

THE LAW OF INTERNATIONAL AIR TRANSPORT

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To
MY WIFE

DEVELOPMENT OF CIVIL AIR TRANSPORT, 1945-60

Total Scheduled Services—Revenue Traffic

YEAR	Kilometres Flown	Hours Flown	Passengers Carried	Passenger- Kilometres	Cargo Tonne- Kilometres	Mail Tonne- Kilometres	Average number of		
							Passengers per aircraft	Kilometres flown per passenger	Kilometres flown per hour
millions									
1960	3 180	8.9	108	111 000	2 180	600	35	1 030	355
1959	3 070	8.9	98	97 000	1 920	520	32	995	345
1958	2 920	8.7	87	85 000	1 670	470	29	975	335
1957	2 830	8.7	86	81 000	1 630	430	29	950	325
1956	2 540	8.0	77	71 000	1 480	400	28	925	320
1955	2 290	7.3	68	61 000	1 300	370	27	905	315
1954	2 050	6.7	59	52 000	1 100	330	25	895	310
1953	1 920	6.4	52	56 000	1 040	280	24	885	300
1952	1 760	6.0	46	40 000	990	250	23	875	295
1951	1 610	5.6	42	35 000	910	230	22	830	290
1950	1 440	5.0	31	28 000	770	200	19	875	285
1949	1 350	4.8	27	24 000	570	190	18	880	280
1948	1 270	4.6	24	21 000	420	170	17	890	275
1947	1 140	4.2	21	19 000	270	130	17	900	270
1946	940	3.8	18	16 000	120	100	17	850	250
1945	600	2.5	9	8 000	110	130	13	880	240

conversions to statute miles and short ton-statute miles

	Miles Flown	Hours Flown	Passengers Carried	Passenger- Miles	Cargo Ton- Miles	Mail Ton- Miles	Average number of		
							Passengers per aircraft	Miles flown per passenger	Miles flown per hour
			millions						
1960	1 975	8.9	108	69 000	1 495	410	35	640	221
1959	1 910	8.9	98	60 000	1 315	355	32	618	214
1958	1 815	8.7	87	53 000	1 145	320	29	606	208
1957	1 760	8.7	86	50 500	1 115	295	29	590	202
1956	1 580	8.0	77	44 000	1 015	275	28	575	199
1955	1 425	7.3	68	38 000	890	255	27	562	196
1954	1 275	6.7	59	32 500	755	225	25	556	193
1953	1 195	6.4	52	28 500	710	190	24	550	186
1952	1 095	6.0	46	25 000	680	170	23	544	183
1951	1 000	5.6	42	22 000	625	160	22	516	180
1950	895	5.0	31	17 500	530	135	19	544	177
1949	840	4.8	27	15 000	390	130	18	547	174
1948	790	4.6	24	13 000	290	115	17	553	171
1947	710	4.2	21	12 000	185	90	17	559	168
1946	585	3.8	18	10 000	80	70	17	528	155
1945	375	2.5	9	5 000	75	90	13	547	149

YEARS	ANNUAL INCREASE OR DECREASE								
1959-60	+ 4%	0%	+ 10%	+ 14%	+ 14%	+ 15%	+ 9%	+ 4%	+ 3%
1958-59	+ 5%	+ 2%	+ 13%	+ 14%	+ 15%	+ 11%	+ 10%	+ 2%	+ 3%
1957-58	+ 3%	0%	+ 1%	+ 5%	+ 2%	+ 9%	0%	+ 3%	+ 3%
1956-57	+ 11%	+ 9%	+ 12%	+ 14%	+ 10%	+ 8%	+ 4%	+ 3%	+ 2%
1955-56	+ 11%	+ 10%	+ 13%	+ 16%	+ 14%	+ 8%	+ 4%	+ 2%	+ 2%
1954-55	+ 12%	+ 9%	+ 15%	+ 17%	+ 18%	+ 12%	+ 8%	+ 1%	+ 2%
1953-54	+ 7%	+ 5%	+ 13%	+ 13%	+ 6%	+ 18%	+ 4%	+ 1%	+ 3%
1952-53	+ 9%	+ 7%	+ 13%	+ 15%	+ 5%	+ 12%	+ 4%	+ 1%	+ 2%
1951-52	+ 9%	+ 7%	+ 10%	+ 14%	+ 9%	+ 9%	+ 5%	+ 5%	+ 2%
1950-51	+ 12%	+ 12%	+ 35%	+ 25%	+ 18%	+ 15%	+ 16%	- 5%	+ 2%
1949-50	+ 7%	+ 4%	+ 15%	+ 17%	+ 35%	+ 5%	+ 6%	- 1%	+ 2%
1948-49	+ 6%	+ 4%	+ 13%	+ 14%	+ 36%	+ 12%	+ 6%	- 1%	+ 2%
1947-48	+ 11%	+ 10%	+ 14%	+ 11%	+ 56%	+ 31%	0%	- 1%	+ 2%
1946-47	+ 21%	+ 11%	+ 17%	+ 19%	+ 125%	+ 30%	0%	+ 6%	+ 8%
1945-46	+ 57%	+ 52%	+ 100%	+ 100%	+ 9%	- 23%	+ 31%	- 3%	+ 4%

Exclusions: The People's Republic of China, the U.S.S.R., and other States which were not members of ICAO at December 31, 1960.

PREFACE

Air transport is a development entirely of the twentieth century. The Wright brothers made their historic flight in 1903, and Louis Blériot his crossing of the English Channel in 1909. The progress that has been made since then in this field of human endeavours is almost beyond belief. Within half a century not merely have the Atlantic, the Pacific and the Arctic Oceans all been bridged but, in the number of passengers carried across the North Atlantic, aircraft have already outstripped ships by more than two to one.¹ The biggest leap forward came of course after the Second World War with the introduction of long-range commercial aircraft. The sixties will be the decade of jets. Then will come supersonic airliners.

Air transport divides itself into scheduled and non-scheduled air services, the former constituting by far the major sector of civil aviation. The number of passengers carried in regular air services throughout the world reached 3.6 million in 1938, 24 million in 1948 and 87 million in 1958, increasing more than twenty-fourfold in twenty years. In 1960 the 100-million mark was passed.

International air transport operates within an extremely complex legal network. At the centre of this cobweb are the Chicago Convention on International Civil Aviation, 1944, and the International Civil Aviation Organisation set up under it. Over eighty States are now parties to this Convention and thereby members of the ICAO.

The Chicago Convention, 1944, confers only limited rights for the operation of non-scheduled air services. The Convention is supplemented with bilateral agreements between States or multilateral treaties on a regional basis, such as the Paris Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, 1956.

In the far more important sector of scheduled international air services, neither the Chicago Convention, 1944, nor subsequent efforts have succeeded in securing a multilateral exchange of operating rights across international frontiers. The meshes of the network on which these services run are woven from hundreds of rather precarious bilateral international treaties concluded after

¹ Across the North Atlantic, 1960: by sea 866,000, by air 1,920,000 (1,761,000 by scheduled flights, 159,000 by charter or special flights).

intensive bargaining by individual pairs of States. All these bilateral agreements are terminable at relatively short notice, although the common interest of nations in keeping the wings of their international airliners aloft has in general kept the Damoclean sword from playing havoc with this delicately balanced structure.

The present study of the law of international air transport begins with a survey of the institutional and legal framework of international civil aviation, namely, the International Civil Aviation Organisation and the Chicago Convention, 1944. It next sets out the distinction between scheduled and non-scheduled international air services. The law governing each of these two branches of international air transport is then successively examined through an analysis of all post-war international air transport agreements to which the United Kingdom is a party.

In the law of international air transport, United Kingdom agreements occupy a special position. British civil aviation has passed through many phases since the end of the Second World War. It was for all practical purposes dormant during the war and, after the war, had to be rebuilt almost from scratch. However, with great resolution, British civil aviation has succeeded, not only in overcoming this initial handicap, but, ably assisted by a vigorous aircraft industry which has produced the Comets, the Viscounts and the Britannias, also in sweeping forward to take the lead in the introduction of round-the-world air services served by pure jets and turbine-engined aircraft.

In the field of scheduled international air transport, the United Kingdom Government, inspired by the object of "order in the air," initially followed a rather cautious policy of retaining a strict governmental control over international air services operated under bilateral agreements in order to protect a newly revived industry. The United States Government, on the other hand, was pursuing a policy of almost unrestricted freedom. At the 1944 Chicago Conference on International Civil Aviation it was not possible to bridge these opposing views. Subsequent negotiations with the United States resulted in the Bermuda Agreement of February 11, 1946. The pattern arrived at in the Bermuda Agreement, which represents a fair and equitable compromise between what were then a strong carrier nation and one desirous of fostering its own renascent civil aviation industry, has not only been made by both contracting parties an integral part of their international civil aviation policy,

but has also exerted a wide influence on bilateral agreements on scheduled international air services concluded by other States. Moreover, the United Kingdom has taken an active part in the European Civil Aviation Conference (ECAC) and its initiative led this regional organisation in March 1959 to establish a Committee of Co-ordination and Liberalisation of Intra-European Air Transport.

In the sector of non-scheduled international air transport, the United Kingdom acceded to the Paris Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, 1956, on January 11, 1960. The Paris Agreement constitutes one of the major events in the legal regulation of international air transport since the Chicago Conference, 1944. It corresponds closely to the two bilateral agreements on non-scheduled air services concluded previously by the United Kingdom with France and Switzerland respectively.

All in all, therefore, United Kingdom air transport agreements afford a singularly representative cross-section of the law of international air transport as a whole, both scheduled and non-scheduled.

The foundations of the present legal scaffolding of the world's airways were laid rather hastily in the immediate post-war years in order to enable the air services quickly to start operation. Alterations and additions have since then been made pragmatically as the years go by. Weak points have been underpinned and excrescences removed. Seventeen years' experience since the Chicago Conference of 1944 has gradually borne fruit and present-day air services agreements present a remarkable degree of uniformity, at least in their essential features. The time has passed when these treaties could be regarded as merely *ad hoc* and temporary arrangements between individual States without any general significance. Like the man-made canyons of Manhattan, these agreements are no longer isolated legal skyscrapers but form a new skyline in international law. A well-delineated law of international air transport has emerged.

From this point of view, a study of these air services agreements serves a wider methodological purpose in international law. It testifies to the truth of a view which has long been advocated by, for instance, the late M. O. Hudson that so much of international relations is today regulated by treaties that only a very limited view will be gained of international law as it actually is were one to

ignore the vast superstructure which these treaties have superimposed on international customary law. If, instead, this treaty practice is analysed in accordance with the technique, which Dr. Schwarzenberger has for many years made his own, of dividing the conventional superstructure into functionally delimited fields, then distinct, rich, specialised and new—in the sense that they have not been clearly perceived before—branches of international law will come to light, each with its own optional principles and standards.

Apart from those concerned with or interested in international air transport and international lawyers in general, it is hoped that other students of world affairs may also find in this survey something of interest. The economic and political significance of international air transport from the standpoint both of national development and of world politics hardly needs to be stressed. Depending on the spirit which animates it and the manner in which it is applied, the law which regulates international civil aviation can either assist or arrest its natural growth, with all the attending consequences.

To find a multilateral basis for the general exchange of commercial rights for international air transport remains one of the permanent objectives of the International Civil Aviation Organisation. To that end a comprehensive analysis of all the bilateral air services agreements in the world has been on its agenda for some time. It is, therefore, also to be hoped that the present effort may contribute in some way to the early realisation of this project by clearing a corner of the undergrowth which now besets the path of progress towards any multilateral agreement. In promoting a greater understanding of the law of international air transport, this and complementary studies may perhaps help to pave the way towards a more liberal approach on the part of States, leading eventually to a multilateral solution, so that the words, "We want the air to unite the peoples, and not to divide them,"² may be transformed from aspiration to reality.

Finally, the author wishes to acknowledge his great indebtedness to the many persons and institutions that have extended their kind co-operation and generous assistance to him in the preparation of this work. Thanks are due to the Secretary-General of the

² See below, p. 495.

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work are entirely those of the author, for which none but the author is responsible.

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B. C.

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June 24, 1961.

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