

Bilateral air transport agreements

Workshop on introduction to Air Transport,
Air & Space Law and Regulation

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Negotiation & implementation of bilaterals

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BILATERALS

The Chicago Convention 1944

main topics: operational/technical/safety

main concept: **SOVEREIGNTY**

BILATERALS

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

(art. 1)

BILATERALS

“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...”

(art. 6)

BILATERALS

“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....”

cabotage

(art. 7)

BILATERALS

→ No entry, unless...

- Permit

- Bilateral

BILATERALS

- Intergovernmental
- Trade in services
- Political
- Commercial
- 'national airlines' = national interest
- Exchange of interests

BILATERALS

Exchange of opportunities → negotiations

Negotiating issues:

- Airline needs/interests
- Markets & traffic potential
- Network/hub-and-spokes
- Inter-airline cooperation
- Political
- Socio-cultural

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The Chicago Transit Agreement

2 'technical' freedoms:
overflight & technical landing

parties: 123 States

non-parties: a.o. Russia, Indonesia, China,
Canada, Saudi-Arabia

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US – UK Bermuda agreement 1946

US starting point:

- Capacity freedom
- Tariff freedom

UK starting point:

- pre-determination of capacity
- government control on tariffs

BILATERALS

Bermuda compromise:

- Capacity – ‘fair and equal opportunity’
- Tariffs – double approval

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'Fair & equal opportunity' ?

- Capacity closely related to traffic demand
- Fair and equal opportunity to operate
- Do not **unduly affect** competitor's services!
- 3rd/4th freedom is 'primary objective'
 - 5th/6th freedom!

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- Bermuda provision on

tariffs:

“Rates to be charged by the air carriers of either Contracting Party between points in the territory of the U.S. and points in the territory of the U.K....shall be subject to the approval of the Contracting Parties”

(rate-making power delegated to airlines through IATA rate conference machinery)

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Standard (Bermuda) bilateral:

- **Designation** – single/dual
- **Nationality** – ownership & control
- **Tariffs** – double approval
- **Commercial opportunities** – ‘equal’ (50/50?)
- **Routes** – intermediate/beyond points
(**annex!**)
- **Rights/‘freedoms’** – 5th freedom/cabotage?
- **Capacity/freq.** – number of svcs/type of a/c ¹⁵

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N.B. National ownership & control (O & C)

‘substantial’ O & ‘effective’ C ?

- (non-) use of the bilateral clause
- National legislation
- Why (not) a national airline (= national interests)

→ effect on M&A

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Negotiating a bilateral:

- Diplomacy and horse-trading
- Gov't – to – gov't and/or airline to airline
- Inter-airline cooperation
- 'Commercial agreements'

E.g. **Siberian royalties**

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Implementation

- Re – negotiation:
change of needs/circumstances
- Arbitration
- Termination (e.g. Canada)
- Enforcement (e.g. Ethiopia)