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Abdelmoneim Ismail Ahmed

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SURVEY OF EGYPTIAN AVIATION LAW AND POLICY—PART I

BY ABDELMONEIM ISMAIL AHMED

IN Egypt, air transport like other types of transportation is subject to governmental restrictions upon the freedom of action of the enterprise. Broadly speaking, civil aviation is entrusted to one of the ministers of State. The minister in charge of civil aviation not only administers safety regulations but also controls, in varying degrees, the development of regularly scheduled and non-scheduled air transport through the power to pass upon applications for operating permissions. This special requirement is merely an application of the general practice of making the operation of any business utilizing the public domain or engaged in a public service, subject to the prior consent of the State. Such permission may be conditional upon the observance of certain requirements. The administrative authority under which civil aviation is placed is symptomatic of the main political influences at work.

In Egypt, before the Second World War questions affecting aviation were dealt with by the Ministry of Communications. Since 1939, civil aviation has been the responsibility of the Ministry of War and Marine. The administration of civil aviation was originally lodged in the Civil Aviation Department of the latter Ministry. There are now two principal agencies concerned with civil aviation: (1) The Civil Aviation Department. (2) The Supreme Board of Civil Aviation. These two agencies are public agencies, responsible to the Minister of War and Marine.

SUPREME BOARD OF CIVIL AVIATION

On the 25th of December 1952, a law was passed establishing a body known as Supreme Board of Civil Aviation. The Board is purely a creature of Statute and has only such jurisdiction as the Statute gives it either in express terms or by implication. Broadly speaking, the functions of the Board are to encourage and foster the development of civil aviation and air transport, and to set the main lines to be followed by the Egyptian negotiator with the foreign countries in concluding bilateral agreements. It could be said that the primary objective of the Board is planning.

The Board is the body responsible for the supervision of the execution of government policy in matters pertaining to civil aviation including air transport, aerodromes, safety equipment for air traffic control, technical training promotion, preparation of aviation legis-

lation and defining the external relationship of Egypt in matters pertaining to civil aviation.

Government Participation

Government participation in the management of air transport enterprises could be in different forms, which may be outlined as follows:—

(1) Government participation in the management of otherwise privately-controlled enterprises, through the appointment, or a voice in the appointment of one or more directors or officers. (2) Government ownership, direct or indirect of capital stock in enterprises having the form of a company or corporation. The government may own a minority, a majority, or all of the stock. Such ownership is usually accompanied by the right to appoint some or all of the directors and officers. (3) Government aid to the company may take the form of direct subsidy, mail payments, special favours like granting the company the privilege or them onopoly of operating internal traffic. Such favours are also usually accompanied by a right to appoint some or all of the directors and gives the government the right to intervene in the policy of the company.

The first Egyptian air carrier, "Misr Air Lines," was set up in 1932. It is a *société anonyme*. The Government is not a stock holder. The Government nominates one of its employees to the Board of Directors of the Company, the "Conseil d'Administration."

The company was the chosen instrument of the government up to 1948, inasmuch as it was granted a monopoly for fifteen years as to internal traffic. At the end of the said period which started from its establishment, it enjoyed the privilege of internal traffic for five years. By this privilege, it had the priority as to internal traffic over the other Egyptian air carriers.

Another Egyptian air carrier "Saide" was established in 1948. The government has no share in the ownership of this company but is represented by one of its employees on the Board of Directors of the said company.

Both companies received direct and indirect subsidies from the government in various forms and on different bases. By way of example, the Egyptian air lines are exempted of the entire amount of the tax on aviation fuel used inside or outside the Egyptian territory. The Egyptian air lines also enjoy preferential treatment in the awarding of contracts for services to the government, e.g. the personnel of the government should be transported by the said carriers.

The Egyptian air carriers have benefited by the employment of some graduates, including pilots, navigators, engineers of the civil aviation training schools which received financial assistance from the government. The said companies have been able to benefit by the persons trained in the military service. Such favours give the govern-

ment the right to intervene in the policy of the above-mentioned companies.

Moreover, these companies were required by the existing legislation to have a special authorization to operate internal or international traffic. By this requirement, the government indirectly controls the activities of these companies.

As to the policy with respect to the inauguration of new services the civil aviation department was obliged in 1949 to set up certain rules governing its decisions on new route application in order to avoid competition between the two Egyptian air lines. These rules are as follows:—

1). Whether the new service will serve a useful public purpose, responsive to a public need;) 2. Whether this purpose can and will be served as well by existing lines or carriers; 3) . Whether it can be served by the applicant without impairing the operations of existing carriers contrary to the public interest; and 4) . Whether the cost of the proposed service to the carrier will be outweighed by the benefit which will accrue to the public from the new service; and, 5) . Whether the applicant has got the means to operate the new service successfully and efficiently.

The purpose of such requirements is to guarantee that service once instituted will not be arbitrarily withdrawn from the communities and industries that have become dependent upon it, provided that it would avoid wasteful competition. The above-mentioned rules were drawn up by the Civil Aviation Department due to the lack of clear-cut legislation on such points. The legal basis for such rules is the provisions of the law issued on the 23rd May 1935.

SHORTCOMINGS OF EGYPTIAN AIR TRANSPORTATION POLICY

Lack of a firm policy on the part of the government is undoubtedly the besetting sin of the civil aviation industry in Egypt. The fact that the Egyptian government has for many years carried on promotional and regulatory activity affecting all forms of transportation would seem to suggest that the government has adopted a national transportation policy, Actually it has neither a single transportation policy nor a series of policies that are mutually consistent.

The conflicts and inconsistencies stem primarily from the non co-ordination and non-integration of all forms of transport under one authority which led naturally to uneven treatment of the several forms of transportation. To-day, there are separate bodies each charged with the control of Egypt's transportation system. Manifestly, surface transportation and airlines compete directly for a limited volume of traffic, particularly in the passenger field. Since the government is subsidizing both agencies, failure to co-ordinate the two programs results inevitably in one branch of the government competing with another for the expenditure of the taxpayer's pound. Moreover, when separate agencies are given responsibility for the promotion of indi-

vidual forms of transportation, there is a natural tendency to resist physical or service co-ordination between the two enterprises. Such an outcome is directly opposed to the co-ordination and integration objectives of the national interest of the country. Agencies have been shifted and reshifted without any apparent consideration of the nature of their functions and generally without regard for the facts of inter-agency relationships.

Clearly the creation of the Supreme Board of Civil Aviation is a deliberately promotional approach to the treatment of air transportation. In effect, the government has taken the position that development of commercial aviation is so vital to the nation's commerce and security, that preferential standards of public treatment are required for this new medium of transportation. Moreover, the representation by members of the Ministry of Finance, Ministry of Commerce and Air Force on the Board, would facilitate the achievement of its functions, since most of the difficulties in the past stem primarily from those departments.

However, criticism concerning the Board are many and varied, but may be briefly stated as follows: (a) As to its composition: the number of members (eleven) is excessive. This will lead to prolonged discussions and disagreements and less work will be accomplished. (b) There is nothing in the Statute creating the Board specifying that its members should have the highest possible qualifications in matters pertaining to civil aviation. (c) There is no provision to the effect that no member of the Board is permitted to have any pecuniary interest in any civil aeronautics enterprise. (d) It has a negative attitude towards economic conditions. (e) The relation of the Board with the Civil Aviation Department is not clearly defined. (f) The last criticism is that the functions of the Board are too broad, inasmuch as it is deemed competent to deal with matters which are not essential to civil aviation, e.g. the appointment of the Egyptian Representative to ICAO.

Many defects stem primarily from the lack of clear-cut legislation on such points as eligibility of the air carrier to engage in transportation activities. We started in 1932 with a clean slate, with the opportunity to utilize the accumulated experience of transportation in developing our route pattern and forming basis for a strong system of air transportation. We have not made full utilization of that opportunity till the present time.

On at least one of the routes there was at the beginning one carrier, then two carriers.¹ There is a need for reasonable competition, but there is a limit to it and there is such a thing as wasteful competition. When we pass the limit of reasonable traffic potentiality we reach the realm of wasteful competition and I am not sure that we are not already in that realm on some of the routes.

¹ E.g. the sector Cairo-Beirut, also sector Cairo-Athens.

The second departure from logical principle was at least partial abandonment of the requirement that possession of adequate capital should be basic in recognizing aspiring air carriers. Some of the early bidders did not have capital sufficient for their initial aircraft and equipment. The hope of some bidders was that they would secure the necessary authorization and then raise capital on future prospects. Some who began with capital deficiencies later repaired them, others began with a lack of capital and are still not solvent. It is evident that some of the financial problems of to-day go back to the first day of operation, some years ago.

The third departure from logical principles was the lack of insistence that the air routes of a carrier should, together, form a logical transportation system, and that illogical systems should neither be created nor permitted.

If we will critically examine the route pattern of the air carriers of to-day we will see in some the result of deficiencies in planning. Some of the airlines form an interesting assembly of diverse air routes, but in formation they depart far from the principle that routes grouped together should be inter-related. This result is partially the fault of the air carriers and the civil aviation authorities. It is easy to create too many illogical air routes, too many duplicating routes, perhaps with the belief that mistakes are more easily repaired in air transportation than other forms of transportation. The relative ease of starting new air routes deceived and continues to deceive, many, including operators, potential operators, and agencies of the government. We would stress here, that experience indicates that a large air line with many marginal or illogical air routes will lose money and position much more rapidly than a smaller air line with a lesser number of marginal routes.

BASIC PRINCIPLES OF A STRONG EGYPTIAN AIR TRANSPORT SYSTEM

It would be well to conclude that there has been enough of this transportation ideology and that there should be a return to administration premised upon sound transportation principles. It is probable that the civil aviation authorities will want to take another look at the policy which has developed such destructive competition. I believe that we would be ill-advised to permit our air carriers to go into bankruptcy. It is obvious that it is contrary to the national interest to do so. The aeroplane is the symbol of Egyptian power and Egyptian prestige. To illustrate, the reasons for foreign States' interest in air transport would be mentioned below.

Fundamentally, the reasons for the interest of States in air transport are not different from those explaining their interest in other forms of transport. They want to use the new means of communication and transportation not only to promote national progress but also for more specific and probably more potent reasons.

Air transport is useful in emergencies when other means of communication are suspended.² Air transport has a distinguishing characteristic which makes it of even greater concern to governments than any other means of transportation and communication. Aircraft are not merely carriers of goods or passengers or mail. They are weapons of war, a means of sudden attack. Every commercial pilot acquires experience in flying certain routes along which death-dealing squadrons may come some day under his guidance.³

The possibilities for the development of air transport as a source of national income, or of credits in the balance of international payments, have not attracted much notice, but in countries like the Netherlands they may help to explain governmental interest in aviation.⁴

The possession of a well-developed system of air transport, is a factor enhancing the prestige of a nation at home and abroad. On the other hand, the failure of a nation to develop air transport, specially in the presence of successful foreign enterprise, is likely to do damage to national prestige. The importance of prestige as a consideration in the national aviation policy is freely admitted by government spokesmen.

The suspension of the negotiation between the Egyptian government and the French government for concluding a bilateral agreement in 1949, was due to the refusal of the French government to permit the Egyptian air lines to operate through or to the so-called French territories in North Africa. After an exchange of notes between the two governments for a year, an agreement was reached on the basis that Egyptian air lines may operate to and/or through the said territories on the condition that the Egyptian air lines would not handle their own traffic in the so-called French territories: in other words the French would handle the traffic for the Egyptian air lines. Those restrictions were obviously for political reasons.

The French have emphasized the cultural aspects of national prestige in the role of air transport in maintaining cultural ties. The influence of France in the world, according to one French writer, is not measured solely by production or population, but includes elements of intellectual affinity and political solidarity. French air lines help to protect an "intellectual empire which is menaced by merchant empires." Air transport is also a sign of national vitality, preventing France from appearing as a nation of lesser stature.⁵

We may conclude that considerations of national prestige, propaganda, cultural influence, as facilities for official and nonofficial intercourse with foreign nations, and of imperial and domestic unity, have played no mean part in awakening governmental interest in air trans-

² Cf. Lissitzyn, *International Air Transport and National Policy*, 1942, p. 15.

³ *Ibid.*, p. 37.

⁴ *Ibid.*, p. 55.

⁵ *Ibid.*, p. 60.

port. *Those considerations should be kept in mind in framing the national aviation policy of Egypt.*

The enumeration of the defects in transportation policy makes it clear that basic policy revision will be necessary if the goals of maximum achievement and economy are to be attained. Changes in policy, however, cannot be effected without the necessary organizational tools. Once the desired policy is determined, accompanying changes in government organization not only help to make the goal possible but tend also to promote the realization of policy objectives by creating an environment favourable to them. The transportation situation has become so complex and is changing so rapidly that *it demands, we believe, the continued attention of a single executive agency: the Ministry of Transport.*

The control of all forms of transport in a central authority would bring together the various bodies, re-organized, united and devoted henceforth to the pursuit of a well planned policy for the co-ordination and regulation of transportation. Such policy would achieve maximum efficiency and economy to the several individual forms of transportation. The purpose of such policy is to prevent the establishment of more transport enterprises than can be supported by available or anticipated traffic. The single authority would be in a position to eliminate destructive competition not only within each form but also between or among the different forms of transportation. The proposed authority should be empowered to set the over-all pattern of transport competition, determine when and where new transport facilities are needed and the conditions under which the concerns occupying the field may operate for traffic.

It would be the responsibility of this authority to select the essential routes to be operated within the country and abroad. Generally speaking, it would be the task of this authority to draw up sound policy of the nation as to transportation and to see that it is applied intelligently. Moreover, such consolidation would supply a going organization capable of assuming immediate responsibility for administering a wartime transportation program. It would also provide a continuing and authoritative source of information for the legislative and executive branches of government concerning the financial and operating position of the several transport agencies and the adequacy of the total transportation plant to meet the needs of commerce and national security. There would be placed in the new body only those responsibilities and functions that have an affirmative bearing on the maintenance of an adequate national transportation system. Authority and responsibility would be delegated to four Deputy Ministers: in charge of water transportation, highway transportation, railroad transportation and civil aviation.

As to the instrument for the control of civil aviation, distinction first should be made clearly between economic and promotional regulation on the one hand and technical and administrative activities on

the other. To this end, *we propose the creation of a board which would be the responsible body for the economic and promotional regulation pertaining to civil aviation. Technical and administrative activities would be left to the Civil Aviation Department.*

COMPOSITION AND FUNCTIONS OF THE PROPOSED CIVIL AVIATION BOARD

Importance of the composition of the Board: As this question impresses itself upon my mind the character, the capacity, the wisdom and the selection of the men is everything. Unless the government can provide the Board with men of the right stamp, men of independence, of character, of firmness and of fairness, men who have experience in business, experience and knowledge of the economics of air transportation, experience in aviation law; unless the government can provide the Board with such members, we cannot look with any hope toward successful operation of the Board.

The government has to give to these men such tenure as will invite the men that we want to come and take the seats upon this Board. The government has to give them a tenure long enough to induce them to give up any business in which they may be engaged and which may be profitable. In this connection we may say that the most efficient work would be obtained from the Board if the members were appointed on the same tenure as judges. A life tenure would mean a continuity of regulative tradition. It would also mean that the dignity and security attaching to the life tenure would permit the Board to obtain a high order of ability which could not be obtained in the case of a short tenure.

Thus, it is clear that the Board should have an efficient and commanding personnel, that the tenure of office of the Board should be sufficient to attract men of the highest calibre, and that the selection of the men is everything inasmuch as the jurisdiction of the Board would cover a wide field.

The next point of importance is how many members should constitute the Board. Should they be eleven as on the existing Board, or should they be less? In answering this question, we should be guided by the experience of other countries in this field. The experience of the United States of America points to the conclusion that the existence of a board equipped with five members is able to perform its work efficiently. We could add that if the Board were composed of members well paid by the government, it would be to its advantage that the Board be composed of four or five members.

Functions of the Proposed Civil Aviation Board: (a) The Board should be the chief instrument for the control of civil aviation with respect to all matters relating to economic regulation and certain other activities, e.g. drafting of rules. This will eliminate the confusion of responsibilities existing under the Supreme Board of Civil Aviation Act and provide a more clear-cut and effective plan of organization

for the agencies. (b) It should be the function of the Board to examine the efficiency of air carriers. Issue of convenience and necessity certificates to air carriers which are fit and able to perform such transportation properly. The Board should be empowered to modify, suspend or revoke such certificates. (c) Permits to foreign air carriers should be issued by the Board. (d) The Board should maintain closer regulation over the question of rates. (e) The Board should have the responsibility of making a survey of the existing system of airports and should present to the Civil Aviation Department definite recommendations as to the construction, improvement, development, operation of maintenance of a national system of airports. (f) The direct and indirect financial aid given to air lines should be under the constant control of the Board, and subject at all times to revision as technical improvement, changes in operating conditions, or the needs of the particular territory served may require. The formulas under which aid is extended should be such as to encourage good management and technical progress, and to stimulate rapid evolution towards complete self-support and independence of public aid. (g) It should be the duty of the Board to require periodic financial and operating reports from all air lines, to examine their status at suitable intervals, and to make public record of such reports. (h) Adoption of the principles which should be followed by Egypt in concluding bilateral agreements with foreign countries. Moreover, the Board should be empowered to see that the provision of such agreements, are diligently carried out.

PROPOSED AIR CARRIER ECONOMIC REGULATION

No air carrier should be permitted to engage in any air transportation unless there is in force a certificate issued by the Civil Aviation Board authorizing such carriers to engage in such transportation. The Board should be the competent authority to issue the certificate of public convenience and necessity to the air carriers, if it finds that the applicant is fit, willing and able to perform such transportation properly, and to conform to the provisions of the laws, rules and regulations of the country, and requirements of the C.A.B., and that the transportation is required for public convenience and thorough necessity, otherwise such application will be denied.⁶

An applicant for a certificate of public necessity and convenience must assume the burden of proving to the Board that he is "fit," willing, and able properly according to the provisions of aviation legislation. He must also satisfy the Board that "the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity."

An applicant for a permit to conduct contract carrier operations

⁶ Inspired by the text of the Civil Aeronautics Act of 1938 of the U.S.A. (United States Government Printing Office, Washington, 1940), particularly Title IV—Air Carrier Economic Regulation, p. 17.

must also demonstrate fitness, willingness, and ability to perform the contract services proposed, and that the operation "to the extent authorized by the permit, will be consistent with the public interest, and the national transportation policy declared by the laws of aviation. The policy with respect to the inauguration of new services, would be whether the new operation or service will provide a useful public service, responsive to a public demand or need, whether this purpose can and will be served by the applicant in a specific operation without endangering or impairing the operations of existing carriers, contrary to the public interest. The Board, upon petition or complaint or upon its own initiative, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with the provisions of the laws, rules and regulations in force in Egypt.⁷

The policy of the government should be to support and assist Egyptian air lines in their relations with foreign governments. It should be considered as in the public interest to regulate and control foreign air lines entering Egypt with the purpose of securing for Egyptian air lines equality of opportunity in foreign countries. No foreign air carrier shall operate to or through the Egyptian territory unless there is in force a permit for such operation issued by the Board.

The most critical question confronting the government and the aviation industry is whether our international aviation shall be conducted by a single company or by a series of companies. In other words, should the government allow any person whomsoever to conduct a regular line of aircraft for commercial transport. Both economic and political considerations must be weighed in deciding where the national interest lies between the monopolistic and the competitive paths. The economic arguments used for the competitive development of our international air lines are those which competition develops generally:

(1) Competing lines are impelled to conduct their operations with maximum efficiency, both with respect to costs and to regularity and adequacy of service. (2) In a branch of transportation where the public must be persuaded to adopt new travel habits, competition is said to be the most successful builder of traffic; with the larger volume of traffic unit costs decline and rates can be lowered. Of course, the lower the rates, the more successful competition can be in developing a large volume of traffic. (3) The competitive development of international air lines, either as alternative routes or as parallel operations, gives the country an element of insurance against the loss of its international operation should economic misfortune require one company to suspend its operations. In short, we could say that the fundamental argument for the extension of competition is that ultimately it is the

⁷ *Ibid.*

most effective stimulus to improvement in service and lower operating costs.

In answer to these arguments, we could say that there will be sufficient foreign competition to provide such stimulus. A larger and stronger air line which would result from concentrating the operation in a single company, would be less likely to have to suspend operations as a result of accidents or other misfortunes. Moreover the cost of supporting international air operations has been used as an argument for having one chosen instrument. Inasmuch as most international operations have in the past been supported by public funds and will for a time continue to be dependent upon grants from the public treasury, it is argued that the taxpayers' money will be saved if international air operations are conducted by a single company. In any comparison between the relative economics of monopoly and competition, it must be remembered that the costs (the so-called wastes) of competition are apparent and readily identified, whereas the wastes of monopoly are concealed. The higher costs of maintaining two overhead staffs and duplicating traffic offices can be readily measured and are an obvious target for criticism.

The attraction of capital is another argument advanced for the concentration of international operations in a single organization. If Egyptian international aviation must meet the competition of subsidized government-owned foreign air lines, it will be difficult to persuade investors to invest their funds in what must inevitably be a risky enterprise. Thus, it is argued that the risk can be minimized by avoiding competition between Egyptian air lines.

Inasmuch as Egypt is forced to compete with strong nation blocs, it will probably be to its best advantage to maintain a policy of allowing its foreign air transportation to be carried out by a single organization. Such policy could not be achieved except by an express provision in the new Code as the present legislative policy of Egypt is one of competition. There should be a specific provision to the effect of creating a body corporate with the name "Misr Overseas Aviation Company." The purpose of the corporation shall be to operate as an air carrier in foreign air transportation and to provide transportation by air throughout the world, under the Egyptian flag, for persons, cargo and mail. No air carrier except "Misr Overseas Aviation Company" shall be authorized by any certificate to operate in foreign air transport. The proposed Civil Aviation Board may by order require the corporation to make any extensions of its services, or to establish and provide any new service if it sees that this is in the public interest. If the Board requires the corporation so to extend its service or to provide new service, it shall issue its order making such requirement only under such conditions as will guarantee to the corporation a reasonable compensation for the service it is so required to perform.⁸

⁸ Since 1952 there has been only one company, "Misr Airlines," operating the internal and international air services.

If Egypt should choose to concentrate its international air operations in a single company, a second series of problems would arise. Shall the single company be financed by private or public capital? Shall the government participate in the management of the corporation? Shall other transportation interests be permitted to participate in the ownership and control of the international air line?

While there has been a definite trend toward government ownership of railroads, the evidence nevertheless still points to the greater efficiency of private ownership and management in air transport. Contemporary opinion, both within and without the government, does not suggest that the Egyptian government will deliberately adopt a policy of government ownership of its international operations. Yet public ownership and operation may come as the unforeseen consequence of other aspects of national aviation policy. Heavy and increasing government financial support to international air lines would lead successively to government ownership of air line securities and to active participation in the management and operation of air lines. The question of private or government ownership like other questions relating to international aviation, cannot be settled once and for all at the present stage of the industry's development. Unforeseen circumstances may make government ownership the only form of organization consistent with the public interest in adequate international air transport.

Many proposals have been forthcoming as to the interests which should be invited to participate in the ownership of the single company. One of these proposals is to invite all forms of transportation, the railroads and steamship companies as well as the domestic air line, to invest in the international operation. The first argument that might be advanced for such a community company is that adequate capital would be assured to promote the development of international operation.

The entrance of shipping companies into air transportation raises urgent questions of policy in Egypt nowadays as they are exerting themselves to be allowed to operate air lines. In our case, it is doubtless true that the air lines require the financial backing which shipping capital can supply. The opening of air transportation to the shipping interests would, in the short run, result in the investment of more capital and the development of more air service than could otherwise be expected. The fundamental arguments against this system are concerned with the long-run consequences of shipping control of air transport. It is argued that any dominance of international air transport by shipping interests is viewed with grave misgivings by those who realize that the new air transport industry requires imagination and vision to deal with new problems which are scarcely analogous to those in which shipping management is experienced. Furthermore, it is rightly submitted that shipping industry in Egypt has not reached

the stage of endowing other industries, it is still in need of attracting more capital to help it to carry its own business efficiently. It would be unwise to open the air transport industry to the shipping companies. *The new Code should contain a provision to the effect that the ownership of a stock in air lines by corporations engaged in other activities of transportation should be prohibited.*

Subsidy Support

What policies should the country follow regarding subsidies to aviation enterprises? What measure of financial assistance will be necessary to enable the Egyptian air lines to carry on their activities successfully? What use of subsidies will serve to support an economic framework within which competition may stimulate progress, assure safe and adequate service, guarantee efficient operations, promote low costs for air services, and encourage the widest possible use of this newest form of transportation? The Egyptian government cannot look with indifference upon the subsidy policies adopted by foreign countries, if it wishes to influence the legal and economic frameworks within which our international and national aviation shall operate.

Three principles should guide the Egyptian government in giving financial assistance to our air carriers. First, the government should avoid starting subsidy wars by refraining from using those forms of financial assistance which may provoke retaliatory subsidies. All subsidies should be specific and open, for hidden subsidies inevitably give rise to international friction and distrust. The second principle to be observed in giving financial assistance to air lines is that such support should take the form of relieving the air lines of a part of their fixed or overhead costs. Third, if it should be necessary for the government to give financial assistance to international air lines to offset differences in the level of operating costs, such financial assistance should be as specific as the conditions of the industry permit. Similarly, the government may give financial grants to research institutions and help the establishment of aircraft manufacturers.

We may conclude that it should be the policy of the Egyptian government to maintain a position of world leadership in air transport, and to lend such aid as may be necessary to insure that the most modern and efficient equipment and methods shall be applied on Egyptian domestic and foreign air lines. Moreover, the policy of Egypt should be to support and assist Egyptian air lines in its relations with foreign governments.

It should be provided by legislation that: (1) Direct government aid should not as a matter of course be extended to all air lines having certificates of convenience and necessity, but only to such air lines as are deserving of such aid in the public interest. (2) The direct financial aid given to air lines should be under the constant control of the Board, and subject at all times to revision as technical improvement, changes in operating conditions, or the needs of the particular

territory served may require. The formulas under which aid is extended should be such as to encourage good management and technical progress, and to stimulate rapid evolution towards complete self-support and independence of direct governmental aid. (3) Air lines should be made eligible as railroads now are, for loans from the government.

AIRSPACE SOVEREIGNTY IN EGYPT

The basic principle of international aviation law is that the air space has the same legal status as the surface of the earth beneath it. Air space over the land areas, inland waters, canals, bays or gulfs under national sovereignty and territorial waters of any State, is part of the national air space of such State.

The non-adherence of Egypt to the Paris Convention had nothing to do with the acknowledgment of the principle of air space sovereignty enunciated by the said convention. In other words, the non-adherence was not due to any refusal by Egypt to accept the doctrine of air space sovereignty—quite the contrary. Through separate practice and statutes, Egypt insisted on air space sovereignty and its consequent right to admit or exclude foreign aircraft from her territorial air space. By way of example, Imperial Airways Company and KLM were permitted to fly to or through Egyptian territory only after applying for an authorization from the Egyptian government. A conditional authorization was issued to each of these companies in the period 1931-1933, fixing the route of flight and designating the aerodromes to be used by them in landing and taking off.

Also, every recorded official act of Egypt has indicated its complete acceptance of the doctrine of air space sovereignty and its insistence on its right as a sovereign State, as against foreign nations to determine whether the aircraft of such foreign nations may be admitted to or excluded from use of the air space over Egyptian territory.

A primary step was taken toward the control of flight in Egypt. A law was issued on March 24, 1920, to the effect that the establishment of aerodromes is a government monopoly. By implication, no aircraft was permitted to land or take off except on and from these aerodromes. Accordingly, they had to obtain prior permission from the government. On the 23rd of May 1935, a law was passed enunciating the principle of air space sovereignty over Egyptian territory. Article 1 of the said law provides that:

“The State has complete and exclusive sovereignty over the air space above its territory. The territory of the State shall be deemed to be the land areas and territorial waters adjacent thereto.”

This delay could not be construed in contrario, to the effect that Egypt had not recognized the principle of air space sovereignty before 1935. The only reason justifying this delay, in incorporating the binding

obligation of the principle of air space sovereignty into its legislation, was due to the fact that the civil aviation authorities were trying, since 1929, to codify aviation rules in one code. Inasmuch as they were confronted by many obstacles in completing the code and in view of the rapid development of air transport in Egypt, they abandoned the idea of codifying aviation rules in one code and started issuing separate laws for each case.

The principle of absolute sovereignty, confers upon the State exclusive power to regulate flight within its atmosphere. The prerogatives which the State possesses are founded on two principles: (1) That of permitting, refusing or withdrawing authorization to fly in the air space subject to its sovereign control. (2) That of demanding that all aircraft flying in its air space conform to the laws, rules and regulations of the country flown over. It is from these two aspects that the juridical status of the Egyptian flight space should be studied. Accordingly, we shall distinguish between the status of: 1. Egyptian aircraft; 2. Foreign aircraft.

EGYPTIAN AND FOREIGN AIRCRAFT

According to the Air Navigation Act of the 27th of May, 1935, no Egyptian aircraft is permitted to fly within Egyptian territory except by a prior permission from the Ministry in charge of civil aviation. In addition to this permission, a special (conditional) authorization is required if the aircraft is engaged in transportation of passengers and cargo for remuneration or is used for training, or any other aviation activity for remuneration. This authorization is personal to the owner of the aircraft: it would be invalid in case of change of ownership. The authorization would be for a fixed time or a fixed number of flights. Furthermore, the above-mentioned Air Navigation Act provided that Egyptian aircraft are required to have a prior authorization from the Minister in charge of civil aviation to fly abroad. The Minister in charge of civil aviation is empowered by the Act to suspend for a certain period or to withdraw any authorization if he sees that it is in the public interest.

As to foreign aircraft which are registered in the Egyptian register and which are entitled to have registration marks but not nationality: they are subject to the above mentioned requirements—except that they are not permitted to ask for an authorization to fly abroad.

Broadly speaking, before and after the Second World War, foreign aircraft, whether engaged in scheduled or non-scheduled flight, whether operating on a commercial or non-commercial basis, have been required to have a prior permission to operate to or through Egyptian territory. Before 1935, foreign air carriers operating on a regular schedule were treated on the same basis as any foreign company applying to exercise commercial activities in Egypt. They applied directly to the government and got a conditional authorization from

the Council of the Cabinet. Such was the case with the early air carriers operating to and/or through the Egyptian territory (KLM, Imperial Airways).

With the passage of the Air Navigation Act of 1935, all foreign aircraft were required to have a prior permission from the Ministry in charge of civil aviation, in order to operate to or through Egyptian territory. The practice in Egypt as to scheduled foreign air carriers, has been based on the grant of a temporary permission for six months, renewable if the case warrants such a renewal. As to non-scheduled air carriers, the conditions of the authorization vary to suit individual cases. All foreign aircraft have been required to apply for the authorization through their respective governments. The reason for such procedure was to guarantee that Egyptian aircraft in foreign countries would be treated similarly, i.e. that reciprocity of authorizations be ensured.

Through ratification of the Chicago Convention, Egypt assumed obligations on the international level. ICAO notified its members that: "As from October 15th, 1947 . . ., all aircraft of Contracting States which are members of the International Civil Aviation Organization, being aircraft not engaged in scheduled international air services are permitted to make flights into or in transit non-stop across Egyptian territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission." Scheduled air carriers were required to have a prior permission as was the practice previously.

Due to the troubles which took place in Palestine in 1948, these rules were changed. An ICAO notice issued on the 17th of May, provided that: (1) No private aircraft will be allowed to enter or fly through Egyptian territory. (2) All aircraft engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air service shall not enter Egyptian territory without special permission from the Ministry of National Defence. This permission will be required whether the aircraft stops in Egypt or not and whether its stop is for traffic purposes or not. (3) Scheduled international services having obtained prior permission from the Egyptian government to operate to or through Egypt will continue their operations on condition that their route does not include a stop in Palestine on their way into or out of Egypt. (4) The earlier 1947 notice was cancelled. The legal basis of the notice which is still in force, is article 89 of the Chicago Convention. This article provides that in case of war, which is still in existence between Egypt and the so-called Israel, the provisions of this convention shall not affect the freedom of action of any of the Contracting States affected, whether as belligerents or as neutrals.

In a letter from the Council Representative of Egypt to the Secretary General of ICAO, dated 21, Nov. 1950, it was indicated that Egypt would be willing to adopt rules for the entry of foreign non-scheduled flights along more liberal lines. In substance, the letter

outlined the following regulations, conditions or limitations that might be imposed by the Egyptian government in regard to non-scheduled commercial flights of foreign aircraft:

A. Aircraft engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services, shall have the privilege of taking on or discharging passengers, cargo or mail without prior permission.

1. *Freedoms*: Only 3rd and 4th freedom traffic to be carried.
2. *Ownership*: To enjoy the privileges mentioned, substantial ownership of aircraft operated and effective control of operations should be vested in nationals of the Contracting States in which aircraft are registered.
3. *Load Carried*: (i) *in case of passengers*: "Pure Charters" can always enjoy the privilege in question. These are the cases of aircraft entirely chartered for a specific act of transportation by a single customer; all passengers belonging to one same group-classification of people, i.e. football team, opera troupes, etc. (ii) *in case of freight*: when freight carried consists of one consistent category of freight, i.e. fruit, meat, engineering equipment.
4. *Route flown and adequacy of scheduled services*: cases where route flown is not covered by any existing scheduled services.

B. Any other type of operation not fulfilling conditions (1), (2), (3) and (4) will require prior permission.

(To be continued)