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## The Law of International Air Transport, by Chin Cheng

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# BOOK REVIEW

## THE LAW OF INTERNATIONAL AIR TRANSPORT

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In its introductory note on the back of the cover of the impressive volume, the Library of World Affairs states rightly that "This comprehensive treatise fills a long felt gap in the literature of air law."

After a brief review of the historical development and an explanation of the freedoms of the air and reference to the Chicago Convention of 1944, Volume I, Part One deals fully with the legal aspects of the International Civil Aviation Organization (ICAO), including its functions and the rights and duties of Members under the Chicago Convention. Of particular interest is the study relating to international co-operation and facilitation.

Part Two is devoted to a careful distinction between scheduled and non-scheduled international air services with particular reference to the law on non-scheduled international air transport as affected by bilateral air transport agreements and a very full description of the multilateral Paris Agreement of April 30, 1956.

Part Three is entirely devoted to the scheduled international air transport. The distinction drawn between multilateralism and bilateralism is interesting. The reader will be impressed with the careful and painstaking analysis of the rights of the parties to bilateral air transport agreements, and the methods by which such difficult subjects as route fixing, capacity, change of gauge and tariffs are dealt with by the learned author.

Under the sub-heading of "Inter-Airline Co-operation," reference is made to the "International Air Transport Association," (IATA). The information about an attempt of IATA to go beyond rate fixing and to draw up a consolidated world tariff is somewhat vague. Whilst the many bilateral agreements give certain authority to IATA to deal with rates, it is not correct in fact, or in law, to call this activity of the organization "rate fixing." This activity is completely subject to government approval. Nor was the consolidated tariff project really a matter beyond the scope of the IATA authority as determined by the bilateral agreements or by its Articles of Association or its Charter.

In passing it may be useful to mention that the object of the exercise of the airlines who attempted to draw up the consolidated tariff was more a technical consolidation of existing rules rather than creating more substance. The project was an attempt to put into form certain rules, regulations and rates, many of which had already been agreed by the airlines in the form of Traffic Conference Resolutions approved by governments.

On page 249 reference is made briefly to the IATA Conditions of Carriage for Passengers, Baggage and Cargo and to the Contract on the Passenger Ticket and Air Waybill. These subjects have certain impact on international airline co-operation and it is regretted that they did not receive as full treatment as other parts of the bilateral agreements such as disputes, renewals, etc.

The discussion regarding joint ownership and pooling of services, on page 252, is interesting. Although the author is limited by the availability of material regarding pooling in Europe, he attempts to explore the principles of pooling with skill and understanding. The secrecy that surrounds the operation of pools in Europe explains the lack of completeness of this part.

The conclusions on page 492 suggest that Members of ICAO, under the Chicago Convention, are committed to four cardinal principles; the complete and exclusive sovereignty of every State over the airspace above its territory, nationality of aircraft based on registration, uniform conditions governing aircraft engaged in international aerial navigation, and finally international co-operation in securing the maximum standardization of aeronautical laws, procedures, codes and practices. With this the reader will not find it difficult to agree.

Much less clear, however, is the remark that it has become increasingly more difficult to differentiate between scheduled and non-scheduled services and that non-scheduled may be more aptly described as a-scheduled rather than non-scheduled. Nor can one fully appreciate the comment that from the point of view of international regulations, the test to distinguish between scheduled and non-scheduled services has become entirely subjective.

The nature of the two services is quite different and their similarities, if any, from the point of view of applicable international regulations are of no consequence. The distinction between Articles 5 and 6 of the Chicago Convention is obvious, with the result that under Article 5 certain operations are granted by the Chicago Convention itself, and under Article 6 no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State and in accordance with the terms of such permission or authorization.

It is well accepted today that the Contracting States to the Chicago Convention are not ready to limit their national sovereignty. This is best illustrated by the preambles of bi-lateral agreements. The fact that bi-lateral agreements deal with certain aspects of non-scheduled services, is merely incidental to the major objective of the agreement which is to authorize routes and rights for scheduled operations. The pride of the Nation is the scheduled operator, who is kept sometimes on highly competitive routes only for the purpose of demonstrating prestige.

The volume of non-scheduled operations has increased and their importance cannot be denied. These increases in the numbers do not, however, obliterate the difference between scheduled and non-scheduled operation. The legal and economic differences between the two systems of operating are clear and cannot be overlooked.

Whilst there were attempts toward multilateralism during recent years in international air transport, it would be wrong not to acknowledge that the network of bi-lateral agreements is, and will remain for a long time, the basic element in scheduled international civil aviation. It might be desirable to have a multi-lateral agreement governing scheduled international services but the rigidity of the multilateral principles, compared with the flexibility of bi-lateralism, would seem to make the latter the best suited for this stage of development. However, for the future it may

be interesting to consider what an international organization might be able to do were it given authority to deal with routes, capacities and frequencies. Today this may be a moot question, since no State participating in the Chicago Convention is seriously interested in such a venture, but the thought, however, might hold possibilities.

All this is of importance regarding scheduled operations. Non-scheduled services under Article 5, on the other hand, could develop much more freely, as demonstrated by the Paris Convention of 1956, which even with its limited geographic scope, is an interesting example of post-war air law development.

We must thank Mr. Bin Cheng for undertaking the onerous task of cutting the path through the jungle of international bi-lateral and multi-lateral agreements. Even if not all his conclusions agree with those of the reviewer, the material is now printed in a thorough, systematic, learned fashion which commends his book to the libraries of all those who have an interest in international air law.