

# AVIATION ACT 74 OF 1962

Nam-Cats-Enviro: Noise Certification

[ASSENTED TO 21 JUNE, 1962]

[DATE OF COMMENCEMENT: 21 JULY, 1962]

## as amended by

Aviation Amendment Act 12 of 1965  
Expropriation Act 55 of 1965  
Aviation Amendment Act 83 of 1969  
Civil Aviation Offences Act 10 of 1972  
General Law Amendment Act 62 of 1973  
Expropriation Act 63 of 1975  
Executive Powers (Transport) Transfer Proclamation A.G. 14 of 1978  
Aviation Amendment Act 10 of 1991

### GENERAL NOTE:

**S.16 of Act 10 of 1991 substituted certain expression in general.**

## ACT

**To consolidate the laws enabling effect to be given to certain International Aviation Conventions and making provision for the control, regulation and encouragement of flying within Namibia and for other matters incidental thereto.**

*[Long title substituted by s. 15 of Act 10 of 1991.]*

### 1 Definitions

In this Act, unless the context otherwise indicates-

**"accident"** includes any occurrence declared by regulation to constitute an accident;

**"aerodrome"** means a defined area on any land or water or building intended to be used either wholly or in part for the arrival, departure or movement of aircraft, and includes any building, installation or equipment within any such area which is intended to be so used;

**"aircraft"** means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface;

*["aircraft" substituted by s. 1 of Act 83 of 1969.]*

**"Commission" .....**

*["Commission" deleted by s. 1 (a) of Act 10 of 1991.]*

**"Convention"** means the Convention on International Civil Aviation drawn up at Chicago on the seventh day of December, 1944, and adopted by section 1 of the Amendment Act, 1947 (Act 427), and set out in the First Schedule to this Act and includes any amendments thereof and additions thereto binding upon Namibia by virtue of the provisions of Articles 63 (2) (e) and 144 of the Namibian Constitution;

*["Convention" substituted by s. 1 (b) of Act 10 of 1991.]*

**Aviation Act 74 of 1962**

**"Director"** means the Director: Civil Aviation appointed under section 5;  
[*"Director" inserted by s. 1 (c) of Act 10 of 1991.*]

**"flight path"** means the line of an aircraft's passage through the air;

**"intoxicating liquor"** means intoxicating liquor as defined in section 1 of the Liquor Ordinance, 1969 (Ordinance 2 of 1969);  
[*"intoxicating liquor" inserted by s. 3 of Act 12 of 1965 and substituted by s. 1 (d) of Act 10 of 1991.*]

**"Minister"** means the Minister of Works, Transport and Communication;  
[*"Minister" substituted by s. 1 (e) of Act 10 of 1991.*]

**"Namibian aircraft"** means an aircraft registered in terms of this Act;  
[*"Namibian aircraft" inserted by s. 1 (f) of Act 10 of 1991.*]

**"owner"**, in relation to an aircraft or aerodrome, means the person in whose name the aircraft or aerodrome is registered, and includes any person who or has been as agent in Namibia for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

**"prescribed"** means prescribed by or under this Act or any proclamation;

**"proclamation"** means any proclamation issued under this Act;

**"regulation"** means any regulation made under this Act;

**"Republic"** .....  
[*"Republic" deleted by s. 1 (g) of Act 10 of 1991.*]

**"South African aircraft"** .....  
[*"South African aircraft" deleted by s. 1 (h) of Act 10 of 1991.*]

**"this Act"** includes any regulations;

**"Transit Agreement"** means the International Air Services Transit Agreement drawn up at Chicago on the seventh day of December, 1944, and adopted by section 2 of the Aviation Amendment Act, 1946 (Act 41 of 1946), and set out in the Second Schedule to this Act, and includes any amendments thereof and additions thereto binding upon Namibia by virtue of the provisions of Articles 63 (2) (l) and 144 of the Namibia Constitution.  
[*"Transit Agreement" substituted by s. 1 (i) of Act 10 of 1991.*]

## **2 Application of Act**

(1) The provisions of this Act and of the Convention and of the Transit Agreement, shall, except where expressly excluded under this Act or by regulation, apply to all aircraft whilst in or over any part of Namibia or the territorial sea thereof and to all Namibian aircraft and personnel wheresoever they may be.

(2) For the purposes subsection (1) the personnel of an aircraft shall be deemed to include the pilot-in-command or other person in charge of the aircraft, and all other members of the crew of the aircraft.

(3) The provisions of this Act and of the Convention and of the Transit Agreement shall not apply to aircraft or aerodromes belonging to the Ministry of Defence or for the time being in use exclusively by the Namibia Defence Force, or to any person employed on or in connection with such aircraft or aerodromes, irrespective of whether such person is so employed in military or civil capacity: Provided that the Minister, after consultation with the Minister of Defence, may by notice in the *Gazette* apply to any such aircraft, aerodrome person any of the

said provisions with or without modification.

*[S. 2 amended by s. 4 of Proc. A.G. 14 of 1978 and substituted by s. 2 of Act 10 of 1991.]*

### **3 Power to carry out Convention and Transit Agreement**

(1) The President may issue such proclamations as appear to him or her necessary for carrying out the Convention or the Transit Agreement and for giving effect thereto or to any of the provisions thereof.

*[S. 3 substituted by s. 3 of Act 10 of 1991.]*

### **4 Functions of National Transport Commission in connection with provisions of this Act**

(1) The Director shall, subject to the control and direction of the Minister, be responsible for the carrying out of the provisions of this Act and of the Convention and of the Transit Agreement.

(2) Every person appointed under this Act or concerned with the carrying out of the provisions thereof, shall perform his functions and exercise any discretion expressly or impliedly vested in him, subject to the directions and approval of the Director.

(3) With the written consent of the Director any person in whom any discretion is vested as is contemplated in subsection (2), may delegate the power to exercise such discretion on his behalf to any other specified person.

### **5 Appointment of Director: Civil Aviation**

(1) The Minister shall appoint, subject to the laws of the public service, a person as Director: Civil Aviation.

(2) A reference in a law passed before the commencement of this Act to the Commissioner of Civil Aviation, shall be construed as a reference to the Director: Civil Aviation appointed under section 5 of the principal Act, as amended by subsection (1) of this section.

*[S. 5 amended by s. 5 of Proc. A.G. 14 of 1978 and substituted by s. 4 of Act 10 of 1991.]*

### **6 Establishment and maintenance of aerodromes by the State**

(1) The Minister may out of moneys appropriated by Parliament for the purpose-

- (a) establish and maintain aerodromes;
- (b) provide and maintain roads and approaches thereto, and apparatus and equipment therefor;
- (c) construct and maintain drainage works for the control and disposal of water which would otherwise gather thereon; and
- (d) acquire land and interests in and rights to and over land for any purpose contemplated in paragraph (a), (b) or (c).

*[Sub-s. (1) amended by s. 5 of Act 10 of 1991.]*

(2) .....

*[Sub-s. (2) substituted by s. 36 of Act 55 of 1965 and repealed by s. 95 of Act 63 of 1975.]*

(3) The provisions of any law governing the granting of authority for the

issue of any licence for the carrying on of any trade or occupation, for the carrying on of which a licence is required in terms of any regulation made under sub-paragraph (vi) of paragraph (e) of sub-section (1) of section *twenty-two*, shall not apply to or in respect of any aerodrome established and maintained in terms of this section.

**6bis Sale of intoxicating liquor and other goods on State aerodromes through Department of Transport or by certain authorized persons**

(1) Notwithstanding anything to the contrary in any law contained, the Minister may-

- (a) through the Ministry of Works, Transport and Communication undertake the sale of intoxicating liquor for consumption in or on the premises referred to in subsection (3) of this section, other refreshments, smokers' 'requisites, reading-matter and such other goods as the Minister may deem fit, at any aerodrome established and maintained in terms of section 6 and the sale, in any transit area designated under subsection (4) of this section at any such aerodrome of intoxicating liquor for consumption outside Namibia;
- (b) grant permission to any person or two or more persons jointly or separately to sell, subject to such conditions as the Minister may impose when granting such permission or as may be prescribed, at any such aerodrome any one or more of or all the following classes goods, namely, intoxicating liquor for consumption in or on the premises referred to in subsection (3) of this section, other refreshments, smokers' requisites, reading-matter and such other goods as the Minister may deem fit, and, in any transit area designated under subsection (4) of this section at any such aerodrome, intoxicating liquor for consumption outside Namibia;

*[Sub-s. (1) substituted by s. 2 (a) of Act 83 of 1969 and amended by s. 6 (a) of Act 10 of 1991.]*

(2) .....

*[Sub-s. (2) deleted by s. 6 (b) of Act 10 1991.]*

(3) The sale of anything in terms of paragraph (a) of sub-section (1) or by virtue of any permission granted in terms of paragraph (b) of the said sub-section, shall take place in or on such premises as the Minister may determine, and such premises may include any such area on or such portion of the aerodrome in question as the Minister may determine.

(4) Notwithstanding the provisions of section 78 (2) (c) of the Liquor Ordinance 1969 (Ordinance 2 of 1969), the Minister may in respect of any portion or portions of any premises referred to in subsection (3) of this section, designated by him or her as a transit area or transit areas as the case may be, fix days and hours of sale and delivery of intoxicating liquor, and any days or hours so fixed shall be deemed to be the days on which or the hours during which liquor may in terms of the said section 78, be sold or delivered in such area or areas.

*[Sub-s. (4) substituted by s. 6 (c) of Act 10 of 1991.]*

(5) .....

[Sub-s. (5) substituted by s. 24 of Act 62 of 1973 and deleted by s. 6 (d) of Act 10 of 1991.]

(6) Any person who consumes at any place within Namibia any intoxicating liquor sold in terms of subsection (1) for consumption outside Namibia, shall be guilty of an offence.

[S. 6bis inserted by s. 4 of Act 12 of 1965 and sub-s. (6) added by s. 2 (b) of Act 83 of 1969.]

## **7 Acquisition of land or rights in connection with licensed aerodromes not belonging to the State**

(1) The Minister may out of moneys appropriated by the Parliament for this purpose-

- (a) for the purpose of ensuring that proper effect may be given to the provisions of any regulation made under paragraph (m) of sub-section (1) of section *twenty-two*, acquire land and interests in and rights to and over land adjoining or adjacent to any aerodrome not belonging to the State, in respect of which a licence under the regulations has been or is to be issued; and
- (b) acquire land and interests in and rights to and over land for the purpose of the erection and maintenance of warning lights and other aids to safety in air navigation (including pipe lines or power lines or the like, whether underground or overhead, required in connection with such lights or other aids) which are deemed necessary in connection with any aerodrome not belonging to the State, in respect of which a licence under the regulations has been or is to be issued.

[Sub-s. (1) amended by s. 7 of Act 10 of 1991.]

(2) The provisions of sub-section (2) of section *six* shall *mutatis mutandis* apply in respect of the acquisition of land, interests or rights under sub-section (1) of this section.

## **8 Access to land or structures for certain purposes**

(1) Any person duly authorized thereto in writing by the Permanent Secretary of Works, Transport and Communication may enter any land or structure, after notice to the occupier thereof, for the purpose of carrying out thereon or therein any such examination or survey as may be necessary to determine its suitability for any of the purposes mentioned in section *six* or *seven* or of performing thereon or therein any other act which he is authorized to perform thereon or therein by this Act.

(2) Any person who hinders or obstructs any person in the exercise of his powers or the performance of his duties under sub-section (1) shall be guilty of an offence.

## **9 Establishment of aerodromes on undermined or certain other land**

Notwithstanding the provisions of section *ten* no aerodrome shall be established-

- (a) on any undermined ground or within distance of ninety-five metres from any undermined ground or any open mine excavation unless, in the

opinion of the Government Mining Engineer, such aerodrome could be used with safety; or

*[Para. (a) substituted by s. 8 of Act 10 of 1991.]*

- (b) on any ground which in the opinion of the Minister of Mines and Energy may be required for purposes of mining or prospecting for minerals, except-
- (i) in the case of an aerodrome contemplated in sub-section (1) of section six, after consultation with the Minister of Mines and Energy; or
  - (ii) in the case of any other aerodrome, with the approval of the said Minister.

**10** . . .

*[S. 10 repealed by s. 9 of Act 10 of 1991.]*

**11 Trespass, nuisance and responsibility for damage**

(1) No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height, which, having regard to wind, weather and all the circumstances of the case, is reasonable, or the ordinary incidents of such flight, so long as the provisions of this Act and of the Convention and of the Transit Agreement are duly complied with.

(2) Where material damage or loss is caused by an aircraft in flight, taking off or landing, or by any person in any such aircraft, or by any article falling from any such aircraft, to any person or property on land or water, damages may be recovered from the owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action as though such damage or loss had been caused by his wilful act, neglect or default.

(3) The provisions of sub-section (2) shall not apply where the damage or loss was caused by or contributed to by the negligence or wilful act of the person by whom it was suffered.

(4) Where any damages recovered from or paid by the owner of an aircraft under this section arose from damage or loss caused solely by the wrongful or negligent action or omission of any person other than the owner or some person in his employment, the owner shall, subject to the provisions of paragraph (b) of sub-section (5), be entitled to recover from that person the amount of such damages.

(5) (a) In any proceedings against the owner for the recovery of damages in terms of sub-section (2) such owner may, on making such application to the court and on giving such security as to costs as may be prescribed by rules of court, join any person referred to in sub-section (4) as a defendant.

(b) If such person is not so joined he shall not in any subsequent proceedings taken against him by the owner be precluded from disputing the reasonableness of any damages recovered from or paid by the owner.

(6) Where any aircraft has been *bona fide* leased or hired out for a period exceeding fourteen days to any other person by the owner thereof, and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the

employment of the owner, this section shall have effect as though for references to the owner, there were substituted references to the person to whom the aircraft has been so leased or hired out.

## **12 Investigation of accidents**

(1) In the event of any accident arising out of or in the course of air navigation and occurring in or over Namibia or the territorial sea thereof, or, in the case of Namibian aircraft, wheresoever they may be, the Minister may appoint one or more persons as a board of inquiry, known as an accident inquiry board, to make an investigation into the cause of and responsibility for the accident and report to him thereon.

(2) The accident inquiry board shall, if the accident occurred within Namibia, have power to summon and examine witnesses on oath and to call for the production, and grant inspection, of books, logs, certificates, licences and other documents.

(3) The laws and rules governing the magistrates' courts of Namibia, shall *mutatis mutandis* apply to procuring the attendance of witnesses, their examination, the production of books and documents, and the like, and for that purpose the chairman of the accident inquiry board or, where the board consists of one person only, such person shall have power to sign such documents as may be necessary for the purpose of the inquiry, in the same manner as the magistrate or the clerk of the court has power to do under the rules of the magistrates' courts.

(4) Any process to be served in terms of sub-sections (2) and (3) for purposes of such an inquiry shall be served by a member of the Namibian Police.

(5) Nothing in this section contained shall be construed as affecting the powers or duties conferred or imposed upon magistrates by the Inquests Act, 1959 (Act 58 of 1959).

(6) Where an accident involving loss of life is enquired into under this section by a board consisting of a magistrate only or by a board of which a magistrate is a member, the inquiry held under this Act may be a joint inquiry of the board and inquest of the magistrate.

## **13 Infringement of patents**

(1) (a) Where it is alleged by any person interested that a foreign aircraft (other than an aircraft to which section *fourteen* applies) making a passage through or over Namibia infringes in itself or in any part of it any invention, design or model which is entitled to protection in Namibia, the High Court of Namibia may (pending action to be brought), order the detention of such aircraft until the owner thereof deposits or secures in respect of the alleged infringement a sum determined in accordance with the provisions of paragraph (a) of sub-section (2) (hereinafter referred to as the deposit sum).

*[Para. (a) substituted by s. 10 of Act 10 1991.]*

(b) Upon such sum being so deposited or secured, the aircraft shall not, during the continuance or in the course of the passage, be subject to further detention in respect of the same cause of action.

(2) (a) The deposited sum shall be such a sum as may be agreed between the parties interested, or shall, in default of agreement, be fixed by the court, and

payment thereof shall be made or secured to the applicant in such a manner as the parties may agree or the court may direct.

(b) In giving judgment in the action so to be brought by the claimant, the court or the commissioner of patents, as the case may be, shall grant an order as to the disposal of the deposited sum.

(3) For the purposes of this section, the expression "owner" means the actual owner of an aircraft, and includes any person claiming through or under him, and the expression "passage" includes all landings and stoppages in the course or the purpose of a flight.

#### **14 Exemption of certain aircraft and parts thereof from seizure on patent claims**

(1) Any lawful entry into Namibia, or any lawful transit across Namibia, with or without landings, of an aircraft to which this section applies in terms of sub-section (3), shall not entail any seizure or detention of the aircraft, or any proceedings being brought against the owner or operator thereof, or any other interference therewith, by or on behalf of any person in Namibia, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.

(2) The importation into, and storage in, Namibia of spare parts and spare equipment for an aircraft to which this section applies in terms of sub-section (3), and the use and installation thereof in the repair of such an aircraft shall not entail any seizure or detention of the aircraft or of such spare parts or spare equipment, or any proceedings being brought against the owner or operator of the aircraft or the owner of such spare parts or spare equipment, or any other interference with the aircraft by or on behalf of any person in Namibia on the ground that such spare parts or spare equipment or their installation are or is an infringement of any patent, design or model: Provided that this sub-section shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Namibia or are exported from Namibia for sale or distribution.

(3) This section applies to an aircraft, other than an aircraft used in military, customs or police services, registered in any country or territory in the case of which there is for the time being in force a declaration made by the President by proclamation in the *Gazette*, with a view to the fulfilment of the provisions of the Convention or of the Transit Agreement to which this section relates, that the benefits of those provisions apply to that country or territory, and to such other aircraft as the President may by proclamation specify.

(4) The provisions of section *thirteen* shall not apply to or in relation to an aircraft to which this section applies.

#### **15 Detention of aircraft and duties of customs officers if aircraft are detained**

(1) (a) If the owner, pilot-in-command or person in charge of any aircraft commits any offence under this Act from or in respect of that aircraft or if reasonable suspicion exists that such an offence has been committed or attempted or is about to be committed or attempted or in respect of any aircraft by the owner, pilot-in-command or person in charge thereof, any member of the Namibian Police Force may, pending the trial of the charge detain the aircraft in



question.

*[Para. (a) substituted by s. 11 of Act 10 of 1991.]*

(b) If recognizances are entered into or security deposited to the satisfaction of the authority having power to demand and receive such recognizances or security, that authority may, if satisfied that the ends of justice will not thereby be prejudiced, order the release of the aircraft from further detention.

(c) Any person who, knowing that any aircraft is being detained in terms of paragraph (a), removes or causes to be removed such aircraft, shall be guilty of an offence.

(2) No customs officer authorized to grant clearance to any aircraft shall grant clearance to any aircraft while detained in terms of this section.

#### **16 Prohibition of conveyance of armaments in aircraft**

(1) Except with the written permission of the Minister or a person in the service of the State authorized thereto by the Minister and subject to such conditions as the Minister or such person may determine, no person shall convey any armaments in an aircraft.

(2) An aircraft which is upon reasonable grounds believed to be engaged in conveying any armaments contrary to the provisions of subsection (1), shall be subject to the provisions of the regulations with regard to the identification and interception of aircraft.

(3) A person who is an authorized person for the purposes of the Civil Aviation Offences Act, 1972 (Act 10 of 1972), may in exigent circumstances, without derogating from any power which such authorized person may have under the Criminal Procedure Act, 1977 (Act 51 of 1977), at any aerodrome or place in Namibia, without a warrant-

(a) search any aircraft which such authorized person reasonably believes to be used or to have been used to convey any armaments contrary to the provisions of subsection (1) of this section, and any cargo or goods on board such an aircraft;

(b) seize-

(i) any armaments found during a search carried out under paragraph (a) of this subsection;

(ii) any aircraft on which such armaments are found; and

(iii) any other thing which in the opinion of such authorized person was used or is intended to be used for the commission, or in connection with the commission, of an offence under this section ; and

(c) arrest any person who is found on board an aircraft contemplated in paragraph (a) of this subsection and whom such authorized person reasonably suspects of having committed an offence under this section or of attempting to commit such an offence.

(4) If an authorized person referred to in subsection (3) attempts to arrest

any person under paragraph (c) of that subsection and such person-

- (a) resist the arrest and cannot be arrested without the use of force; or
- (b) flees when it is clear that an attempt to arrest such a person is being made, or resist such an attempt and flees,

the authorized person may, in order to make the arrest, use such force as may in the circumstances be reasonable necessary to overcome the resistance or to prevent the person concerned from fleeing, and may call on any competent person to assist him or her to make the arrest.

(5) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period not exceeding 10 years.

(6) (a) Any armaments, aircraft or other thing seized under subsection (3) (b) shall be forfeited to the State unless the court at the trial of any person accused of the contravention concerned of subsection (1) finds-

- (i) in the case of armaments, that they were not conveyed contrary to the provisions of the last named subsection and were not intended to be used for unlawful purposes; or
- (ii) in the case of such an aircraft or other thing, that it was not used or intended to be used for the commission, or in connection with the commission, of any offence.

(b) Anything forfeited in terms of paragraph (a) shall be disposed of as the Minister may either generally or in a particular case order.

(c) The provisions of paragraph (a), in so far as they relate to an aircraft, shall not affect the rights which any person other than a person accused of the contravention concerned of subsection (1) may have to such an aircraft, if he or she, within 30 days of the seizure thereof, satisfies the Minister by means of proof in writing submitted through the Permanent Secretary: Works, Transport and Communication that he or she did not know that the aircraft was used or intended to be used for the commission, or in connection with the commission, of any offence, or that he or she took all reasonable steps to prevent the use thereof in connection with the offence.

(7) For the purposes of this section the expression "armaments" shall include any bombs, ammunition or weapons, or any substance, material, raw material, components, equipment system, articles or technique of whatever nature capable of being used in the development, manufacture or maintenance of armaments or for defence purposes or other purposes determined by the Minister, but with exception of any such armaments while being conveyed in an aircraft-

- (a) on behalf of the State;
- (b) by or on behalf of-
  - (i) any person in his or her capacity as an officer or employee of the State;

- (ii) any person who is entitled by virtue of the Arms and Ammunition Act, 1969 (Act 75 of 1969), to possess the armaments concerned or to have the armaments concerned in his or her custody.

*[S. 16 repealed by s. 10 of Act 10 of 1972 and inserted by s. 12 of Act 10 of 1991.]*

## **17 Requisitioning of aircraft and calling out of flight crew for air search and rescue operations**

(1) The Minister, or any person authorized thereto by the Minister, may at any time requisition any civil aircraft and call out any holder of a flight crew licence issued in terms of this Act, for air search and rescue operations, subject to the payment of compensation at such rate as may be prescribed.

(2) If any air search and rescue operations are undertaken by the State in connection with any occurrence caused by the negligent or other unlawful act or omission of any person, the Minister may recover from such person the whole or any portion of the expenses incurred by the State in connection with such operations, according as he may determine after consultation with the Minister of Finance.

(3) Any person who without lawful reason refuses or fails to comply with any order or instruction made or given by virtue of the provisions of sub-section (1), shall be guilty of an offence.

## **18 Jurisdiction**

Any offence under this Act and any offence committed on a Namibian aircraft, shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed in any place where the accused happens to be: Provided that if any such offence is committed within Namibia, the offence may be tried by any court having jurisdiction where the offence was committed.

## **19 Penalties**

(1) Any person who contravenes the provisions of, or commits an offence under, this Act or the Convention or the Transit Agreement, or who fails to comply with any such provision with which it is his duty to comply, shall, except where another penalty is specially provided, be liable on conviction to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) If a person referred to in sub-section (1) is the holder of a licence, certificate or rating issued under this Act, the court convicting him may, in addition to any penalty which may be imposed under sub-section (1), cancel, suspend for a specified period, or order the endorsement of, such licence, certificate or rating, or, if he is not the holder of any such licence, certificate or rating, declare him to be disqualified from holding any licence, certificate or rating under this Act for such period as the court deems fit.

(3) This section shall apply equally to the owner of an aircraft and to the pilot or person in charge thereof, unless the owner (except in the case of an air carrier as defined in section *one* of the Air Services Act, 1949 (Act 51 of 1949)), proves to the satisfaction of the court that the contravention, offence or failure in question occurred without his order, permission or connivance.

(4) The penalties provided in this Act shall be in addition to and not in substitution for any penalties imposed under any customs law or regulation

relating to the importation or exportation of goods, and to persons entering or leaving Namibia by aircraft.

## **20 Indemnification of State and certain State employees**

Notwithstanding any legal provision to the contrary the State and its officers and employees acting in the performance of their duty shall not be liable for-

- (a) any loss or damage caused by the death of or injury to any person while conveyed in any aircraft owned, operated or chartered by the State through its Ministry of Works, Transport and Communication or while entering or mounting or being in such aircraft for the purpose of being conveyed in it or while being in or alighting from such aircraft after having been conveyed in it, if that person was so conveyed or to be conveyed otherwise than in the performance of his duty as an officer or employee of the State; or
- (b) any loss of or damage to any goods conveyed in such aircraft otherwise than in the interests of the State.

## **21 Expenditure and revenue under this Act**

(1) All expenditure incurred in the administration of this Act and the carrying out and giving effect to the provisions of the Convention and the Transit Agreement shall be defrayed out of moneys appropriated by Parliament for the purpose.

(2) All moneys received under this Act or the Convention or the Transit Agreement shall be paid into the Consolidated Revenue Fund.

## **22 Regulations**

- (1) The Minister may make regulations relating to-
  - (a) the carrying out of, and giving effect to, the provisions of the Convention and the Transit Agreement;
  - (a) *bis* the designation of persons to carry out the provisions of this Act, and the powers and duties of persons so designated;
- (b) the safety and security of persons and property and the prohibition of flying at such heights or in such manner as is deemed to be dangerous to life and property;
- (b) *bis* air traffic services for Namibia, and the powers and duties of the persons charged with the operation of such services;

*[Para. (a)bis inserted by s. 5 (1) (a) of Act 12 of 1965.]*

- (c) the issue, by a person and in the circumstances prescribed, of an order directing-
  - (i) any aircraft intending to land at an aerodrome to observe a specified flight path during holding, approach and landing;
  - (ii) any aircraft intending to land at a particular aerodrome not to land at

*[Para. (b)bis inserted by s. 5 (1) (b) of Act 12 of 1965.]*

- such aerodrome but to proceed to another aerodrome specified; and
- (iii) any aircraft to observe, upon take-off at an aerodrome, a specified climb-out flight path until the assigned flight altitude is attained;
- (c) *bis* the time when or the circumstances under which and the persons on whose direction an order issued by virtue of the provisions of paragraph (c) may or shall be departed from;
- [Para. (c)bis inserted by s. 5 (1) (c) of Act 12 of 1965.]*
- (d) (i) the licensing, inspection and regulation of aerodromes or other places set apart for the use of aircraft;
  - (ii) the scales of charges at licensed aerodromes or at aerodromes (whether licensed or not) established and maintained in terms of the provisions of section *six*, and exemption from payment or variation as to the payment of such charges;
  - (iii) the registers and records to be kept at aerodromes referred to in subparagraph (ii), and the manner in which they shall be kept;
  - (iv) the prohibition or the regulation of the use of unlicensed aerodromes;
  - (v) access to aerodromes and places where aircraft have landed and access to aircraft factories for the purpose of inspecting the work carried on therein;
- (e) the control and management of any aerodrome established and maintained in terms of the provisions of section *six*, including-
- (i) the prevention of damage to any runway, taxiway or other works or property connected with such aerodrome;
  - (ii) the prohibition or the regulation of vehicular or other traffic within such aerodrome, the parking of vehicles therein, the demarcation of places, and the imposition of fees, for such parking, the manner of payment of such fees, and the meaning of the word "park" for the purposes of this sub-paragraph;
  - (iii) the control of aircraft on such aerodrome while such aircraft are not subject to the control of the air traffic control service operating at such aerodrome;
  - (iv) the prevention of damage to aircraft on such aerodrome and the protection of freight carried by such aircraft;
  - (v) the removal of aircraft hulks and aircraft wreckage likely to obstruct any runway or taxiway on such aerodrome, the imposition and recovery of charges for the right to leave an aircraft hulk or any aircraft wreckage on any such aerodrome, and the saving of life in the case of aircraft accidents;

- (vi) the granting of licences to handling, forwarding, passenger or freight agents or other persons trading, otherwise than by virtue of the provisions of section *six bis*, or carrying on any occupation, on such aerodrome, and the fees to be paid in respect of each such licence;

*[Sub-para. (vi) substituted by s. 5 (1) (d) of Act 12 of 1965.]*

- (vi) *bis* the granting, in terms of section *six bis*, of permission to sell at any such aerodrome any intoxicating liquor, other refreshments, smokers' requisites, reading-matter and other goods, and the sale of such goods at any such aerodrome by virtue of such permission;

*[Sub-para (vi)bis inserted by s. 5 (1) (e) of Act 12 of 1965.]*

- (vi) *ter* .....

*[Sub-para. (vi)ter inserted by s. 25 of Act 62 of 1973 and deleted by s. 13 (a) of Act 10 of 1991.]*

- (vii) the prohibition of smoking on such aerodrome or any part thereof;
- (viii) discretionary rights and powers which may be exercised in relation to the admission of the public to, or their exclusion from, such aerodrome or any part thereof, the imposition of charges for such admission, exemption from payment or variation as to the payment of such charges, and the designation of the person who shall decide during which periods those charges shall be payable;
- (ix) the prohibition or the regulation of the admission of any animal or class of animal to such aerodrome or any part thereof;
- (x) the prevention of the commission of any nuisance in or on such aerodrome and, generally, the promotion and ensuring of good sanitation, cleanliness and decency therein or thereon;
- (xi) the regulation of the handling and storing of goods at such aerodrome, the charges to be made for handling or storing goods and for their care or custody, the terms and conditions upon which they shall be received, the disposal of unclaimed goods, and exemption from payment or variation as to the payment of such charges;
- (xii) the conditions under which and the times when dangerous or offensive classes of goods may be transported or handled at such aerodrome, the prohibition of the transport or handling of those classes of goods, and provision for or sanctioning of the removal or destruction of such goods;
- (xiii) the use of land forming part of such aerodrome for sites for the bulk storage of oil, liquid fuel and other inflammable substances, or for pipe lines, power lines and the like, and whether such lines shall be overhead or underground;

- (xiv) the installation, maintenance and control of automatic vending, weighing, novelty and similar machines on such aerodrome and the charges to be paid in respect of each such machine;
- (f) the licensing or certificating of persons engaged in the construction, overhaul, maintenance, inspection or supervision of aircraft;
- (g) the manner and conditions of the issue and renewal of any certificate or licence required under this Act or under the Convention or the Transit Agreement, including the examination and tests to be undergone, and the form, custody, production, cancellation, suspension, endorsement and surrender of any such certificate or licence;
- (h) the keeping and form of the register of Namibian aircraft;
- (i) the conditions under which aircraft may pass into, within or from Namibia;
- (j) the areas within which, or the aerodromes at which, aircraft coming from any place outside Namibia shall land, and the areas within which or the aerodromes from which aircraft shall depart to any place outside Namibia;
- (k) the exemption from any of the provisions of this Act or of the Convention or the Transit Agreement, of aircraft flown for experimental purposes, or any other aircraft, or any persons, where it appears unnecessary that such provisions should apply;
- (l) the fees to be paid in respect of the grant of any certificate or licence or otherwise for the purposes of this Act or of the Convention or the Transit Agreement;
- (m) the prohibition or the regulation of the erection or the coming into existence of any obstruction exceeding a prescribed height within a prescribed distance from any aerodrome;
- (n) the lighting or marking of obstructions at or within the prescribed distance from an aerodrome or exceeding the prescribed height or which according to any other criteria, or in the opinion of a person, specified in the regulations, constitute a danger to aircraft,

*[Para. (n) substituted by s. 13 (b) of Act 10 of 1991.]*

(nA) .....

*[Para. (nA) inserted by s. 3 of Act 83 of 1969 and deleted by s. 13 (c) of Act 10 of 1991.]*

- (o) the prohibition or the regulation of lights at or in the neighbourhood of any aerodrome;
- (p) the signals or other communications which may or shall be made by or to aircraft and persons carried therein, and the acknowledgement of and compliance with such signals or communications;

*[Para. (p) substituted by s. 5 (1) of Act 12 of 1965.]*

- (q) the prevention or the minimizing of interference with the use or effectiveness of radio or electronic apparatus used as aids to safety in air navigation;
- (r) the prohibition or restriction of aircraft from flying over any specified area, and measures for preventing aircraft from flying over any area in contravention of any such prohibition or restriction, or entering or leaving Namibia in contravention of any provision of this Act;

*[Para. (r) substituted by s. 5 (1) (g) of Act 12 of 1965.]*

- (s) the prevention of nuisances arising out of air navigation or aircraft factories, aerodromes or other aircraft establishments, including the prevention of nuisance due to noise or vibration originating from the operation of machinery in aircraft on or above aerodromes, whether by the installation in aircraft or on aerodromes of means for the prevention of such noise or vibration, or otherwise;
- (t) the order in which aircraft may be requisitioned and the holders of flight crew licences issued in terms of this Act may be called out in terms of sub-section (1) of section seventeen, the carrying out of any air search and rescue operations, and the rate at which compensation is to be paid by the State in respect of any aircraft requisitioned and the calling out of any person for the purpose of such operations;
- (u) the persons by whom and to whom accidents shall be notified, and the procedure to be followed in notifying accidents and in holding accident inquiries;
- (v) the prohibition, pending investigation, of access to or interference with aircraft to which an accident has occurred, and the authorizing of any person so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with any such aircraft;
- (w) the conferring of powers or the imposing of duties to-
  - (i) cancel, suspend, endorse, or surrender any licence or certificate granted under this Act where it appears on an investigation that the licence or certificate ought to be cancelled, suspended, endorsed, or surrendered;
  - (ii) produce any such licence or certificate for the purpose of being dealt with;
- (x) the prohibition or the regulation, for the purpose of ensuring the safe operation of aircraft, of the use in aircraft or aero engines of parts, instruments, accessories or other materials which do not conform to prescribed specifications or standards of quality or manufacture;



- (y) airworthiness requirements (including requirements as to design, performance, operation or maintenance) for aircraft or aircraft components or equipment, and the specifications for materials used in, and the standards and processes which shall be observed in, the construction of aircraft or aircraft components or equipment
- (z) the requirements to be observed and the steps to be taken in connection with the conveyance in aircraft of any animal as defined in section 1 of the Animals Protection Act, 1962 ( Act 71 of 1962), or any fish as defined in section 1 of the Sea Fisheries Act, 1973(Act 58 of 1973);
- (zA) the compilation of operational directives in respect of aircraft and aerodromes by owners, the matters to be dealt with in such directives, the approval of such directives by a person specified in the regulations and the issue of such approved directives, or other directives of a similar nature compiled or published by authoritative bodies or organisations, to persons employed on or in connection with aircraft or aerodromes;
- (zB) the exercise of control over the conveyance in aircraft of dangerous goods defined in or described in the regulations, including-
  - (i) a prohibition of such conveyance of particular dangerous goods;
  - (ii) a prohibition of such conveyance of dangerous goods not subject to a prohibition under subparagraph (i), otherwise than either in accordance with the conditions, requirements and safety measures set out in the regulations, or under the authority of a permission in writing given in any particular case by a person specified in the regulations;
  - (iii) the licensing of or issue of certificates to persons specified in the regulations and engaged in the consigning of dangerous goods in aircraft or the acceptance of such goods; and

*[Paras. (z), (zA) and (zB) added by s. 13 (d) of Act 10 of 1991.]*

generally, for the better carrying out of the objects and purposes of this Act, the generality of this provisions not being limited by the particular matters provided in the preceding paragraphs of this sub-section.

(2) (a) Different regulations may be made under paragraph (e) of sub-section (1) in respect of different aerodromes established and maintained under the provisions of section six.

(b) Any requirements, specifications, standards or processes prescribed under paragraph (y) of sub-section (1) may differ in respect of different classes of aircraft or different types or models of the same class of aircraft or the same type or model of aircraft when used in different categories of operation, or in respect of different classes or types of aircraft components or equipment.

(3) No fees, rates of compensation or charges or, where applicable, exemption from payment or variation as to the payment of such fees or charges, shall be prescribed or provided for under sub-section (1) except after consultation

with the Minister of Finance.

(4) Any regulation made under this Act may prescribe penalties for the contravention thereof or failure to comply therewith and the mode of enforcing such penalties, and may also impose different penalties in case of a second or subsequent contravention or non-compliance, but no such penalty shall exceed the penalties mentioned in section *nineteen*.

## **22A Incorporation of international aviation standards in regulations**

(1) The Minister may by notice in the *Gazette* incorporate in the regulations any international aviation standards, without stating the text thereof, by mere reference to the number, title and the year of issue of that aviation standard or to any other particulars by which that aviation standard is sufficiently identified.

(2) Any international aviation standard incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to the provisions of this Act, be deemed to be a regulation made as provided for in section 22.

(3) A notice under subsection (1) shall come into operation on a date specified in the notice, but not before the expiry of 30 days after the date of publication of the notice.

(4) If any international aviation standard is at any time after the incorporation thereof in the regulations amended or substituted the International Civil Aviation Organisation, the notice incorporating that aviation standard in the regulation shall, unless otherwise stated therein, be deemed to refer to that aviation standard as so amended or substituted, as the case may be.

(5) An officer in the Ministry of Works, Transport and Communication designated by the Minister for such purpose shall keep in his or her office a copy the complete text of each international aviation standard incorporated in the regulations under subsection (1) and of each amendment and substitution of any such aviation standard, and shall at the request in writing of any interested person make such copy available free of charge to any such person for inspection or for making a copy thereof (at such person's expense) at a place approved by such officer.

(6) Whenever in any judicial proceedings the question arises whether any writing contains the text of an international aviation standard incorporated in the regulations under subsection (1), or of any amendment or substitution of any such aviation standard, any writing purporting to be statement by a person who in that statement alleges that he or she is an officer in the Ministry of Works, Transport and Communication and that a particular writing described in or attached to the statement contains the said text, shall on its mere production at those proceedings by any person be *prima facie* proof of the facts stated therein.

(7) In this section international aviation standard' means any international standard or recommended practice or procedure adopted by the International Civil Aviation Organisation for the purposes of article 37 of the Convention.

[S. 22A inserted by s. 14 of Act 10 of 1991.]

## **23 Act binding on State**

This Act shall bind the State.

## **24 Repeal of laws and savings**

(1) Subject to the provisions of sub-sections (2) and (3) the laws specified in the Third Schedule are hereby repealed.

(2) Anything done or deemed to have been done in terms or by virtue of any provision of a law repealed by sub-section (1), shall be deemed to have been done in terms or by virtue of the corresponding provision of this Act.

(3) Any proclamation or regulation which at the commencement of this Act is in force in terms of a provision of a law repealed by sub-section (1), shall remain in force until repealed in terms of this Act or any other law.

## **25 Short title and commencement**

This Act shall be called the Aviation Act, 1962, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

### **FIRST SCHEDULE**

### **CONVENTION ON INTERNATIONAL CIVIL AVIATION**

#### **PREAMBLE**

WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

WHEREAS it is desirable to avoid friction and to promote that co-operation between nations and peoples upon which the peace of the world depends;

THEREFORE the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this Convention to that end.

### **PART I-AIR NAVIGATION**

#### **CHAPTER I**

#### **GENERAL PRINCIPLES AND APPLICATIONS OF THE CONVENTION**

##### **Article 1**

##### **Sovereignty**

The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

##### **Article 2**

##### **Territory**

For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

##### **Article 3**

##### **Civil and state aircraft**

(a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.

(b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.

(c) No state aircraft of a contracting State shall fly over the territory of

another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof.

(d) The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

#### **Article 4**

##### **Misuse of civil aviation**

Each contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention.

### **CHAPTER II**

## **FLIGHT OVER TERRITORY OF CONTRACTING STATES**

#### **Article 5**

##### **Right of non-scheduled flight**

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 air 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.

#### **Article 6**

##### **Scheduled air services**

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.

#### **Article 7**

##### **Cabotage**

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

#### **Article 8**

##### **Pilotless aircraft**

No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.

#### **Article 9**

##### **Prohibited areas**

(a) Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organization.

(b) Each contracting State reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States.

(c) Each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraph (a) or (b) above to effect a landing as soon as practicable thereafter at some designated airport within its territory.

#### **Article 10**

##### **Landing at customs airport**

Except in a case where, under the terms of this Convention or a special authorization, aircraft are permitted to cross the territory of a contracting State without landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State, such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airports shall be published by the State and transmitted to the International Civil Aviation Organization established under Part II of this Convention for communication to all other contracting States.

#### **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.

**Article 12**  
**Rules of the air**

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

**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.

**Article 14**  
**Prevention of spread of disease**

Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other communicable diseases as the contracting States shall from time to time decide to designate, and to that end contracting States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the contracting States may be parties.

**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.

#### **Article 16**

##### **Search of aircraft**

The appropriate authorities of each of the contracting States shall have the right, without unreasonable delay, to search aircraft of the other contracting States on landing or departure, and to inspect the certificates and other documents prescribed by this Convention.

### **CHAPTER III**

#### **NATIONALITY OF AIRCRAFT**

##### **Article 17**

##### **Nationality of aircraft**

Aircraft have the nationality of the State in which they are registered.

##### **Article 18**

##### **Dual registration**

An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another.

##### **Article 19**

##### **National laws governing registration**

The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.

##### **Article 20**

##### **Display of marks**

Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.

##### **Article 21**

##### **Report of registrations**

Each contracting State undertakes to supply to any other contracting State or to the International Civil Aviation Organization, on demand, information concerning the registration and ownership of any particular aircraft registered in that State. In addition, each contracting State shall furnish reports to the International Civil Aviation Organization, under such regulations as the latter may prescribe, giving such pertinent data as can be made available concerning the ownership and control of aircraft registered in that State and habitually engaged in international air navigation. The data thus obtained by the International Civil Aviation Organization shall be made available by it on request to the other contracting States.

### **CHAPTER IV**

## **MEASURES TO FACILITATE AIR NAVIGATION**

### **Article 22**

#### **Facilitation of formalities**

Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.

### **Article 23**

#### **Customs and immigration procedures**

Each contracting State undertakes, so far as it may find practicable, to establish customs and immigration procedures affecting international air navigation in accordance with the practices which may be established or recommended from time to time, pursuant to this Convention. Nothing in this Convention shall be construed as preventing the establishment of customs-free airports.

### **Article 24**

#### **Customs duty**

(a) Aircraft on a flight to, from, or across the territory of another contracting State shall be admitted temporarily free of duty, subject to the customs regulations of the State. 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 compliance with the regulations of the State concerned, which may provide that the articles shall be kept under customs supervision and control.

### **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 co-ordinated measures which may be recommended from time to time pursuant to this Convention.

### **Article 26**

#### **Investigation of accidents**

In the event of an accident to an aircraft of a contracting State occurring in



the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be present at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State.

#### **Article 27**

##### **Exemption from seizure on patent claim**

(a) While engaged in international air navigation, any authorized entry of aircraft of a contracting State into the territory of another contracting State or authorized transit across the territory of such State with or without landings shall not entail any seizure or detention of the aircraft or any claim against the owner or operator thereof or any other interference therewith by or on behalf of such State or any person therein, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is an infringement of any patent, design, or model duly granted or registered in the State whose territory is entered by the aircraft, it being agreed that no deposit of security in connection with the foregoing exemption from seizure or detention of the aircraft shall in any case be required in the State entered by such aircraft.

(b) The provisions of paragraph (a) of this Article shall also be applicable to the storage of spare parts and spare equipment for the aircraft and the right to use and install the same in the repair of an aircraft of a contracting State in the territory of any other contracting State, provided that any patented part or equipment so stored shall not be sold or distributed internally in or exported commercially from the contracting State entered by the aircraft.

(c) The benefits of this Article shall apply only to such States, parties to this Convention, as either (1) are parties to the International Convention for the Protection of Industrial Property and to any amendments thereof; or (2) have enacted patent laws which recognize and give adequate protection to inventions made by the nationals of the other States parties to this Convention.

#### **Article 28**

##### **Air navigation facilities and standard systems**

Each contracting State undertakes, so far as it may find practicable, to-

- (a) provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention;
- (b) adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules which may be recommended or established from time to time, pursuant to this Convention;
- (c) collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with standards which may

be recommended or established from time to time, pursuant to this Convention.

## **CHAPTER V CONDITIONS TO BE FULFILLED WITH RESPECT TO AIRCRAFT**

### **Article 29**

#### **Documents carried in aircraft**

Every aircraft of a contracting State, engaged in international navigation, shall carry the following documents in conformity with the conditions prescribed in this Convention-

- (a) its certificate of registration;
- (b) its certificate of airworthiness;
- (c) the appropriate licences for each member of the crew;
- (d) its journey log book;
- (e) if it is equipped with radio apparatus, the aircraft radio station licence;
- (f) if it carries passengers, a list of their names and places of embarkation and destination;
- (g) if it carries cargo, a manifest and detailed declarations of the cargo.

### **Article 30**

#### **Aircraft radio equipment**

(a) Aircraft of each contracting State may, in or over the territory of other contracting States, carry radio transmitting apparatus only if a licence to install and operate such apparatus has been issued by the appropriate authorities of the State in which the aircraft is registered. The use of radio transmitting apparatus in the territory of the contracting State whose territory is flown over shall be in accordance with the regulations prescribed by that State.

(b) Radio transmitting apparatus may be used only by members of the flight crew who are provided with a special licence for the purpose, issued by the appropriate authorities of the State in which the aircraft is registered.

### **Article 31**

#### **Certificates of airworthiness**

Every aircraft engaged in international navigation shall be provided with a certificate of airworthiness issued or rendered valid by the State in which it is registered.

### **Article 32**

#### **Licences 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 licences issued or rendered valid by the State in which the aircraft is registered.

(b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences

granted to any of its nationals by another contracting State.

### **Article 33**

#### **Recognition of certificates and licences**

Certificates of airworthiness and certificates of competency and licences 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 licences 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.

### **Article 34**

#### **Journey log books**

There shall be maintained in respect of every aircraft engaged in international navigation a journey log book in which shall be entered particulars of the aircraft, its crew and of each journey, in such form as may be prescribed from time to time pursuant to this Convention.

### **Article 35**

#### **Cargo restrictions**

(a) No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make.

(b) Each contracting State reserves the right, for reasons of public order and safety, to regulate or prohibit the carriage in or above its territory of articles other than those enumerated in paragraph (a): Provided that no distinction is made in this respect between its national aircraft engaged in international navigation and the aircraft of the other States so engaged; and provided further that no restriction shall be imposed which may interfere with the carriage and use on aircraft of apparatus necessary for the operation or navigation of the aircraft or the safety of the personnel or passengers.

### **Article 36**

#### **Photographic apparatus**

Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory.

## **CHAPTER VI**

### **INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES**

#### **Article 37**

##### **Adoption of International standards and procedures**

Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the international Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and

recommended practices and procedures dealing with-

- (a) communications systems and air navigation aids, including ground marking;
- (b) characteristics of airports and landing areas;
- (c) rules of the air and air traffic control practices;
- (d) licensing of operating and mechanical personnel;
- (e) airworthiness of aircraft;
- (f) registration and identification of aircraft;
- (g) collection and exchange of meteorological information;
- (h) log books;
- (i) aeronautical maps and charts;
- (j) customs and immigration procedures;
- (k) aircraft in distress and investigation of accidents;

and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

#### **Article 38**

##### **Departures from international standards and procedures**

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the international Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State.

#### **Article 39**

##### **Endorsement of certificates and licences**

(a) Any aircraft or part thereof with respect to which there exists an international standard of airworthiness or performance, and which failed in any respect to satisfy that standard at the time of its certification, shall have endorsed on or attached to its airworthiness certificate a complete enumeration of the details in respect of which it so failed.

(b) Any person holding a licence who does not satisfy in full the conditions laid down in the international standard relating to the class of licence or certificate which he holds shall have endorsed on or attached to his licence a complete enumeration of the particulars in which he does not satisfy such conditions.

#### **Article 40**

##### **Validity of endorsed certificates and licences**

No aircraft or personnel having certificates or licences so endorsed shall participate in international navigation, except with the permission of the State or States whose territory is entered. The registration or use of any such aircraft, or of any certificated aircraft part, in any State other than that in which it was originally certificated shall be at the discretion of the State into which the aircraft or part is imported.

#### **Article 41**

##### **Recognition of existing standards of airworthiness**

The provisions of this Chapter shall not apply to aircraft and aircraft equipment of types of which the prototype is submitted to the appropriate national authorities for certification prior to a date three years after the date of adoption of an international standard of airworthiness for such equipment.

#### **Article 42**

##### **Recognition of existing standards of competency of personnel**

The provisions of this Chapter shall not apply to personnel whose licences are originally issued prior to a date one year after initial adoption of an international standard of qualification for such personnel; but they shall in any case apply to all personnel whose licences remain valid five years after the date of adoption of such standard.

## **PART II THE INTERNATIONAL CIVIL AVIATION ORGANISATION**

### **CHAPTER VII**

#### **ORGANIZATION**

#### **Article 43**

##### **Name and composition**

An organization to be named the International Civil Aviation Organization is formed by the Convention. It is made up of an Assembly, a Council, and such other bodies as may be necessary.

#### **Article 44**

##### **Objectives**

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to-

- (a) insure the safe and orderly growth of international civil aviation throughout the world;
- (b) encourage the arts of aircraft design and operation for peaceful purposes;
- (c) encourage the development of airways, airports, and air navigation facilities for international civil aviation;

- (d) meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- (e) prevent economic waste caused by unreasonable competition;
- (f) insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- (g) avoid discrimination between contracting states;
- (h) promote safety of flight in international air navigation;
- (i) promote generally the development of all aspects of international civil aeronautics.

**Article 45**  
**Permanent seat**

The permanent seat of the Organization shall be at such place as shall be determined at the final meeting of the Interim Assembly of the Provisional International Civil Aviation Organization set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944, The seat may be temporarily transferred elsewhere by decision of the Council, and otherwise than temporarily by decision of the Assembly, such decision to be taken by the number of votes specified by the Assembly. The number of votes so specified will not be less than three-fifths of the total number of contracting States.

**Article 46**  
**First meeting of Assembly**

The first meeting of the Assembly shall be summoned by the Interim Council of the above-mentioned Provisional Organization as soon as the Convention has come into force, to meet at a time and place to be decided by the Interim Council.

**Article 47**  
**Legal capacity**

The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full juridical personality shall be granted wherever compatible with the constitution and laws of the State concerned.

**CHAPTER VIII**  
**THE ASSEMBLY**

**Article 48**  
**Meetings of Assembly and voting**

(a) The assembly shall meet not less than once in three years and shall be convened by the Council at a suitable time and place. Extraordinary meetings of the Assembly may be held at any time upon the call of the Council or at the request of any ten contracting States addressed to the Secretary General.

(b) All contracting States shall have an equal right to be represented at the

meetings of the Assembly and each contracting State shall be entitled to one vote. Delegates representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.

(c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

#### **Article 49**

##### **Powers and duties of Assembly**

The powers and duties of the Assembly shall be to-

- (a) elect at each meeting its President and other officers;
- (b) elect the contracting States to be represented on the Council, in accordance with the provisions of Chapter IX;
- (c) examine and take appropriate action on the reports of the Council and decide on any matter referred to it by the Council;
- (d) determine its own rules of procedure and establish such subsidiary commissions as it may consider to be necessary or desirable;
- (e) vote annual budgets and determine the financial arrangements of the Organization, in accordance with the provisions of Chapter XII;
- (f) review expenditures and approve the accounts of the Organization;
- (g) refer, at its discretion, to the Council, to subsidiary commissions, or to any other body any matter within its sphere of action;
- (h) delegate to the Council the powers and authority necessary or desirable for the discharge of the duties of the Organization and revoke or modify the delegations of authority at any time;
- (i) carry out the appropriate provisions of Chapter XIII;
- (j) consider proposals for the modification or amendment of the provisions of this Convention and, if it approves of the proposals, recommend them to the contracting States in accordance with the provisions of Chapter XXI;
- (k) deal with any matter within the sphere of action of the Organization not specifically assigned to the Council.

#### **CHAPTER IX THE COUNCIL**

##### **Article 50**

##### **Composition and election of Council**

(a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of 30 contracting States elected by the Assembly. An election shall be held at the first meeting of the Assembly and thereafter every three years, and the members of the Council so elected shall hold office until the next

following election.

*[Para. (a) amended by Proc. R. 204 of 31 August, 1973.]*

(b) In electing the members of the Council, the Assembly shall give adequate representation to (1) the States of chief importance in air transport; (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation; and (3) the States not otherwise included whose designation will insure that all the major geographic areas of the world are represented on the Council. Any vacancy on the Council shall be filled by the Assembly as soon as possible; any contracting State so elected to the Council shall hold office for the unexpired portion of its predecessor's term of office.

(c) No representative of a contracting State on the Council shall be actively associated with the operation of an international air service or financially interested in such a service.

### **Article 51 President of Council**

The Council shall elect its President for a term of three years. He may be re-elected. He shall have no vote. The Council shall elect from among its members one or more Vice-Presidents who shall retain their right to vote when serving as acting President. The President need not be selected from among the representatives of the members of the Council but, if a representative is elected his seat shall be deemed vacant and it shall be filled by the State which he represented. The duties of the President shall be to-

- (a) convene meetings of the Council, the Air Transport Committee, and the Air Navigation Commission;
- (b) serve as representative of the Council; and
- (c) carry out on behalf of the Council the functions which the Council assigns to him.

### **Article 52 Voting in Council**

Decisions by the Council shall require approval by a majority of its members. The Council may delegate authority with respect to any particular matter to a committee of its members. Decisions of any committee of the Council may be appealed to the Council by any interested contracting State.

### **Article 53 Participation without a vote**

Any contracting State may participate, without a vote, in the consideration by the Council and by its committees and commissions of any question which especially affects its interests. No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party.

### **Article 54 Mandatory functions of Council**

The Council shall-

- (a) submit annual reports to the Assembly;



- (b) carry out the directions of the Assembly and discharge the duties and obligations which are laid on it by this Convention;
- (c) determine its organization and rules of procedure;
- (d) appoint and define the duties of an Air Transport Committee, which shall be chosen from among the representatives of the members of the Council, and which shall be responsible to it;
- (e) establish an Air Navigation Commission, in accordance with the provisions of Chapter X;
- (f) administer the finances of the Organization in accordance with the provisions of Chapters XII and XV;
- (g) determine the emoluments of the President of the Council;
- (h) appoint a chief executive officer who shall be called the Secretary General, and make provision for the appointment of such other personnel as may be necessary, in accordance with the provisions of Chapter XI;
- (i) request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds;
- (j) report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council;
- (k) report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction;
- (l) adopt, in accordance with the provisions of Chapter VI of this Convention, international standards and recommended practices; for convenience, designate them as Annexes to this Convention; and notify all contracting States of the action taken;
- (m) consider recommendations of the Air Navigation Commission for amendment of the Annexes and take action in accordance with the provisions of Chapter XX;
- (n) consider any matter relating to the Convention which any contracting State refers to it.

#### **Article 55**

##### **Permissive function of Council**

The Council may-

- (a) where appropriate and as experience may show to be desirable create subordinate air transport commissions on a regional or other basis and

define groups of states or airlines with or through which it may deal to facilitate the carrying out of the aims of this Convention;

- (b) delegate to the Air Navigation Commission duties additional to those set forth in the Convention and revoke or modify such delegations of authority at any time;
- (c) conduct research into all aspects of air transport and air navigation which are of international importance, communicate the results of its research to the contracting States, and facilitate the exchange of information between contracting States on air transport and air navigation matters;
- (d) study any matters affecting the organization and operation of international air transport, including the international ownership and operation of international air services on trunk routes, and submit to the Assembly plans in relation thereto;
- (e) investigate, at the request of any contracting State, any situation which may appear to present avoidable obstacles to the development of international air navigation; and, after such investigation, issue such reports as may appear to it desirable.

## **CHAPTER X THE AIR NAVIGATION COMMISSION**

### **Article 56**

#### **Nomination and appointment of Commission**

The Air Navigation Commission shall be composed of twelve members appointed by the Council from among persons nominated by contracting States. These persons shall have suitable qualifications and experience in the science and practice of aeronautics. The Council shall request all contracting States to submit nominations. The President of the Air Navigation Commission shall be appointed by the Council.

### **Article 57**

#### **Duties of Commission**

The Air Navigation Commission shall:

- (a) consider, and recommend to the Council for adoption, modifications of the Annexes to this Convention;
- (b) establish technical sub-commissions on which any contracting State may be represented, if it so desires;
- (c) advise the Council concerning the collection and communication to the contracting States of all information which it considers necessary and useful for the advancement of air navigation.

## **CHAPTER XI PERSONNEL**

### **Article 58**

#### **Appointment of personnel**

Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting State.

#### **Article 59**

##### **International character of personnel**

The President of the Council, the Secretary General, and other personnel shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the Organization. Each contracting State undertakes fully to respect the international character of the responsibilities of the personnel and not to seek to influence any of its nationals in the discharge of their responsibilities.

#### **Article 60**

##### **Immunities and privileges of personnel**

Each contracting State undertakes, so far as possible under its constitutional procedure, to accord to the President of the Council, the Secretary General, and the other personnel of the Organization, the immunities and privileges which are accorded to corresponding personnel of other public international organizations. If a general international agreement on the immunities and privileges of international civil servants is arrived at, the immunities and privileges accorded to the President, the Secretary General, and the other personnel of the Organization shall be the immunities and privileges accorded under that general international agreement.

### **CHAPTER XII**

#### **FINANCE**

#### **Article 61**

##### **Budget and apportionment of expenses**

The Council shall submit to the Assembly annual budgets, annual statements of accounts and estimates of all receipts and expenditures. The Assembly shall vote the budgets with whatever modification it sees fit to prescribe and, with the exception of assessments under Chapter XV to States consenting thereto, shall apportion the expenses of the Organization among the contracting States on the basis which it shall from time to time determine.

#### **Article 62**

##### **Suspension of voting power**

The Assembly may suspend the voting power in the Assembly and in the Council of any contracting State that fails to discharge within a reasonable period its financial obligations to the Organization.

#### **Article 63**

##### **Expenses of delegations and other representatives**

Each contracting State shall bear the expenses of its own delegation to the Assembly and the remuneration, travel, and other expenses of any person whom it appoints to serve on the Council, and of its nominees or representatives on any subsidiary committees or commissions of the Organization.

**CHAPTER XIII  
OTHER INTERNATIONAL ARRANGEMENTS  
Article 64**

**Security arrangements**

The Organization may, with respect to air matters within its competence directly affecting world security, by vote of the Assembly enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace.

**Article 65**

**Arrangements with other international bodies**

The Council, on behalf of the Organization, may enter into agreements with other international bodies for the maintenance of common services and for common arrangements concerning personnel and, with the approval of the Assembly, may enter into such other arrangements as may facilitate the work of the Organization.

**Article 66**

**Functions relating to other agreements**

(a) The Organization shall also carry out the functions placed upon it by the International Air Services Transit Agreement and by the International Air Transport Agreement drawn up at Chicago on December 7, 1944, in accordance with the terms and conditions therein set forth.

(b) Members of the Assembly and the Council who have not accepted the International Air Services Transit Agreement or the International Air Transport Agreement drawn up at Chicago on December 7, 1944, shall not have the right to vote on any questions referred to the Assembly or Council under the provisions of the relevant Agreement.

**PART III  
INTERNATIONAL AIR TRANSPORT**

**CHAPTER XIV  
INFORMATION AND REPORTS  
Article 67**

**File reports with Council**

Each contracting State undertakes that its international airlines shall in accordance with requirements laid down by the Council, file with the Council traffic reports, cost statistics and financial statements showing among other things all receipts and the sources thereof.

**CHAPTER XV  
AIRPORTS AND OTHER AIR NAVIGATION FACILITIES  
Article 68**

**Designation of routes and airports**

Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use.

**Article 69**

**Improvement of air navigation facilities**

If the Council is of the opinion that the airports or other air navigation  
**Aviation Act 74 of 1962**

facilities, including radio and meteorological services, of a contracting State are not reasonably adequate for the safe, regular, efficient, and economical operation of international air services, present or contemplated, the Council shall consult with the State directly concerned and other States affected, with a view to finding means by which the situation may be remedied, and may make recommendations for that purpose. No contracting State shall be guilty of an infraction of this Convention if it fails to carry out these recommendations.

#### **Article 70**

##### **Financing of air navigation facilities**

A contracting State, in the circumstances arising under the provisions of Article 69, may conclude an arrangement with the Council for giving effect to such recommendations. The State may elect to bear all of the costs involved in any such arrangement. If the State does not so elect, the Council may agree, at the request of the State, to provide for all or a portion of the costs.

#### **Article 71**

##### **Provision and maintenance of facilities by Council**

If a contracting State so requests, the Council may agree to provide, man, maintain, and administer any or all of the airports and other air navigation facilities, including radio and meteorological services, required in its territory for the safe, regular, efficient and economical operation of the international air services of the other contracting States, and may specify just and reasonable charges for the use of the facilities provided.

#### **Article 72**

##### **Acquisition or use of land**

Where land is needed for facilities financed in whole or in part by the Council at the request of a contracting State, that State shall either provide the land itself, retaining title if it wishes, or facilitate the use of the land by the Council on just and reasonable terms and in accordance with the laws of the State concerned.

#### **Article 73**

##### **Expenditure and assessment of funds**

Within the limit of the funds which may be made available to it by the Assembly under Chapter XII, the Council may make current expenditures for the purposes of this Chapter from the general funds of the Organization. The Council shall assess the capital funds required for the purposes of this Chapter in previously agreed proportions over a reasonable period of time to the contracting States consenting thereto whose airlines use the facilities. The Council may also assess to States that consent any working funds that are required.

#### **Article 74**

##### **Technical assistance and utilization of revenues**

When the Council, at the request of a contracting State, advances funds or provides airports or other facilities in whole or in part, the arrangement may provide, with the consent of that State, for technical assistance in the supervision and operation of the airports and other facilities, and for the payment, from the revenues derived from the operation of the airports and other facilities, of the operating expenses of the airports and the other facilities, and of interest and

amortization charges.

#### **Article 75**

##### **Taking over of facilities from Council**

A contracting State may at any time discharge any obligation into which it has entered under Article 70, and take over airports and other facilities which the Council has provided in its territory pursuant to the provisions of Articles 71 and 72, by paying to the Council an amount which in the opinion of the Council is reasonable in the circumstances. If the State considers that the amount fixed by the Council is unreasonable it may appeal to the Assembly against the decision of the Council and the Assembly may confirm or amend the decision of the Council.

#### **Article 76**

##### **Return of funds**

Funds obtained by the Council through reimbursement under Article 75 and from receipts of interest and amortization payments under Article 74 shall, in the case of advances originally financed by States under Article 73, be returned to the States which were originally assessed in the proportion of their assessments, as determined by the Council.

### **CHAPTER XVI**

#### **JOINT OPERATING ORGANIZATIONS AND POOLED SERVICES**

##### **Article 77**

##### **Joint operating organization permitted**

Nothing in this Convention shall prevent two or more contracting States from constituting joint air transport operating organizations or international operating agencies and from pooling their air services on any routes or in any regions, but such organizations or agencies and such pooled services shall be subject to all the provisions of this Convention, including those relating to the registration of agreements with the Council. The Council shall determine in what manner the provisions of this Convention relating to nationality of aircraft shall apply to aircraft operated by international operating agencies.

##### **Article 78**

##### **Function of Council**

The Council may suggest to contracting States concerned that they form joint organizations to operate air services on any routes or in any regions.

##### **Article 79**

##### **Participation in operating organisations**

A State may participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by its government. The companies may, at the sole discretion of the State concerned, be State-owned or partly state-owned or privately owned.

### **PART IV-FINAL PROVISIONS**

#### **CHAPTER XVII**

#### **OTHER AERONAUTICAL AGREEMENTS AND ARRANGEMENTS**

##### **Article 80**

##### **Paris and Habana Conventions**

Each contracting State undertakes, immediately upon the coming into force of this Convention, to give notice of denunciation of the Convention relating to the Regulation of Aerial Navigation signed at Paris on October 13, 1919, or the Convention on Commercial Aviation signed at Habana on February 20, 1928, if it is a party to either. As between contracting States, this Convention supersedes the Conventions of Paris and Habana previously referred to.

#### **Article 81**

##### **Registration of existing agreements**

All aeronautical agreements which are in existence on the coming into force of this Convention, and which are between a contracting State and any other State or between an airline of a contracting State and any other State or the airline of any other State, shall be forthwith registered with the Council.

#### **Article 82**

##### **Abrogation of Inconsistent arrangements**

The contracting States accept this Convention as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which, before becoming a member of the Organization has undertaken any obligations toward a non-contracting State or a national of a contracting State or of a non-contracting State inconsistent with the terms of this Convention, shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Convention.

#### **Article 83**

##### **Registration of new arrangements**

Subject to the provisions of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

### **CHAPTER XVIII**

### **DISPUTES AND DEFAULT**

#### **Article 84**

##### **Settlement of disputes**

If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may, subject to Article 85, appeal from the decision of the Council to an *ad hoc* arbitral tribunal agreed upon with the other parties to the dispute or to the Permanent Court of International Justice. Any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council.

**Article 85**  
**Arbitration procedure**

If any contracting State party to a dispute in which the decision of the Council is under appeal has not accepted the Statute of the Permanent Court of International Justice and the contracting States parties to the dispute cannot agree on the choice of the arbitral tribunal, each of the contracting States parties to the dispute shall name a single arbitrator who shall name an umpire. If either contracting State party to the dispute fails to name an arbitrator within a period of three months from the date of the appeal, an arbitrator shall be named on behalf of that State by the President of the Council from a list of qualified and available persons maintained by the Council. If, within thirty days, the arbitrators cannot agree on an umpire, the President of the Council shall designate an umpire from the list previously referred to. The arbitrators and the umpire shall then jointly constitute an arbitral tribunal. Any arbitral tribunal established under this or the preceding Article shall settle its own procedure and give its decisions by majority vote, provided that the Council may determine procedural questions in the event of any delay which in the opinion of the Council is excessive.

**Article 86**  
**Appeals**

Unless the Council decides otherwise, any decision by the Council on whether an international airline is Operating in conformity with the provisions of this Convention shall remain in effect unless reversed on appeal. On any other matter, decisions of the Council shall, if appealed from, be suspended until the appeal is decided. The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding.

**Article 87**  
**Penalty for non-conformity by airline**

Each contracting State undertakes not to allow the operation of an airline of a contracting State through the airspace above its territory if the Council has decided that the airline concerned is not conforming to a final decision rendered in accordance with the previous Article.

**Article 88**  
**Penalty for nonconformity by State**

The Assembly shall suspend the voting power in the Assembly and in the Council of any contracting State that is found in default under the provisions of this Chapter.

**CHAPTER XIX**  
**WAR**

**Article 89**  
**War and emergency conditions**

In case of war, 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. The same principle shall apply in the case of any contracting State which declares a state of national emergency and notifies the fact to the Council.

**CHAPTER XX**



## **ANNEXES**

### **Article 90**

#### **Adoption and amendment of Annexes**

(a) The adoption by the Council of the Annexes described in Article 54, subparagraph (1), shall require the vote of two-thirds of the Council at a meeting called for that purpose and shall then be submitted by the Council to each contracting State. Any such Annex or any amendment of an Annex shall become effective within three months after its submission to the contracting States or at the end of such longer period of time as the Council may prescribe, unless in the meantime a majority of the contracting States register their disapproval with the Council

(b) The Council shall immediately notify all contracting States of the coming into force of any Annex or amendment thereto.

## **CHAPTER XXI**

### **RATIFICATIONS, ADHERENCES, AMENDMENTS AND DENUNCIATIONS**

#### **Article 91**

##### **Ratification of Convention**

(a) This convention shall be subject to ratification by the signatory States. The instruments of ratification shall be deposited in the archives of the Government of the United States, of America, which shall give notice of the date of the deposit to each of the signatory and adhering States.

(b) As soon as this Convention has been ratified or adhered to by twenty-six States it shall come into force between them on the thirtieth day after deposit of the twenty-sixth instrument. It shall come into force for each State ratifying thereafter on the thirtieth day after the deposit of its instrument of ratification.

(c) It shall be the duty of the Government of the United States of America to notify the government of each of the signatory and adhering States of the date on which this Convention comes into force.

#### **Article 92**

##### **Adherence to Convention**

(a) This Convention shall be open for adherence by members of the United Nations and States associated with them, and States which remained neutral during the present world conflict.

(b) Adherence shall be effected by a notification addressed to the Government of the United States of America and shall take effect as from the thirtieth day from the receipt of the notification by the Government of the United States of America, which shall notify all the contracting States.

#### **Article 93**

##### **Admission of other States**

States other than those provided for in Articles 91 and 92 (a) may, subject to approval by any general international organization set up by the nations of the world to preserve peace, be admitted to participation in this Convention by means of a four-fifths vote of the Assembly and on such conditions as the Assembly may prescribe: Provided that in each case the assent of any State invaded or attacked during the present war by the State seeking admission shall be necessary.

**Article 94**  
**Amendment of Convention**

(a) Any proposed amendment to this Convention must be approved by a two-thirds vote of the Assembly and shall then come into force in respect of States which have ratified such amendment when ratified by the number of contracting States specified by the Assembly. The number so specified shall not be less than two-thirds of the total number of contracting States.

(b) If in its opinion the amendment is of such a nature as to justify this course, the Assembly in its resolution recommending adoption may provide that any State which has not ratified within a specified period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention.

**Article 95**  
**Denunciation of Convention**

(a) Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States.

(b) Denunciation shall take effect one year from the date of the receipt of the notification and shall operate only as regards the State effecting the denunciation.

**CHAPTER XXII**  
**DEFINITIONS**

**Article 96**

For the purpose of this Convention the expression-

- (a) "Air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.
- (b) "International air service" means an air service which passes through the air space over the territory of more than one State.
- (c) "Airline" means any air transport enterprise offering or operating an international air service.
- (d) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

**SIGNATURE OF CONVENTION**

IN ,WITNESS WHEREOF, the undersigned plenipotentiaries, having been duly authorized, sign this Convention on behalf of their respective governments on the dates appearing opposite their signatures.

DONE at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may

sign or adhere to this Convention.

*Note:* Names of signatories not printed.

## **SECOND SCHEDULE**

### **INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT**

The States which sign and accept this International Air Services Transit Agreement, being members of the International Civil Aviation Organisation, declare as follows:

#### **ARTICLE I**

##### **Section 1**

Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes.

The privileges of this section shall not be applicable with respect to airports utilized for military purposes to the exclusion of any scheduled international air services. In areas of active hostilities or of military occupation, and in time of war along the supply routes leading to such areas, the exercise of such privileges shall be subject to the approval of the competent military authorities.

##### **Section 2**

The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and when it comes into force, with the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on December 7, 1944.

##### **Section 3**

A contracting State granting to the airlines of another contracting State the privilege to stop for non-traffic purposes may require such airlines to offer reasonable commercial service at the points at which such stops are made.

Such requirements shall not involve any discrimination between airlines operating on the same route, shall take into account the capacity of the aircraft, and shall be exercised in such a manner as not to prejudice the normal operations of the international air services concerned or the rights and obligations of a contracting State.

##### **Section 4**

Each contracting State may, subject to the provisions of this Agreement:

- (1) Designate the route to be followed within its territory by any international air service and the airports which any such service may use;
- (2) Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: 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 of the International Civil Aviation Organization established under the above-mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

## **Section 5**

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

## **ARTICLE II**

### **Section 1**

A contracting State which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon enquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above-mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

### **Section 2**

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention.

## **ARTICLE III**

This Agreement shall remain in force as long as the above-mentioned Convention: Provided, however, that any contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice of withdrawal.

## **ARTICLE IV**

Pending the coming into force of the above-mentioned Convention, all references to it herein, other than those contained in Article II, Section II and Article V, shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and Interim Council, respectively.

## **ARTICLE V**

For the purposes of this Agreement, "territory" shall be defined as in Article II of the above-mentioned Convention.

## **ARTICLE VI SIGNATURES AND ACCEPTANCES OF AGREEMENT**

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

IN WITNESS WHEREOF, the undersigned, having been duly authorised, sign this Agreement on behalf of their respective governments on the dates appearing opposite their respective signatures.

DONE at Chicago the seventh day of December, 1944, in the English language. A text drawn up in the English, French and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the Governments of all the States which may sign or accept this Agreement.

*NOTE:* Names of Signatories not printed.

### **THIRD SCHEDULE LAWS REPEALED**

<b>No. and year of Law</b>	<b>Title</b>
Act 16 of 1923.	Aviation Act, 1923
Act 41 of 1946	Aviation Amendment Act, 1946
Act 42 of 1947	Aviation Amendment Act, 1947
Act 18 of 1950.	Aviation Amendment Act, 1950
Act 51 of 1955	Aviation Amendment Act, 1955
Act 45 of 1962	Aviation Amendment Act, 1962

**Aviation Act 74 of 1962**

