within thirty (30) days after such period of sixty (60) days, the two arbitrators so designated shall by agreement designate a third arbitrator who shall not be a national of either Contracting Party.

b) if either Contracting Party fails to name an arbitrator, or if the third arbitrator is not agreed upon in accord-

257. Canada-India.

> ance with sub-paragraph (a) either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators.
>
> 4. Each Contracting Party shall use its best efforts consistent with its national laws to put into effect any decision or award of the arbitral tribunal.
>
> 5. Each Contracting Party shall bear the fees and expenses of the arbitrator it has appointed. The fees and expenses of the third arbitrator, as well as the expenses of the arbitration shall be equally shared by the Contracting Parties.[258]

t) Registration, Termination, Multilateral Agreements and Entry into Force

These last provisions in the Canadian BATAs are usually written this way:

> Either Contracting Party may at any time from the entry into force of this Agreement give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate one (1) year after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by mutual consent before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International

258. Canada-Romania.

Civil Aviation Organization.

[and]

> This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

It must be stressed that in Canada, the Department of External Affairs registers also the Agreements, the Annexes, and the non-confidential Memorandum of Understanding and Agreed Minutes.

[and] in a different Article:

> If a general multilateral air convention comes into force in respect of both Contracting Parties, the provisions of such convention shall prevail. Consultations in accordance with Article XX of this Agreement may be held with a view to determining the extent to which this Agreement is affected by the provisions of the multilateral convention.

[or]

> In the event of a general multilateral air convention accepted by the Contracting Parties entering into force, the provisions of such convention shall prevail. Any discussions with a view to determining the extent to which the present Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention, shall take place in accordance with Article 17 of the present Agreement.[259]

[and] in another Article:

> This Agreement shall be applied provisionally from the date of its signature, and shall enter into force on the later of the dates on which the Contracting Parties

259. Canada-Yugoslavia.

shall each have notified the other by diplomatic note that they have obtained whatever internal approval may be required to give effect to this Agreement.[260]

[or]

This Agreement shall enter into force when the Contracting Parties each have notified the other by Diplomatic Note that they have obtained whatever internal approval may be required to give effect to this Agreement.[261]

[or]

1. This Agreement shall be applied provisionally from the date of its signature, and shall enter into force on the latter of the dates on which the Contracting Parties shall each have notified the other by diplomatic note that they have obtained whatever internal approval may be required to give effect to this Agreement.

2. The Agreement between the Government of Canada and the Government of the Hellenic Republic on Commercial Scheduled Air Services signed at Athens on the eighteenth day of January in the year nineteen hundred and seventy-four (1974), shall provisionally cease to be applied from the date of the signature of the present Agreement, and shall terminate on the date of the entry into force of the present Agreement.[262]

[or]

This Agreement shall be applied provi-

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260. In Barbados-Canada and Canada-New Zealand, it is mentioned: "This Agreement shall enter into force on the date of signature".

261. Canada-India.

262. Canada-Greece.

> sionally from the date of its signature and shall come into force when the Contracting Parties have notified each other of the compliance with the formalities required by their legislation relating to the coming into force of international agreements.[263]
>
> [and] on a different page:
>
> IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed the present Agreement.
>
> DONE in duplicate at _____ on this _____ day of _____ in the English and French languages, each version being equally authentic.[264]

The Canadian view on the entry into force of BATAs as changed. Before, it was in two steps: a) upon signing (it is provisionally to the greatest extent possible) and b) an exchange of letters to confirm the entry into force. Now, it is in force from the moment of its signing. Thus, the signing authorities have more authority since they do not necessarily have to go back to the Parliament to get the "official" entry into force. On the other hand, Canada respects the procedure of the other countries that could continue to apply the traditional way (*i.e.* in two steps).

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263. Canada-Romania.

264. With Portugal: "in the English, French and Portuguese languages". With India: "in the English, Hindi and French languages". *Etc.*

[and] at the bottom of the page:

For the Government	For the Government of Canada

u) Annex

Finally, in the Annex of the BATA is found the route(s) to be operated, and specifications attached. The example provided here is taken from Canada - New Zealand:

ANNEX

SECTION I

Route to be operated by the designated airline or airlines of Canada:

Points of Origin	Intermediate Points	Points in New Zealand	Points Beyond
Points in Canada	Honolulu Nadi	Auckland Christchurch	To be agreed

Notes

(a) Any point or points specified above may be omitted on any or all services but all services shall originate or terminate in Canada.

(b) Aircraft schedules shall recognise the applicable conditions concerning density of movements and allocation of terminal facilities.

SECTION II

Route to be operated by the designated airline or airlines of New Zealand:

Points of Origin	Intermediate Points	Points in Canada	Points Beyond
Points in New Zealand	2 points to be named by New Zealand, selected from: Nadi Papeete Honolulu Los Angeles One point in the USA not east of Chicago	Vancouver Toronto	To be agreed

Notes:

(a) Any point or points specified above may be omitted on any or all services but all services shall originate or terminate in New Zealand.

(b) Only one point in Canada may be selected.

(c) The intermediate points and/or the point in Canada may be changed every six months on sixty days notice to the aeronautical authorities of Canada.

(d) If Toronto is selected, the intermediate points served shall not be in the USA west coast states or Texas. Service at Toronto shall be at off-peak times of the day and at a terminal building acceptable to airport management, consistent with the Government of Canada's requirements regarding exceptions to the moratorium on additional foreign airline entry at Pearson International Airport.

(e) Nadi and Honolulu shall not jointly be available as the two intermediate points en route to Vancouver until either designated airline increases frequency to two services per week.

CONCLUSION

The preceding text emphasized the drafting of Canadian BATAs. The author did not discuss all the essential elements that are part of the BATAs: the topic of Canadian BATAs obliges one to make choices.

For instance, what is the binding force of the Canadian BATAs? A whole chapter could have been written on this subject.

> A bilateral air agreement as a treaty is governed by the general rule: "The binding force of a treaty concerns in principle the Contracting States only, and not their subjects". When negotiating an air agreement, the two parties involved exercise their sovereign rights over the air space under their control, and the grant of transit or traffic rights is accomplished, as a rule, on a government-to-government basis.[265]

"The agreements are binding on the contracting parties under international law, but they may have varying legal status in individual countries under domestic

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265. Gertler, J., "Bilateral Air Transport Agreements: Non-Bermuda Reflections", (1976) 42 JALC, 779-824, at p. 796: quoting Oppenheim, L., *International Law*, (7th ed., 1948), p. 829.

law."[266]

One thing is certain, pragmatism and flexibility are the premises of the Canadian BATAs:

> The dominant feature of Canadian treaty-making is the informal and pragmatic approach that has characterized, over the years, the actions taken by Canada in developing effective and simplified methods for making treaties (...) The review of Canadian practice which follows demonstrates, I believe, that the Canadian approach to treaty-making is and has been a very flexible one. Forms are adapted to meet international requirements, whatever they may be. The accent is both on informality and flexibility.[267]

The particular feature of the Canadian BATAs is the facility to adapt adequately and rapidly to the dynamic

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266. Gertler, J., "Custom in International Air Relations", *supra* note 242, at p. 75. See also Plouffe, J.P., "Les arrangements internationaux des agences et ministères du Canada", (1983) 21 *Annuaire canadien de Droit international* (UBC) 176-216. In the *Air Carrier Regulations*, section 160.1 (added the 15th of February 1983), it is mentioned under the subtitle "International Agreements and Conventions";
    160.1 Where there is any inconsistency between the provisions of these Regulations and the provisions of an international agreement or convention relating to civil aviation to which Canada is a party, the provisions of the agreement or convention shall prevail to the extent of the inconsistency.
A similar wording is used in article 69 of the *National Transportation Act*.

267. Gotlieb, A.E., "Canadian Treaty-Making: Informal Agreements and Interdepartmental Arrangements", in *Canadian Perspectives on International Law and Organization*, edited by R. St J. MacDonald, G.L. Morris, D.M. Johnston, University of Toronto Press, 1974, 972, at p. 229.

changes of the aviation industry. If only one concept of Canadian BATAs remains in the reader's memory, it should be the characteristic of adaptability. In fact, this is related to the whole world of aviation: "(t)he aviation world has a great power of adaptation, so it may not necessarily have to pass through all the stages of economic thinking which the rest of our economy has gone through in the past 200 years, in order to catch up with the present state of art."[268] There are inconveniences, though, to the bilateral mechanism of negotiations: "(b)ilateral agreements, because they are flexible and easily renegotiated, promote a certain amount of instability in international air law. A multilateral treaty would be more permanent, less susceptible to change, and therefore norm-creative rather than norm-disruptive."[269] On the other hand, Mr. Monlaü explains very well how bilateral air agreements (as opposed to multilateral air agreements) will prevail in the future.

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268. Raben, H., "Deregulation: A Critical Interrogation", in *International Air Transport in the Eighties*, A Colloquium of The Netherlands Institute of Transport and The Netherlands Civil Aviation Authority under the auspices of the University of Leyden (Faculty of Law: Air and Space), Kluwer, The Netherlands, 1981, 250, at p. 19.

269. Sion, L.G., "Multilateral Air Transport Agreements Reconsidered..." *supra* note 25, at p. 204.

> Après les échecs répétés des tentatives faites pour aboutir à un accord multilatéral, le système bilatéral peut paraître plus profondément ancré que jamais. L'aspect politique du transport aérien est indéniable. Et face aux positions toujours plus individualistes et protectionnistes des Etats, il est apparu d'une certaine façon illusoire de poursuivre l'idée d'un accord multilatéral donnant à tous des droits identiques. Car le résultat d'une telle approche multilatérale aurait pour résultat la consécration de la position dominante de quelques grandes compagnies mondiales, en nombre très limité, au détriment de toutes les *marginales* vouées à la disparition. Tandis que le schéma bilatéral, s'il peut satisfaire les forts, rassure en tout cas les plus faibles qui peuvent espérer tirer un bien meilleur parti de discussions individuelles.[270]

As Mr. Monlaü mentioned, the political aspects of international aviation are fundamental. So many things could be said for instance, just on the very contemporary negotiations between Canada and the United Kingdom. The British government has served notice of its intention to cancel a five-year old air services agreement between Canada and Britain after talks aimed at resolving a dispute on the matter collapsed in mid-September, 1986. The British government, supporting a complaint by British Airways, had threatened for some time to cancel the agreement, insisting that Air Canada has abused so-called fifth-freedom rights

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270. Monlaü, M.B., Le transport aérien en Afrique noire francophone et les accords bilatéraux franco-africains, *supra* note 4, at p. 178.

along its lucrative Toronto-London-Bombay-Singapore route.[271]

> The argument heated up last month with the announcement by Ottawa that it plans to withdraw from an international agreement permitting foreign carriers the automatic right of technical stops and overflights. Britain threatened tit-for-tat action, but is more vulnerable: British carriers regularly overfly Canada on the way to U.S. destinations, but Canadian airlines do not need to traverse British territory on flights to Western Europe.[272]

This example demonstrates how deep bilateral air negotiations are involved in political and economical affairs. In this case, an agreement more favorable to the British government, and consequently, to its "chosen instrument", British Airways would facilitate the privatiza-

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271. The chief executive of British Airways PLC, Colin Marshall, has echoed the British Government's contention that its bilateral air-services agreement with Canada is unfairly weighted in favor of Canadian airlines and should be totally renegotiated (...)

A bigger British complaint, however, is about Air Canada's success on routes from Canada to Bombay and Singapore via London. Britain says the Canadian airline is carrying 80 per cent of London-originating traffic - a figure disputed by Canadian officials.

in Plommer, L., "British Airways' Head Endorses Call for New Pact", (25 September, 1986) The Globe and Mail, Toronto, at p. B-20. See also French, C., "Britain to Withdraw from Airline Accord", (20 September, 1986) The Globe and Mail, Toronto, at p. B-2.

272. French, C., "'Division of the World' Runs Into Snags", *supra* note 92.

tion of this British airline.

Hence, "(w)e must accept that in almost all cases the bilaterals are not between equals. Each side has different needs and aspinations. Each side has different capabilities to fulfill the needs of the other. The extent to which one country desires or can participate in air transportation differs."[273]

273. Lim, R.H., "Aviation in World and State Economics", in *International Air Transport in the Eighties*, *supra* note 268, at p. 47.

ACRONYMS AND ABBREVIATIONS

AASL	Annals of Air and Space Law
BATA	Bilateral Air Transport Agreement
BOAC	British Overseas Airways Corporation
CAB	Civil Aeronautics Board
CBIT	Contract Bulk Inclusive Tour
CPA	Canadian Pacific Airlines
CP Air	Canadian Pacific Air Lines
CTC	Canadian Transport Commission
ECAC	European Civil Aviation Conference
FRG	Federal Republic of Germany
IASL	Institute of Air Space Law
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
ICASL	Institute and Centre of Air and Space Law
IFURTA	Institut de formation universitaire et de recherche du transport aérien
JALC	Journal of Air Law and Commerce
LGDJ	Librairie Générale de Droit et de Jurisprudence
PICAO	Provisional International Civil Aviation Organization
RSC	Revised Statutes of Canada
TCA	Trans-Canada Airlines
TIA	Toronto International Airport
TIAS	Treaties and Other International Acts Series
UBC	University of British Columbia

UK	United Kingdom
UNTS	United Nations Treaty Series
US	United States
USA	United States of America
USC	United States Congress
USSR	Union of Soviet Socialist Republics
UST	United States Treaties
VJIL	Virginia Journal of International Law

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ANNEX I

A U.S. Standard "Bermuda I" Agreement

AIR TRANSPORT AGREEMENT

BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND THE GOVERNMENT OF _____

The Government of the United States of America and the Government of _____ ,

Recognizing the increasing importance of international air travel between the two countries and desiring to conclude an agreement which will assure its continued development in the common welfare, and

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,

Have agreed as follows:

ARTICLE 1

For the purpose of the present Agreement:

A. "Agreement" shall mean this Agreement, the Schedule attached thereto, and any amendments thereto.

B. "Aeronautical authorities" shall mean in the case of the United States of America, the Federal Aviation Administration with respect to the technical permission, safety standards, and requirements referred to in Articles 3 and 6(B) respectively, otherwise the Civil Aeronautics Board, and in the case of _____, _____, or in both cases, any person or agency authorized to perform the functions exercised at present by those authorities.

C. "Designated airline" shall mean an airline that one Contracting Party has notified the other Contracting Party to be an airline which will operate a specific route or routes listed in the schedule to this Agreement. Such notification shall be communicated in writing through diplomatic channels.

D. "Territory", in relation to a State, shall mean the land areas under the sovereignty, suzerainty, protection, jurisdiction or trusteeship of that State, and territorial waters adjacent thereto.

E. "Air service" shall mean any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail, separately or in combination.

F. "International air service" shall mean an air service which passes through the air space over the territory of more than one State.

G. "Stop for non-traffic purposes" shall mean a landing for any purpose other than taking on or discharging passengers, cargo or mail.

ARTICLE 2

Each Contracting Party grants to the other Contracting Party rights for the conduct of air services by the designated airline or airlines, as follows:

(1) To fly across the territory of the other Contracting Party without landing;

(2) To land in the territory of the other Contracting Party for non-traffic purposes; and

(3) To make stops at the points in the territory of the other Contracting Party named on each of the routes specified in the appropriate paragraph of the Schedule of this Agreement for the purpose of taking on and discharging international traffic in passengers, cargo, and mail, separately or in combination.

ARTICLE 3

Air service on a route specified in the Schedule to this Agreement may be inaugurated by an airline or airlines of one Contracting Party at any time after that Contracting Party has designated such airline or airlines for that route and the other Contracting Party has granted the appropriate operating and technical permission. Such other Contracting Party shall, subject to Articles 4 and 6, grant this permission, provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that Contracting Party, under the laws and regulations normally applied by those authorities, before being permitted to engage in the operations contemplated in this Agreement.

ARTICLE 4

A. Each Contracting Party reserves the right to withhold or revoke the operating permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event that:

(1) Such airline fails to qualify under the laws and regulations normally applied by the aeronautical authorities of that Contracting Party;

(2) Such airline fails to comply with the laws and regulations referred to in Article 5 of this Agreement; or

(3) That Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party.

B. Unless immediate action is essential to prevent infringement of the laws and regulations referred to in Article 5 of this Agreement, the right to revoke such permission shall be exercised only after consultation with the other Contracting Party.

ARTICLE 5

A. 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 or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

B. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail of aircraft, including regulations relating to entry, clearance, immigration, passports, customs, and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

ARTICLE 6

A. Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

B. The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety standards and requirements relating to aeronautical facilities, airmen, aircraft, and the operation of the designated airlines which are maintained and administered by the other Contracting Party. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to said Convention, and the other Contracting Party will take appropriate corrective action. Each Contracting Party reserves the right to withhold or revoke the technical permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event the other Contracting Party does not take such appropriate action within a reasonable time.

ARTICLE 7

Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed for the use of such airports and facilities by its national aircraft engaged in similar international services.

ARTICLE 8

A. Each Contracting Party shall exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular equipment, ground equipment, stores, and other items intended for use solely in connection with the operation or servicing of aircraft of the airlines of such other Contracting Party engaged in international air service. The exemptions provided under this paragraph shall apply to items:

(1) Introduced into the territory of one Contracting Party by or on behalf of the designated airlines of the other Contracting Party;

(2) Retained on aircraft of the designated airlines of one Contracting Party upon arriving in

or leaving the territory of the other Contracting Party; or

(3) Taken on board aircraft of the designated air lines of one Contracting Party in the territory of the other and intended for use in international air service;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption.

B. The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph A, provided such other airline or airlines similarly enjoy such exemptions from such other Contracting Party.

ARTICLE 9

A. There shall be a fair and equal opportunity for the airlines of each Contracting Party to operate on any route covered by this Agreement.

B. In the operation by the airlines of either Contracting Party of the air services described in this Agreement, the interest of the airlines of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes.

C. The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

D. Services provided by a designated airline under this Agreement 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 countries of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement 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 to:

(1) traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

(2) the requirements of through airline operations; and,

(3) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

E. Without prejudice to the right of each Contracting Party to impose such uniform conditions on the use of airports and airport facilities as are consistent with Article 15 of the Convention on International Civil Aviation, neither Contracting Party shall unilaterally restrict the airline or airlines of the other Contracting Party with respect to capacity, frequency, scheduling or type of aircraft employed in connection with services over any of the routes specified in the Schedule to this Agreement. In the event that one of the Contracting Parties believes that the operations conducted by an airline of the other Contracting Party have been inconsistent with the standards and principles set forth in this Article, it may request consultations pursuant to Article 12 of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with said standards and principles.

ARTICLE 10

A. All rates to be charged by an airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, such as costs of operation, reasonable profit, and the rates charged by any other airlines, as well as the characteristics of each service. Such rates shall be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal competence.

B. Any rate proposed to be charged by an airline of either Contracting Party for carriage to or from the territory of the other Contracting Party shall, if so required, be filed by such airline with the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of introduction unless the Contracting Party with whom the filing is to be made permits filing on shorter notice. 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, and that no airline rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents.

C. It is recognized by both Contracting Parties that, during any period for which either Contracting Party has approved the traffic conference procedures of the International Air

Transport Association, or other association of international air carriers, any rate agreements concluded through these procedures and involving an airline or airlines of that Contracting Party will be subject to the approval of the aeronautical authorities of that Contracting Party.

D. If the aeronautical authorities of a Contracting Party, on receipt of the notification referred to in paragraph B above, are dissatisfied with the rate proposed, the other Contracting Party shall be so informed at least fifteen (15) days prior to the date that such rate would otherwise become effective, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

E. If the aeronautical authorities of a Contracting Party, upon review of an existing rate charged for carriage to or from the territory of that Party by an airline or airlines of the other Contracting Party are dissatisfied with that rate, the other Contracting Party shall be so informed and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

F. In the event that an agreement is reached pursuant to the provisions of paragraph D or E, each Contracting Party will exercise its best efforts to put such rate into effect.

G. If:

(1) under the circumstances set forth in paragraph D, no agreement can be reached prior to the date that such rate would otherwise become effective; or

(2) under the circumstances set forth in paragraph E, no agreement can be reached prior to the expiration of sixty (60) days from the date of notification,

then the aeronautical authorities of the Contracting Party raising the objection to the rate may take such steps as may be considered necessary to prevent the inauguration or the continuation of the service in question at the rate complained of; provided, however, that the aeronautical authorities of the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable service between the same points.

H. When in any case under paragraph D and E the Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initated by either of them, the terms of Article 13 of this Agreement shall apply. In rendering its decision or award, the arbitral tribunal shall be guided by the principles laid down in this Article.

ARTICLE 11

The following provisions shall govern the sale of air transportation and the conversion and remittance of revenues:

A. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, in its discretion, through its agents. Such airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

B. Any rate specified in terms of the national currency of one of the Contracting Parties shall be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Party.

C. Each designated airline shall have the right to convert and remit to its country local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly and without restrictions at the rate of exchange in effect for the sale of transportation at the time such revenues are presented for conversion and remittance and shall be exempted from taxation to the fullest extent permitted by national law. If a Contracting Party does not have a convertible currency and requires the submission of applications for conversion and remittance, the airlines of the other Contracting Party shall be permitted to file such applications as often as weekly free of burdensome or discriminatory documentary requirements.

ARTICLE 12

Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations shall begin within a period of sixty (60) days from the date the other Contracting Party receives the request.

ARTICLE 13

A. Any dispute with respect to matters covered by this Agreement not satisfactorily adjusted through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein.

B. Arbitration shall be by a tribunal of three arbitrators constituted as follows:

(1) One arbitrator shall be named by each Contracting Party within sixty (60) days of the date of

delivery by either Contracting Party to the other of a request for arbitration. Within thirty (30) days after such period of sixty (60) days, the two arbitrators so designated shall by agreement designate a third arbitrator, who shall not be a national of either Contracting Party.

(2) If either Contracting Party fails to name an arbitrator or if the third arbitrator is not agreed upon in accordance with paragraph (1), either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators.

C. Each Contracting Party shall use its best efforts consistent with its national law to put into effect any decision or award of the arbitral tribunal.

D. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties.

ARTICLE 14

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 15

Either Contracting Party may at any time notify the other of its intention to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one year after the date on which the notice of termination is received by the other Contracting Party, unless withdrawn before the end of this period by agreement between the Contracting Parties.

ARTICLE 16

This agreement will come into force on the day it is signed.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

Done in duplicate at _____ in the English and _____ languages, both texts being equally authentic, this _____ day of _____, 19___.

For the Government of the United States of America:

For the Government of _____:

SCHEDULE

A. An airline or airlines designated by the Government of the United States shall be entitled to operate air services on each of the specified routes, in both directions, and to make scheduled landings in _____ at the points specified in this paragraph:

1. .....

B. An airline or airlines designated by the Government of _____ shall be entitled to operate air services on each of the specified routes, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph:

1. .....

C. Points on any of the specified routes may at the option of the designated airlines be omitted on any or all flights.

ANNEX II

IV LEGISLATIVE TEXTS/LÉGISLATION

AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (BERMUDA 2)*

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland,

Resolved to provide safe, adequate and efficient international air transportation responsive to the present and future needs of the public and to the continued development of international commerce,

Desiring the continuing growth of adequate, economical and efficient air transportation by airlines at reasonable charges, without unjust discrimination or unfair or destructive competitive practices;

Resolved to provide a fair and equal opportunity for their designated airlines to compete in the provision of international air services,

Desiring to ensure the highest degree of safety and security in international air transportation,

Seeking to encourage the efficient use of available resources, including petroleum, and to minimize the impact of air services on the environment,

Believing that both scheduled and charter air transportation are important to the consumer interest and are essential elements of a healthy international air transport system;

Reaffirming their adherence to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944; and

Desiring to conclude a new agreement complementary to that Convention for the purpose of replacing the Final Act of the Civil Aviation Conference held at Bermuda, from 15 January to 11 February 1946, and the annexed Agreement between the Government of the United States of America and the Government of the United Kingdom relating to Air Services between their Respective Territories, as subsequently amended ("the 1946 Bermuda Agreement"),

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement unless otherwise stated, the term:

(a) "Aeronautical authorities" means, in the case of the United States, the Department of Transportation, the Civil Aeronautics Board, or their successor agencies, and in the case of the United Kingdom, the Secretary of State for Trade, the Civil Aviation Authority or their successors,

(b) "Agreement" means this Agreement, its Annexes and any amendments thereto;

* Reprinted from the US Department of Transportation Washington DC 205 90 July 23, 1977

(c) "Air service" means scheduled air service or charter air service or both, as the context requires, performed by aircraft for the public transport of passengers, cargo or mail, separately or in combination, for compensation;

(d) "Airport" means a landing area, terminals and related facilities used by aircraft;

(e) "All-cargo air service" means air service performed by aircraft on which cargo or mail (with ancillary attendants) is carried, separately or in combination, but on which revenue passengers are not carried;

(f) "Combination air service" means air service performed by aircraft on which passengers are carried and on which cargo or mail may also be carried if authorized by the relevant national license or certificate;

(g) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes: (i) any amendment thereto which has entered into force under Article 94(a) thereof and has been ratified by both Contracting Parties; and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, in so far as such amendment or Annex is at any given time effective for both Contracting Parties;

(h) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;

(i) "Gateway route segment" means that part of a route described in Annex 1 which lies between the point of last departure or first arrival served by a designated airline in its homeland and the point or points served by that airline in the territory of the other Contracting Party;

(j) "International air service" means an air service which passes through the air space over the territory of more than one State,

(k) "Revenue passenger" means a passenger paying 25 percent or more of the normal applicable fare;

(l) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail carried for compensation,

(m) "Tariff" means the price to be charged for the public transport of passengers, baggage and cargo (excluding mail) on scheduled air services including the conditions governing the availability or applicability of such price and the charges and conditions for services ancillary to such transport but excluding the commissions to be paid to air transportation intermediaries;

(n) "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Contracting Party, and the territorial waters adjacent thereto; and

(o) "User charge" means a charge made to airlines for the provision for aircraft, their crews and passengers of airport or air navigation property or facilities, including related services and facilities

ARTICLE 2

Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by its airlines:

(a) the right to fly across its territory without landing; and

(b) the right to make stops in its territory for non-traffic purposes.

(2) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purposes of operating scheduled international air services on the routes specified in Annex 1. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. The airlines designated by each Contracting Party may make stops in the territory of the other Contracting Party at the points specified and to the extent specified for each route in Annex 1 for the purpose of taking on board and discharging passengers, cargo or mail, separately or in combination, in scheduled international air service

(3) Each Contracting Party grants to the other Contracting Party the rights

specified in Annex 1 for the purposes of operating charter international air services.

(4) Nothing in paragraphs (2) or (3) of this Article shall be deemed to confer on the airline or airlines of one Contracting Party the rights to take on board, in the territory of the other Contracting Party, passengers, cargo or mail carried for compensation and destined for another point in the territory of that other Contracting Party except to the extent such rights are authorized in Annex 1 or Annex 4.

(5) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate rearrangements of such routes, including the grant of rights for such time as may be necessary to facilitate viable operations.

ARTICLE 3

Designation and Authorization of Airlines

(1) (a) Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating the agreed services on each of the routes specified in Annex 1 and to withdraw or alter such designations. Such designations shall be made in writing and shall be transmitted to the other Contracing Party through diplomatic channels.

(b) A Contracting Party may request consultations with regard to the designation of an airline or airlines under subparagraph (a) of this paragraph. If, however, agreement is not reached within 60 days from the date of the designation, the designation shall be regarded as a proper designation under this Article.

(2) Notwithstanding paragraph (1) of this Article, for the purpose of operating the agreed combination air services on US Routes 1 and 2, and UK Routes 1, 2, 3, 4 and 5, each Contracting Party shall have the right to designate not more than:

(a) two airlines on each of two gateway route segments of its own choosing,

(b) one airline on each gateway route segment other than those selected under subparagraph (a) of this paragraph, except that each Contacting Party may designate not more than:

(i) two airlines on any gateway route segment other than those selected under subparagraph (a) of this paragraph, provided: (A) the total on-board passenger traffic carried by the designated airlines of both Contracting Parties in scheduled air service on a gateway route segment exceeds 600,000 one-way revenue passengers in each of two consecutive twelve month periods; or (B) the total on-board passenger traffic carried by its designated airline in scheduled air service on the gateway route segment exceeds 450,000 one-way revenue passengers in each of two consecutive twelve month periods. For the purpose of this subparagraph, the revenue passenger levels specified must be reached for the first time after the entry into force of this Agreement; and

(ii) two airlines on any gateway route segment other than those selected under subparagraph (a) or permitted under subparagraph (b)(i) of this paragraph, where either the other Contracting Party has not made a designation three years after the right to operate that gateway route segment becomes effective or the airline designated by it does not by then operate, (either nonstop or in combination with another gateway route segment) or operates fewer than 100 round trip combination flights within a twelve month period An additional designation under this subparagraph shall continue in force notwithstanding subsequent regular operation by an airline of the other Contracting Party

If coincident gateway route segments appear on more than one route, the limitations set forth in this paragraph apply to the coincident segments taken together. A Contracting Party making designations under this paragraph shall specify which subparagraph applies

(3) Notwithstanding paragraph (1) of this Article, for the purpose of operating

the agreed all-cargo air services on US Route 7 and on UK Routes 11 and 12 (taken together), each Contracting Party shall have the right to designate not more than a total of three airlines, except that, if the airline or airlines designated by one Contracting Party are licensed or certificated by their own aeronautical authorities and authorized by the other Contracting Party to offer all-cargo air services on a gateway route segment on which the airline or airlines designated by the other Contracting Party are not licensed or certificated by their own aeronautical authorities to offer such services, that other Contracting Party may designate an additional airline on the relevant route or routes to operate all-cargo air services only on that gateway route segment, notwithstanding the fact that such designation will result in the designation of more than three airlines on the relevant route or routes.

(4) Notwithstanding paragraph (1) of this Article, a Contracting Party receiving a designation of an airline which is authorized by that airline's own aeronautical authorities only to operate aircraft having a maximum passenger capacity of 30 seats or less and a maximum payload capacity of 7,500 pounds or less and which was not designated under the 1946 Bermuda Agreement may refuse to regard such designation as a proper designation under this Article if it would result in more than three such airlines or more than the number designated under the 1946 Bermuda Agreement (whichever is greater), operating at any point in the territory of the Contracting Party receiving the designation.

(5) If either Contracting Party wishes to designate an airline or airlines for the routes set forth in paragraphs (2) or (3) of this Article, in addition to the designations specifically permitted by those paragraphs, it shall notify the other Contracting Party. The second Contracting Party may either: (i) accept such further designation; or (ii) request consultations. After consultations the second Contracting Party may decline to accept the designation.

(6) On receipt of a designation made by one Contracting Party under the terms of paragraphs (1), (2) or (3) of this Article, or accepted under the terms of paragraph (5) of this Article, and on receipt of an application or applications from the airline so designated for operating authorizations and technical permissions in the form and manner prescribed for such applications, the other Contracting Party shall grant the appropriate operating authorizations and technical permissions, provided:

(a) substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals;

(b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Contracting Party considering the application or applications; and

(c) the other Contracting Party is maintaining and administering the standards set forth in Article 6 (Airworthiness).

If the aeronautical authorities of the Contracting Party considering the application or applications are not satisfied that these conditions are met at the end of a 90-day period from receipt of the application or applications from the designated airlines, either Contracting Party may request consultations, which shall be held within 30 days of the request

(7) When an airline has been designated and authorized in accordance with the terms of this Article, it may operate the relevant agreed services on the specifiel routes in Annex 1, provided, however, that the airline complies with the applicable provisions of this Agreement

ARTICLE 4

Application of Laws

(1) 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 or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

(2) The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail of aircraft, including regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

ARTICLE 5

Revocation or Suspension of Operating Authorization

(1) Each Contracting Party shall have the right to revoke, suspend, limit or impose conditions on the operating authorizations or technical permissions of an airline designated by the other Contracting Party where:

(a) substantial ownership and effective control of that airline are not vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or

(b) that airline has failed to comply with the laws or regulations of the first Contracting Party; or

(c) the other Contracting Party is not maintaining and administering safety standards as set forth in Article 6 (Airworthiness).

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further non-compliance with subparagraphs (b) or (c) of paragraph (1) of this Article, such rights shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6

Airworthiness

(1) Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the air services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention. Each Contracting Party reserves the right, however, to refuse to recognize as valid for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

(2) The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety, and security standards and requirements maintained and administered by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft, and the operation of the designated airlines. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety and security standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety and security standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to the Convention, and the other Contracting Party shall take appropriate

corrective action. Each Contracting Party reserves the right to withhold, revoke or limit, pursuant to Articles 2 (Grant of Rights), 3 (Designation and Authorization of Airlines), and 5 (Revocation or Suspension of Operating Authorization), the operating authorization or technical permission of an airline or airlines designated by the other Contracting Party, in the event the other Contracting Party does not take such appropriate action within a reasonable time.

ARTICLE 7

Aviation Security

The Contracting Parties reaffirm their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services and undermine public confidence in the safety of civil aviation. The Contracting Parties agree to provide maximum aid to each other with a view to preventing hijackings and sabotage to aircraft, airports and air navigation facilities and threats to aviation security. They reaffirm their commitments under and shall have regard to the provisions of the Convention on Offences and certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. The Contracting Parties shall also have regard to applicable aviation security provisions established by the International Civil Aviation Organization. When incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications intended to terminate such incidents rapidly and safely. Each Contracting Party shall give sympathetic consideration to any request from the other for special security measures for its aircraft or passengers to meet a particular threat.

ARTICLE 8

Commercial Operations

(1) The designated airline or airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.

(2) Each Contracting Party agrees to use its best efforts to ensure that the designated airlines of the other Contracting Party are offered the choice, subject to reasonable limitations which may be imposed by airport authorities, of providing their own services for ground handling operations; of having such operations performed entirely or in part by another airline, an organization controlled by another airline, or a servicing agent, as authorized by the airport authority, or of having such operations performed by the airport authority.

(3) Each Contracting Party grants to each designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory directly and, at the airline's discretion, through its agents. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

(4) Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues

are presented for conversion and remittance. Both Contracting Parties have accepted the obligations set out in Article VIII of the Articles of Agreement of the International Monetary Fund.

(5) Each Contracting Party shall use its best efforts to secure for the designated airlines of the other Contracting Party on a reciprocal basis an exemption from taxes, charges and fees imposed by State, regional and local authorities on the items listed in paragraphs (1) and (2) of Article 9 (Customs Duties), as well as from fuel through-put charges, in the circumstances described under those paragraphs, except to the extent that the charges are based on the actual cost of providing the service

ARTICLE 9

Customs Duties

(1) Aircraft operated in international air services by the designated airlines of either Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores including but not limited to such items as food, beverages and tobacco, which are on board such aircraft, shall be relieved on the basis of reciprocity from all customs duties, national excise taxes, and similar national fees and charges not based on the cost of services provided, on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be relieved from the duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the service provided:

(a) aircraft stores, introduced into or supplied in the territory of a Contracting Party, and taken on board, within reasonable limits, for use on outbound aircraft engaged in an international air service of a designated airline of the other Contracting Party;

(b) spare parts including engines introduced into the territory of a Contracting Party for the maintenance or repair of aircraft usel in an international air service of a designated airline of the other Contracting Party; and

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft engaged in an international air service of a designated airline of the other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities

(4) The reliefs provided for by this Article shall also be available in situations where the designated airlines of one Contracting Party entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs (1) and (2) of this Article provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party

ARTICLE 10

User Charges

(1) Each Contracting Party shall use its best efforts to ensure that user charges imposed or permitted to be imposed by its competent charging authorities on the designated airlines of the other Contracting Party are just and reasonable. Such charges shall be considered just and reasonable if they are determined and

imposed in accordance with the principles set forth in paragraphs (2) and (3) of this Article, and if they are equitably apportioned among categories of users.

(2) Neither Contracting Party shall impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own designated airlines operating similar international air services.

(3) User charges may reflect, but shall not exceed, the full cost to the competent charging authorities of providing appropriate airport and air navigation facilities and services, and may provide for a reasonable rate of return on assets, after depreciation. In the provision of facilities and services, the competent authorities shall have regard to such factors as efficiency, economy, environmental impact and safety of operation. User charges shall be based on sound economic principles and on the generally accepted accounting practices within the territory of the appropriate Contracting Party.

(4) Each Contracting Party shall encourage consultations between its competent charging authorities and airlines using the services and facilities, where practicable through the airlines' representative organizations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made.

(5) For the purposes of paragraph (4) of this Article, each Contracting Party shall use its best efforts to encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles set out in this Article.

(6) In the event that agreement is reached between the Contracting Parties that an existing user charge should be revised, the appropriate Contracting Party shall use its best efforts to put the revision into effect promptly.

ARTICLE 11

Fair Competition

(1) The designated airline or airlines of one Contracting Party shall have a fair and equal opportunity to compete with the designated airline or airlines of the other Contracting Party.

(2) The designated airline or airlines of one Contracting Party shall take into consideration the interests of the designated airline or airlines of the other Contracting Party so as not to affect unduly that airline's or those airlines' services on all or part of the same routes. In particular, when a designated airline of one Contracting Party proposes to inaugurate services on a gateway route segment already served by a designated airline or airlines of the other Contracting Party, the incumbent airline or airlines shall each refrain from increasing the frequency of their services to the extent and for the time necessary to ensure that the airline inaugurating service may fairly exercise its rights under paragraph (1) of this Article. Such obligation to refrain from increasing frequency shall not last longer than two years or beyond the point when the inaugurating airline matches the frequencies of any incumbent airline, whichever occurs first, and shall not apply if the services to be inaugurated are limited as to their capacity by the license or certificate granted by the designating Contracting Party.

(3) Services provided by a designated airline under this Agreement 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. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related to:

(a) the traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

(b) the requirements of through airline operations; and

(c) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

(4) The frequency and capacity of services to be provided by the designated airlines of the Contracting Parties shall be closely related to the requirements of all categories of public demand for the carriage of passengers and cargo including mail in such a way as to provide adequate service to the public and to permit the reasonable development of routes and viable airline operations. Due regard shall be paid to efficiency of operation so that frequency and capacity are provided at levels appropriate to accommodate the traffic at load factors consistent with tariffs based on the criteria set forth in paragraph (2) of Article 12 (tariffs).

(5) The Contracting Parties recognize that airline actions leading to excess capacity or to the underprovision of capacity can both run counter to the interests of the travelling public. Accordingly, in the particular case of combination air services on the North Atlantic routes specified in paragraph (1) of Annex 2, they have agreed to establish the procedures set forth in Annex 2. With respect to other routes and services, if one Contracting Party believes that the operations of a designated airline or airlines of the other Contracting Party have been inconsistent with the principles set forth in this Article, it may request consultations pursuant to Article 16 (Consultations) for the purpose of reviewing the operations in question to determine whether they are in conformity with these principles. In such consultations there shall be taken into consideration the operations of all airlines serving the market in question and designated by the Contracting Party whose airline or airlines are under review. If the Contracting Parties conclude that the operations under review are not in conformity with the principles set forth in this Article, they may decide upon appropriate corrective or remedial measures, except that, where frequency or capacity limitations are already provided for a route specified in Annex 1, the Contracting Parties may not vary those limitations or impose additional limitations except by amendment of this Agreement.

(6) Neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other except according to the terms of this Agreement or by such uniform conditions as may be contemplated by the Convention

ARTICLE 12

Tariffs

(1) Tariffs of the designated airlines of the Contracting Parties for carriage between their territories shall be established in accordance with the procedures set out in this Article.

(2) The tariffs charged by the designated airlines of one Contracting Party for public transport to or from the territory of the other Contracting Party shall be established at the lowest level consistent with a high standard of safety and adequate return to efficient airlines operating on the agreed routes. Each tariff shall, to the extent feasible, be based on the costs of providing such service assuming reasonable load factors. Additional relevant factors shall include among others the need of the airline to meet competition from scheduled or charter air services, taking into account differences in cost and quality of service, and the prevention of unjust discrimination and undue preferences or advantages. To further the reasonable interests of users of air transport services, and to encourage the further developmnat of civil aviation, individual airlines should be encouraged to initiate innovative, cost-based tariffs.

(3) The tariffs charged by the designated airlines of one Contracting Party for public transport between the territory of the other Contracting Party and the territory of a third State shall be subject to the approval of the other Contracting Party and such third State; provided, however, that a Contracting Party shall not require a different tariff from the tariff of its own airlines for comparable service between the same points. The designated airlines of each Contracting Party shall file such tariffs with the other Contracting Party, in accordance with its requirements.

(4) Any tariff agreements with respect to public transport between the territories of the Contracting Parties concluded as a result of intercarrier discussions, including those held under the traffic conference procedures of the International Air Transport Association, or any other association of international airlines, and involving the airlines of the Contracting Parties will be subject to the approval of the aeronautical authorities of those Contracting Parties, and may be disapproved at any time whether or not previously approved. The submission of such agreements is not the filing of a tariff for the purposes of the provisions of paragraph (5) of this Article. Such agreements shall be submitted to the aeronautical authorities of both Contracting Parties for approval at least 105 days before the proposed date of effectiveness, accompanied by such justification as each Contracting Party may require of its own designated airlines. The period of 105 days may be reduced with the consent of the aeronautical authorities of the Contracting Party with whom a filing is made. The aeronautical authorities of each Contracting Party shall use their best efforts to approve or disapprove (in whole or in part) each agreement submitted in accordance with this paragraph on or before the 60th day after its submission. Each Contracting Party may require that tariffs reflecting agreements approved by it be filed and published in accordance with its laws.

(5) Any tariff of a designated airline of one Contracting Party for public transport between the territories of the Contracting Parties shall, if so required, be filed with the aeronautical authorities of the other Contracting Party at least 75 days prior to the proposed effective date unless the aeronautical authorities of that Contracting Party permit the filing to be made on shorter notice. Such tariff shall become effective unless action is taken to continue in force the existing tariff as provided in paragraph (7) of this Article.

(6) If the aeronautical authorities of one Contracting Party, on receipt of any filing referred to in paragraph (5) of this Article, are dissatisfied with the tariff proposed or desire to discuss the tariff with the other Contracting Party, the first Contracting Party shall so notify the other Contracting Party through diplomatic channels within 30 days of the filing of such tariff, but in no event less than 15 days prior to the proposed effective date of such tariff. The Contracting Party receiving the notification may request consultations and, if so requested, such consultation shall be held at the earliest possible date for the purpose of attempting to reach agreement on the appropriate tariff. If notification of dissatisfaction is not given as provided in this paragraph, the tariff shall be deemed to be approved by the aeronautical authorities of the Contracting Party receiving the filing and shall become effective on the proposed date.

(7) If agreement is reached on the appropriate tariff under paragraph (6) of this Article, each Contracting Party shall exercise its best efforts to put such tariff into effect. If an agreement is not reached prior to the proposed effective date of the tariff, or if consultations are not requested, the aeronautical authorities of the Contracting Party expressing dissatisfaction with that tariff may take action to continue in force the existing tariffs beyond the date on which they would otherwise have expired at the levels and under the conditions (including seasonal variations) set forth therein. In this event the other Contracting Party shall similarly take any action necessary to continue the existing tariffs in effect. In no circumstances, however, shall a Contracting Party require a different tariff from the tariff of its own designated airlines for comparable service between the same points.

(8) The aeronautical authorities of each Contracting Party shall exercise their best efforts to ensure that the designated airlines conform to the agreed tariffs filed with the aeronautical authorities of the Contracting Parties, and that no airline rebates any portion of such tariffs by any means, directly or indirectly.

(9) In order to avoid tariff disputes to the greatest extent possible:
(a) a continuing Tariff Working Group shall be established to make recommendations on tariff-making standards, as provided in Annex 3;
(b) the aeronautical authorities will keep one another informed of such guidance as they may give to their own airlines in advance of or during traffic conferences of the International Air Transport Association; and
(c) during the period that the aeronautical authorities of either Contracting Party have agreements under consideration pursuant to paragraph (4) of this Article, the Contracting Parties may exchange views and recommendations, orally or in writing. Such views and recommendations shall, if requested by either Contracting Party, be presented to the aeronautical authorities of the other Contracting Party, who will take them into account in reaching their decision.

ARTICLE 13

Commissions

(1) The airlines of each Contracting Party may be required to file with the aeronautical authorities of both Contracting Parties the level or levels of commissions and all other forms of compensation to be paid or provided by such airline in any manner or by any device, directly or indirectly, to or for the benefit of any person (other than its own *bona fide* employees) for the sale of air transportation between the territories of the Contracting Parties. The aeronautical authorities of each Contracting Party shall exercise their best efforts to ensure that the commissions and compensation paid by the airlines of each Contracting Party conform to the level or levels of commissions and compensation filed with the aeronautical authorities.
(2) The level of commissions and other forms of compensation paid with respect to the sale, within the territory of a Contracting Party, of air transportation, shall be subject to the laws and regulations of such Contracting Party, which shall be applied in a nondiscrimintatory fashion.

ARTICLE 14

Charter Air Service

(1) The Contracting Parties recognize the need to further the maintenance and development, where a substantial demand exists or may be expected, of a viable network of scheduled air services, consistently and readily available, which caters for all segments of demand and particularly for those needing a wide and flexible range of air services.
(2) The Contracting Parties also recognize the substantial and growing demand from that section of the travelling public which is price rather than time sensitive, for air services at the lowest possible level of fares. The Contracting Parties, therefore, taking into account the relationship of scheduled and charter air services and the need for a total air service system, shall further the maintenance and development of efficient and economic charter air services so as to meet that demand.
(3) The Contracting Parties shall therefore apply the provisions of Annex 4 to charter air services between their territories.

ARTICLE 15

Transitional Provisions

(1) Designation. On the entry into force of this Agreement, and until 1 November 1977, all designations and authorizations in effect pursuant to the 1946 Bermuda Agreement shall remain in effect. Additional designations shall

be subject to the provisions of Article 3 (Designation and Authorization of Airlines) of this Agreement. By 1 November 1977, each Contracting Party shall indicate to the other all the initial designations applicable under this Agreement. Nothwithstanding the provisions of Article 3, until 1 November 1977:
(a) the United States shall be entitled to retain two designated airlines to operate combination air services on each of three gateway route segments on US Routes 1 and 2, taken together; and
(b) the United Kingdom shall be entitled to retain three designated airlines to operate combination air services on one gateway route segment on UK Routes 1, 2, 3, 4 and 5, taken together.
(2) Capacity. Notwithstanding the provisions of Annex 2, as regards the winter traffic season of 1977/78 the following procedures shall apply:
Paragraph (2): Airlines shall file schedules not later than 120 days prior to the winter traffic season, instead of 180 days.
Paragraph (3): Airlines shall refile amendments not later than 105 days prior to the winter traffic season, instead of 165 days.
Paragraph (4): A Contracting Party's notice of inconsistency shall be given within 90 days, instead of 150 days.
Paragraph (5): If requested, consultations shall begin not later than 75 days prior to the winter traffic season, instead of 90 days.
Paragraph (6): If agreement on capacity to be operated is not achieved, paragraph (6) procedures shall apply within 60 days prior to the winter traffic season, instead of 75 days.
(3) Tariffs. All tariffs filed to become effective on or after 1 November 1977, and all agreements filed to become effective on or after 1 January 1978 shall be subject to the provisions of Article 12 (Tariffs). Agreements filed to become effective prior to 1 January 1978 shall be subject to the provisions of Article 12 to the greatest extent feasible. Tariffs filed to become effective prior to 1 November 1977 shall be subject to the provisions of the 1946 Bermuda Agreement, and all tariffs in effect under the 1946 Bermuda Agreement shall continue in force, but either Contracting Party may notify the other Contracting Party of its dissatisfaction with any such tariffs, and the procedures set forth in this Agreement shall then apply.

ARTICLE 16

Consultations

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations shall begin within a period of 60 days from the date the other Contracting Party receives the request, unless otherwise agreed by the Contracting Parties

ARTICLE 17

Settlement of Disputes

(1) Any dispute arising under this Agreement, other than disputes where self-executing mechanisms are provided in Article 12 (Tariffs) and Annex 2, which is not resolved by a first round of formal consultations, may be referred by agreement of the Contracting Parties for decision to some person or body. If the Contracting Parties do not so agree, the dispute shall at the request of either Contracting Party be submitted to arbitration in accordance with the procedures set forth below.
(2) Arbitrations shall be by a tribunal of three arbitrators to be constituted as follows:
(a) within 30 days after the receipt of a request for arbitration, each Contract-

ing Party shall [redacted] one arbitrator. Within 60 days after these two arbitrators have been nominated, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(b) if either Contracting Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparapraph (a) of this paragraph, either Contracting Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 days. If the President is of the same nationality as one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed by the Contracting Parties, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement, and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

(5) The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision of the majority of the tribunal shall prevail.

(6) The Contracting Parties may submit request for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

(7) Each Contracting Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal. In the event that one Contracting Party does not give effect to any decision or award, the other Contracting Party may take such proportionate steps as may be appropriate.

(8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph (2)(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 18

Amendment

Any amendments or modifications of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an Exchange of Notes.

ARTICLE 19

Termination

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period.

ARTICLE 20

Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 21

Entry into Force

This Agreement shall enter into force on the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate at Bermuda this 23rd day of July, Nineteen Hundred and Seventy-Seven.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Brock Adams

Alan S. Boyd

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Edmund Dell

W. Patrick Shovelton

ANNEX 1 ROUTE SCHEDULES

(See Official Publication by the U.S. Department of Transportation)

ANNEX 2 — Capacity on the North Atlantic

(1) In order to ensure the sound application of the principles set forth in Article 11 (Fair Competition) of this Agreement and in view of the special circumstances of North Atlantic air transport, the Contracting Parties have agreed to the following procedures with respect to combination air services on US Routes 1 and 2 and UK Routes 1, 2, 3, 4 and 5, specified in Annex 1.

(2) The purpose of this Annex is to provide a consultative process to deal with cases of excess provision of capacity, while ensuring that designated airlines retain adequate scope for managerial initiative in establishing schedules and that the overall market share achieved by each designated airline will depend upon passenger choice rather than the operation of any formula or limitation mechanism. In keeping with these objectives, the Contracting Parties desire to avoid unduly frequent invocation of the consultative mechanism or limitation provision in order to avoid undue burden of detailed supervision of airline scheduling for the Contracting Parties

(3) Not later than 180 days before each summer and winter traffic season, each designated airline shall file with both Contracting Parties its proposed schedules for services on each relevant gateway route segment for that season. Such schedules shall specify the frequency of service, type of aircraft and all the points to be served. The designated airlines may amend their filings in the light

of the schedules so filed and shall file such amendments with both Contracting Parties not later than 165 days before each summer and winter traffic season. In the event that adjustments in schedules are later required, such adjustments shall be filed with both Contracting Parties on a timely basis. A resulting increase in frequency by an airline on any gateway route segment shall be subject to the approval of the other Contracting Party.

(4) If a Contracting Party (the "Receiving Party") believes that an increase in frequency of service on a gateway route segment contained in any of the schedules so filed with it by a designated airline of the other Contracting Party (the "Requesting Party") may be inconsistent with the principles set forth in Article 11 of this Agreement, it shall, not later than 150 days before the next traffic season, notify the Requesting Party, giving the reasons for its belief and, in its discretion, indicating the increase, if any, in frequency of service on the gateway route segment which it considers consistent with the Agreement. Such notification shall not, however, be permitted in respect of a schedule for a summer traffic season which specifies a total of 120 or fewer round trip frequencies on any gateway route segment of for a winter traffic season which specifies 88 of fewer such frequencies. The Requesting Party shall review the increase in frequency of service called into question in the light of the principles set forth in Article 11, taking into account the public requirement for adequate capacity, the need to avoid uneconomic excess capacity, the development of routes and services, the need for viable airline operations, and the capacity offered by airlines of third countries between the points in question The Requesting Party shall, not later than 120 days before the next traffic season notify the Receiving Party of the extent to which it considers that the increase in frequency is consistent with the principles set forth in Article 11

(5) If the Receiving Party is not satisfied with the Requesting Party's determination with respect to the increase in frequency in question, it shall so notify the Requesting Party not later than 105 days before the next traffic season, and consultations shall be held as soon as possible and in any event not later than 90 days before that traffic season. In such consultations, the Parties shall exchange relevant economic data, including forecasts of the percentage increase in total on-board revenue passenger traffic expected on the gateway route segment in question when the next traffic season is compared with the previous corresponding season.

(6) If, 75 days before the traffic season begins, agreement has not been reached through such consultations, each designated airline on the gateway route segment in question shall be entitled to operate during the next traffic season the schedule it proposes to operate, but not more than the sum of.

(a) the total number of round trip frequencies (excluding extra-sections) which that airline was allowed under this Annex to operate on that gateway route segment during the previous corresponding season; and

(b) such number of round trip frequencies as are determined by applying to the number described in subparagraph (a) the average of the forecast percentages mentioned in paragraph (5) of this Annex An addition of 20 round trip frequencies during a summer traffic season or 15 during a winter traffic season shall in any event be permitted.

In no event shall a designated airline be required to operate fewer than 120 round trip frequencies during a summer traffic season or 88 during a winter traffic season

(7) A designated airline of one Contracting Party which inaugurates service on a gateway route segment already served by a designated airline or airlines of the other Contracting Party shall not be bound by the limitations set forth in paragraph (6) of this Annex for a period of two years or until it matches the frequencies of any incumbent airline of that other Contracting Party, whichever occurs first

(8) Operations of Concorde aircraft by United Kingdom designated airlines shall not be subject to the provisions of this Annex. In order, however, that this exclusion should not unfairly affect United States designated airlines, the United States airline designated to operate combination air services on the

Washington-London gateway route segment may not be required, under paragraph (6) of this Annex, to operate fewer than seven round trip flights per week.

(9) Each Contracting Party shall allow filed schedules which have not been questioned under paragraph (5) of this Annex to become effective on their proposed commencement dates Each Contracting Party shall allow schedules which may have been determined by agreement through consultations or, in the absence of such agreement, as provided in paragraph (6) of this Annex, to become effective on their proposed commencement dates Each Contracting Party may take such steps as it considers necessary to prevent the operation of schedules which include frequencies greater than those permitted or agreed under this Annex

(10) Each designated airline shall be entitled to operate extra sections on any gateway route segment, provided that such extra sections are not advertised or held out as separate flights.

(11) In the event that either Contracting Party believes that this Annex is not achieving the objectives set forth in paragraph (2), they may consult at any time, pursuant to Article 16 (Consultations) of this Agreement, to consider alterations to the procedures or numerical limitations.

(12) Subject to Article 19 (Termination) of this Agreement, this Annex shall remain in force for a period of five years. The Contracting Parties shall consult during the first quarter of the fifth year after the entry into force of this Agreement to review the operation of the Annex and to decide as to its extension or revision. If the Contracting Parties do not agree on extension or revision, this Annex shall remain in force for a further period of two years and shall then lapse

(13) For the purposes of this Annex, "summer and winter traffic seasons" mean, respectively, the periods from 1 April through 31 October and from 1 November through 31 March

ANNEX 3 — Tariffs

(1) A tariff Working Group shall be established and shall consist of experts from each Contracting Party in areas such as accounting, statistics, financial analysis, economics, pricing and marketing

(2) The Tariff Working Group shall meet within 90 days of the entry into force of this Agreement and thereafter as necessary to accomplish the objectives of this Agreement.

(3) The Tariff Working Group shall develop procedures for the exchange, on a recurrent basis, of verified financial and traffic statistics in order to assist each Contracting Party in assessing tariff proposals

(4) The Tariff Working Group shall, by 23 July 1978, make recommendations to the Contracting Parties on load factor standards and evaluation and review criteria for North Atlantic tariffs

(5) The Contracting Parties shall review the recommendations of the Tariff Working Group and, subject to the outcome of this review, shall give due consideration to these recommendations in reviewing tariffs and agreements reached under the auspices of the International Air Transport Association.

(6) Either Contracting Party may from time to time request that the Tariff Working Group be convened to consider specific issues

ANNEX 4 — Charter Air Service

(1) The Memorandum of Understanding on Passenger Charter Air Services between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, applying from 1 April 1977, shall be regarded as being incorporated in this Annex for as long as it remains in force

(2) Articles [redacted] paragraphs (1), (3), and (4)), 4, 6, 8 (except that paragraph (3) shall apply [redacted] to the extent authorized by the aeronautical authorities in the relevant territory), 9, 10, 14, 16, 17, 18, 19, 20 and 21 of this Agreement shall apply to airlines authorized by both Contracting Parties to operate charter international air services between the territories of the two Contracting Parties.

(3) In furtherance of paragraphs (1) and (2) of Article 14 of this Agreement, the Contracting Parties agree that it is desirable to work toward a multilateral arrangement for charter air services in the North Atlantic market. The Contracting Parties also agree that a bilateral agreement would be an appropriate means of achieving their common objective. Such bilateral agreement should include, among other matters, progressive charterworthiness conditions, freedom of market access, arrangements for designation and authorization of charter airlines which lead to the issue of permits rather than individual flight licenses, minimization of administrative burdens, all-cargo charter arrangements, and capacity and price arrangements consistent with those contained in the Memorandum of Understanding on Passenger Charter Air Services. The Contracting Parties shall enter into negotiations as soon as possible and, in any event, not later than 31 December 1977, to work towards the foregoing objectives. In the absence of agreement by 31 March 1978, the Contracting Parties agree to consult further with a view to a continuation of liberal arrangements for charter air services

ANNEX III

A U.S. Standard "Country-of-Origin" Pricing Article

(1) Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

(a) prevention of predatory or discriminatory prices or practices;

(b) protection of consumers from prices that are high or restrictive because of the abuse of monopoly power; and

(c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

(2) Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party or by airlines of third countries of prices charged by charterers to the public for traffic originating in the territory of that other Party.

(3) If either Party believes that a price proposed or charged by

(a) an airline of the other Party or an airline of a third country for international air transportation between the territories of the Parties; or

(b) an airline of the other Party for international air transportation between the territory of the first Party and a third country, including in both cases transportation on an interline or intra-line basis,

is inconsistent with the considerations set forth in paragraph (1) of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Party within 30 days of receiving the notification or filing of the price. Either Party may then request consultations which shall be held as soon as possible, and in no event later than 30 days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issue.

(4) If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect.

(5) If,

(a) with respect to a proposed price, consultations are not requested or an agreement is not reached as a result of consultations; or

(b) with respect to a price already being charged when notice of dissatisfaction is given, consultations are not requested within 30 days of receipt of the notice or an agreement is not reached as a result of consultations within 60 days of receipt of the notice,

either Party may take action to prevent the inauguration or continuation of the price for which a notice of dissatisfaction has been given, but only with respect to traffic where the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory. Neither Party shall take unilateral action to prevent the inauguration or continuation of any price subject to this Article, except as provided in this paragraph.

(6) Notwithstanding paragraph (5) of this Article, each Party shall allow

(a) any airline of either Party or any airline of a third country to meet a lower more competitive price proposed or charged by any other airline or charterer for international air transportation between the territories of the Parties, and

(b) any airline of one Party to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territory of the other Party and a third country. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type.

ANNEX IV

A U.S. STANDARD "POST 1977" AGREEMENT

AIR TRANSPORT AGREEMENT

BETWEEN THE GOVERNMENT OF THE

UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE

KINGDOM OF THAILAND

The Government of the United States of America and the Government of the Kingdom of Thailand,

Desiring to promote an international air transport system based on fair and constructive competition among airlines in the marketplace with as little governmental intervention and regulation as possible, consistent with the provisions of this Agreement,

Desiring to facilitate the expansion of international air transport opportunities,

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position and wishing to encourage designated airlines to develop and implement innovative and competitive prices,

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944,

Desiring to conclude a revised agreement covering scheduled and charter air transportation to replace the Air Services Agreement concluded between them and signed at Bangkok on February 26, 1947,

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

(a) "Aeronautical authorities" means, in the case of the United States, the Civil Aeronautics Board or the Department of Transportation, whichever has jurisdiction, or their successor agencies, and in the case of the Kingdom of Thailand, means the Minister of Communications and/or any person or body authorized to perform any Civil Aviation or similar functions exercised by the said Minister;

(b) "Agreement" means this Agreement, its Annexes, and any amendments thereto;

(c) "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers (and their baggage), cargo and mail, separately or in combination, for remuneration or hire;

(d) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:

(i) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties, and

(ii) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;

(e) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;

(f) "Price" means:

(i) any fare, rate or price to be charged by airlines, or their agents, and the conditions governing the availability of such fare, rate or price;

(ii) the charges and conditions for services ancillary to carriage of traffic which are offered by airlines; and

(iii) amounts charged by airlines to air transportation intermediaries;

for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation.

(g) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers (and their baggage), cargo and mail in air transportation;

(h) "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto; and

(i) "User charge" means a charge made to airlines for the provision of airport, air navigation or aviation security property or facilities.

(j) "Full economic costs" means the direct cost of providing service plus a reasonable charge for administrative overhead.

ARTICLE 2

Grant of Rights

Each Contracting Party grants to the other Contracting Party rights for the conduct of air services by the designated airline or airlines, as follows:

(1) to fly across the territory of the other Contracting Party without landing;

(2) to land in the territory of the other Contracting Party for nontraffic purposes; and

(3) To make stops at the points in the territory of the other Contracting Party named on each of the routes specified in the appropriate paragraph of the Schedule of this Agreement for the purpose of taking on and discharging

international traffic in passengers, cargo, and mail, separately or in combination.

ARTICLE 3

Designation and Authorization

(1) Each Party shall have the right to designate as many airlines as it wishes, consistent with its domestic laws and policies, to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify whether the airline is authorized to conduct the type of air transportation specified in Annex I or in Annex II or in both.

(2) On receipt of such a designation and of applications in the form and manner prescribed from the designated airline for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

(a) substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both.

(b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and

(c) the Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety).

ARTICLE 4

Revocation of Authorization

(1) Each Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Party where:

(a) substantial ownership and effective control of that airline are not vested in the other Party or the other Party's nationals;

(b) that airline has failed to comply with the laws

and regulations referred to in Article 5 of this Agreement; or

(c) the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).

(2) Unless immediate action is essential to prevent further non-compliance with subparagraphs (1) (b) or (1) (c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

ARTICLE 5

Application of Laws

(1) While entering, within or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

(2) While entering, within or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by or on behalf of such passengers, crew or cargo of the other Party's airlines.

ARTICLE 6

Safety

(1) Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

(2) Each Party may request consultations concerning the safety and security standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety and security

standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate action within a reasonable time.

ARTICLE 7

Aviation Security

Each Party:

(1) reaffirms its commitment to act consistently with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal on September 23, 1971;

(2) shall require that operators of aircraft of its registry act consistently with applicable aviation security provisions established by the International Civil Aviation Organization; and

(3) shall provide maximum aid to the other Party with a view to preventing unlawful seizure of aircraft, sabotage to aircraft, airports, and air navigation facilities, and threats to aviation security; give sympathetic consideration to any request from the other Party for special security measures for its aircraft or passengers to meet a particular threat; and when incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, assist the other Party by facilitating communications intended to terminate such incidents rapidly and safely.

ARTICLE 8

Commercial Opportunities

(1) The airline or airlines of one Party may establish offices in the territory of the other Party for the promotion and sale of air transportation.

(2) The designated airline or airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, bring in and maintain in the territory of the other Party managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

(3) Each designated airline may perform its own ground handling in the territory of the other Party ("self-handling") or, at its option, select among competing, authorized agents and designated airlines of either Party engaged in regular air transportation, scheduled or charter, in the territory of the other Party, for such services. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services if self-handling were possible.

(4) Each designated airline of one Party may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter traffic originates. Each designated airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or, subject to domestic law, in freely convertible currencies.

(5) Each designated airline of one Party may convert and remit, without restrictions or taxation, to its country, on demand, local revenues in excess of sums locally disbursed. Such conversion and remittance shall be permitted promptly, in accordance with the applicable administrative currency regulations, at the rate of exchange for current transactions and remittance.

ARTICLE 9

Customs Duties and Taxes

(1) On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular aircraft equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during the flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in

international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges imposed by the national authorities, and not based on the cost of services provided, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the service provided, as follows:

(a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of a designated airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

(b) ground equipment and spare parts including engines introduced into the territory of a Party for the servicing, maintenance or repair of aircraft of a designated airline of the other Party used in international air transportation; and

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of a designated airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The exemptions provided for by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs (1) and (2) of this Article.

(5) Each Party shall use its best efforts to secure for the designated airlines of the other Party, on the basis of reciprocity, an exemption from taxes, duties, charges and fees imposed by State, regional and local authorities on

the items specified in paragraphs (1) and (2) of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the actual cost of providing the service.

ARTICLE 10

User Charges

(1) User charges imposed by the competent charging authorities on the airlines of the other Party shall be just, reasonable, and nondiscriminatory.

(2) User charges imposed on the airlines of the other Party may reflect, but shall not exceed, an equitable portion of the full economic cost to the competent charging authorities of providing the airport, air navigation, and aviation security facilities and services. Facilities and services for which charges are made shall be provided on an efficient and economic basis. Reasonable notice shall be given prior to changes in user charges. Each Party shall encourage consultations between the competent charging authorities in its territory and airlines using the services and facilities, and shall encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges.

ARTICLE 11

Fair Competition

(1) Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.

(2) Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competition practices adversely affecting the competitive position of the airlines of the other Party.

(3) Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airline or airlines of the other Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

(4) Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no-

objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of the Agreement.

(5) Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a nondiscriminatory basis to enforce uniform conditions as foreseen by paragraph (3) of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

ARTICLE 12

Pricing (Mutual Disapproval)

(1) Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

(a) prevention of predatory or discriminatory prices or practices;

(b) protection of consumers from prices unduly high or restrictive because of the abuse of a dominant position; and

(c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

(2) Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party or by airlines of third countries of prices charged by charterers to the public for traffic originating in the territory of that other Party.

(3) Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party or by an airline of a third country for international air transportation between the territories of the Parties, or (b) an airline of one Party for international air

transportation between the territory of the other Party and a third country, including in both cases transportation on an interline or intra-line basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without mutual agreement, that price shall go into or continue in effect.

(4) Notwithstanding paragraph (3) of this Article, each Party shall allow (a) any airline of either Party or any airline of a third country to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territories of the Parties, and (b) any airline of one Party to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territory of the other Party and a third country. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type, or such price through a combination of prices.

ARTICLE 13

Consultations

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed. Each Party shall prepare and present during such consultations relevant evidence in support of its position in order to facilitate informed, rational and economic decisions. If there are any revisions of this Agreement or its annexes as a result of such consultations, they shall be confirmed by an exchange of Diplomatic Notes.

ARTICLE 14

Settlement of Disputes

(1) Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, except

those which may arise under paragraph 3 of Article 12 (Pricing), may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall at the request of either Party be submitted to arbitration in accordance with the procedures set forth below.

(2) Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(b) if either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 days. If the President is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

(4) Except as otherwise agreed, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

(5) The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted,

whichever is sooner. The decision of the majority of the tribunal shall prevail.

(6) The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

(7) Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

(8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph (2) (b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 15

Termination

Either Party may, at any time give notice in writing, through Diplomatic channels, to the other Party, of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the end of this period.

ARTICLE 16

Multilateral Agreement

If a multilateral agreement, accepted by both Parties, concerning any matter covered by this Agreement enters into force, this Agreement shall be amended so as to conform with the provisions of the multilateral agreement.

ARTICLE 17

Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 18

Entry into Force

This Agreement shall enter into force on the date of signature and shall supersede the Air Services Agreement of February 26, 1947, as amended.

ANNEX I

SCHEDULED AIR SERVICE

Section 1

Airlines of one Party whose designation identifies this Annex shall, in accordance with the terms of their designation, be entitled to perform international air transportation (1) between points on the following routes, and (2) between points on such routes and points in third countries through points in the territory of the Party which has designated the airline.

A. Routes for the airline or airlines designated by the Government of the United States:

From the United States via intermediate points to points in Thailand and beyond.

B. Routes for the airline or airlines designated by the Government of the Kingdom of Thailand:

1. From Thailand via intermediate points to New York.

2. From Thailand via intermediate points to Honolulu and Los Angeles and beyond to Canada and Europe.

3. From Thailand via intermediate points across the Pacific to Guam,1/ Honolulu, Seattle,1/ Los Angeles and one additional point 1/ in the United States to be selected by Thailand with the option to change the point by giving sixty days' prior notice, and beyond to points in Canada.

1/ Four roundtrip frequencies per week may be operated through Tokyo serving Guam, Seattle or the additional U.S. point, whether served directly or indirectly through another U.S. point.

Section 2

Each designated airline may, on any or all flights and at its option, operate flights in either or both directions and without directional or geographic limitation, serve points on the routes

in any order, and omit stops at any points or points outside the territory of the Party which has designated that airline, without loss of any right to carry traffic otherwise permissible under the Agreement.

Section 3

On any international segment or segments of the routes described in Section 1 above, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the Party which has designated the airline and, in the inbound direction, the transportation to the territory of the Party which has designated the airline is a continuation of the transportation beyond such point.

ANNEX II

Charter Air Service

Section 1

Airlines of one Party whose designation identifies this Annex shall, in accordance with the terms of their designation, be entitled to perform international air transportation to, from and through any point or points in the territory of the other Party, either directly or with stopovers en route, for one-way or roundtrip carriage of the following traffic:

(a) any traffic to or from a point or points in the territory of the Party which has designated the airline;

(b) any traffic to or from a point or points beyond the territory of the Party which has designated the airline and carried between the territory of that Party and such beyond point or points (i) in transportation other than under this Annex; or (ii) in transportation under this Annex with the traffic making a stopover of at least two consecutive nights in the territory of that Party.

Section 2

With regard to traffic originating in the territory of either Party, each airline performing air transportation under this Annex shall comply with such laws, regulations and rules of the Party in whose territory the traffic originates, whether on a one-way or roundtrip basis, as that Party now or hereafter

specifies shall be applicable to such transportation. When the regulations or rules of one Party apply more restrictive terms, conditions or limitations to one or more of its airlines, the designated airlines of the other Party shall be subject to the least restrictive of such terms, conditions or limitations. Moreover, if the aeronautical authorities of either Party promulgate regulations or rules which apply different conditions to different countries, each Party shall apply the most liberal regulation or rule to the designated airlines of the other Party.

Section 3

Neither Party shall require a designated airline of the other Party, in respect of the carriage of traffic from the territory of that other Party on a one-way or roundtrip basis, to submit more than a declaration of conformity with the laws, regulations and rules of that other Party referred to under Section 2 of this Annex or of a waiver of these regulations or rules granted by the aeronautical authorities of that other Party.

ANNEX V

I

NONSCHEDULED AIR SERVICE AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Government of Canada and the Government of the United States o America,

Being Parties to the Convention on International Civil Aviation opene for signature at Chicago on the seventh day of December 1944,

Desiring to conclude an Agreement for the purpose of promoting non scheduled air services,

Recognizing that the geographic situation of the two countries, includin, the location of their main centers of population, and the close relationship between their two peoples create a situation unique in international civi aviation,

Desiring to ensure the continued development of a system of air transpor free from discriminatory practices, based on an equitable exchange of eco nomic benefits to the two countries, and able to accommodate the needs of the people of the two countries with a minimum of artificial restraint arising from the existence of their common border,

Desiring to ensure equitable opportunity for the air carriers of the two countries to participate in the development of this system and to make optimum use of modern equipment,

Recognizing the existence, continuing importance, and contribution t international aviation of the Air Transport Agreement[a] for vital scheduled services, and of the Agreement on Air Transport Preclearance of air travellers,[b]

Believing furthermore that the Air Transport Agreement for scheduled air services between their territories and the Agreement on Air Transport Preclearance of air travellers should be complemented by an agreemen covering nonscheduled air services between their territories, and

Desiring to ensure the orderly development of such nonscheduled air services consistent with their interests in maintaining a sound system o scheduled air services between their respective territories,

Have agreed as follows:

ARTICLE I

For the purpose of this Agreement,

(a) "Agreement" shall mean this Agreement, the Annexes attached the to, and any amendments thereto.

(b) "Aeronautical authorities" shall mean, in the case of the United St of America, the Federal Aviation Administration with respect to

[a] Treaty Series 1968 No. 3 and 1974 No. 18
[b] Treaty Series 1974 No. 17

I

ACCORD RELATIF AUX SERVICES AÉRIENS NON RÉGULIERS ENTRE LE GOUVERNEMENT DU CANADA ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE

Le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique,

Étant parties à la Convention relative à l'aviation civile internationale ouverte à la signature à Chicago le septième jour de décembre 1944,

Désirant conclure un accord afin de promouvoir les services aériens non réguliers,

Reconnaissant que la situation géographique des deux pays, y compris la répartition de leurs principaux centres urbains, et les relations étroites qui existent entre leurs deux peuples créent une situation unique dans le domaine de l'aviation civile internationale,

Désirant assurer le développement régulier d'un système de transport aérien exempt de toute pratique discriminatoire, fondé sur un échange équitable d'avantages économiques entre les deux pays et capable de répondre aux besoins de la population des deux pays en ne comportant qu'un minimum d'entraves artificielles créées par l'existence de leur frontière commune,

Désirant permettre aux transporteurs aériens des deux pays de participer équitablement au développement de ce système et de faire un usage optimum du matériel moderne,

Reconnaissant l'existence et l'importance soutenue de l'Accord relatif aux transports aériens[a] pour ce qui est des services aériens réguliers essentiels et de l'Accord relatif au prédédouanement des passagers aériens[b] dans le domaine du transport aérien et leur apport à l'aviation internationale,

Estimant en outre que l'Accord relatif aux transports aériens portant sur les services aériens réguliers entre leurs territoires et l'Accord relatif au prédédouanement des passagers aériens dans le domaine du transport aérien doivent être complétés par un accord touchant les services aériens non réguliers entre leurs territoires, et

Désirant assurer le développement ordonné desdits services aériens non réguliers en conformité avec leur intérêt à maintenir un système rationnel de services aériens réguliers entre leurs territoires respectifs,

Sont convenus de ce qui suit:

ARTICLE PREMIER

Aux fins du présent Accord:

a) «Accord» désigne le présent Accord, les Annexes qui y sont jointes et toutes les modifications qui pourront y être apportées.

b) «Autorités aéronautiques» désigne, dans le cas des États-Unis d'Amérique, la *Federal Aviation Administration* pour ce qui touche l'autori-

[a] Recueil des Traités 1968 N° 3 et 1974 N° 18.
[b] Recueil des Traités 1974 N° 17

technical permission and safety standards and requirements referred to in Articles III and VI (2) respectively, otherwise the Civil Aeronautics Board, and in the case of Canada, the Canadian Air Transportation Administration with respect to the technical permission and safety standards and requirements referred to in Articles III and VI (2) respectively, otherwise the Canadian Transport Commission, or in both cases, any person or agency authorized to perform the functions exercised at present by those authorities.

(c) "Carrier" or "carriers" shall mean an air carrier or carriers designated by one Contracting Party in writing to the other Contracting Party to be a carrier which will operate any of the nonscheduled air services provided for in this Agreement.

(d) "Territory" in relation to a Contracting Party shall mean the land areas under the sovereignty, jurisdiction or trusteeship of the Contracting Party, and territorial waters adjacent thereto.

(e) "Traffic" shall mean such traffic as is specifically provided for in the Annexes attached hereto.

(f) "Nonscheduled air service" shall mean such air service as is specifically provided for in the Annexes attached hereto.

(g) "Enplane" shall mean the first taking on board of nonscheduled air service traffic on an aircraft of a carrier.

(h) "Deplane" shall mean any deboarding of nonscheduled air service traffic from an aircraft of a carrier but shall not include deboarding for nontraffic purposes.

(i) "Re-enplane" shall mean any taking on board on an aircraft of a carrier of nonscheduled air service traffic which has enplaned and deplaned.

(j) "Air Transport Agreement" shall mean the Air Transport Agreement between the Government of the United States of America and the Government of Canada signed on January 17, 1966, as amended, or any agreement which may supersede it.

(k) "Rates" shall be deemed to include all tariffs, tolls, fares, and charges for transportation, and the conditions of carriage, classifications, rules, regulations, practices, and services related thereto.

ARTICLE II

1 Each Contracting Party grants to the other Contracting Party the rights specified in the Annexes attached hereto for the carriers of the other Contracting Party to enplane, deplane, and re-enplane nonscheduled air service traffic.

2. Nothing herein is intended to affect services not covered by this Agreement.

ARTICLE III

1 Each Contracting Party shall have the right to designate, by diplomatic note to the other Contracting Party, a carrier or carriers to operate any of the nonscheduled air services provided in this Agreement.

sation technique et les normes et les exigences en matière de sécurité précisées aux Articles III et VI (2) respectivement ou, autrement, le Civil Aeronautics Board et, dans le cas du Canada, l'Administration canadienne des transports aériens pour ce qui touche l'autorisation technique et les normes et les exigences en matière de sécurité précisées aux Articles III et VI (2) respectivement ou, autrement, la Commission canadienne des transports, ou, dans les deux cas, toute personne ou tout organisme habilités à remplir les fonctions exercées à l'heure actuelle par ces autorités.

c) «Transporteur» ou «Transporteurs» désignent un ou plusieurs transporteurs aériens désignés par écrit par une Partie contractante à l'autre Partie contractante comme transporteur devant exploiter tout service aérien non régulier visé dans le présent Accord.

d) «Territoire», par rapport à une Partie contractante, désigne les étendues terrestres placées sous la souveraineté, la juridiction ou la tutelle de cette Partie contractante, ainsi que les eaux territoriales y adjacentes.

e) «trafic» désigne le trafic précisé dans les Annexes jointes au présent Accord.

f) «Service aérien non régulier» désigne le service aérien précisé dans les Annexes jointes au présent Accord.

g) «Embarquement» désigne le premier chargement du trafic d'un service aérien non régulier à bord d'un aéronef d'un transporteur.

h) «Débarquement» désigne tout déchargement du trafic d'un service aérien non régulier hors d'un aéronef d'un transporteur sans toutefois inclure les déchargements à des fins non commerciales.

i) «Rembarquement» désigne tout chargement du trafic d'un service aérien non régulier qui a été embarqué à bord et débarqué d'un aéronef d'un transporteur.

j) «Accord relatif aux transports aériens» désigne l'Accord relatif aux transports aériens entre le Gouvernement des États-Unis d'Amérique et le Gouvernement du Canada qui a été signé le 17 janvier 1966 dans sa forme modifiée ou tout autre accord qui pourrait le remplacer.

k) «Tarifs» est censé comprendre tous les droits, taxes et frais de transport, ainsi que les conditions de transport, les classifications, les règles, les règlements, les pratiques et les services qui s'y rattachent

ARTICLE II

1 Chaque Partie contractante accorde à l'autre Partie contractante les droits précisés dans les Annexes jointes au présent Accord pour ce qui est de l'embarquement, du débarquement et du rembarquement du trafic d'un service aérien non régulier par les transporteurs de l'autre Partie contractante.

2 Aucune disposition du présent Article ne modifie les services qui ne sont pas visés par le présent Accord

ARTICLE III

1 Chaque Partie contractante aura le droit de désigner, par une note diplomatique adressée à l'autre Partie contractante, un ou plusieurs transporteurs qu'elle chargera d'exploiter tout service aérien non régulier prévu dans le présent Accord

2. Upon receipt of a designation made by one Contracting Party, and upon receipt from the carrier of an application or applications in the form and manner prescribed for such applications, the aeronautical authorities of the other Contracting Party shall grant to the carrier, subject to the provisions of Articles IV and VI, and with a minimum of procedural delay, appropriate licensing and technical authorization to operate the nonscheduled air services provided for in this Agreement.

3. The aeronautical authorities of one Contracting Party may require a carrier of the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by them to the operation of international commercial air services.

ARTICLE IV

1. Each Contracting Party reserves the right to withhold, revoke or impose conditions on the authorization referred to in Article III with respect to a carrier of the other Contracting Party in the event that.

(a) Such carrier fails or ceases to qualify before the aeronautical authorities of the first Contracting Party under the laws and regulations normally applied by those authorities;

(b) Such carrier fails to comply with the laws and regulations referred to in Article V; or

(c) The first Contracting Party is not satisfied that substantial ownership and effective control of such carrier are vested in the Contracting Party designating the airline or in nationals of that Contracting Party

2. Unless immediate action is essential to prevent further infringement of the laws and regulations referred to in Article V, the right to revoke the authorization provided for in paragraph 1 above shall be exercised only after consultation with the other Contracting Party.

ARTICLE V

1. 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 carrier or carriers of the other Contracting Party, and shall be complied with by such aircraft upon entrance into, departure from, and while within the territory of the first Contracting Party

2. The laws, regulations, and procedures of one Contracting Party relating to the admission to or departure from its territory of passengers, baggage, cargo or crew of aircraft, including regulations and procedures relating to prevention of unlawful interference with aircraft, entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, baggage, cargo or crew of the carrier or carriers of

2. Sur réception d'un avis de désignation provenant d'une Partie contractante et d'une ou de plusieurs demandes formulées et présentées de la manière prescrite par le transporteur, les autorités aéronautiques de l'autre Partie contractante accorderont audit transporteur, sous réserve des dispositions des Articles IV et VI et dans les plus brefs délais possibles, les licences et l'autorisation technique nécessaires à l'exploitation des services aériens non réguliers prévus dans le présent Accord.

3. Les autorités aéronautiques d'une Partie contractante pourront demander à un transporteur de l'autre Partie contractante de justifier son aptitude à remplir les conditions prescrites par les lois et règlements appliqués normalement et raisonnablement par ces autorités à l'exploitation des services aériens commerciaux sur les routes internationales.

ARTICLE IV

1 Chaque Partie contractante se réserve le droit de refuser, d'annuler ou d'assortir de conditions l'autorisation indiquée à l'Article III et accordée au transporteur de l'autre Partie contractante si

a) ledit transporteur ne peut convaincre les autorités aéronautiques de la première Partie contractante qu'il satisfait aux exigences des lois et règlements appliqués normalement par ces autorités ou qu'il cesse de satisfaire auxdites exigences;

b) ledit transporteur ne se conforme pas aux lois et règlements mentionnés à l'Article V; ou

c) la première Partie contractante n'a pas obtenu la preuve qu'une part importante de la propriété et le contrôle effectif du transporteur en cause sont entre les mains de la Partie contractante désignant l'entreprise de transport aérien ou de ressortissants de cette Partie contractante.

2. A moins qu'il ne soit indispensable de prendre des mesures immédiates pour empêcher des infractions aux lois et règlements mentionnés à l'Article V, le droit d'annuler l'autorisation précisée au paragraphe 1 ci-dessus ne sera exercé qu'après consultations avec l'autre Partie contractante.

ARTICLE V

1 Les lois et règlements d'une Partie contractante relatifs à l'admission sur son territoire et au départ des aéronefs affectés à la navigation aérienne internationale, ou à l'exploitation et à la conduite de ces appareils à l'intérieur des frontières de ladite Partie contractante, s'appliquent aux aéronefs du transporteur ou des transporteurs de l'autre Partie contractante et doivent être observés par ces aéronefs lorsqu'ils entrent dans le territoire de la première Partie contractante, lorsqu'ils quittent ce territoire et pendant qu'ils se trouvent à l'intérieur de ses frontières.

2. Les lois, règlements et procédures d'une Partie contractante relatifs à l'admission sur son territoire et au départ des passagers, des bagages, des équipages et des cargaisons des aéronefs, y compris les règlements et les procédures destinés à prévenir l'intervention illicite dans l'aviation, les formalités d'admission, de congé, d'immigration, de passeports, de douane et de quarantaine devront être observés par les passagers et les équipages et pour les bagages et cargaisons du ou des transporteurs de l'autre Partie contrac-

the other Contracting Party upon entrance into, departure from, and while within the territory of the first Contracting Party.

ARTICLE VI

1. Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

2. The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety standards and requirements relating to aeronautical facilities, operations, airmen, and aircraft, which are maintained and administered by the other Contracting Party. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety standards and requirements of the other Contracting Party up to standards at least equal to the minimum standards which may be established pursuant to said Convention, and the other Contracting Party will take appropriate corrective action. Each Contracting Party reserves the right to withhold or revoke the technical authorization referred to in Article III of this Agreement with respect to a carrier of the other Contracting Party, or to impose conditions on such authorization, in the event the other Contracting Party does not take such appropriate action within a reasonable time

ARTICLE VII

1. Each Contracting Party shall have the right to promulgate and enforce laws and regulations governing nonscheduled air service. Such regulations shall be applied consistently with this Agreement and without discrimination against or among carriers of the other Contracting Party.

2. Where both Contracting Parties have promulgated regulations governing the same specific type of service covered in an Annex, the regulations of the Contracting Party in whose territory the enplanement occurs shall govern unless otherwise agreed.

3. Where one Contracting Party has promulgated regulations governing a specific type of service covered in an Annex, and the other Contracting Party has not, that other Contracting Party shall accept the applicability of such

tante ou à leur égard, lors de l'entrée dans le territoire de la première Partie contractante, lors du départ et durant le séjour à l'intérieur des frontières de ce territoire

ARTICLE VI

1. Les certificats de navigabilité, les brevets d'aptitude et les licences qui ont été délivrés ou validés par l'une des Parties contractantes et qui sont encore en vigueur seront reconnus comme valables par l'autre Partie contractante pour l'exploitation des services prévus dans le présent Accord, à condition que les exigences d'après lesquelles ces certificats ou licences ont été délivrés ou validés soient égales ou supérieures aux normes minima qui peuvent être fixées en vertu de la Convention sur l'aviation civile internationale. Toutefois, chaque Partie contractante se réserve le droit de refuser de reconnaître, aux fins des vols effectués au-dessus de son propre territoire, les brevets d'aptitude ou les licences qui sont octroyés à ses propres nationaux par l'autre Partie contractante.

2. Les autorités aéronautiques compétentes de chaque Partie contractante peuvent demander la tenue de consultations portant sur les normes et les exigences en matière de sécurité qui sont maintenues et administrées par l'autre Partie contractante relativement aux installations aéronautiques, à l'exploitation, au personnel navigant et aux aéronefs. Si, à la suite de ces consultations, les autorités aéronautiques compétentes de l'une ou l'autre des Parties contractantes jugent que l'autre Partie contractante ne maintient ou s'administre pas de façon efficace dans ces secteurs des normes et des exigences en matière de sécurité qui soient équivalentes ou supérieures aux conditions minima qui peuvent être établies en vertu de la Convention relative à l'aviation civile internationale, elles feront part à l'autre Partie contractante de leurs constatations et des mesures jugées nécessaires pour rendre les normes et les exigences de l'autre Partie contractante en matière de sécurité au moins équivalentes aux normes minima qui peuvent être établies en vertu de ladite Convention, et l'autre Partie contractante prendra les mesures de redressement qui s'imposent. Chaque Partie contractante se réserve le droit de refuser ou d'annuler l'autorisation technique visée à l'Article III du présent Accord à l'égard d'un transporteur de l'autre Partie contractante ou d'assortir de conditions ladite autorisation advenant le cas où l'autre Partie contractante ne prend pas les mesures qui s'imposent dans un délai raisonnable.

ARTICLE VII

1. Chaque Partie contractante aura le droit de promulguer et de mettre en vigueur des lois et règlements régissant les services aériens non réguliers. Ces règlements seront appliqués en conformité des dispositions du présent Accord et sans discrimination à l'endroit des ou entre les transporteurs de l'autre Partie contractante.

2. Lorsque les deux Parties contractantes ont promulgué des règlements régissant le même genre particulier de service visé dans une Annexe, les règlements de la Partie contractante dans le territoire de laquelle l'embarquement s'effectue prévaudront, sauf entente contraire.

3. Lorsqu'une seule des Parties contractantes a promulgué des règlements régissant un genre particulier de service visé dans une Annexe, l'autre Partie contractante acceptera l'application de ces règlements pour ce qui est de

regulations with respect to traffic enplaned in the territory of the first Contracting Party, unless otherwise agreed

4 Each Contracting Party shall have the right, if the other Contracting Party promulgates regulations which alter the basic character of a specific type of service covered in an Annex, to refuse to accept the applicability of such regulations with respect to traffic enplaned in the territory of that other Contracting Party, notwithstanding the provisions of paragraphs 2 and 3 above. Such action shall normally be taken only after consultation with the other Contracting Party

5 Either Contracting Party may submit to the other Contracting Party proposed new specific types of service for inclusion in an Annex to this Agreement. Such proposals shall normally be accompanied by explanatory statements. The other Contracting Party shall either accept the new specific types of service within sixty days of receipt, in which case they shall be incorporated into an Annex to the Agreement by an exchange of diplomatic notes, or it shall indicate a willingness to consult promptly with the first Contracting Party

6 Each Contracting Party may adopt and apply requirements relating to licensing procedures, administrative matters, or the collection of information, such as requirements concerning tariffs, traffic data, manifests, and similar matters.

ARTICLE VIII

The volume of nonscheduled air service traffic between the territories of the two Contracting Parties enplaned by the carriers of one Contracting Party in the territory of the other Contracting Party shall be reasonably related to the volume of such traffic enplaned by carriers of the first Contracting Party in its own territory and deplaned or re-enplaned in the territory of the other Contracting Party, taking into account the nature of the respective markets. Provisions to implement this Article shall be established in the Annexes to this Agreement.

ARTICLE IX

1 Nonscheduled air service traffic between the territories of the two Contracting Parties transported by the carriers of one Contracting Party shall not cause substantial impairment of the scheduled air services of the scheduled airlines of the other Contracting Party or of the nonscheduled air services of the carriers of the other Contracting Party

2. Unless otherwise agreed, neither Contracting Party may impose (a) any requirement that prior approval be obtained for any individual flight or series of flights by a carrier or carriers of the other Contracting Party which has qualified before the competent aeronautical authorities of the first Contracting Party, or (b) any restrictions on such carrier or carriers with respect to capacity, frequency or type of aircraft employed on nonscheduled air services provided for by this Agreement

l'embarquement du trafic dans le territoire de la première Partie contractante, sauf entente contraire

4. Si l'autre Partie contractante promulgue des règlements qui modifient le caractère fondamental d'un genre particulier de service visé dans une Annexe, chaque Partie contractante aura le droit de ne pas accepter l'application de ces règlements pour ce qui est de l'embarquement du trafic dans le territoire de l'autre Partie contractante, nonobstant les dispositions des paragraphes 2 et 3 ci-dessus. Cette mesure ne sera normalement prise qu'après consultations avec l'autre Partie contractante.

5. L'une ou l'autre des Parties contractantes peut proposer à l'autre Partie contractante de nouveaux genres particuliers de service qui pourront être inclus dans une annexe au présent Accord. Ces propositions seront normalement accompagnées d'explications. L'autre Partie contractante pourra, soit accepter les nouveaux genres particuliers de service dans les soixante jours qui suivront la réception et, dans un tel cas, les propositions seront incorporées à une annexe au présent Accord par échange de notes diplomatiques, soit indiquer son désir de consulter sans délai la première Partie contractante.

6 Chaque Partie contractante peut adopter et appliquer les exigences relatives aux pratiques régissant la délivrance des licences, aux questions administratives ou à la collecte de l'information, y compris les exigences concernant les tarifs, les données relatives au trafic, les manifestes et d'autres questions analogues.

ARTICLE VIII

Le volume du trafic des services aériens non réguliers entre les territoires des deux Parties contractantes qui sera embarqué par les transporteurs d'une Partie contractante dans le territoire de l'autre Partie contractante devra correspondre dans une mesure raisonnable au volume du trafic embarqué par les transporteurs de la première Partie contractante dans son propre territoire et débarqué ou rembarqué dans le territoire de l'autre Partie contractante, compte tenu de la nature des marchés respectifs. Les dispositions visant la mise en application du présent Article sont établies dans les Annexes du présent Accord

ARTICLE IX

1 Le trafic des services aériens non réguliers entre les territoires des deux Parties contractantes qui est acheminé par les transporteurs d'une Partie contractante ne devra pas nuire de façon marquée aux services aériens réguliers des entreprises de transport aérien régulier de l'autre Partie contractante ou aux services aériens non réguliers des transporteurs de l'autre Partie contractante

2 Sauf entente contraire, aucune des deux Parties contractantes ne pourra imposer a) une condition quelconque concernant l'obtention préalable de l'autorisation pour tout vol particulier ou pour toute série de vols effectués par un ou plusieurs transporteurs de l'autre Partie contractante qui se sont qualifiés auprès des autorités aéronautiques compétentes de la première Partie contractante ou b) une restriction quelconque à l'égard de ce ou ces transporteurs en ce qui a trait à la capacité, à la fréquence ou au type d'aéronef utilisé dans des services aériens non réguliers prévus par le présent Accord

ARTICLE X

If, after review over a period of time, the laws or regulations of either Contracting Party or the operations by the carrier or carriers of one Contracting Party performed pursuant to this Agreement appear to the other Contracting Party to constitute substantial impairment of the scheduled or nonscheduled air services of the scheduled airlines or the carriers of the other Contracting Party, that other Contracting Party may request consultations in accordance with Article XV

ARTICLE XI

1 The rates to be charged by the carriers of either Contracting Party for carriage to or from the territory of the other Contracting Party shall be reasonable, considering all relevant factors bearing upon the economic characteristics of prescribed nonscheduled air services provided for in this Agreement.

2. If the aeronautical authorities of one Contracting Party are dissatisfied with a proposed or existing rate of a carrier or carriers of the other Contracting Party, that other Contracting Party shall be so informed and the Contracting Parties shall exercise their best efforts to resolve the matter through prior consultations. Each Contracting Party shall retain the right to apply its laws and regulations with respect to such rates

3 The aeronautical authorities of each Contracting Party shall exercise their best efforts to ensure that the rates charged and collected conform to the rates filed and in effect with each Contracting Party, and that no carrier rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents.

ARTICLE XII

1 Each Contracting Party shall exempt the carriers of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular equipment, ground equipment, stores, and other items intended for use solely in connection with the operation, maintenance or servicing of aircraft of the carriers of the other Contracting Party. The exemptions granted by this paragraph shall apply to items.

(a) introduced into the territory of one Contracting Party by or on behalf of the carriers of the other Contracting Party

(b) retained on board aircraft of the carriers of one Contracting Party upon arriving in, or leaving the territory of the other Contracting Party,

(c) taken on board aircraft of the carriers of one Contracting Party in the territory of the other Contracting Party and intended solely for use in international air services,

whether or not such items are consumed wholly within the territory of the Contracting Party granting the exemption.

ARTICLE X

Si, après un examen portant sur une certaine période, les lois ou règlements de l'une ou l'autre des Parties contractantes ou l'exploitation du ou des transporteurs d'une Partie contractante en application du présent Accord semblent, de l'avis de l'autre Partie contractante, nuire de façon marquée aux services aériens réguliers ou non réguliers des entreprises de transport aérien régulier ou des transporteurs de l'autre Partie contractante, ladite autre Partie contractante pourra demander la tenue de consultations en conformité de l'Article XV

ARTICLE XI

1 Les tarifs imposés par les transporteurs de l'une ou l'autre Partie contractante pour le service à destination ou en provenance du territoire de l'autre Partie contractante seront fixés à des taux raisonnables, compte tenu de tous les facteurs pertinents qui influent sur les caractéristiques économiques des services aériens non réguliers prescrits prévus dans le présent Accord

2. Si les autorités aéronautiques d'une Partie contractante sont insatisfaites d'un tarif proposé ou existant d'un ou de plusieurs transporteurs de l'autre Partie contractante, ladite autre Partie contractante en sera avisée et les deux Parties contractantes s'efforceront de résoudre la question au moyen de consultations préalables. Chaque Partie contractante se réserve le droit d'appliquer ses lois et règlements à l'égard de ces tarifs.

3 Les autorités aéronautiques de chaque Partie contractante veilleront à ce que les tarifs imposés et perçus soient conformes aux tarifs déposés et en vigueur auprès de chaque Partie contractante, et à ce qu'aucun transporteur ne réduise un de ces tarifs d'une manière quelconque, soit directement, soit indirectement, notamment en versant une commission de vente excessive à ses agents

ARTICLE XII

1 Chaque Partie contractante, dans toute la mesure où sa législation nationale le permet, exemptera les transporteurs de l'autre Partie contractante des restrictions à l'importation, des droits de douane, des droits d'accise, des frais de visite et des autres droits et taxes nationaux sur les carburants, les huiles lubrifiantes, les fournitures techniques consommables, les pièces de rechange y compris les moteurs l'équipement normal, l'équipement terrestre, les provisions et autres articles qui doivent être utilisés uniquement pour l'exploitation l'entretien ou la réparation des aéronefs des transporteurs de l'autre Partie contractante. Les exemptions accordées en vertu du présent paragraphe s'appliqueront aux articles

a) introduits dans le territoire d'une Partie contractante par les transporteurs de l'autre Partie contractante ou en leur nom,

b) conservés à bord des aéronefs des transporteurs d'une Partie contractante au moment de l'arrivée dans le territoire de l'autre Partie contractante ou au départ dudit territoire,

c) pris à bord des aéronefs des transporteurs d'une Partie contractante dans le territoire de l'autre Partie contractante, et destinés à n'être utilisés qu'en service aérien international,

que ces articles soient consommés ou non entièrement à l'intérieur du territoire de la Partie contractante qui accorde l'exemption

2. The exemptions provided by this Article shall also be available in situations where a carrier or carriers of one Contracting Party have entered into arrangements with one or more carriers of airlines to receive and use on loan or on transfer in the territory of the other Contracting Party the items specified in paragraph 1 above, provided that each such other carrier or airline is similarly entitled to such exemptions from the other Contracting Party

ARTICLE XIII

1. Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed for the use of such airports and facilities by its national aircraft engaged in similar international services.

2. Neither Contracting Party shall give a preference to its own carriers over the carriers of the other Contracting Party in the application of its customs, immigration, quarantine, and similar regulations or in the use of airports, airways, and other facilities under its control

ARTICLE XIV

Neither Contracting Party shall discriminate against a carrier or among carriers of the other Contracting Party providing the services covered by this Agreement

ARTICLE XV

Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations should commence as soon as practicable but not later than sixty days from the date of receipt of the request for consultations, unless otherwise agreed by the Contracting Parties.

ARTICLE XVI

1. Any dispute with respect to matters covered by this Agreement not satisfactorily resolved through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein.

2. Arbitration shall be by a tribunal of three arbitrators constituted as follows

(a) One arbitrator shall be named by each Contracting Party within two months of the date of delivery by either Contracting Party to the other of a request for arbitration. Within one month after such period of two months, the two arbitrators so designated shall by agreement designate a third arbitrator, provided that such arbitrator shall not be a national of either Contracting Party

(b) If either Contracting Party fails to designate an arbitrator, or if the third arbitrator is not agreed upon in accordance with subpara

2. Les exemptions prévues par le présent Article s'appliqueront également dans les cas où un ou plusieurs transporteurs d'une Partie contractante auront pris des dispositions auprès d'un ou de plusieurs transporteurs ou entreprises de transport aérien afin de recevoir et d'utiliser par voies de prêt ou de transfert dans le territoire de l'autre Partie contractante les articles spécifiés au paragraphe 1 ci-dessus pourvu que chacun des transporteurs ou entreprises de transport aérien précités ait également droit à ces exemptions de la part de l'autre Partie contractante

ARTICLE XIII

1. Chaque Partie contractante peut imposer ou permettre que l'on impose des droits justes et raisonnables pour l'utilisation des aéroports publics et autres installations qui se trouvent sous son contrôle, à la condition que ces droits ne soient pas plus élevés que ceux que doivent acquitter ses aéronefs nationaux assurant des services aériens internationaux semblables.

2. Aucune des Parties contractantes n'accordera de préférence à ses transporteurs par rapport à ceux de l'autre Partie contractante dans l'application de ses règlements de douane, d'immigration, de quarantaine ou d'autres règlements semblables ou dans l'utilisation des aéroports, voies aériennes et autres installations qui se trouvent sous son contrôle.

ARTICLE XIV

Aucune des Parties contractantes ne fera de discrimination au détriment d'un transporteur ou de certains transporteurs de l'autre Partie contractante qui assurent les services visés par le présent Accord.

ARTICLE XV

L'une ou l'autre des Parties contractantes peut réclamer à n'importe quel moment la tenue de consultations sur des questions qui se rattachent à l'interprétation, à la mise en œuvre, à l'application ou à la modification du présent Accord. Ces consultations doivent commencer dès que possible, et au plus tard dans les soixante jours qui suivent la date de réception de la demande de consultation, sauf entente contraire entre les Parties contractantes.

ARTICLE XVI

1. Tout différend relatif à des questions visées par le présent Accord qui n'aura pas été réglé de manière satisfaisante par voie de consultations sera, à la demande d'une des Parties contractantes, soumis à un arbitrage conformément à la procédure exposée dans le présent Article

2. L'arbitrage sera confié à un tribunal de trois arbitres, constitué comme suit

a) Chaque Partie contractante désignera un arbitre dans les deux mois de la date à laquelle une des Parties contractantes aura présenté une demande d'arbitrage à l'autre Partie contractante. Dans un délai d'un mois après cette période de deux mois, les deux arbitres choisis désigneront d'un commun accord un troisième arbitre qui ne devra être ressortissant ni de l'un ni de l'autre État contractant.

b) Si l'une ou l'autre des Parties contractantes ne désigne pas d'arbitre, ou faute d'entente sur le choix du troisième arbitre en conformité de

graph (a) above, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators

3 The Contracting Parties shall use their best efforts consistent with national law to put into effect any decision or award of the arbitral tribunal

4 The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties

ARTICLE XVII

Either Contracting Party may at any time notify the other Contracting Party by diplomatic note of its intention to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization The Agreement shall terminate one year after the date of receipt of the notice of intention to terminate, unless by agreement between the Contracting Parties such notice is withdrawn before the expiration of that time

ARTICLE XVIII

This Agreement shall come into force on the day it is signed

l'alinéa a) ci-dessus, l'une ou l'autre des Parties contractantes pourra demander au président du conseil de l'Organisation de l'aviation civile internationale de désigner un ou plusieurs arbitres, selon le cas.

3. Les Parties contractantes s'efforceront, dans toute la mesure où le permettra leur législation nationale, de mettre à exécution les décisions du tribunal d'arbitrage.

4 Les frais du tribunal d arbitrage, y compris la rémunération et les frais des arbitres seront partagés également entre les Parties contractantes.

ARTICLE XVII

L'une ou l'autre des Parties contractantes pourra à n'importe quel moment notifier par note diplomatique à l'autre Partie contractante son intention de dénoncer le présent Accord. Cette notification sera communiquée simultanément à l'Organisation de l'aviation civile internationale. L'Accord prendra fin un an après la date de réception de la notification par l'autre Partie contractante, sauf si la notification est annulée d'un commun accord avant l'expiration de ce délai.

ARTICLE XVIII

Le présent Accord entrera en vigueur à la date de sa signature

IN WITNESS WHEREOF the undersigned, duly authorized by their respectiv Governments, have signed the present Agreement.

DONE in duplicate at Ottawa in the English and French languages, bot versions being equally authentic, this 8th day of May 1974

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet par leu Gouvernements respectifs, ont signé le présent Accord.

FAIT en double exemplaire à Ottawa en langues anglaise et française, l deux versions faisant également foi, ce 8ième jour de mai 1974

For the Government of Canada
JEAN MARCHAND
Pour le Gouvernement du Canada

For the Department of the United States of America
WILLIAM J PORTER
Pour le Gouvernement des États-Unis d'Amérique

ANNEX A
SPECIFIED RIGHTS

I *Definitions*

For the purpose of providing the services covered by this Agreement and its Annexes:

A. "Large aircraft" shall mean an aircraft having both:

(1) a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds; and

(2) a maximum authorized take-off weight on wheels greater than 35 thousand pounds.

B. "Small aircraft" shall mean an aircraft which is not a "large aircraft" as defined above.

C. "Maximum passenger capacity" and "maximum payload capacity" shall have the meanings assigned to them in regulations of the Civil Aeronautics Board.

D. "Maximum authorized take-off weight on wheels" shall have the meaning assigned to it in regulations of the Canadian Transport Commission.

II. *United States of America*

Subject to the requirements of this and other Annexes to the Agreement a carrier or carriers of the United States of America, when providing the services prescribed in Annex B to this Agreement for the movement of nonscheduled air service traffic between a point or points in the territory of one Contracting Party and a point or points in the territory of the other Contracting Party (including transportation by other modes on either an outgoing or return leg of a round-trip journey), shall be entitled to

A. Enplane (and subsequently deplane on return trips) at any point or points in the territory of Canada nonscheduled air service traffic which is to be deplaned or re-enplaned at any point or points in the territory of the United States.

B. Deplane or re-enplane at any point or points in the territory of Canada nonscheduled air service traffic which has been enplaned at any point or points in the territory of the United States.

III. Canada

Subject to the requirements of this and other Annexes to the Agreement a carrier or carriers of Canada, when providing the services prescribed in Annex B to this Agreement for the movement of nonscheduled air service traffic between a point or points in the territory of one Contracting Party and a point or points in the territory of the other Contracting Party (including transportation by other modes on either an outgoing or return leg of a round-trip journey), shall be entitled to.

ANNEXE A
DROITS SPÉCIFIÉS

I *Définitions*

Aux fins d'assurer les services couverts par le présent Accord et ses Annexes:

A. «Gros aéronef» désigne un aéronef qui présente les deux caractéristiques suivantes:

(1) une capacité voyageurs maximale de plus de 30 sièges ou une capacité de charge marchande maximale de plus de 7,500 livres; et

(2) un poids maximal autorisé au décollage, sur roues, supérieur à 35,000 livres.

B. «Petit aéronef» désigne un aéronef qui n'est pas un «gros aéronef» tel que défini ci-dessus.

C. Le «capacité voyageurs maximale» et la «capacité de charge marchande maximale» ont le sens qui leur est attribué dans les règlements du *Civil Aeronautics Board*.

D. «Le poids maximal autorisé au décollage, sur roues» a le sens qui lui est attribué dans les règlements de la Commission canadienne des transports.

II. *États-Unis d'Amérique*

Sous réserve des prescriptions de la présente et des autres Annexes de l'Accord, un transporteur ou des transporteurs des États-Unis d'Amérique, lorsqu'il assurent les services prescrits à l'Annexe B du présent Accord, en vue de l'acheminement du trafic de services aériens non réguliers, entre un point ou des points situés sur le territoire d'une des Parties contractantes et un point ou des points situés sur le territoire de l'autre Partie contractante (y compris l'utilisation d'autres modes de transport, soit pour l'aller, soit pour le retour, lors d'un voyage aller et retour), ont le droit.

A. d'embarquer (et, ultérieurement, débarquer, lors de voyages aller et retour), en tout point ou tous points du territoire canadien, du trafic de services aériens non réguliers, qui doit être débarqué ou rembarqué en tout point ou tous points situés sur le territoire des États-Unis d'Amérique.

B. de débarquer ou de rembarquer en tout point ou tous points du territoire canadien, du trafic de services aériens non réguliers qui a été embarqué en tout point ou tous points situés sur le territoire des États-Unis d'Amérique.

III *Canada*

Sous réserve des prescriptions de la présente et des autres Annexes de l'Accord, un ou des transporteurs du Canada, lorsqu'ils assurent les services prescrits à l'Annexe B du présent Accord, en vue de l'acheminement du trafic de services aériens non réguliers entre un point ou des points sur le territoire d'une Partie contractante et un point ou des points sur le territoire de l'autre Partie contractante (y compris l'utilisation d'autres modes de transport, soit pour l'aller soit pour le retour, lors d'un voyage aller et retour), ont le droit.

A. Enplane (and subsequently deplane on return trips) at any point or points in the territory of the United States nonscheduled air service traffic which is to be deplaned or re-enplaned at any point or points in the territory of Canada.

B. Deplane or re-enplane at any point or points in the territory of the United States nonscheduled air service traffic which has been enplaned at any point or points in the territory of Canada.

IV. *Directional Balance of Enplanements*

A. The number of flights[*] of each carrier of one Contracting Party, which have enplaned nonscheduled air service traffic in the territory of the other Contracting Party, shall not have exceeded by more than one-third the number of flights by such carrier which have enplaned nonscheduled air service traffic in the territory of the first Contracting Party during the period of time beginning with the first quarter year (ending on March 31, June 30, September 30, and December 31) in which such carrier first performed an flight transporting non-scheduled air service traffic under this Agreement and ending with the most recently completed quarter year. The aeronautical authorities of that other Contracting Party may withhold approval of a flight, series of flights or part of a series of flights proposed to be operated by a carrier of the first Contracting Party, if such carrier has, at the end of any quarter year, other than the first quarter year of its operations under this Agreement, exceeded the above directional balance relationship. Any such withholding of approval shall not extend beyond the last day of the quarter year after the quarter year in which such conformity has been restored.

B. Paragraph A above shall be applied separately for each carrier to:

(1) Large aircraft flights for the movement of traffic in passengers,

(2) Large aircraft flights for the movement of traffic in property,

(3) Small aircraft flights for the movement of traffic in passengers, and

(4) Small aircraft flights for the movement of traffic in property.

C. The provisions of paragraph A above shall not be applicable to the following flights, but such flights shall be subject to the provisions of Annex C to the extent specified therein.

(1) Round-trip flights performed in charter air service as single entity passenger charters to a parent or affiliate of the carrier solely for land sales purposes, and where no charge or other financial obligation is imposed directly or indirectly on the passenger as a condition of carriage or accommodation during the trip;

[*] For the purposes of this provision, any flight, either one-way or round-trip (including tour and open jaw as round trip), shall be counted as one flight.

A d'embarquer (et, ultérieurement, de débarquer, lors de voyages aller et retour), en tout point ou tous points du territoire des États-Unis d'Amérique, du trafic de services aériens non réguliers, qui doit être débarqué ou rembarqué en tout point ou tous points situés sur le territoire canadien.

B. de débarquer ou de rembarquer, en tout point ou tous points du territoire des États-Unis, du trafic de services aériens non réguliers, qui a été embarqué en tout point ou tous points situés sur le territoire canadien.

IV. *Équilibre des embarquements dans les deux sens*

A. Le nombre de vols[*] de chaque transporteur d'une Partie contractante qui a embarqué du trafic de services aériens non réguliers sur le territoire de l'autre Partie contractante ne doit pas dépasser de plus du tiers le nombre de vols assurés par ce transporteur au cours desquels il a été embarqué du trafic de services aériens non réguliers sur le territoire de la première Partie contractante pendant la période débutant avec le premier trimestre (les trimestres prenant fin le 31 mars, le 30 juin, le 30 septembre et le 31 décembre) au cours duquel ce transporteur a pour la première fois assuré un vol quelconque pour le transport du trafic de services aériens non réguliers dans le cadre du présent Accord, cette période prenant fin avec le dernier trimestre écoulé. Les autorités aéronautiques de l'autre Partie contractante peuvent refuser l'autorisation d'un vol, d'une série de vols ou d'une partie d'une série de vols que se propose d'assurer un transporteur de la première Partie contractante, si ce transporteur, à la fin d'un trimestre quelconque, autre que le premier trimestre de son exploitation dans le cadre du présent Accord, a dépassé la proportion ci-dessus concernant l'équilibre des embarquements dans les deux sens. Un tel refus d'autorisation ne devra pas se prolonger au-delà du dernier jour du trimestre suivant le trimestre durant lequel la conformité a été rétablie.

B. Le paragraphe A ci-dessus doit s'appliquer séparément pour chaque transporteur, en ce qui concerne:

(1) Les vols assurés au moyen de gros aéronefs pour le transport de passagers;

(2) Les vols assurés au moyen de gros aéronefs pour le transport de biens,

(3) Les vols assurés au moyen de petits aéronefs pour le transport de passagers, et

(4) Les vols assurés au moyen de petits aéronefs pour le transport de biens.

C. Les dispositions du paragraphe A ci-dessus ne s'appliquent pas aux vols suivants qui sont assujettis aux dispositions de l'Annexe C, dans la mesure y spécifiée.

(1) Vols aller et retour effectués dans un service aérien d'affrètement au titre d'affrètements sans participation pour passagers, pour un parent ou un affilié du transporteur uniquement aux fins de ventes de terres et où frais ou autre obligation financière n'est imposé directement ou indirectement au passager au titre de condition de transport ou de logement durant le voyage;

[*] Aux fins de la présente prescription, tout vol, qu'il s'agisse d'un voyage aller ou d'un voyage retour (y compris les voyages circulaires et les voyages en circuit ouvert en tant que voyages aller) compte pour un vol.

(2) Flights utilizing aircraft having a maximum authorized take-off weight on wheels not greater than 18,000 pounds;

(3) Flights by carriers, which are also airlines performing scheduled air services under the Air Transport Agreement, which enplane nonscheduled air service traffic at a terminal or terminals of the international route in the territory of the other Contracting Party, for which that carrier is a designated or otherwise authorized airline under the Air Transport Agreement and which deplane or re-enplane such traffic at the terminal or terminals of the route in the territory of the Contracting Party of which the carrier is a national, or at the intermediate point or points named in the license issued to that carrier by the aeronautical authorities of the other Contracting Party,

(4) Flights by United States carriers, which are also airlines performing scheduled air services under the Air Transport Agreement, which enplane nonscheduled air service traffic in passengers at a terminal or terminals in the territory of Canada of an international route having a terminal or terminals in the State of Hawaii, California, Nevada, Arizona, Florida, Puerto Rico or the U.S. Virgin Islands for which that carrier is designated under the Air Transport Agreement and which deplane or re-enplane such traffic at any point or points on the route system of that carrier also lying within one or more of the above-named areas in which the route terminal or terminals lie; and

(5) Flights by United States carriers, which are not carriers falling under subparagraph 3 or 4 above, which enplane nonscheduled air service traffic in passengers at a point or points in the territory of Canada and deplane or re-enplane such traffic at any point or points in the State of Hawaii, California, Nevada, Arizona, Florida, Puerto Rico or the U.S. Virgin Islands.

V *Conditions and Interpretations*

A. Transportation under this Agreement of traffic having a prior, subsequent or intervening movement by any mode of air transportation to or from territories other than those of the United States and Canada is prohibited, except for passengers moving independently of any group.

B. The performance of any otherwise authorized nonscheduled air service by a carrier as an aircraft lessee shall be considered as an operation under this Agreement, subject to conditions which either Contracting Party may establish governing "dry" or "wet" leases. However, operations conducted by a carrier as a lessor of an aircraft shall not be deemed to be within the scope of this Agreement insofar as the lessor is concerned.

C. A carrier which operates flights of the types listed in subparagraphs (1) and (2) of paragraph C of Section IV of this Annex for enplanements in the territory of the Contracting Party of which it is a national shall not thereby

(2) Vols pour lesquels il est utilisé des aéronefs dont le poids maximal au décollage, sur roues, ne dépasse pas 18,000 livres;

(3) Vols effectués par des transporteurs qui constituent également des entreprises de transport aérien assurant des services réguliers en vertu de l'Accord relatif aux transports aériens, qui embarquent du trafic de services aériens non réguliers, à une tête de ligne ou à des têtes de lignes de la route internationale situées dans le territoire de l'autre Partie contractante pour laquelle ce transporteur constitue une entreprise de transport aérien désignée ou autrement autorisée en vertu de l'Accord relatif aux transports aériens et qui débarquent ou rembarquent ledit trafic à la tête de ligne ou aux têtes de lignes, ou en un point ou des points intermédiaires mentionnés dans la licence délivrée audit transporteur par les autorités aéronautiques de l'autre Partie contractante, de la route située dans le territoire de la Partie contractante dont le transporteur est un ressortissant;

(4) Vols assurés par des transporteurs des États-Unis qui constituent également des entreprises de transport aérien assurant des services aériens réguliers en vertu de l'Accord relatif aux transports aériens, qui embarquent des passagers transportés par service aérien non régulier, à une tête de ligne ou à des têtes de lignes situées en territoire canadien, de la route internationale dont la tête de ligne ou les têtes de lignes se trouvent dans les États d'Hawaii, de Californie, du Nevada, de l'Arizona, de Floride, de Porto Rico ou des Îles Vierges (É-U.) pour lesquelles ce transporteur est désigné en vertu de l'Accord relatif aux transports aériens et qui débarquent ou rembarquent des passagers en tout point ou points situés sur le réseau de routes de ce transporteur, dans l'une ou plusieurs des zones susmentionnées dans lesquelles se trouvent la tête ou les têtes de lignes; et

(5) Vols assurés par des transporteurs des États-Unis non visés par les sous-alinéas 3 ou 4 susmentionnés, qui embarquent des passagers transportés par service aérien non régulier en un point ou des points situés sur le territoire canadien et débarquent ou rembarquent ces passagers en un point ou des points quelconques situés dans les États d'Hawaii, de Californie, du Nevada, de l'Arizona, de Floride, de Porto Rico ou des Îles Vierges (É-U)

V *Conditons et interprétations*

A. Les transports effectués en vertu du présent Accord qui impliquent un déplacement antérieur, postérieur ou intermédiaire par un mode quelconque de transport aérien, à destination ou en provenance de territoires autres que ceux des États-Unis et du Canada sont interdits, sauf pour les passagers qui ne font pas partie d'un groupe

B. Le fait d'assurer tout service aérien non régulier par ailleurs autorisé, par un transporteur ayant loué un aéronef, doit être considéré comme une exploitation en vertu du présent Accord, sous réserve des conditions que l'une ou l'autre des Parties contractantes peut établir pour régir la location avec ou sans équipage. Toutefois, les exploitations réalisées par un transporteur en tant que loueur d'un aéronef ne sont pas considérées comme entrant dans le cadre du présent Accord en ce qui concerne le loueur

C Un transporteur qui assure des vols des types énumérés aux sous-alinéas (1) et (2) du paragraphe C de la section IV de la présente Annexe, aux fins d'embarquements dans le territoire de la Partie contractante dont il est ressortissant n'acquiert pas de ce fait le droit d'assurer des vols de types

acquire an entitlement to operate different types of flights for enplanements in the territory of the other Contracting Party

D Each Contracting Party recognizes that for ecological reasons it may be necessary to place restrictions or bans within its territory on certain nonscheduled air services, such as float plane flights to and from wilderness lakes. If such restrictions or bans are applied to the international traffic of carriers of the other Contracting Party to and from the ultimate destinations of the traffic in the affected area, that other Contracting Party may impose such conditions on the carriers of the Contracting Party placing the restrictions or bans as may be necessary to ensure equality of treatment with respect to such traffic.

E. The aeronautical authorities of Canada may, in licensing small aircraft operations by carriers of the United States, limit the right to enplane nonscheduled air service traffic in the territory of Canada to two adjacent Provinces or Territories of Canada (at the selection of the carrier being licensed), with New Brunswick, Nova Scotia, and Prince Edward Island being considered as a single province for this purpose Should the aeronautical authorities of Canada utilize this option, they will nevertheless consider authorizing, upon application, small aircraft enplanements by such carriers elsewhere in Canada, at least for an experimental period, in order that the need, if any, for the limitation may be empirically evaluated.

F A carrier of one Contracting Party may not take on board at one point in the territory of the other Contracting Party nonscheduled air service traffic destined for another point or points in the territory of such other Contracting Party. However, a carrier of one Contracting Party may provide a stopover at any such points to:

(1) Nonscheduled air service traffic in passengers carried on large aircraft which has been enplaned in the territory of the Contracting Party of which such carrier is a national and which is moving under a contract providing for nonscheduled air service transportation on the same carrier to or from a point or points in the territory of the Contracting Party of which such carrier is a national, even if a different aircraft is used; and

(2) Nonscheduled air service traffic in passengers carried on small aircraft which has been enplaned in the territory of the Contracting Party of which such carrier is a national (and subsequently will be returned to that territory) and which is moving under a contract providing for nonscheduled air service transportation on the same carrier to or from a point or points in the territory of the Contracting Party of which such carrier is a national if the same aircraft stays with the traffic throughout its journey; provided, however, that if an aircraft having a maximum authorized take-off weight on wheels of less than 18,000 pounds is to be used, the aeronautical authorities of the other Contracting Party may require that special authorization, to be justified by the needs of the traffic, be requested and obtained for such operations.

différents en vue d'embarquements dans le territoire de l'autre Partie contractante

D Chaque Partie contractante admet que, pour des raisons écologiques, il peut s'avérer nécessaire d'imposer des restrictions ou des interdits sur son territoire en ce qui concerne certains services non réguliers, tels que les vols assurés au moyen d'hydravions à flotteurs, à destination ou en provenance de lacs situés dans les régions qui offrent un abri naturel à la faune. Si de tels interdits ou restrictions sont appliqués au trafic international des transporteurs de l'autre Partie contractante, à destination ou en provenance des destinations finales du trafic dans la région intéressée, l'autre Partie contractante peut imposer ces conditions aux transporteurs de la Partie contractante qui établit les interdits ou restrictions, au besoin, afin d'assurer l'égalité de traitement pour ce qui est de ce trafic.

E Les autorités aéronautiques du Canada peuvent, en autorisant l'exploitation de petits aéronefs par les transporteurs des États-Unis, limiter le droit d'embarquer du trafic de services aériens non réguliers sur le territoire du Canada, à destination de deux provinces ou territoires canadiens voisins (au choix du transporteur auquel est délivré la licence). A cette fin, le Nouveau-Brunswick, la Nouvelle-Écosse et l'Île-du-Prince-Édouard sont considérés comme une seule province. Si les autorités aéronautiques du Canada appliquent cette option, elles envisageront néanmoins d'autoriser, sur demande, les embarquements sur petits aéronefs par ces transporteurs se trouvant ailleurs au Canada, au moins pour une période expérimentale, afin que le besoin de limitation puisse être évalué de façon empirique, le cas échéant.

F Un transporteur d'une Partie contractante ne peut prendre à bord, en un point du territoire de l'autre Partie contractante, du trafic de services aériens non réguliers destiné à un autre point ou à d'autres points du territoire de cette autre Partie contractante. Toutefois, un transporteur d'une Partie contractante peut effectuer une escale en l'un quelconque de ces points:

(1) pour le transport de passagers par service aérien non régulier sur de gros aéronefs, ces passagers ayant embarqué sur le territoire de la Partie contractante dont ce transporteur est un ressortissant et étant transporté en vertu d'un contrat qui prévoit le transport par service aérien non régulier sur le même transporteur, à destination ou en provenance d'un point ou de points situés dans le territoire de la Partie contractante dont ce transporteur est un ressortissant, même si un aéronef différent est utilisé, et

(2) pour le transport de passagers par service aérien non régulier sur de petits aéronefs, ces passagers ayant embarqué sur le territoire de la Partie contractante dont ce transporteur est un ressortissant (les passagers devant ultérieurement retourner sur ce territoire) et étant transportés en vertu d'un contrat qui prévoit le transport par service aérien non régulier sur le même transporteur, à destination ou en provenance d'un point ou de points situés dans le territoire de la Partie contractante dont ce transporteur est un ressortissant, si le même aéronef est affecté uniquement à ses passagers durant toute la durée du voyage, et sous réserve toutefois que si l'on utilise un aéronef dont le poids maximal autorisé au décollage, sur roues, est inférieur à 18,000 livres, les autorités aéronautiques de l'autre Partie contractante puissent exiger qu'une autorisation spéciale, devant être justifiée par les besoins du trafic, soit demandée et obtenue pour ce genre d'exploitation.

ANNEX B
PRESCRIBED SERVICES

I. *Definitions*

For the purpose of providing the services prescribed in this Annex

A. "Nonscheduled air service" shall be limited to "charter air service" permitted hereunder

B. "Traffic" shall mean passengers, including their accompanied baggage, and property, but shall not include passengers and property moved under contract to the military authorities of either Contracting Party

C "Charter air service" shall mean commercial air transportation of traffic on a time, mileage or trip basis by a carrier or carriers, where the entire planeload capacity of one or more aircraft has been engaged.

D "Single Entity" shall, with respect to enplanements in the Territory of Canada, have the meaning assigned to "entity" in the regulations of the Canadian Transport Commission.

E. "Property" shall, with respect to enplanements in the Territory of Canada, have the meaning assigned to "goods" in the regulations of the Canadian Transport Commission.

II *Prescribed Service Types—Large Aircraft*

The following types of charter air service may be performed with large aircraft for enplanements by carriers in the territories indicated:

	Types	Territory
A.	*As set forth in Civil Aeronautics Board Regulations*	
	Single Entity Passenger)	
	Single Entity Property)	
	Pro Rata Affinity)	
	Mixed (Entity/Pro Rata))	United States of America
	Inclusive Tour)	
	Study Group)	
	Overseas Military Personnel)	
	Travel Group)	

Note The same aircraft may be chartered to more than one charterer and/or for transportation of more than one group solely pursuant to conditions set forth in the regulations referred to above

ANNEXE B
SERVICES PRESCRITS

I *Définitions*

Aux fins d'assurer les services prescrits dans la présente Annexe:

A «Service aérien non régulier» se limite au «service aérien d'affrètement» autorisé en vertu des présentes.

B «Trafic» désigne les passagers, y compris leurs bagages accompagnés, et des biens, mais ne comprend pas les passagers et les biens transportés aux termes d'un contrat avec les autorités militaires de l'une ou de l'autre des Parties contractantes.

C «Service aérien d'affrètement» désigne le transport aérien commercial du trafic, sur une base tenant compte du temps, du millage ou des voyages par un ou plusieurs transporteurs lorsque l'affrètement porte sur la pleine capacité de charge d'un ou de plusieurs aéronefs.

D L'expression «affrètement sans participation», dans la mesure où elle s'applique aux embarquements effectués dans le territoire du Canada, aura la signification qui est attribuée à l'expression «affrètement sans participation» dans les règlements de la Commission canadienne des transports.

E. Le terme «biens», dans la mesure où il s'applique aux embarquements effectués dans le territoire du Canada, aura la signification qui est attribuée au terme «marchandises» dans les règlements de la Commission canadienne des transports.

II. *Genres de services prescrits—Gros aéronefs*

Les genres de services aériens d'affrètement suivants peuvent être assurés par de gros aéronefs en ce qui concerne les embarquements effectués par les transporteurs dans les territoires indiqués.

	Genres	Territoire
A	*Comme il est énoncé dans les règlements du Civil Aeronautics Board*	
	Affrètement sans participation, pour compte unique, voyageurs)	
	Affrètement sans participation, pour compte unique, fret)	
	Affrètement avec participation, pour groupes ayant une affinité)	
	Affrètement mixte (avec participation/sans participation))	États-Unis d'Amérique
	Voyage tout compris)	
	Groupe d'étude)	
	Personnel militaire servant outre-mer)	
	Groupe effectuant un voyage)	

Remarque Le même aéronef peut être affrété par plus d'un affréteur et (ou) pour le transport de plus d'un groupe, uniquement dans les cas prévus par les règlements susmentionnés.

Types	Territory
B. *As set forth in Canadian Transport Commission Air Carrier Regulations*	
Single Entity Passenger	Canada
Single Entity Property	
Pro Rata Common Purpose	
Advance Booking	
Inclusive Tour	
Note. The same aircraft may be chartered to more than one charterer and/or for transportation of more than one group solely pursuant to conditions set forth in the regulations referred to above.	

III *Prescribed Service Types—Small Aircraft*

A. The charterworthiness of enplanements with small aircraft in the territory of the United States by carriers shall be established by conformity with the definition in Section I (C) of this Annex, provided that each aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group.

B. The charterworthiness of enplanements with small aircraft in the territory of Canada by carriers shall be established by conformity with. (1) the definition in Section I (C) of this Annex; and (2) a charter type specified in Section II (B) of this Annex, applicable to such aircraft

IV *Conditions and Requirements*

A The aeronautical authorities of the Contracting Party in which the traffic is to be enplaned may withhold approval with respect to charterworthiness of a flight, series of flights or part of a series of flights proposed to be operated by a carrier of the other Contracting Party if the charterworthiness criteria, conditions and requirements established by the first Contracting Party are not met, provided, however, that

(1) Notification of any withholding of such approval is given to the carrier within (a) 30 days of the initial filing in the case of other than single entity charters, or (b) 10 days of the initial filing in the case of single entity charters,

(2) Any such withholding of approval shall be withdrawn if the charter worthiness criteria, conditions, and requirements are subsequently met, and

Genres	Territoire
B *Comme il est énoncé dans le Règlement de la Commission canadienne des transports*	
Affrètement sans participation, pour compte unique voyageurs	Canada
Affrètement sans participation, pour compte unique, fret	
Affrètement avec participation, à but commun	
Affrètement avec réservation anticipée	
Voyage tout compris	
Remarque Le même aéronef peut être affrété par plus d'un affréteur et (ou) pour le transport de plus d'un groupe, uniquement dans les cas prévus par les règlements susmentionnés.	

III *Genres de services prescrits—Petits aéronefs*

A. L'affrétabilité des embarquements effectués par les transporteurs avec de petits aéronefs, sur le territoire des États-Unis, doit être établie en conformité de la section I(C) de la présente Annexe, sous réserve que chaque aéronef ait été réservé par une personne, soit pour son usage personnel, soit pour le transport d'un groupe de personnes et (ou) de leurs biens, à titre d'agent ou de représentant de ce groupe.

B L'affrétabilité des embarquements effectués par les transporteurs avec de petits aéronefs, sur le territoire du Canada, doit être établie en conformité: (1) avec la définition de la section I(C) de la présente Annexe, et (2) avec un genre d'affrètement spécifié à la section II(B) de la présente Annexe, applicable à ces aéronefs

IV *Conditions et exigences*

A Les autorités aéronautiques de la Partie contractante sur le territoire de laquelle le trafic doit être embarqué peuvent refuser leur autorisation en ce qui concerne l'affrétabilité d'un vol, d'une série de vols ou d'une partie d'une série de vols que se propose d'assurer un transporteur de l'autre Partie contractante si les critères les conditions et les exigences de l'affrétabilité établis par la première Partie contractante ne sont pas respectés, pourvu toutefois

(1) qu'un avis de tout refus d'accorder cette autorisation soit donné au transporteur dans a) les 30 jours du dépôt initial dans les cas autres que des affrètements pour compte unique, sans participation ou b) les 10 jours du dépôt initial dans le cas d'affrètements sans participation pour compte unique;

(2) que tout refus d'autorisation de ce genre soit retiré si les critères, les conditions et les exigences de l'affrétabilité sont ultérieurement respectés et

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(3) Approval may be revoked at any time if the charterworthiness criteria, conditions, and requirements are not met.

B. Charterworthiness criteria, conditions, and requirements shall be applied by the aeronautical authorities of the Contracting Party in which the traffic is to be enplaned on an objective and non-discriminatory basis to the carriers of both Contracting Parties

ANNEX C
SPECIAL PROVISIONS FOR UNIDIRECTIONAL MARKETS

I. *Application*

This Annex applies to the types of nonscheduled air service specified in the Schedules attached hereto, within the market areas defined therein, such markets having been identified as being unidirectional in enplanements at the territory of one or the other Contracting Party for reasons related to climate, geography, availability of particular recreational facilities at the point or points of deplanement or other largely natural conditions.

II. *Governing Provisions*

The volume of nonscheduled air service seats offered collectively by the carriers of each Contracting Party in each market area defined in the Schedules attached hereto shall be governed by the following provisions.

A. The aeronautical authorities of the Contracting Party in which the traffic is enplaned shall, on or before March 1 of each calendar year, make and announce at the same time to all carriers preliminary forecasts of the number of seats in each Schedule to which the percentages specified therein will be applied for the operating year beginning on April 1 of that calendar year and ending on the following March 31. Not later than June 30 of each operating year, the aeronautical authorities of the Contracting Party in which the traffic is enplaned shall make and announce at the same time to all carriers final forecasts of the number of seats in each Schedule to which the percentages specified therein will be applied for the operating year in progress. The final forecast for each Schedule shall not be less than the preliminary forecast for each corresponding Schedule, and no forecast shall be less than the number of seats actually flown, or, in the case of the preliminary forecasts, projected to have been flown, by all carriers in each Schedule during the first previous calendar year, modified in proportion to the rate of change experienced from the second previous calendar year to the first previous calendar year as follows:

(1) one percent, for each full percent of the actual change, for that part of the change up to and including 15 percent, and

(2) three-quarters of one percent, for each full percent of the actual change, for that part of the change from 16 up to and including 35 percent, and

(3) que l'autorisation puisse être révoquée en tout temps si les critères, les conditions et les exigences relatifs à l'affrétabilité ne sont pas respectés.

B. Les critères, conditions et exigences relatifs à l'affrétabilité devront être appliqués par les autorités aéronautiques de la Partie contractante sur le territoire de laquelle le trafic doit être embarqué, sur une base objective et non discriminatoire à l'endroit des transporteurs des deux Parties contractantes.

ANNEXE C
DISPOSITIONS SPÉCIALES CONCERNANT LES MARCHÉS UNIDIRECTIONNELS

I. *Application*

La présente Annexe s'applique aux genres de services aériens non réguliers spécifiés dans les listes ci-jointes, dans les zones de marché y définies, ces marchés ayant été identifiés comme étant unidirectionnels lors des embarquements sur le territoire de l'une ou de l'autre Partie contractante pour des raisons se rapportant au climat, à la géographie, à la présence d'installations récréatives particulières au point ou aux points de débarquement, ou autres conditions essentiellement naturelles.

II. *Dispositions essentielles*

Le nombre de sièges pour service aérien non régulier, offert collectivement par les transporteurs de chaque Partie contractante pour chaque zone de marché définie dans les listes ci-jointes sera régi par les dispositions suivantes

A. Les autorités aéronautiques de la Partie contractante sur le territoire de laquelle le trafic est embarqué doivent, au plus tard le 1er mars de chaque année civile, élaborer et annoncer en même temps à tous les transporteurs, les prévisions préliminaires concernant le nombre de sièges de chaque liste à laquelle les pourcentages y spécifiés seront appliqués pour l'année d'exploitation débutant le 1er avril de cette année civile et se terminant le 31 mars de l'année suivante. Au plus tard le 30 juin de chaque année d'exploitation, les autorités aéronautiques de la Partie contractante sur le territoire de laquelle le trafic est embarqué devront élaborer et annoncer en même temps à tous les transporteurs, les prévisions définitives concernant le nombre de sièges de chaque liste à laquelle les pourcentages y spécifiés seront appliqués pour l'année d'exploitation en cours. Les prévisions définitives pour chaque liste ne devront pas être inférieures aux prévisions préliminaires pour chaque liste correspondante et aucune prévision ne devra être inférieure au nombre de sièges effectivement occupés lors de vols, ou, dans le cas de prévisions préliminaires, qui étaient censés être occupés lors de vols, par tous les transporteurs de chaque liste, durant l'année civile précédente, modifiée en proportion du pourcentage de modifications subies, de la deuxième année civile précédente à la première année civile précédente, comme il suit:

(1) un pour cent, pour chaque pour cent complet de la modification réelle, pour la partie de la modification s'élevant à 15 pour cent inclusivement, et

(2) trois quarts de un pour cent, pour chaque pour cent complet de la modification réelle, pour la partie de la modification s'étendant de 16 à 35 pour cent inclusivement, et

(3) one-half of one percent, for each full percent of the actual change, for that part of the change from 36 up to and including 70 percent, and

(4) one-quarter of one percent, for each full percent of the actual change, for that part of the change over 70 percent;

with fractions of percentages rounded to the nearest whole number

B. Any seat, either one-way or round-trip (including circle tour and open-jaw as round trip), shall be counted as one seat

C. Each carrier shall submit at the same time to the aeronautical authorities of both Contracting Parties any statements, documents or information required, prior to the organization of traffic, by the rules of the Contracting Party in which the traffic is proposed to be enplaned

D. The aeronautical authorities of the Contracting Party in which the traffic is to be enplaned may withhold approval of a flight, series of flights or part of a series of flights proposed to be operated by a carrier of the other Contracting Party to the extent that the number of seats on such flight or flights, when added to the number of seats previously approved for operations by all carriers of that Contracting Party in a Schedule, would exceed their percentage, as set forth in that Schedule, of the preliminary or final forecast for that Schedule. However, if the carriers of the first Contracting Party have received approval for the operation of a total number of seats in a Schedule in excess of their percentage, as set forth in that Schedule, of the preliminary or final forecast for that Schedule, approval may be withheld with respect to carriers of the other Contracting Party only to the extent that the excess of such carriers would be greater than the excess of the carriers of the first Contracting Party by more than the proportion of the respective percentages in that Schedule. If approval for a flight or flights has been withheld pursuant to this paragraph, such flight or flights shall subsequently be approved to the extent that the conditions specified in this paragraph may later become inapplicable.

E. Applications involving proposed operations during the upcoming operating year submitted prior to the announcement of the preliminary forecast for that operating year shall be acted upon when that forecast is announced

F. If approval for a flight or flights of a carrier has been withheld, pursuant to paragraph D above, such carrier may submit an application to the aeronautical authorities of the Contracting Party withholding the approval requesting that such flight or flights be approved as required by the public convenience and necessity if such Contracting Party is Canada or the public interest if such Contracting Party is the United States of America. Such applications shall be processed under the laws and regulations of the Contracting Party withholding the approval

G. In order to assure that the foregoing provisions operate equitably and do not serve to restrict the market artificially, the aeronautical authorities of

(3) un demi de un pour cent, pour chaque pour cent complet de la modification réelle, pour la partie de la modification s'étendant de 36 à 70 pour cent inclusivement, et

(4) un quart de un pour cent, pour chaque pour cent complet de la modification réelle, pour chaque partie de la modification s'étendant au-dessus de 70 pour cent,

les fractions des pourcentages étant arrondies au nombre entier le plus proche

B. Tout siège, soit pour un aller ou un aller et retour (y compris les voyages circulaires et les voyages en circuit ouvert en tant que voyage aller et retour) compte comme un siège.

C. Chaque transporteur doit présenter en même temps aux autorités aéronautiques des deux Parties contractantes tous documents, déclarations ou renseignements exigés, avant organisation du trafic selon les règlements de la Partie contractante sur le territoire de laquelle on se propose d'embarquer le trafic.

D. Les autorités aéronautiques de la Partie contractante sur le territoire de laquelle le trafic doit être embarqué peuvent refuser l'autorisation d'un vol, d'une série de vols ou d'une partie d'une série de vols que se propose d'assurer un transporteur de l'autre Partie contractante, dans la mesure où le nombre de sièges pour ce vol ou ces vols, lorsqu'on l'ajoute au nombre de sièges antérieurement approuvé pour l'exploitation par tous les transporteurs de ladite Partie contractante d'une liste, dépasse leur pourcentage, tel qu'établi dans cette liste, des prévisions préliminaires ou définitives de cette liste. Toutefois, si les transporteurs de la première Partie contractante ont reçu l'autorisation d'exploiter un nombre total de sièges d'une liste dépassant leur pourcentage, tel qu'établi dans cette liste, des prévisions préliminaires ou définitives de cette liste, l'autorisation ne peut être refusée à l'endroit des transporteurs de l'autre Partie contractante que dans la mesure où le surplus de ces transporteurs dépasse le surplus des transporteurs de la première Partie contractante dans une proportion supérieure aux pourcentages respectifs de cette liste. Si l'autorisation d'un vol ou de vols a été refusée conformément au présent paragraphe, ce vol ou ces vols devront être ultérieurement autorisés dans la mesure où les conditions spécifiées au présent paragraphe pourraient être ultérieurement inapplicables.

E. Les demandes concernant les exploitations projetées pendant la prochaine année d'exploitation présentées avant l'annonce de la prévision préliminaire pour ladite année d'exploitation doivent être mises à exécution lors de l'annonce de cette prévision.

F. Si l'autorisation d'un vol ou de vols d'un transporteur a été refusée, conformément au paragraphe D ci-dessus, ce transporteur peut présenter une demande aux autorités aéronautiques de la Partie contractante refusant l'autorisation, en demandant que ce vol ou ces vols soient autorisés, comme l'exigent la commodité et les besoins du public si le Canada est la Partie contractante ou comme l'exige l'intérêt du public si les États-Unis d'Amérique sont la Partie contractante. Ces demandes doivent être examinées d'après les lois et règlements de la Partie contractante qui refuse l'autorisation.

G. Afin de s'assurer que les dispositions susmentionnées sont appliquées de façon équitable et ne servent pas à limiter artificiellement le marché, les autorités aéronautiques des Parties contractantes maintiendront des contacts

the Contracting Parties will maintain close and frequent contact as necessary to resolve such questions of implementation as may arise

III. *Review Provisions*

A. The Contracting Parties shall consult, pursuant to Article XV of the Agreement, if the actual number of seats flown by all carriers in a Schedule during an operating year is greater or less than the forecast for that Schedule by more that 15 percent in order to agree on improved methods of forecasting.

B. Within six months after the end of each operating year, the Contracting Party in which the traffic is enplaned shall inform the other Contracting Party of the total number of seats flown in each of the Schedules, broken down by specific service types, by areas of destination, and by carriers.

Schedule 1

A Market area: Enplanements in the territory of Canada and deplanements in the State of Hawaii.

B. Types of nonscheduled air service: All passenger charters except those encompassed by subparagraph (2) of paragraph C of Section IV of Annex A.

C Percentages to be applied to the preliminary and final forecasts for the market area defined in paragraph A above:

		United States Carriers	Canadian Carriers
First Phase:	April 1, 1974-March 31, 1975	10	90
	April 1, 1975-March 31, 1976	10	90
Second Phase	April 1, 1976-March 31, 1977	20	80
	April 1, 1977-March 31, 1978	20	80
Final Phase:	April 1, 1978-March 31, 1979	25	75
	and any subsequent operating year		

etroits et fréquents selon les besoins afin de résoudre les questions de mise en application qui pourraient surgir.

III *Dispositions relatives à la révision*

A. Les Parties contractantes devront se consulter, conformément à l'Article XV de l'Accord, si le nombre réel des sièges occupés lors de vols, par tous les transporteurs d'une liste, pendant une année d'exploitation, est supérieur ou inférieur de plus de 15 pour cent aux prévisions pour cette liste, afin de se mettre d'accord pour améliorer les méthodes de prévision.

B. Dans les six mois suivant la clôture de chaque année d'exploitation, la Partie contractante sur le territoire de laquelle le trafic est embarqué doit informer l'autre Partie contractante du nombre total de sièges occupés durant des vols dans chacune des listes, en subdivisant suivant les genres de services rendus, les zones de destination et les transporteurs.

Liste 1

A. Zone de marché Embarquements sur le territoire du Canada et débarquements sur le territoire de l'État d'Hawaii.

B. Genres de services aériens non réguliers. Tous les services d'affrètement pour passagers, sauf ceux qui sont couverts par l'alinéa (2) du paragraphe C de la section IV de l'Annexe A

C. Pourcentages devant être appliqués aux prévisions préliminaires et finales pour la zone de marché définie au paragraphe A ci-dessus:

		Transporteurs des États-Unis	Transporteurs du Canada
Première phrase:	1er avril 1974—31 mars 1975	10	90
	1er avril 1975—31 mars 1976	10	90
Deuxième phase.	1er avril 1976—31 mars 1977	20	80
	1er avril 1977—31 mars 1978	20	80
Phase finale:	1er avril 1978—31 mars 1979	25	75
	et toute année d'exploitation ultérieure		

Schedule 2

A. Market area: Enplanements in the territory of Canada and deplanements in Florida

B. Types of nonscheduled air service: All passenger charters except those encompassed by subparagraphs (1) and (2) of paragraph C of Section IV of Annex A

C. Percentages to be applied to the preliminary and final forecasts for the market area defined in paragraph A above:

		United States Carriers	Canadian Carriers
First Phase:	April 1, 1976-March 31, 1976	10	90
	April 1, 1976-March 31, 1976	10	90
Second Phase:	April 1, 1976-March 31, 1977	20	80
	April 1, 1977-March 31, 1978	30	80
Final Phase:	April 1, 1978-March 31, 1979	25	75
	and any subsequent operating year		

Liste 2

A. Zone de marché: Embarquement sur le territoire du Canada et débarquement sur le territoire de l'État de Floride.

B. Genres de services aériens non réguliers. Tous les services d'affrètement pour passagers, sauf ceux qui sont couverts par les alinéas (1) et (2) du paragraphe C de la section IV de l'Annexe A.

C. Pourcentages devant être appliqués aux prévisions préliminaires et finales pour la zone de marché définie au paragraphe A ci-dessus.

		Transporteurs des États-Unis	Transporteurs du Canada
Première phase:	1er avril 1976—31 mars 1976	10	90
	1er avril 1976—31 mars 1976	10	90
Deuxième phase:	1er avril 1976—31 mars 1977	20	80
	1er avril 1977—31 mars 1978	30	80
Phase finale:	1er avril 1978—31 mars 1979	25	75
	et toute année d'exploitation ultérieure.		

Schedule 3

A. Market area. Enplanements in the territory of Canada and deplanements in the State of Hawaii, Florida, California, Arizona, Nevada, Puerto Rico, and the U.S. Virgin Islands.

B. Types of nonscheduled air service: All passenger charters except those encompassed by subparagraphs (1) and (2) of paragraph C of Section IV of Annex A.

C. Percentages[18] to be applied to the preliminary and final forecasts[19] for the market area defined in paragraph A above:

		United States Carriers	Canadian Carriers
First Phase:	April 1, 1974-March 31, 1975	20	80
	April 1, 1975-March 31, 1976	30	80
Second Phase:	April 1, 1976-March 31, 1977	35	65
	April 1, 1977-March 31, 1978	35	65
Final Phase:	April 1, 1978-March 31, 1979	40	60
	and any subsequent operating year		

[18] For the purpose of implementation of Section II(D) of this Annex and paragraph B above, proposed enplanements in Canada with deplanements in the State of Hawaii shall be governed exclusively by Schedule 1 to this Annex, and proposed enplanements in Canada with deplanements in Florida shall be governed exclusively by Schedule 2 to this Annex.

[19] The minimum preliminary and final forecasts to be applied for this Schedule shall be no less than 120 percent of the preliminary and final forecasts applicable to the State of Hawaii, Florida, and Nevada combined.

Liste 3

A. Zone du marché: Embarquements sur le territoire du Canada et débarquements sur le territoire des États d'Hawaii, de Floride, de Californie, d'Arizona, du Nevada, de Porto Rico et des îles Vierges (É.-U.)

B. Genres de services aériens non réguliers: Tous les services d'affrètement pour passagers, sauf ceux qui sont couverts par les alinéas (1) et (2) du paragraphe C de la section IV de l'Annexe A.

C. Pourcentages,[18] devant être appliqués aux prévisions préliminaires et définitives[19] pour la zone de marché définie au paragraphe A ci-dessus:

		Transporteurs des États-Unis	Transporteurs du Canada
Première phase:	1er avril 1974—31 mars 1975	20	80
	1er avril 1975—31 mars 1976	20	80
Deuxième phase:	1er avril 1976—31 mars 1977	35	65
	1er avril 1977—31 mars 1978	35	65
Phase finale:	1er avril 1978—31 mars 1979	40	60
	et toute année d'exploitation ultérieure		

[18] Aux fins de la mise en application de la section II (D) de la présente Annexe et du paragraphe B ci-dessus, les embarquements projetés au Canada avec débarquement dans l'État d'Hawaii seront exclusivement régis par la liste 1 de la présente Annexe, et les embarquements projetés au Canada avec débarquements en Floride seront régis exclusivement par la liste 2 de la présente Annexe.

[19] Les prévisions minimales préliminaires et finales devant être appliquées pour la présente liste ne devront pas être inférieures à 120 pour cent des prévisions préliminaires et finales applicables aux États d'Hawaii, de Floride et du Nevada combinés.

ANNEX D
IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

1 Flight Authorizations and Notifications

A. The aeronautical authorities of one Contracting Party may require that a carrier of the other Contracting Party apply for approval of each flight or series of flights and await receipt of such approval prior to the operation of any flight involving enplanements, in the territory of the first Contracting Party, which utilize aircraft having a maximum authorized take-off weight on wheels greater than 18,000 pounds. Such approval may be withheld only in accordance with paragraph A of Section IV of Annex A, Section IV of Annex B, or Section II of Annex C. Applications for approval in emergency situations may be made by telegram or telephone giving essential details with normal documentation being provided as soon as possible

B. It is the intention of the Contracting Parties to cooperate to the maximum extent possible on matters covered by paragraph A above in an attempt to avoid the necessity of the aeronautical authorities of one Contracting Party acting directly against a carrier or carriers of the other Contracting Party. In particular, withholding of approval pursuant to paragraph A of Section IV of Annex A will normally be taken only after consultation with the other Contracting Party for the purpose of resolving the matter In addition, if a carrier substantially exceeds the requirements of paragraph A of Section IV of Annex A during any period of time, or if, with respect to traffic not subject to paragraph C of Section IV of Annex A, the relationship of the carrier's volume of traffic, enplaned in the territory of the Contracting Party of which it is not a national, to the volume of traffic such carrier enplaned in the territory of the Contracting Party of which it is a national, substantially exceeds the relationship set forth in paragraph A of Section IV of Annex A, the Contracting Parties shall consult promptly at the request of either, in order to decide what corrective action should be taken to avoid the continuation of the imbalance.

C. The aeronautical authorities of one Contracting Party may, with respect to nonscheduled air service traffic enplaned in the territory of the other Contracting Party and deplaned in the territory of the first Contracting Party, require that carriers of both Contracting Parties transmit a notification in advance of all flights utilizing aircraft having a maximum authorized take-off weight on wheels greater than 18,000 pounds, to the aeronautical authorities of the first Contracting Party, provided, however, that such transmittal shall not be required more than 48 hours in advance of the flight, except that in cases where contracting takes place less than 48 hours in advance of the flight, transmittal shall be as soon as possible, if necessary by telegram or telephone. The information required to be provided in any such notification shall be limited to the type of charter, routing, date or dates of operation, aircraft type, and number of seats or volume of space contracted for

ANNEXE D
MISE EN ŒUVRE, ADMINISTRATION ET APPLICATION

1 Autorisations et notifications de vols

A Les autorités aéronautiques de l'une des Parties contractantes peuvent exiger qu'un transporteur de l'autre Partie contractante demande une autorisation pour chaque vol ou série de vols et attende la réception de cette autorisation avant d'assurer un vol quelconque comportant des embarquements sur le territoire de la première Partie contractante qui utilise des aéronefs dont le poids maximal autorisé au décollage, sur roues, est supérieur à 18,000 livres. Cette autorisation ne peut être refusée que dans les cas prévus au paragraphe A de la section IV de l'annexe A, de la section IV de l'Annexe B ou de la section II de l'Annexe C Les demandes d'autorisation dans les cas d'urgence peuvent être faites par télégramme ou par téléphone, en donnant les principaux détails, la documentation normale devant être fournie dès que possible

B Il est dans l'intention des Parties contractantes de collaborer au maximum en ce qui concerne les questions couvertes par le paragraphe A ci-dessus afin d'éviter qu'il ne soit nécessaire aux autorités aéronautiques de l'une des Parties contractantes d'agir directement à l'endroit d'un ou de plusieurs transporteurs de l'autre Partie contractante. En particulier, le refus d'autorisation, conformément au paragraphe A de la section IV de l'Annexe A n'entrera normalement en vigueur qu'après consultations avec l'autre Partie contractante afin de résoudre la question En outre, si un transporteur dépasse de façon notable les exigences du paragraphe A de la section IV de l'Annexe A durant une période quelconque ou si, en ce qui concerne le trafic non assujetti au paragraphe C de la section IV de l'Annexe A, le volume de trafic d'un transporteur embarqué sur le territoire de la Partie contractante dont il n'est pas un ressortissant, par rapport au volume de trafic que ce transporteur a embarqué sur le territoire de la Partie contractante dont il est un ressortissant, dépasse de façon notable le rapport énoncé au paragraphe A de la section IV de l'Annexe A, les Parties contractantes devront se consulter dans les plus brefs délais à la demande de l'une ou de l'autre afin de décider des mesures correctives à prendre pour éviter que ne se maintienne le déséquilibre

C Les autorités aéronautiques de l'une des Parties contractantes peuvent, en ce qui concerne le trafic de services aériens non réguliers embarqué dans le territoire de l'autre Partie contractante et débarqué sur le territoire de la première Partie contractante, exiger que les transporteurs des deux Parties contractantes transmettent à l'avance aux autorités aéronautiques de la première Partie contractante une notification relative à tous les vols pour lesquels sont utilisés des aéronefs dont le poids maximal autorisé au décollage, sur roues, est supérieur à 18,000 livres, sous réserve toutefois que cette notification ne soit pas exigée plus de 48 heures avant le vol Toutefois, dans les cas où le contrat de location est effectif moins de 48 heures avant le vol, la notification doit être faite dès que possible, par télégramme ou par téléphone si nécessaire. Les renseignements que l'on doit fournir dans une telle notification se limitent au genre d'affrètement, à l'acheminement, à la date ou aux dates d'exploitation, au type d'aéronef et au nombre de sièges ou au volume faisant l'objet de la location.

II *Enforcement Cooperation*

To minimize the administration burdens of enforcement procedures on carriers and organizers with respect to advance booking and travel group charters, and at the same time to coordinate enforcement procedures with respect to such charters, the aeronautical authorities of the Contracting Party in which the traffic is enplaned shall, on request, transmit to the aeronautical authorities of the other Contracting Party as soon as practicable, passenger lists and other appropriate documents to facilitate the conduct of spot checks of flights. The aeronautical authorities of that other Contracting Party shall not require the routine filing with them of passenger lists and other documents for advance booking and travel group charters which enplane traffic in the territory of the first Contracting Party. The aeronautical authorities of that other Contracting Party shall transmit to the aeronautical authorities of the first Contracting Party, for appropriate enforcement of the latter's regulations, evidence obtained of possible violations on flights operated pursuant to such regulations, rather than interrupt the flight and cause inconvenience to the travelling public.

III. *Reporting Requirements*

In addition to reasonable reporting requirements which either Contracting Party may impose, each carrier shall be required to report flights utilizing aircraft having a maximum authorized take-off weight on wheels greater than 18,000 pounds on Canadian Transport Commission Statement 40 on a monthly basis to the aeronautical authorities of each Contracting Party

IV. *Impairment of Scheduled Air Services*

In view of the nature of the air transportation markets between Canada and the State of Hawaii and between Canada and Florida, and in view of the interest of both Contracting Parties in avoiding substantial impairment of the scheduled air services operated in these markets under the Air Transport Agreement, both Contracting Parties will consult at any time, at the request of either and pursuant to Article IX (1) of the present Agreement, to review the situation in these markets and to determine whether special arrangements should be adopted to avoid substantial impairment.

II *Collaboration pour la mise en application*

Pour alléger au maximum les tâches administratives des transporteurs et des organisateurs relatives aux procédures de mise en application en ce qui concerne les réservations anticipées et les affrètements pour voyages en groupe, et pour coordonner en même temps les méthodes de mise en application en ce qui concerne ces affrètements, les autorités aéronautiques de la Partie contractante sur le territoire de laquelle le trafic est embarqué doivent, sur demande et dès que possible, transmettre aux autorités aéronautiques de l'autre Partie contractante des listes de passagers et autres documents appropriés pour faciliter les vérifications sur place des vols. Les autorités aéronautiques de l'autre Partie contractante ne devront pas exiger le dépôt habituel des listes de passagers et autres documents relatifs aux réservations anticipées et aux affrètements pour voyages en groupe lors d'un embarquement de trafic sur le territoire de la première Partie contractante. Les autorités aéronautiques de l'autre Partie contractante devront transmettre aux autorités aéronautiques de la première Partie contractante, en vue de la mise en application appropriée des règlements de cette dernière, les preuves obtenues relativement à des violations éventuelles lors de vols effectués conformément à ces règlements, plutôt que d'interrompre le vol et de gêner les voyageurs.

III *Exigences relatives aux comptes rendus*

En plus des exigences raisonnables que peuvent imposer l'une ou l'autre des Parties contractantes en ce qui concerne les comptes rendus, il sera exigé que chaque transporteur, sur une base mensuelle et en utilisant le relevé 40 de la Commission canadienne des transports, rende compte aux autorités aéronautiques de chacune des Parties contractantes des vols pour lesquels sont utilisés des aéronefs dont le poids maximal autorisé au décollage, sur roues, est supérieur à 18,000 livres.

IV *Détérioration des services aériens réguliers*

Étant donné la nature des marchés de transport aérien entre le Canada et l'État d'Hawaii et entre le Canada et la Floride, et étant donné l'intérêt des deux Parties contractantes à éviter des détériorations notables des services aériens réguliers exploités sur ces marchés en vertu de l'Accord relatif aux transports aériens, les deux Parties contractantes se consulteront, à n'importe quel moment, à la demande de l'une ou l'autre, et conformément à l'Article IX (1) du présent Accord pour examiner la situation de ces marchés et pour déterminer s'il est nécessaire d'adopter des arrangements spéciaux afin d'éviter toute détérioration notable.

II

The Ambassador of the United States of America to the Secretary of State for External Affairs of Canada

Ottawa, May 8, 1974

No. 78

Sir,

I have the honor to refer to the Nonscheduled Air Service Agreement between the Government of the United States of America and the Government of Canada signed on this date, and to express the reservation of my Government that, notwithstanding Article VII(2) of that Agreement, the performance by any carrier of Inclusive Tour Charter flights enplaned in Canada by any carrier shall, in addition to meeting the requirements of the Canadian Transport Commission regulations applicable thereto, also be conditional upon the land portion of the tour providing overnight hotel accommodations at a minimum number of places other than the point of origin, each place a minimal distance from the other, each such minimum to be the minimum permitted by the Civil Aeronautics Board for any United States—Canada Inclusive Tour Charter by any United States carrier; provided, however, that any Canadian carrier (other than a Canadian carrier also designated under the Air Transport Agreement for service on any route having a terminal or coterminal in Florida or the State of Hawaii) may, in lieu of the above minimums, meet only the minimal stop requirements extant July 30, 1973, prior to the amendment of subparagraph 41(g) (i) of Air Carrier Regulations SOR/72-145 as set forth in Canadian Transport Commission General Order No. 1973-1 Air of July 31, 1973.

I would appreciate receiving confirmation from you that the Government of Canada acknowledges the above reservation.

Accept, Sir, the renewed assurances of my highest consideration

WILLIAM J PORTER

The Honourable Mitchell Sharp,
Secretary of State for External Affairs,
Ottawa

II

L'Ambassadeur des États-Unis d'Amérique au Secrétaire d'État aux Affaires Extérieures du Canada

(Traduction)

Ottawa, le 8 mai 1974

No. 78

MONSIEUR LE SECRÉTAIRE D'ÉTAT,

J'ai l'honneur de me référer à l'Accord relatif aux services aériens non réguliers entre le Gouvernement des États-Unis d'Amérique et le Gouvernement du Canada, signé à la présente date, et d'exprimer la réserve de mon Gouvernement selon laquelle, nonobstant l'Article VII (2) dudit Accord, l'exécution de vols d'affrètement voyage tout compris, avec embarquement au Canada par un quelconque transporteur devra, en plus de répondre aux exigences des règlements y applicables de la Commission canadienne des transports, être soumise également à la condition suivante, soit que la portion terrestre du voyage comporte le logement à l'hôtel pour la nuit en un nombre minimum d'endroits autres que le point d'origine, chaque endroit étant situé à une distance minimale de l'autre et chacun de ces minima devant correspondre aux minima permis par le *Civil Aeronautics Board* pour un affrètement voyage tout compris États-Unis—Canada effectué par un transporteur quelconque des États-Unis, sous réserve toutefois que tout transporteur canadien (autre qu'un transporteur canadien également désigné en vertu de l'Accord relatif aux transports aériens pour assurer le service sur toute route ayant un terminus ou des coterminus en Floride ou dans l'État d'Hawaï) puisse, au lieu des minima susmentionnés, satisfaire aux exigences minimales d'escale existant le 30 juillet 1973, avant modification de l'alinéa 41 (g) (i) du Règlement sur les transporteurs aériens DORS/73-145, tel qu'énoncé dans l'ordonnance générale n° 1973-1 Air du 31 juillet 1973 de la Commission canadienne des transports.

Je vous serais reconnaissant de bien vouloir nous confirmer que le Gouvernement du Canada reconnaît la réserve susmentionnée, dont les versions anglaise et française font également foi.

Veuillez agréer, Monsieur le Secrétaire d'État, les assurances renouvelées de ma très haute considération.

WILLIAM J PORTER

L'honorable Mitchell Sharp,
Secrétaire d'État aux Affaires extérieures,
Ottawa

III

The Secretary of State for External Affairs of Canada to the Ambassador of the United States of America

Ottawa, May 8, 1974

EXCELLENCY,

I have the honour to refer to your note of this date concerning a reservation expressed by your Government with respect to the Nonscheduled Air Services Agreement.

The Government of Canada acknowledges this reservation. In turn, I wish to express the reservation of my Government that it will not

(1) apply the provisions of subparagraphs (4) and (5) of paragraph C of Section IV of Annex A to the said Agreement in so far as deplanements in Hawaii or Florida are concerned,

(2) implement the second phases defined in Schedules 1, 2, and 3 of Annex C to the said Agreement but will continue to apply the percentages shown for the first phase in any operating year after the first phase;

(3) implement Section II (A) and (B) of Annex B to the said Agreement with respect to travel group charter and advance booking charter services;

(4) implement footnote No. 2 in Schedule 3 of Annex C to the said Agreement.

This reservation will terminate when the Government of Canada receives notice from the Government of the United States of America that the reservation set forth in the note referred to above has been terminated, except that the percentages shown for the second phases specified in Schedules 1, 2, and 3 of Annex C to the said Agreement will not be applied until April 1 of the third operating year after the date of said notice and the percentages shown for the final phases defined in the same Schedules will be applied two years thereafter. The Government of Canada will, however, review the possibility of removing that part of its reservation set forth in numbered paragraph 3 above, in whole or in part, without regard to termination by the Government of the United States of America of its reservation.

I would appreciate receiving confirmation that the Government of the United States acknowledges the reservation of the Government of Canada, as set forth in this note, equally authentic in English and in French.

Accept, Excellency, the renewed assurances of my highest consideration.

MITCHELL SHARP
Secretary of State
for External Affairs

His Excellency the Honourable William J Porter,
Ambassador of the United States of America,
Ottawa

Le Secrétaire d'État aux Affaires Extérieures du Canada à l'Ambassadeur des États-Unis d'Amérique

Ottawa, le 8 mai 1974

EXCELLENCE,

J'ai l'honneur de me reporter à votre Note de ce jour relative à une réserve exprimée par votre Gouvernement au sujet de l'Accord relatif aux services aériens non réguliers.

Le Gouvernement du Canada note cette réserve. A mon tour, je désire exprimer la réserve de mon gouvernement selon laquelle:

(1) il n'appliquera pas les dispositions des alinéas (4) et (5) du paragraphe C de la section IV de l'Annexe A dudit Accord, en ce qui concerne les débarquements à Hawaii ou en Floride;

(2) il n'appliquera pas la deuxième phase définie dans les listes 1, 2 et 3 de l'Annexe C dudit Accord, mais continuera à appliquer les pourcentages indiqués pour la première phase lors de toute année d'exploitation faisant suite à la première phase;

(3) il n'appliquera pas la section II(A) et (B) de l'Annexe B dudit Accord en ce qui concerne les services d'affrètement pour voyages en groupe et les services d'affrètement avec réservation anticipée;

(4) il n'appliquera pas le renvoi n° 2 de la liste 3 de l'Annexe C dudit Accord.

Cette réserve prendra fin lorsque le Gouvernement du Canada sera avisé par le Gouvernement des États-Unis d'Amérique que la réserve énoncée dans la Note susmentionnée a pris fin. Toutefois, les pourcentages indiqués pour la deuxième phase précisée dans les listes 1, 2 et 3 de l'Annexe C dudit Accord ne seront pas appliqués avant le 1er avril de la troisième année d'exploitation faisant suite à la date dudit avis et les pourcentages indiqués pour les phases finales définies dans les mêmes listes seront appliqués deux années plus tard. Toutefois, le Gouvernement du Canada examinera la possibilité de supprimer cette partie de sa réserve, énoncée au paragraphe 3 susmentionné, en totalité ou partiellement, indépendamment de l'annulation de la réserve du Gouvernement des États-Unis.

Je vous saurais gré de confirmer que le Gouvernement des États-Unis note la réserve du Gouvernement du Canada exprimée dans la présente Note, dont les versions anglaise et française font également foi.

Veuillez agréer, Excellence, les assurances renouvelées de ma très haute considération

Le Secrétaire d'État
aux Affaires extérieures
MITCHELL SHARP

Son Excellence l'Honorable William J Porter,
Ambassadeur des États-Unis d'Amérique,
Ottawa

167

The Ambassador of the United States of America to the Secretary of State for External Affairs of Canada

Ottawa, May 8, 1974.

No. 79

Sir,

I have the honor to refer to your note of this date which acknowledges the reservation of my Government regarding the performance of Inclusive Tour Charter flights and expresses a reservation of your Government. The Government of the United States of America acknowledges the reservation of the Government of Canada set forth in your note, equally authentic in English and in French.

Accept, Sir, the renewed assurances of my highest consideration

WILLIAM J PORTER

The Honourable Mitchell Sharp,
Secretary of State for External Affairs,
Ottawa.

L'Ambassadeur des États-Unis d'Amérique au Secrétaire d'État aux Affaires Extérieures du Canada

(Traduction)

Ottawa, le 8 mai 1974

MONSIEUR LE SECRÉTAIRE D'ÉTAT,

J'ai l'honneur de me référer à votre Note en date de ce jour, qui note la réserve exprimée par mon Gouvernement relativement à l'exécution de vols d'affrètement voyage tout compris et qui exprime une réserve de votre Gouvernement. Le Gouvernement des États-Unis note la réserve du Gouvernement du Canada exprimée dans votre Note, dont les versions anglaise et française font également foi.

Veuillez agréer, Monsieur le Secrétaire d'État, les assurances renouvelées de ma très haute considération.

WILLIAM J PORTER

L'honorable Mitchell Sharp,
Secrétaire d'État aux Affaires extérieures,
Ottawa

V

The Secretary of State for External Affairs of Canada to the Ambassador of the United States of America

Ottawa, May 8, 197-

EXCELLENCY,

I have the honour to refer to the Nonscheduled Air Service Agreement between the Government of Canada and the Government of the United States of America signed on this date and to your Note of the same date concerning a reservation expressed by your Government with respect to the said Agreement.

In order to facilitate the movement of traffic under the Agreement and to avoid the necessity of cancelling contracts in force between carriers and charterers, I propose, on behalf of my Government, that the following interim arrangements be applied on the coming into force of the Agreement until carriers are issued new or amended licences pursuant to Article III of the Agreement.

1. Any carrier designated by the Government of the United States shall, pending application for, and issuance of, an appropriate license under the Agreement, be deemed to have obtained such a license and to have been authorized to operate nonscheduled air services between the respective territories of Canada and the United States as provided for in the Agreement, provided such carrier (a) holds a valid class 9-4 license issued by the Air Transport Committee of the Canadian Transport Commission, or (b) appears on the current eligible list of the said Committee on the date of the coming into force of the Agreement.

2. Any carrier designated by the Government of Canada shall, pending issuance of an amended foreign air carrier permit under the Agreement, be allowed to operate nonscheduled air services between the respective territories of the United States and Canada as provided for in the Agreement to the maximum extent the Civil Aeronautics Board is legally empowered to do so (e.g. by waiver of its regulations), provided such carrier holds a valid foreign air carrier permit

3. Any carrier designated by the Government of Canada (other than a carrier also designated under the Air Transport Agreement for service on any route having a terminal or coterminal in Florida or the State of Hawaii), with respect to inclusive tour charter flights by such carriers which are to enplane traffic in Canada and which have been approved by the Air Transport Committee of the Canadian Transport Commission prior to the coming into force of the Agreement, shall be permitted to operate such flights under the Agreement without applicability of the reservation of the Government of the United States

Le Secrétaire d'État aux Affaires Extérieures du Canada à l'Ambassadeur des États-Unis d'Amérique

Ottawa, le 8 mai 197-

EXCELLENCE,

J'ai l'honneur de me référer à l'Accord relatif aux services aériens non réguliers entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique signé aujourd'hui et à votre Note de ce jour qui exprime une réserve de votre Gouvernement à l'endroit dudit Accord.

Afin de faciliter le mouvement du trafic aux termes dudit Accord et d'éviter de devoir résilier des contrats en vigueur entre les transporteurs et les affréteurs, je propose, au nom de mon Gouvernement, que les arrangements transitoires suivants soient mis en application au moment de l'entrée en vigueur dudit Accord jusqu'à ce que les transporteurs aient reçu des licences nouvelles ou modifiées, en conformité avec l'Article III de l'Accord.

1. Tout transporteur désigné par le Gouvernement des États-Unis, en attendant de présenter sa demande de permis et de recevoir aux termes de l'Accord ledit permis pertinent sera considéré comme ayant obtenu un tel permis et étant autorisé à exploiter des services aériens non réguliers entre les territoires respectifs du Canada et des États-Unis comme il est précisé dans l'Accord, pourvu que le transporteur a) détienne un permis valide de la classe 9-4 délivré par le Comité des transports aériens de la Commission canadienne des transports ou b) qu'il figure dans la liste d'admissibilité en cours dudit Comité à la date de l'entrée en vigueur de l'Accord.

2. Tout transporteur désigné par le Gouvernement du Canada, en attendant la délivrance d'un permis modifié pour les transporteurs aériens étrangers aux termes de l'Accord, pourra exploiter des services aériens non réguliers entre les territoires respectifs des États-Unis et du Canada comme il est précisé dans l'Accord, dans la mesure maximale où le *Civil Aeronautics Board* y est autorisé de par la loi (par ex par la dérogation à ses règlements), pourvu que le transporteur détienne un permis pour les transporteurs étrangers valide.

3. En ce qui concerne les vols d'affrètement voyage tout compris par des transporteurs qui embarqueront du trafic au Canada et auront été approuvés par le Comité des transports aériens de la Commission canadienne des transports avant la date de l'entrée en vigueur de l'Accord tout transporteur désigné par le Gouvernement du Canada (autre qu'un transporteur également désigné aux termes de l'Accord relatif aux transports aériens pour exploiter toute route ayant un aéroport terminal ou coterminal en Floride ou dans l'État de Hawaii) pourra assurer cesdits vols aux termes de l'Accord sans que soit appliquée la réserve exprimée par le Gouvernement des États-Unis.

I would appreciate receiving confirmation from you that the above interim arrangements set forth in this note, equally authentic in English and in French, are acceptable to your Government.

Accept, Excellency, the renewed assurances of my highest consideration

MITCHELL SHARP
Secretary of State for External Affairs

His Excellency the Honourable William J. Porter,
Ambassador of the United States of America,
Ottawa.

The Ambassador of the United States of America to the Secretary of State for External Affairs of Canada.

Ottawa, May 8, 1974

No 80

SIR,

I have the honor to refer to your note of this date proposing interim arrangements to be applied on the coming into force of the Nonscheduled Air Service Agreement until carriers are issued new or amended licenses pursuant to Article III of the Agreement and to confirm that the proposals set forth in your note, equally authentic in English and in French, are acceptable to my Government.

Accept, Sir, the renewed assurances of my highest consideration.

WILLIAM J PORTER

The Honourable Mitchell Sharp,
Secretary of State for External Affairs,
Ottawa

Je vous saurais gré de me confirmer que les arrangements transitoires exprimés dans cette note, dont les versions anglaise et française font également foi, rencontrent l'agrément de votre Gouvernement.

Veuillez agréer, Excellence, les assurances renouvelées de ma très haute considération

Le Secrétaire d'État aux Affaires extérieures
MITCHELL SHARP

Son Excellence l'honorable William J Porter,
Ambassadeur des États-Unis d'Amérique,
Ottawa.

VI

L'Ambassadeur des États-Unis d'Amérique au Secrétaire d'État aux Affaires Extérieures du Canada

(Traduction)

Ottawa, le 8 mai 1974

No. 80

MONSIEUR LE SECRÉTAIRE D'ÉTAT,

J'ai l'honneur de me référer à votre Note en date de ce jour dans laquelle vous proposez l'application d'arrangements transitoires à compter de la date d'entrée en vigueur de l'Accord relatif aux services aériens non réguliers et jusqu'à ce que les transporteurs aient reçu de nouvelles licences ou des licences modifiées, en conformité de l'Article III de l'Accord; j'ai l'honneur de confirmer que les propositions énoncées dans votre Note, qui fait également foi en anglais et en français, rencontrent l'agrément de mon Gouvernement.

Veuillez agréer, Monsieur le Secrétaire d'État, les assurances renouvelées de ma très haute considération.

WILLIAM J. PORTER

L'honorable Mitchell Sharp,
Secrétaire d'État aux Affaires extérieures,
Ottawa.