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REPORT ON THE SCANDINAVIAN AIRLINES SYSTEM (SAS)

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REPORT ON THE SCANDINAVIAN AIRLINES SYSTEM

INTRODUCTION

1. Among the aims and objectives of ICAO is to foster the planning and development of international air transport so as to meet the needs of the peoples of the world for safe, regular, efficient and economical air transport, to prevent economic waste caused by unreasonable competition, and to avoid discrimination between Contracting States. To that end the Council is authorized to conduct research into all aspects of air transport which are of international importance and to 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. The Convention specifically authorizes Member States to participate in joint operating organizations or in pooling arrangements, and the Council is even authorized to suggest to Contracting States the formation of such organizations.

2. In the light of these provisions, the Council has conducted a considerable amount of research into the various forms of cooperation in international air transport that exist or that might be undertaken. This research has dealt with matters ranging from the possibility of forming international operating organizations in the broadest sense to the various cooperative and pooling arrangements that are now in effect between individual airlines in various parts of the world; it has also touched on the questions of aircraft registration that appeared to be involved. Besides a number of Secretariat studies and internal working papers, the Organization has published Circular No. 28-AT/4, entitled, "Existing Forms of Commercial and Technical Cooperation between European Airlines in Regional Air Service", a study actually prepared for the Organization by the Institut français du Transport aérien (IFTA). The present Circular represents another facet of the Organization's research, in that it describes the Scandinavian Airlines System (SAS), the most important operating entity of multiple nationality yet achieved. The object of the present paper is a primarily factual description of the SAS entity as it now exists, with some notes as to its origins and the

problems encountered in bringing it to its present stage of development, as well as a brief and tentative appraisal of the extent to which SAS may represent a trend which countries outside of Scandinavia might wish to follow.

3. "SCANDINAVIAN AIRLINES SYSTEM Denmark - Norway - Sweden", to give it its complete official title, is the result of years of planning and experiment on the part of the three Scandinavian countries in the field of joint ownership and operation of air transport services. In its present stage of development, it represents the furthest advance hitherto marked along the road to complete cooperation in ownership and operation of an air transport enterprise by several countries, without abandonment of the national character of the constituent elements of the consortium. The enterprise, known as SAS, is a considerable one. In volume of traffic carried, the combined airline stands about twelfth among the great airlines of the world.* It has more than 6,000 employees, making it one of the dozen or so largest enterprises in Scandinavia. Some revenue traffic statistics for the past two years of operation (those ended 30 September 1951 and 1952) appear at Appendix 1 to this report.

PART I - HISTORY OF THE FORMATION OF THE SAS CONSORTIUM

4. The Scandinavian countries emerged from the second world war with very little in the way of physical aviation equipment, but with well developed plans for resuming internal and international air transport activities. Orders had been placed for the most modern transport airplanes, while in Sweden, as a stopgap, some interned B-17 bombers had been converted into civil transports. On 27 June 1945, less than two months after Germany collapsed, the newly formed Swedish Intercontinental Airlines (hereinafter called SILA) made the first post-war commercial flight across the Atlantic with one of these bombers.

5. The various Scandinavian national companies had a keen realization of the fact that they could further their interests to greater advantage by acting in concert than they could hope to do acting separately. The first field in which a common scheme was developed was over the North and South Atlantic. There, the Danish airline, Det Danske Luftfartselskab A/S (hereinafter called DDL), the Norwegian airline, Det Norske Luftfartselskap A/S (hereinafter called DNL), and SILA entered into a consortium agreement under date of 31 July 1946. This agreement called for contribution of capital and equipment to the single operating entity known as OSAS (Overseas Scandinavian Airlines System) in the proportions of 3 (SILA), 2 (DDL) and 2 (DNL). Their operations were to be conducted for joint profit so that rights and obligations, profits and losses, were shared between the three parent companies

* As of the beginning of 1952, it had some 46 routes serving 37 countries and 67 cities, and considerable expansion has taken place since that time. Three of the countries served were Scandinavian, 14 European and 20 extra-European. Twenty-three of the cities were Scandinavian, 25 European and 19 extra-European. The length of the route network was 88,500 kilometres, or 54,000 miles. At its inception, the consortium had 59 aircraft and has added several since; for its long-distance services, it uses primarily DC-6 type aircraft, of which it has about 26.

according to their respective interests in the consortium. In September, the first scheduled plane bearing the now familiar triple-shield emblem took off for New York.

6. It was not until about two years later, under an arrangement first established in 1948 and later extended under date of 25 June 1949, that the companies of the three countries were able to arrive at a somewhat similar agreement governing services on routes in Europe, the Near East and Africa. The Swedish participant in this new consortium, ESAS (European Scandinavian Airlines System), was not SILA, but Aktiebolaget Aerotransport (hereinafter called ABA), a company that had operated in Europe since before the war. It is probable that the pre-war history of operation on at least some of these routes, coupled with a familiarity with cooperative arrangements in force during that period, influenced the form of this second agreement. In any event, the ESAS agreement represented a pooling arrangement under which each company operated its share of a previously agreed traffic program arranged so as to divide ton-kilometres performed as nearly as possible in the proportions of 3, 2 and 2. Total traffic revenues went into a pool which was divided between the companies in proportion to traffic actually carried, calculated in ton-kilometres. Joint ticket and traffic offices were established in foreign cities. Each airline, however, continued as a separate operating entity, operating its agreed share of the international routes as well as its own internal services, and bearing all its own costs separately.

7. The chief advantages of the ESAS arrangement lay in the elimination of competition on a number of routes where it had been excessive, and in savings resulting from the consolidation of ticket offices and other activities abroad formerly carried on separately. Even so, the arrangement was by no means perfect and gave rise to a number of problems. Revenues and expenses from total aggregate operations had to be allocated first between the ESAS and the OSAS enterprises and the various internal services before the remainder could be allocated between the four national companies -- two Swedish and one each Danish and Norwegian -- according to the different formulae under the two agreements. Numerous inter-company billings were required, and these often gave rise to differences of opinion. Moreover, the national companies had suffered financial reverses of varying severity which made their capacity to participate in the consortium to the fullest extent somewhat uncertain.

8. In 1950, a comprehensive program was undertaken to obviate the operating difficulties and to provide a sounder basic capitalization and equipment procurement policy. Negotiations between the companies from January to March 1950 resulted in concrete proposals which were reviewed by the Ministers of Communications of the Scandinavian countries in May.

Further negotiations continued throughout the summer, with the result that the present consortium agreement, effective as of 1 October 1950, was signed on 8 February 1951. The nature of this agreement and of the organization created thereby will be considered in Part II of this paper.

9. Even after signature of the basic agreement, however, there remained much to be done in the way of governmental measures to bring the situation thereunder properly within the framework of the different national laws, regulations and operating concessions. This aspect of the work continued throughout most of 1951, and was completed by the signature of certain agreements on 20 December 1951. The governmental program will be reviewed in Part III of this paper.

PART II - THE PRESENT CONSORTIUM AGREEMENT AND OPERATIONS THEREUNDER

10. The agreement, for the first time, creates a coordinated operating entity with most of the characteristics of a single company. It eliminates the financial and accounting problems that had beset the former consortiums. It also saves a substantial amount of money by the elimination of duplicating functions. Certain other difficulties it has not been possible to overcome completely. Notwithstanding the close cultural and linguistic ties between the three Scandinavian countries, one can still sense the play of inherent national differences. A slight, but curious, instance of this is that the original signed version of the consortium agreement itself was drafted in English rather than in one of the Scandinavian tongues.

Analysis of the Agreement

11. The present agreement, dated 8 February 1951 and reproduced in full at Appendix 2, supersedes the above-mentioned OSAS and ESAS agreements, and regulates the entire activity of the consortium. Its salient features are summarized as follows, with references to the pertinent articles:

- a) Parties. ABA, DDL, DNL.
- b) Effective period. 1 October 1950 to 30 September 1975 (§ 18).
- c) Activities covered. All "commercial air traffic and other business in connection therewith," the parties undertaking not "directly

or indirectly ~~to~~ carry on, or support, or take any interest in any other activity of the kind carried on by the consortium." Each party has the right on request of its Government to require the consortium to "perform, on conditions to be agreed, domestic traffic which is not considered acceptable from a sound business viewpoint" (§ 1). Business activities shall be allocated reasonably between the three countries. (§ 3).

d) Participations and liabilities. As against third parties, the parties are jointly and severally liable. As between themselves, they share in assets, profits and liabilities in the ratio of 3 (ABA), 2 (DDL) and 2 (DNL). The capital of the consortium is 157.5 million Swedish Kronor (\$30, 350, 000 U.S.; £10, 850, 000) (§ 2, 4)*.

e) Property. Aircraft are regarded internally between the parties as owned by the consortium, which exercises, with regard to third parties, the power to control and dispose of the same, including the power to sell. Legal title for purposes of registration is retained by the separate parties, and it is contemplated that each type of aircraft shall be allocated for registration as nearly as possible in the 3, 2, 2 ratio. Real estate in Scandinavia is retained by the parties and placed at the disposal of the consortium on a lease basis. Other property is assigned to the consortium (§ 4, 5, 6).

f) Management. This is in the hands of a Board of Directors of 18, of whom six are appointed by each party. Offices of chairman and first and second vice-chairmen alternate between the parties. They, together with three other members of the Board of which each party appoints one, constitute the executive committee. In case of an equal vote, the opinion supported by the chairman prevails. A general manager acts as chief executive officer of the consortium; he may not be a member of the Board. Other personnel shall be appointed with due consideration to achieving a reasonable proportion between Swedes, Danes and Norwegians (§ 7 - 10).

g) Finances. The Board has power to determine the distribution of profits and to decide if, and to what extent, the parties shall be called on to make contributions to cover losses (§ 12).

h) Force majeure. Parties are mutually exonerated from liability for failure to fulfill provisions of the agreement caused by "war, danger of war, civil disturbances, blockade, catastrophic acts of nature, or similar circumstances" (§ 13).

* Capital of the several parties is:

ABA 67, 500, 000 Swedish Kronor (\$13, 050, 000 U.S.; £4, 650, 000)

DDL 36, 500, 000 Danish Kroner (\$5, 285, 000 U.S.; £1, 890, 000)

DNL 30, 000, 000 Norwegian Kroner (\$4, 200, 000 U.S.; £1, 500, 000).

i) Withdrawal. Fairly elaborate provisions are made for withdrawal in case of breach of agreement, insolvency, unwillingness to join a decision of the other parties affecting the extent of the consortium's activity, etc. In case one party withdraws, the others are entitled to the exclusive and continued use of the SAS name and insignia (§ 15).

The Nature of the Enterprise Created by the Consortium Agreement

12. The enterprise resembles an ordinary company to the greatest extent possible as far as management and operation are concerned. It differs from the more familiar forms of corporation in that it has no governmental charter conferring legal entity. A further difference is that the property of the enterprise is not completely vested in the consortium itself. Real estate is retained separately, and aircraft and equipment are placed at the disposal of the consortium in a manner that makes it possible to withdraw the same in case of national emergency. This will be more clearly evident when inter-governmental arrangements are considered (see paragraph 25, *infra*). Moreover, for reasons of national defense, the maintenance and technical ground services retain a certain degree of independence. Comparison is also possible between the consortium and a partnership of its three constituent companies. However, it differs radically from the ordinary form of partnership in that the individual partners are not active in the direct control of the day-to-day activities of the consortium.

13. On the whole, therefore, it seems best not to attempt to identify the consortium with any of the more familiar forms of commercial undertaking, but to regard it as a creature of the particular arrangement out of which it grew. The amount of specialized government action that has been necessary to bring the consortium into being (see Part III) is a further ground for not trying to apply any standard label. It may be noted in passing that the consortium itself is exempt from taxation in all three countries. This status is achieved, in Sweden at least, by the fact that the ordinary tax laws simply do not apply to this novel form of organization.

The Consortium as a Holder of Commercial Rights

14. Before passing to the operations of the body created by the consortium agreement, it will be convenient to consider how its peculiar legal construction has affected its ability to obtain operating concessions in foreign countries. The striking point here is that the difficulties created by its anomalous character seem to have been more than counterbalanced by the fact that, through SAS, three countries are negotiating in concert vis-à-vis the outside world. This has meant in practice that foreign countries have shown a greater willingness to grant concessions to the consortium than they might have shown to any one of its members, since the possibility of later having to deal with the other two did not exist. The tendency has been also :