

AVIATION ACT NO. 74 OF 1962

Assented to: 21 June 1962

Date of commencement: 21 July, 1962

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 the Republic of South Africa and for other matters incidental thereto.

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1. Definitions

In this Act, unless the context otherwise indicates-

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

aerodrome

[Definition of "aerodrome" deleted by s. 19 (a) of Act No. 44 of 1993.]

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;

[Definition of "aircraft" substituted by s. 1 of Act No. 83 of 1969.]

airport 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;

[Definition of "airport" inserted by s. 19 (b) of Act No. 44 of 1993.]

authorized officer means an authorized officer designated in terms of section 5 (4) (a);

[Definition of "authorized officer" inserted by s. 1 (a) of Act No. 16 of 1992.]

Commission

[Definition of "Commission" deleted by s. 33 (3) of Act No. 115 of 1990.]

Commissioner means the Commissioner for Civil Aviation appointed in terms of section 5 (1);

[Definition of "Commissioner" inserted by s. 1 (a) of Act No. 16 of 1992.]

Convention means the Convention on International Civil Aviation drawn up at Chicago on the seventh day of December, 1944, and adopted by section one of the Aviation Amendment Act, 1947 (Act No. 42 of 1947), and set out in the First Schedule to this Act, and includes any amendments thereof and additions thereto ratified and proclaimed in accordance with paragraph (b) of sub-section (1) of section three;

department means the Department of Transport;

[Definition of "department" inserted by s. 1 (b) of Act No. 16 of 1992.]

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

inspector means an inspector designated in terms of section 5 (4) (a);

[Definition of "inspector" inserted by s. 1 (c) of Act No. 16 of 1992.]

intoxicating liquor

[Definition of "intoxicating liquor" inserted by s. 3 of Act No. 12 of 1965 and deleted by s. 1 (a) of Act No. 4 of 1982.]

liquor

[Definition of "liquor" inserted by s. 1 (b) of Act No. 4 of 1982 and deleted by s. 19 (c) of Act No. 44 of 1993.]

Minister means the Minister of Transport;

[Definition of "Minister" substituted by s. 1 of Act No. 63 of 1981 and by s. 1 (d) of Act No. 16 of 1992.]

owner, in relation to an aircraft or airport, means the person in whose name the aircraft or airport is registered, and includes any person who is or has been acting as agent in the Republic for a foreign owner, or any person by whom the aircraft or airport 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 includes any territory in respect of which Parliament is competent to legislate;

South African aircraft means an aircraft registered in the Republic;

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 two of the Aviation Amendment Act, 1946 (Act No. 41 of 1946), and set out in the Second Schedule to this Act, and includes any amendments thereof and additions thereto ratified and proclaimed in accordance with paragraph (b) of sub-section (1) of section three.

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 the Republic or the territorial waters thereof and to all South African aircraft and personnel wheresoever they may be.
- (2) For the purposes of sub-section (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 airports belonging to the South African Defense Force or for the time being in use exclusively by the South African Defense Force, or to any person employed on or in connection with such aircraft or airports, irrespective of whether such person is so employed in a military or civil capacity: Provided that the Minister, after consultation with the Minister of Defense, may by notice in the *Gazette* apply to any such aircraft, airport or person any of the said provisions with or without modification.

[Sub-s. (3) amended by s. 2 of Act No. 4 of 1982.]

3. **Power to carry out and apply the Convention and the Transit Agreement**

- (1) The State President may-
 - (a) issue such proclamations as appear to him necessary for carrying out the Convention or the Transit Agreement and for giving effect thereto or to any of the provisions thereof; and
 - (b) do all things necessary to ratify or cause to be ratified on behalf of the Republic, any amendments of, or additions to, the Convention or the Transit Agreement which may from time to time be made and, by proclamation in the *Gazette*, declare that the amendments or additions so ratified shall be observed and have the force and effect of law in the Republic.
- (2) Copies of any amendments or additions ratified and proclaimed in terms of subsection (1) (b) shall be laid upon the Table of the House of Assembly within fourteen days after the publication of the relative proclamation in the *Gazette*, if the House of Assembly is then in ordinary session or, if the House of Assembly is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

[Sub-s. (2) substituted by s. 2 of Act No. 63 of 1981.]

4. **Functions of Minister in connection with provisions of this Act**

- (1) The Minister shall 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 Minister.
- (3) With the written consent of the Minister any person in whom any discretion is vested as is contemplated in sub-section (2), may delegate the power to exercise such discretion on his behalf to any other specified person.

[S. 4 substituted by s. 33 (3) of Act No. 115 of 1990.]

5. **Appointment and functions of and vacating of office by Commissioner for Civil Aviation**

- (1) The Minister shall, after consultation with the Director-General: Transport, appoint an officer in the service of the department as Commissioner for Civil Aviation.
- (2) The Commissioner shall not, in respect of the functions performed by him as Commissioner, be paid any remuneration in addition to his remuneration as an officer of the department, nor shall he be paid any allowance in respect of subsistence and transport at a rate higher than that applicable to him as such an officer.
- (3) The Commissioner shall hold office upon such conditions as the Minister may determine when making the appointment.
- (4) The Commissioner shall-
 - (a) designate one or more officers in the service of the department as inspectors or authorized officers, whose powers and duties shall, subject to the provisions of section 4 (2) and (3), be as prescribed; and
 - (b) possess such powers and perform such duties as may be conferred upon or assigned to him by this Act or any other law.
- (5) The Commissioner shall vacate his office if-
 - (a) he, after consultation with the Director-General: Transport, resigns by notice in writing addressed to the Minister;
 - (b) the Minister removes him from his office because-
 - (i) he has failed to comply with any condition of his appointment; or
 - (ii) he has, in the opinion of the Minister, been guilty of improper conduct or neglected his duties as Commissioner; or
 - (iii) he is, in the opinion of the Minister, unable to perform his duties as Commissioner.
- (6) If the Commissioner dies, or vacates his office in terms of the provisions of subsection (5), the Minister shall, subject to the provisions of subsection (1), appoint another person as Commissioner.

[S. 5 amended by s. 3 of Act No. 63 of 1981 and by s. 46 of Act No. 97 of 1986, repealed by s. 16 of Act No. 58 of 1987 and inserted by s. 2 of Act No. 16 of 1992.]

6.

[S. 6 amended by s. 36 of Act No. 55 of 1965, by s. 95 of Act No. 63 of 1975 and by s. 46 of Act No. 97 of 1986 and repealed by s. 20 of Act No. 44 of 1993.]

6bis

[S. *6bis* inserted by s. 4 of Act No. 12 of 1965, amended by s. 2 of Act No. 83 of 1969, by s. 24 of Act No. 62 of 1973 and by s. 3 of Act No. 4 of 1982 and repealed by s. 20 of Act No. 44 of 1993.]

7. Acquisition of land or rights in connection with licensed airports

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

- (a) in order to ensure that proper effect may be given to the provisions of any regulation made under paragraph (m) of subsection (1) of section twenty-two, acquire land and interests in and rights to and over land adjoining or adjacent to any airport in respect of which a license 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 airport in respect of which a license under the regulations has been or is to be issued.

[S. 7 amended by s. 46 of Act No. 97 of 1986 and substituted by s. 21 of Act No. 44 of 1993.]

8.

[S. 8 amended by s. 4 of Act No. 63 of 1981 and repealed by s. 20 of Act No. 44 of 1993.]

9. Establishment of airports on undermined or certain other land

(1) No airport shall be established-

- (a) on any undermined ground or within a distance of ninety-five metres from any undermined ground or any open mine excavation unless, in the opinion of the regional director as defined in section 1 of the Minerals Act, 1991 (Act No. 50 of 1991), such airport could be used with safety; or
- (b) on any ground which in the opinion of the Minister of Mineral and Energy Affairs may be required for purposes of mining or prospecting for minerals,

except with the approval of the said Minister.

(2) The Minister of Mineral and Energy Affairs may, subject to such conditions as he may deem necessary, delegate to the Director-General: Mineral and Energy Affairs or any other officer in the service of the Department of Mineral and Energy Affairs any power conferred upon him in terms of subsection (1).

[S. 9 amended by s. 5 of Act No. 63 of 1981 and by s. 4 of Act No. 4 of 1982 and substituted by s. 22 of Act No. 44 of 1993.]

10. Permission to use land held under any prospecting or mining permit or mining license for airports

Notwithstanding anything contained in the Minerals Act, 1991 (Act No. 50 of 1991), or any other law, the Minister may permit the use of land held under any prospecting or mining permit or mining license, for the establishment of airports or for landing places for aircraft, provided such use is not, in the opinion of the regional director mentioned in section 9 (1) (a), likely to interfere with mining operations or purposes incidental thereto.

[S. 10 amended by s. 5 of Act No. 4 of 1982 and by s. 46 of Act No. 97 of 1986 and substituted by s. 23 of Act No. 44 of 1993.]

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 or 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 willful 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 willful 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 persons 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 the Republic or the territorial waters thereof, or, in the case of South African 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 the Republic, have power to summon and examine witnesses on oath and to call for the production, and grant inspection, of books, logs, certificates, licenses and other documents.
- (3) The laws and rules governing the magistrates' courts of the Republic, 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 South African Police.
- (5) Nothing in this section contained shall be construed as affecting the powers or duties conferred or imposed upon judicial officers by the Inquests Act, 1959 (Act No. 58 of 1959).
[Sub-s. (5) substituted by s. 3 of Act No. 16 of 1992.]
- (6) Where an accident involving loss of life is enquired into under this section by a board consisting of a judicial officer only or by a board of which a judicial officer is a member, the inquiry held under this Act may be a Joint inquiry of the board and inquest of the judicial officer.
[Sub-s. (6) substituted by s. 3 of Act No. 16 of 1992.]

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 the Republic infringes in itself or in any part of it any invention, design or model which is entitled to protection in the Republic, an-, provincial or local division of the Supreme Court having jurisdiction 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 subsection (2) (hereinafter referred to as the deposited sum).
- (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 the Republic, or any lawful transit across the Republic, 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 the Republic, 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, the Republic 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 the Republic 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 the Republic or are exported from the Republic 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 State President by proclamation in the *Gazette*, with a view to the fulfillment 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 State 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 offense under this Act from or in respect of that aircraft, or if reasonable suspicion exists that such an offense has been committed or attempted or is about to be committed or attempted from or in respect of any aircraft by the owner, pilot-in-command or person in charge thereof, any member of the South African Police or any officer of the South African Defense Force may, pending the trial of the charge, detain the aircraft in question.

[Para. (a) substituted by s. 1 of Act No. 1 of 1984 and amended by s. 24 of Act No. 44 of 1993.]

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

15A **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 a 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 Offenses Act, 1972 (Act No. 10 of 1972), may, without derogating from any power which he may have under the Criminal Procedure Act, 1977 (Act No. 51 of 1977), at any airport or place in the Republic, without a warrant-
 - (a) search any aircraft which he 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 his opinion was used or is intended to be used for the commission, or in connection with the commission, of an offense under this section; and
 - (c) arrest any person who is found on board an aircraft contemplated in paragraph (a) of this subsection and whom he reasonably suspects of having committed an offense under this section or of attempting to commit such an offense, and the provisions of section 2H (2) of the Civil Aviation Offenses Act, 1972, shall *mutatis mutandis* apply for the purpose of his effecting the arrest.
- (4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offense and liable on conviction to imprisonment without the option of a fine for a period not exceeding ten years.
- (5)(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 such armaments, that they were not conveyed contrary to the provisions of the last-named subsection and were not intended to be used for any unlawful purpose; 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 offense.
- (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, within thirty days of the seizure thereof, satisfies the Minister, by means of proof in writing submitted through the Director-General: Transport, that he did not know that the aircraft was used or intended to be used for the commission, or in connection with the commission, of any offense, or that he could not prevent such use.
- (6) For the purposes of this section the expression "armaments" bears the meaning assigned thereto in section 1 of the Armaments Development and Production Act, 1968, (Act No. 57 of 1968), but with the exception of any such armaments while being conveyed in an aircraft-
 - (a) on behalf of the State;
 - (b) by or on behalf of-
 - (i) the Armaments Corporation of South Africa, Limited, established by section 2 of the Armaments Development and Production Act, 1968, or any undertaking or company established or promoted by the said corporation, or any member, director, employee or agent of that corporation or any such undertaking or company;
 - (ii) any person in his capacity as an officer or employee of the State;
 - (iii) any person for the purposes of the Defense Act, 1957 (Act No. 44 of 1957); or
 - (iv) any person who is entitled by virtue of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), to possess the armaments concerned or to have the armaments concerned in his custody.

[S. 15A inserted by s. 6 of Act No. 63 of 1982.]

16.

[S. 16 repealed by, s. 10 of Act No. 10 of 1972.]

17.

[S. 17 repealed by, Act No 44 of 2002]

18. **Jurisdiction**

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

19. **Penalties**

- (1) Any person who contravenes the provisions of, or commits an offense 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 or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

[Sub-s. (1) substituted by s. 4 of Act No. 16 of 1992.]

(2) If a person referred to in sub-section (1) is the holder of a license, 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 license, certificate or rating, or, if he is not the holder of any such license, certificate or rating, declare him to be disqualified from holding any license, 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 1 of the International Air Services Act, 1949 (Act No. 51 of 1949), or in the case of a licensee as defined in section 1 of the Air Services Licensing Act, 1990) proves to the satisfaction of the court that the contravention, offense or failure in question occurred without his order, permission or connivance.

[Sub-s. (3) substituted by s. 33 (3) of Act No. 115 of 1990.]

(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 the Republic 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 Department of Transport 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 State Revenue Fund.

[Sub-s. (2) amended by s. 6 of Act No. 4 of 1982.]

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 powers and duties of inspectors and authorized officers;
[Para. (a)*bis* inserted by s. 5 (1) (a) of Act No. 12 of 1965 and substituted by s. 5 (1) of Act No. 16 of 1992.]
- (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* the operation and provision of any air navigation infrastructure, air traffic service or air navigation service by the Air Traffic and Navigation Services Company established by section 2 of the Air Traffic and Navigation Services Company Act, 1993;
[Para. (b)*bis* inserted by s. 5 (1) (b) of Act No. 12 of 1965 and substituted by s. 17 (a) of Act No. 45 of 1993.]
- (b)*ter*
- (i) the setting of standards for the training, the grading and the licensing of staff concerned in the provision of any air traffic service or any air navigation service, whether or not mentioned in paragraph (b)*bis*;
- (ii) the designation of airways, advisory air routes, prohibited and restricted military areas, general flying and sporting aviation areas and other particular areas;
- (iii) the investigation of incidents reported in relation to the provision of any air traffic service, whether or not mentioned in paragraph (b)*bis*;
- (iv) the approval and, where appropriate, the design of let-down and missed approach procedures;
- (v) the approval for the siting of any off-airport air navigation infrastructure, whether or not mentioned in paragraph (b)*bis*, which is not situated on an airport;
- (vi) the certification of categories of operations at airports;
- (vii) the setting of standards for the maintenance of any air navigation infrastructure, whether or not mentioned in paragraph (b)*bis*, and for the training, the grading and the licensing of staff involved in such maintenance;
- (viii) the flight calibration of any such air navigation infrastructure;
- (ix) the maximum hours of duty of staff concerned in the provision of any air traffic service, whether or not mentioned in paragraph (b)*bis*;
- (x) the co-ordination of frequency allocations in bands of the radiospectrum allocated for aviation use;
- (xi) the co-ordination of aeronautical search and rescue operations;
- (xii) the publication of aeronautical information;
- (xiii) the licensing of entities concerned in any air traffic service, whether or not mentioned in paragraph (b)*bis*; and
- (xiv) any other matter in relation to the provision and operation of any said air navigation infrastructure, air traffic services or air navigation services the regulation of which, in the opinion of the Minister, may be necessary or desirable in order to promote the safe and orderly provision and operation of the said Infrastructure and services;
[Para. (b)*ter* inserted by s. 17 (b) of Act No. 45 of 1993.]
- (c) the issue, by a person and in the circumstances prescribed, of an order directing-
- (i) any aircraft intending to land at an airport to observe a specified flight path during holding, approach and landing;

- (ii) any aircraft intending to land at a particular airport not to land at such airport but to proceed to another airport specified; and
 - (iii) any aircraft to observe, upon take-off at an airport, a specified climbout 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 No. 12 of 1965.]
- (d)(i) the licensing, inspection and regulation of airports or other places set apart for the use of aircraft;
 - (ii) the scales of charges at licensed airports, except a company airport as defined in section 1 of the Airports Company Act, 1993;
[Sub-para. (ii) substituted by s. 25 (a) of Act No. 44 of 1993.]
 - (iii) the registers and records to be kept at airports 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 airports;
 - (v) access to airports and places where aircraft have landed and access to aircraft factories for the purpose of inspecting the work carried on therein;
 - (vi) technical, operational, security and safety standards in respect of a company airport as defined in section I of the Airports Company Act, 1993;
[Sub-para. (vi) added by s. 25 (b) of Act No. 44 of 1993.]
- (e)
- [Para. (e) amended by s. 5 (1) of Act No. 12 of 1965, by s. 25 of Act No. 62 of 1973 and by s. 7 (a) of Act No. 4 of 1982 and deleted by s. 25 (c) of Act No. 44 of 1993.]
- (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 license 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 license;
 - (h) the keeping and form of the register of South African aircraft;
 - (i) the conditions under which aircraft may pass into, within or from the Republic;
 - (j) the areas within which, or the airports at which, aircraft coming from any place outside the Republic shall land, and the areas within which or the airports from which aircraft shall depart shall depart to any place outside the Republic;
 - (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 license 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 airport;
- (n) the lighting and marking of obstructions at or within the prescribed distance from an airport 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. 2 (a) of Act No. 1 of 1984.]
- (nA)
[Para. (nA) inserted by s. 3 of Act No. 83 of 1969 and deleted by s. 2 (b) of Act No. 1 of 1984.]
- (o) the prohibition or the regulation of lights at or in the neighbourhood of any airport;
- (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) (f) of Act No. 12 of 1965.]
- (s) the prevention of nuisances arising out of air navigation or aircraft factories, airports 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 airports, whether by the installation in aircraft or on airports 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 licenses issued in terms of this Act may be called out in terms of subsection (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 license or certificate granted under this Act where it appears on an investigation that the license or certificate ought to be cancelled, suspended, endorsed, or surrendered;
 - (ii) produce any such license 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 No. 71 of 1962), or any fish as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973);

[Para. (z) added by s. 7 (b) of Act No. 4 of 1982.]

- (zA) the compilation of operational directives in respect of aircraft and airports 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 organizations, to persons employed on or in connection with aircraft or airports;

[Para. (zA) inserted by s. 2 (d) of Act No. 1 of 1984.]

- (5) An officer in the department designated by the Minister for such purpose shall keep in his office a copy of 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.

[Sub-s. (5) amended by s. 6 of Act No. 16 of 1992.]

- (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 a statement by a person who in that statement alleges that he is an officer in the department 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.

[Sub-s. (6) amended by s. 6 of Act No. 16 of 1992.]

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

[S. 22A inserted by s. 3 of Act No. 1 of 1984.]

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 State 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 APPLICATION 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 3bis

- (a) The contracting States recognize that every State must refrain from restoring to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.
- (b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provision of this Convention, specifically paragraph (a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft.
- (c) Every civil aircraft shall comply with an order given in conformity with paragraph (b) of this Article. To this end each contracting State shall establish all necessary provisions in its national laws or regulations to make such compliance mandatory for any civil aircraft(registered in that State or operated by an operator who has his principal place of business or permanent residence in that State. Each contracting State shall make any violation of such applicable laws or regulations punishable by severe penalties and shall submit the case to its competent authorities in accordance with its laws or regulations.
- (d) Each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of this Convention. This provision shall not affect paragraph (a) or derogate from paragraphs (b) and (c) of this Article.

[Article 3bis inserted by Proclamation No. 33 of 7 March 1986.]

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 an 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 any 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 maneuvering 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 maneuver 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 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 claims

- (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 licenses for each member of the crew;
- (d) its journey log book;
- (e) if it is equipped with radio apparatus, the aircraft radio station license;
- (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 license 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 license 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
Licenses of personnel

- (a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licenses issued or rendered valid by the State in which the aircraft is registered.
- (b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.

Article 33
Recognition of certificates and licenses

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

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 Remission 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 licenses

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

Article 40

Validity of endorsed certificates and licenses

No aircraft or personnel having certificates or licenses 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 licenses 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 licenses remain valid five years after the date of adoption of such standard.

PART II-THE INTERNATIONAL CIVIL AVIATION ORGANIZATION**CHAPTER VII
THE 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 33 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 following election.
[Para. (a) amended by Proclamation No. R.204 of 31 August, 1973, and by Proclamation No. 194 of 17 October, 1980.]
- (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 reelected. 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 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 XI, 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 States 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 organizations 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 organizations

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 non-conformity 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 Organization, declare as follows:

ARTICLE 1

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 nontraffic 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 H, 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 11 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 movements 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 authorized, 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

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

AMENDMENTS

- Aviation Amendment Act, No. 12 of 1965
- Expropriation Act, No. 55 of 1965
- Aviation Amendment Act, No. 83 of 1969
- Civil Aviation Offenses Act, No. 10 of 1972
- General Law Amendment Act, No. 62 of 1973
- Expropriation Act, No. 63 of 1975
- Aviation Amendment Act, No. 63 of 1981
- Aviation Amendment Act, No. 4 of 1982
- Aviation Amendment Act, No. 1 of 1984
- Transfer of Powers and Duties of the State President Act, No. 97 of 1986
- Transport Advisory Council Act, No. 58 of 1987
- Air Services Licensing Act, No. 115 of 1990
- Aviation Amendment Act, No. 16 of 1992
- Airports Company Act, No. 44 of 1993
- Air Traffic and Navigation Services Company Act, No. 45 of 1993
- South African Maritime and Aeronautical Search and Rescue Act, No 44 of 2002