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WORKING PAPER

THE RIGHTS OF AIRLINE PASSENGERS

Transport Series
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CONTENTS

	Page
INTRODUCTION	5
1. Origin and purpose of the document	5
2. Layout of the document	6
3. The two main points	7
CHAPTER ONE - THE GENERAL FRAMEWORK	8
1. Passenger air transport	8
Tab. I/1 - The scheduled flight market (1996 - worldwide)	8
2. Passenger air transport in the context of deregulation	9
Tab. I/2 - Rates of development of passenger air transport	9
3. Charter flight services	10
4. The <i>No-frills</i> airlines	11
5. The air traveller	12
6. Air transport and public policy	13
7. Protection of travellers	14
CHAPTER TWO - COMMERCIAL POLICIES	16
1. Business, commercial and fares strategies	16
2. The air ticket: legal aspects	16
3. The air ticket: operational aspects	17
4. Economic aspects of ticket management and distribution channels	19
5. The Frequent Flyer Programmes (FFPs)	20
Table II/1 - The main FFP services	22
6. The drawing up of fares and yield management	22
7. Community legislation with regard to fares	24
8. The development of fares following deregulation	25
CHAPTER THREE - COMPUTERIZED RESERVATION SYSTEMS	26
1. Computerized reservation systems: definitions	26
2. Computerized reservation systems: background notes	27
3. Computerized reservation systems: the market	27
Table III/1 - The main GDSs and their presence on the market	29
4. Reservations via the Internet and by computer	30
5. Computerized reservation systems: hosting and Community legislation	31
6. On-line reservation systems: current Community legislation	32

7.	The application of Community legislation and proposed amendments	34
CHAPTER FOUR - TRAVEL		37
1.	Travel problems: delays and cancellations in particular	37
2.	Overbooking	38
3.	Delays in the Warsaw Convention	38
4.	The legal aspects of <i>denied boarding</i>	39
5.	The IATA regulations	40
6.	The Community regulations	42
7.	Current amendments to regulation 295/91	43
CHAPTER FIVE - RUINED AIR TRAVEL		45
1.	Definition of the problem: the concept of accident and incident	45
2.	The Warsaw System	46
3.	The scope of the Warsaw System	48
4.	The carrier's liability in the Warsaw System	49
	Table V/1 - Current limits based on the various acts of the Warsaw System	50
5.	Current problems with the Warsaw System	50
6.	Future prospects of the Warsaw System	52
7.	National legislation	53
8.	Agreements between companies in the area of the standardisation of liability	54
9.	Community initiatives	55
CONCLUSIONS		57
CRITICAL NOTE ON SOURCES AND BIBLIOGRAPHY		58

INTRODUCTION

1. Origin and purpose of the document

This working document, which forms part of the 1998 research programme of the European Parliament's Directorate-General for Research, has been requested by the Committee on Transport and Tourism and has been drawn up within the aforesaid Directorate-General to provide the Committee with a documentary basis for its future work in this area, which has already assumed considerable importance in the positions frequently expressed by the European Parliament on air transport policy.

If the areas of deregulation and safety¹ have aroused considerable interest in the media, the Community institutions have paid equal attention to the rights of travellers² in terms of implementation, as components of **travel quality**, this being an essential part of **long-term mobility**.

The question of travellers' rights is closely tied up with economic ups and downs in this sector: deregulation has brought with it greater competition in terms of prices and a concentration of companies, not only in the form of company buy-outs, but above all, with regard to the area covered by this working document, in the more extended area of associations and the joint management of reservation systems. These phenomena pose objective problems to do with the transparent nature of the service offered on the one hand, because the discount fares, often relating to temporary promotions, scarcely reach the less alert public due to the approach taken by travel agents³, and on the other hand because the use of code sharing, which is becoming more widespread, makes it difficult for the traveller to know with which company he or she will actually be travelling.

To the problems of transparency of offer, which relate to the stages before travel takes place, we must add those relating to its execution; these include the problems of carrier liability for injuries to persons carried, problems which have been the subject of international agreements now generally regarded as inadequate. For certain aspects of traveller protection during the course of travel Community regulations have been introduced to fill some of the gaps in international regulations.

2. Layout of the document

In presenting this argument it has been the intention to follow an approach similar to that of the previous study in the same series devoted to *Protection of Tourists*⁴, to which this is to a certain extent related: to follow the process involved in purchasing and using the service.

Therefore, after an initial chapter to place the subject matter of the document in the context of the air transport sector, two chapters are devoted to the marketing of the transport service, in an attempt to provide information on ticket management, including information of a technical nature; it is this area which seems to be a key element in the relationship between passenger and carrier. On this basis we have sought to reconstruct the companies' fares and promotional policies, in addition to yield management policy which has now become the unknown master of the fate of travellers through all the stages that precede the fateful moment when they are invited to fasten their seatbelt. The third chapter is specifically devoted to the CRSs⁵ and to their offspring, the GDSs⁶ which are the intermediaries between yield management and the traveller: they are a segment of air transport which is now gaining complete autonomy from the companies, the future effects of which are likely to benefit the traveller.

The fourth chapter deals with the surprises a traveller may experience once he or she reaches the airport and before the boarding of the aircraft: delays, flight cancellations, overbooking. It is probably the point when the traveller is at his weakest psychologically: having left behind his home or office, the problem that now faces him is to complete his journey, whatever its purpose; and that journey demands great precision, especially if it involves a number of connections, because to miss just one connection will affect every subsequent link in the chain. Here, too, yield management is often the cause of problems, sometimes intentional ones.

The fifth chapter is devoted to accidents or, to be more accurate, carrier liability. Once the traveller has boarded, indeed even during boarding, it is possible, as in all areas of human activity, for an accident to occur which could have negative consequences of varying degrees of seriousness: baggage goes missing or is damaged, the passenger is injured or is transported to a celestial realm which can only be reached by a soul released from its body. What rules apply to the liability of the carrier? Many international regulations, above all the Warsaw Convention, come into effect, and these are supplemented by the IATA's General Conditions and by Community provisions.

The approach of monitoring the various phases in the relationship between the traveller and the carrier has prevented us from tackling the subject on the basis of regulatory parameters, which is the case for other documents in this series. In particular there is no single chapter devoted specifically to legal aspects. These have been examined as an essential part of the fifth chapter, since it is with respect to civil liability that legal aspects are most relevant. Anyone particularly interested in this area may start by reading that chapter, the first few sections of which reconstruct the general themes of the Warsaw Convention; anyone not particularly interested in this area, on the other hand, will still gain from reading these comments on what is a pillar of international aeronautical law, before learning of the many areas in which it is deficient.

3. The two main points

Two basic strands are interwoven throughout our treatment of passenger rights: **yield management** and the **Convention for the unification of certain regulations relating to international air transport**, otherwise known as the Warsaw Convention.

The first is a system of company management which aims to optimise profits per aircraft seat. As we will see later, it is the instrument whereby an airline becomes both player and referee in the match with the travelling public. To understand its potential, at least to the extent it is possible to penetrate an operating system of the most secretive of enterprises, is essential for the legislator because if, in a political system which recognises commercial freedom, it seems difficult to provide for the public regulation of a company management system, knowledge of that system can help safeguard a public policy that favours passengers, for it is the latter who are on the receiving end of yield management and who have to put up with its demands, even though they are usually unaware of the fact, from the moment they book their flights until they fasten their seatbelts.

The second, which has been grandly described as a pillar of aeronautical law, has given rise to a corpus of international regulations, currently referred to as the "Warsaw System". This, however, is in crisis: many of the conventions of which it is composed have not even been implemented because they lack sufficient ratification. Here too, as in many other cases of international law governed by economic considerations, conflicts of interest between rich and poor countries prevent the negotiated regulations from working. Community legislators wishing to make up for the deficiencies of the international system must come to terms with this pillar; indeed they have already done so, but will need to do so again if they wish to tackle fully the question of the rights of passengers in air transport.

CHAPTER ONE

THE GENERAL FRAMEWORK

1. Passenger air transport

Passenger air transport is a growth area, both worldwide and at a European level. Table I/1 provides the most significant data on passenger air transport in 1996, for airline flights around the world. In that same year, charter flights completed 31,580 million passenger kilometres on internal flights and 204,730 million passenger kilometres on international flights, giving a total of 236,310 million.

Table I/1 - The scheduled flight market (1996 - worldwide)⁷

DATUM	INTERNAL FLIGHTS	INTERNATIONAL FLIGHTS	TOTAL
Passengers (thousands)	970,900	408,700	1,379,600
Pass. x km (millions)	1,048,000	1,363,000	2,441,000
Pass./seats	67.3%	68.9%	68.2%

Table I/2 shows the growth rates over the last few years for scheduled and charter flights: it will be noted that international passenger air transport has experienced continuous expansion, particularly in the area of scheduled flights, while for charter flights the greatest growth has been on internal flights, with steady growth and some exceptional years, while international charter flights have had a sporadic development, some years exhibiting a fall in sales. Overall, during the last 5 and 10 years, charter services have developed more than scheduled flights, but it must be noted that in terms of passenger kilometres, charter flights account for only 8.8% of passenger air transport.

2. Passenger air transport in the context of deregulation

The deregulation of air transport, which is now a reality in the European Union, is generally taken into consideration in terms of its effects on the traveller, from the perspective of a general reduction in fares, whereas in some quarters concerns are expressed about a claimed reduction in the degree of safety. In fact its effects on the traveller are more complex and have not yet been fully defined, since the air sector in the European Union is undergoing a process of realignment with changed market conditions. The experience in the USA, where this sector has already adjusted to deregulation, may be taken as an example, though we must make allowance for the structural differences in this sector⁸ between the two sides of the Atlantic⁹.

Table I/2 - Rates of development of passenger air transport¹⁰

SERVICE	92/91	93/92	94/93	95/94	96/95	96/91	96/86
Internal scheduled	-2%	-3%	8%	5%	5%	2%	2%
International scheduled	12%	7%	9%	8%	9%	9%	7%
Total scheduled	1%	0%	8%	6%	6%	4%	4%
Internal charter	19%	26%	11%	8%	12%	15%	12%
International charter	17%	0%	1%	18%	-11%	4%	4%
Total charter	17%	2%	2%	17%	-9%	6%	5%

In the USA companies have restructured their scheduled flights on the basis of a radial system centred on an airport in order to make savings, both in terms of reducing overheads and achieving greater flight scheduling flexibility, thereby ensuring greater aircraft use. This system means that a traveller whose point of departure or destination is not one of the *hub* airports has longer flight times and a greater number of connections; to reduce waiting time, arrivals and departures have been concentrated in brief periods, with an increase in congestion at *hubs* and thus the greater risk of delay.

From the point of view of fares, under pressure from greater competition, companies have developed fares policies targeted at the different segments of the market, with the obvious effect of minimising the reduction in overall receipts. In practical terms these strategies have favoured reductions in fares on the main routes for the tourist segments, incentives of a different type for frequent flyers, and commission for travel agencies designed to get them involved in the

company strategies. Alongside these measures sophisticated yield management techniques have been developed, particularly in the area of the CRSs. The result, for the traveller, is a situation with very little price transparency: this may take the form of the best of the better fare offers (often linked to the availability of seats when tickets are purchased), a price reduction on the more important routes, and fewer monetary advantages, if not an increase in fares, on secondary routes. Increases in fares have also been caused by the concentration of airline companies when the new company has acquired a dominant share of a given route.

From the point of view of comfort on secondary routes, we have witnessed the use of less comfortable aircraft, while there has been a general increase in the disparity of services in the air and on the ground, between travellers in the various classes. Contrary to what was feared, the number of destinations offered has increased rather than decreased.

These phenomena are also encountered, though to a lesser extent, on the European market. In particular we have seen a development in the offer of new services, with the appearance of the so-called *no frills* carriers, that is to say airline companies offering low-cost flights on which the accessory services (essentially those on board) are reduced to the minimum, but on the continent of Europe another formula for flight service had already become established: the *charter* flight.

3. Charter flight services¹¹

A charter flight is a "*commercial flight chartered for a specific purpose and not listed in a public timetable*"¹². It is an air service operated by an entity other than an airline company (usually a tour operator), referred to commonly as a *charterer*¹³, for the transportation of certain groups of passengers, mostly tourists travelling on an *all-in* basis. In Europe in particular this definition has lost part of its validity with regard to the nature of the charterer, and the latter is now often an airline specialising in this sector.

Charter flights are not programmed¹⁴, even if in some cases they may be regular, and they are not *normally* accessible to individual passengers. In practice some of the seats are actually sold to individual passengers¹⁵ to ensure that the aircraft is full, and in some cases they operate passenger air services as an alternative to the scheduled services. Charter flights do in fact compete with the airline companies in two different markets: that of group transport and that of individual passengers. Their better established position in Europe makes them formidable competitors for the *no-frills* operators, as pointed out by the representative of one of the main airlines consulted in connection with the drawing up of this document.

Table I/2 shows clearly the more significant development that charter services have undergone compared with scheduled services, and the data on Europe is even more relevant: between 1991 and 1994 the average annual growth was 15%, with a peak of 20% in 1993, while in 1994 it was only 13%. This success is attributable to a greater capacity, compared with the airline companies, for adjusting costs to the demands of competition without sacrificing profits, and these profits showed constant growth both in overall terms and in terms of yield per passenger/kilometre. The market share of the charter sector is estimated at 50% of the number of passengers within the continent of Europe.

In contrast with what has happened in the USA, the European charter flight sector has responded well to deregulation of transport and has even gained from it, because it has 40 years of experience, during which time it has forged the best possible commercial relationships and associations, including the ownership of stocks and shares, with the tour operators; because it has succeeded in maintaining a significant price differential with the airline companies; and because the deregulation of air transport, which removes the legal distinctions between charter flights and scheduled flights, has in fact given the former the advantage.

This advantage gained by charter flights is due to the fact that, contrary to many forecasts, deregulation has not made it possible for the airline companies to crack the hard nut of the European charter market, that is to say the links between northern Europe and the traditional tourist destinations of the Mediterranean (Spain, Greece, Italy and North Africa), probably because of the solid relationships that exist between charter and tour operators¹⁶ and because of the operational flexibility offered by the absence of public timetables.

It is precisely this basic thrust in the traditional charter market which permits the development of flight-only services, and these now account for an average of 15% of the transport capacity in the charter sector. The sale of flight-only tickets takes place outside the Global Distribution System, but using computerized systems which are no less sophisticated.

4. The *No-frills* airlines¹⁷

In contrast with the charter airlines, which existed long before deregulation, the airlines dealt with in this section came into being at the same time or shortly before. As their slang title suggests, they are based on a very convenient price/service relationship, making savings on the second of those factors.

These airline companies target that section of individual travellers who, if travelling with other companies, would go for Economy Class at the lowest prices available: the advantage that the no-frills alternative offers is the equal or lower fares, based on the *use it or lose it* principle, that is to say there is no possibility of changing the reservation, that being the point at which the flight ticket is bought. This is also the principle employed for the best individual fares on scheduled flights.

Their strategy is based on the minimising of management costs¹⁸ and on the potential offered by yield management. With regard to the reduction of management costs, this relates to on-board personnel and thus the reduction of service on board to the minimum, but above all it concerns the issuing of tickets which on average costs between 15 and 30 dollars for printing, distribution and agency commission¹⁹: thus the no-frills companies normally sell so-called *ticketless travel*²⁰. A corollary of this policy is the prevalence of direct sales, but only one no-frills company claims to have no relations with travel agencies, reservation systems or any *interline* agreement: in general the no-frills companies also operate through the traditional sales channels, but to a limited extent. In practice the typical method they use to sell and issue entitlement to travel is as follows: the traveller books by telephone and pays by credit card, the company produces a simple sheet of paper listing the details of the travel booked and paid for and sends this to the traveller who produces this when boarding.

However, above a certain volume of business, ticketless travel present problems to the company itself, as demonstrated in the case of Ryanair, the most important no-frills company in Europe, which has not adopted the ticketless travel option, preferring to use traditional ticketing systems accompanied by a particularly sophisticated yield management system.

The case of Ryanair suggests that the no-frills model is a market entry model which will be phased out when the new company is established. Over a certain size, the no-frills company adopts operating methods similar to those of the scheduled airline companies, maintaining a fierce competitive approach to pricing, while the latter are adopting strategies similar to those of the larger no-frills companies in terms of reducing management costs and yield management. However, if there is a tendency for the distinction between scheduled and no-frills companies to become less significant in terms of operating methods, the difference in fares remains significant: the aforesaid TTI study looks at the fares of the three airlines in question on certain routes within the European Community, comparing them with those of their competitors: the resulting differences, expressed as a ratio, can be as high as 1:5.25²¹.

As we conclude this brief overview of the non-scheduled types of air transport, we must stress the different strategic position held by the charter and no-frills airline companies on the European market. While the former maintain their clear and distinct identity as a sector, the latter are tending to become assimilated with the scheduled airline companies. We have looked at the reasons for this different position which, from the point of view of the traveller, is of interest from the perspective of greater competition on fares proposed by the charter companies.

5. The air traveller

Having examined the market from the point of view of offer, it is now necessary to identify the demand, that is to say **air travellers**, to whose rights this document is devoted. This category is made up of *any person who, to reach a destination, makes use of air travel*, though the reasons for his travel may not be irrelevant, since they affect the process involved in buying the air service. A person travelling for business reasons will be less interested in price, since in many cases this is not his concern, and will instead be more concerned with the fastest connections; a person travelling as a tourist is likely to be more interested in "all-in" packages. As we will see below, the airline companies take into account reasons for travel when drawing up their fares strategies.

It therefore seems appropriate, for the correct placing of the air traveller, to recall the concept of *tourist* as already supplied in an earlier working document with reference to the *tourism* sector market:

"If an economic sector is taken to be the combination of a market and the technology which satisfies that market's demand for products and services, it would appear rather difficult to identify a common denominator in the technologies used by the undertakings involved in the provision of travel services, although the market itself is easier to define: it comprises **all those who travel or are staying outside their normal place of residence for whatever reason**. However, there is also an alternative definition based on the underlying purpose of such travel, under which the tourist market comprises all those who comply with the definition given in bold

above, but only for recreational or, at any rate, non work-related reasons. This distinction is based on a *social* approach to tourism which has alternately found favour in political and trade union circles and which conflicts with public measures to promote what is known as *conference* or *business tourism*, which involves travel for economic reasons"²².

The distinction between traveller and tourist is rather blurred and has more to do with the choice of service than with the position of the travellers in their dealings with the company during the provision of the transport service. The purpose of travel will affect the choice of service, but it may not be possible to define a precise correspondence between service and purpose of travel, at least as far as the tourist is concerned. Of the two main categories of flight service, *scheduled* or *charter* flights, the latter is specifically targeted at tourism, while the former is used for any travel purpose. However, even on scheduled flights purpose affects choice: choice of carrier, fare and travel options.

The choice of carrier is affected both by price and by the market segment held by the airline. The commercial decision to serve certain destinations which are geared predominantly for tourism implies customers who will be flying for that purpose: this is the case with some smaller companies, some of which are set up to provide links between customers' places of origin and regions, often outlying, for which tourism is a fundamental resource.

Some discount fares, which offer less flexibility of use and minimum periods of stay²³, are more suited to tourist travel, while the businessman will be more likely to choose options which provide greater flexibility, these services often being linked also to supplementary services that offer greater comfort on planes and at airports.

The tourist is provided with *all-in* travel, that is to say packages consisting of travel, accommodation and other tourist services. In this case the choice is governed by a number of complex factors, among which the transport service is secondary. Moreover, for this type of travel the tourist's counterpart is not the airline, but the Tour Operator who organised the package.

6. Air transport and public policy

Air transport policy, which is part of the wider *transport policy*, which is increasingly seen in terms of the integration of transport policies, could seem the area most directly involved for traveller protection. Indeed it is more exposed than other areas to the influence of the airline companies whose interests *differ* from those of the traveller, not because of any inherent conflict between these two typical parties to the travel contract, but rather because the requirements of flexibility imposed on the former by the increasing competition in the sector are difficult to reconcile, in many respects, with the demands of the traveller. That we are not dealing here with a conflict of interests is borne out by the sensitivity many airline companies have shown in certain specific areas of passenger protection, such as the increase in the financial limits imposed on a carrier's civil liability.

The effects of transport policy on the traveller cannot be analysed only from the perspective of the specific measures for his or her protection, but more importantly in terms of the consequences of the measures adopted on the general framework of the sector. The general direction taken by the major economic powers over the last two decades has been that of the deregulation of air transport: the United States and the European Community have adopted significant measures along these lines.

With regard to the latter, the deregulation of air transport was promoted in the so-called *third package* of June 1992 which includes three distinct regulations concerning: the issuing of licences on the basis of specific Community criteria²⁴; the fixing of fares, deregulated as of 1 January 1993²⁵; the deregulation of cabotage activities as of 1 April 1997²⁶. The basic element of this third package of deregulation measurements takes the form of the proposal relating to access to the market, enshrining the principle of air carriers' freedom of access to all routes between Community airports, and the complete elimination of restrictions applied with regard to capacity. Regulation No. 2408/92 implements the full deregulation of air transport, recognising the right of the Union's air carriers, as from 1 April 1997, to provide air transport on all routes within the Community.

7. Protection of travellers

Alongside the deregulation of air transport the European Community has paid particular attention to safety in order to ensure that companies do not compete by cutting corners in this area, and it is in this connection, and with a view to improving the operation of air transport in Europe, that attention has also been given to air traffic control and to congestion problems.

Safety and quality of service represent the first of the five fundamental rights of consumers, rights that are internationally accepted and recognised by the Union as constituting the objectives of its **consumer policy**²⁷:

- the right to the protection of health and safety;
- the right to the protection of financial interests;
- the right to the protection of legal interests;
- the right to representation and participation;
- the right to information and instruction.

For the purpose of translating these rights, the second and third in particular, into practice, the Union has concentrated on information and on the purchasing procedures.

The consumer's ability to protect himself is directly dependent on the information made available to him. It is therefore essential to improve standards of information relating to consumer products and services, bearing in mind that modern means of communication and computers can act as information tools, but can also have the opposite effect.

With this in mind the public policies aimed at consumers must strive for transparency of information and development of the corresponding services in order to enable consumers to assess the basic characteristics of the goods and services offered so that they can make an informed choice from among competing products and services, use those goods and services safely and in a satisfactory manner, and obtain compensation for any injury or damage caused by the product supplied or by the service received.

These objectives have been implemented, in the case of the air traveller, at two different levels. With regard to the transparency of offer the European Union has adopted certain measures, such as the directive on **travel, holidays and "all-in" packages**²⁸, which still relate essentially to tourists, and the **code of conduct in the area of computer reservation systems**²⁹, currently being amended to bring it into line with new requirements, including the sale of air services over the Internet and the extension of these systems to rail transport. In this area the problems of consumer protection are tied up with those of avoiding the distortion of competition.

Regarding damages suffered by travellers, certain international regulations, such as the so-called *Warsaw System*, have existed since shortly after the war, and have been progressively updated by measures such as agreements between the airline companies. These international regulations have been supplemented by others introduced by the Community, serving to fill gaps in the international provisions, in that the latter related exclusively to liability for material damages and not to liability for certain commercial practices the correctness of which was dubious, such as *overbooking*³⁰.

In these specific areas consumer protection finds its embodiment in the **tourism policy**, under which the Community has done admirable work in this very area of protecting the rights of that particular consumer - the tourist who is a customer not only of the transport companies, but also of other sectors, and therefore requires protection over a much wider spectrum. Even in terms of the transport companies, or to be more accurate when use is made of transport services, the position of a tourist is different from that of a person travelling for reasons not related to tourism, in a number of respects: from the point of view of the other party, in that in many cases air transport is sold by an intermediary as part of a more extensive service; from the point of view of the purchase process, in that the psychological position the tourist finds himself in when choosing is different from that of a person travelling for other reasons; and from the point of view of the offer, in that the tourist is presented with transport products targeted directly at him.

CHAPTER TWO

COMMERCIAL POLICIES³¹

1. Business, commercial and fares strategies

The process of deregulating air transport has resulted in greater competition and as a result in the reduction of fares, which is seen as an advantage for the traveller. Some people, perhaps adopting a somewhat critical view of the deregulation policy, maintain that this reduction in fares is to the detriment of aircraft maintenance and thus of safety. That question is outside the scope of this document whose purpose is to look at the economic interests of the traveller: what we wish to examine here is the *service/price* mix in the companies' commercial policies, that is to say their overall fares and promotional strategy, and which categories of travellers benefit most, or which categories, if any, do not benefit in any way.

Given the fact that the reduction of fares is the result of greater competition brought about by deregulation, we must first place it in the context of companies' commercial policies and seek to *generalise*³² behaviour, the latter clearly being a function of the particular market circumstances of each company. In general we can say that the fares policy is part of a mix of instruments³³ that cover the range between two extremes: *quality and extent of service* on the one hand, and *price* on the other. This mix of instruments will be gauged on the basis of the characteristics of each category of travellers so as to maximise the cashflow from each individual category. This means that it will not tend to increase the market share in each segment to the greatest possible extent, but to optimise cash-flow from each individual segment. Some companies, however, adopting a very aggressive commercial policy based on medium and long-term objectives, offset the cashflow from one category against another, thus accepting that expansion in one area will involve a loss: these are generally strong companies and this strategy is limited to certain lines. The policy normally followed by companies is very conscious of the profitability or yield of each individual flight.

It appears clear, therefore, that the analysis of rates, or rather of their formulation, can be carried out only after examining other components of the commercial policy: the distribution channels and promotion. The former require an exposition of key elements of the air ticket management system, and this is covered in the next two sections. The fourth section is devoted to the distribution channels and here it has been necessary to anticipate certain market considerations concerning the GDSs which will be dealt with in greater detail in the next chapter. The specific terms of reference of this document, focusing on the rights of passengers, do not include the subject of advertising which, for airline companies, is essentially of an institutional nature or is linked to tourist packages already dealt with in another working document³⁴; it does, however, examine the *Frequent Flyer Programmes* which represent a form of promotion targeted specifically and directly at a certain category of travellers. Finally we will consider the problem of fares.

2. The air ticket: legal aspects

The ticket is a travel document, "formally known as *passenger ticket and baggage check*³⁵, issued by a carrier or in the latter's name, and including the contractual terms and corresponding information, as well as the necessary vouchers for the flight and passenger service". The document referred to in the IATA definition is the combination of the two travel documents required by the Warsaw Convention for the passenger and the registered baggage. It may be examined from three different perspectives: legal, operational and economic.

From the legal perspective it is essentially a formal travel document, limited to providing evidence of the passenger's rights and the corresponding duties of the carrier. In this context particular significance is given to the relations between passenger, carrier and the agents between those two parties. From the operational perspective there are the problems concerned with formulating the elements of the relationship using some physical medium, usually paper. From the economic perspective there is the cost of distribution.

Since 1929, the Warsaw Convention³⁶ has stipulated the details that it is compulsory to show on air tickets³⁷: (a) indication of the points of departure and destination; (b) if the points of departure and destination are located in the same signatory State to the Convention, but the route includes stops in another State, one of these stops must be specified; (c) a note to the effect that if the passenger's final destination is a State other than the State of departure, or if a stop is made en route, the Convention is applicable.

The same details are envisaged for the registered baggage check³⁸, insofar as it is not combined with an air ticket. The purpose of these provisions is to ensure clarity regarding the applicability of the Convention's regulations on liability, and thus to specify the international nature of the journey. Nevertheless, other provisions serve to indicate that the air ticket (or the baggage checks) is simply of a probative nature, in line with the prevailing theory relating to travel documents. The passenger could be allowed to board the aircraft even without a ticket, but in that case the carrier would not be able to benefit from the limitation on liability contemplated in the Convention and this would mean that no carrier would allow a passenger to board without a ticket³⁹.

However, the probative nature of the ticket is not limited to the passenger's right to be carried, but is also proof of other accessory or instrumental rights that supplement the actual travel and not only that of the passenger: it is evidence of the rights that exist between one carrier and another, and in particular the financial rights relating to the issuer of the ticket; it is evidence of the registered number of baggage items, the overall weight of the baggage and the corresponding rights; in addition to the authority to board, which may also have policy implications.

3. The air ticket: operational aspects⁴⁰

The IATA has established models and procedures for the issuing of tickets⁴¹ and, in particular, has stipulated the contents in addition to the requirements of the Warsaw Convention. An IATA ticket must contain:

- **complete itinerary:** the airport of departure, the intermediate points at which the passenger has to change carrier, aircraft or class, or at which he or she must make a stopover⁴² and the destination airport;
- **details of the transport service:** flight number, class and status of the reservation (confirmed, request, waiting list, etc.);
- **price** of the complete journey covered by the ticket or by a number of combined tickets, expressed in the currency of the place of departure, or in the other currency stipulated in the applicable currency regulations, and any limitations on use of the ticket;
- **taxes** and other charges;
- **baggage allowance** expressed in kilograms or pounds and the number of registered items.

It should be pointed out that the ticket consists of a separate coupon for each section of the journey and involving one of the changes indicated in the first point above.

From the more specifically technical point of view, the air ticket has undergone a development from the manual to the current versions, and is expected to undergo further developments. This technological development is of interest to the traveller because it means better information on the services and obligations connected with the travel document, to the travel agents because the technological development of ticket management means a simplification of procedures, and finally to the airline companies because of the advantages this gives them in terms of yield management and the reduction of distribution costs.

The **manual ticket** is one written out on pre-printed forms, including the use of mechanised printing equipment, *following a reservation made without the use of computerized systems*. By 2000 this type of ticket should disappear completely. The **TAT/OPTAT ticket**, introduced in the early 1980s is partially pre-printed, and this includes part of the codes; it is then completed using computer equipment, but it will not allow for the insertion of a magnetic strip. This was introduced in the mid 1980s with the **ATB ticket** and the subsequent versions, ATB1 and ATB2, and has since been improved: the magnetic strip containing all the details relating to the flight facilitates boarding, and reduces costs and the risk of fraud.

Other technologies beginning to become established, and likely to dominate air ticket management in the future, are **ticketless** [travel] and **chipcards** (or smartcards). The first consists of a code given to travellers when booking by telephone⁴³, on the basis of which, when checking in, they will be issued with a boarding pass. As we have seen, this system, with which it is possible to reduce distribution costs and accelerate boarding procedures, though requiring special check-in software, is widely used by the no-frills airlines, but has also made an appearance on internal scheduled flights.

The **chipcard**, more widespread in Europe than in the USA, is a system particularly suited to Frequent Flyers, and consists of a prepayment card which, when swiped through a reader, charges the ticket cost to the microprocessor in the card⁴⁴. Among the airline companies that have introduced, or are currently introducing, this type of "ticket", we would mention Lufthansa,

though the latter's system does not permit the use of the chipcards as boarding cards, but only as tickets, KLM, British Airways and SAS. The advantage for the traveller is primarily the boarding time which is practically halved⁴⁵.

A very important operational aspect which is of particular significance in terms of the problems of denied boarding⁴⁶ is the link between the issuing of the ticket and reservation, confirmation of which is effected practically by the addition of the initials OK to the ticket. The great concern with the profitability of seats has led to companies requiring passengers to reconfirm their reservation when this has been made long in advance of the date of travel, for instance in order to take advantage of promotional fares or to ensure getting a seat. This type of requirement is based on Article VI, paragraph 6 (*reconfirmation of reservations*), of IATA's General Conditions and may cause problems in the event of disputes with the company following denied boarding, in that the passenger does not have evidence of confirmation.

4. Economic aspects of ticket management and distribution channels

Travel agencies are the distribution channel for 80% of air tickets sold, and in Europe more often than not they act as secondary intermediaries between the GDSs⁴⁷ and the end customer, playing a key role in the choices made by the latter. This explains their crucial importance in terms of the promotion of sales, an importance which the increase in competition has emphasised, affecting the level of commission paid to them.

This commission, advertising and promotion are thus included in the distribution costs which are put at between 15 and 30 dollars⁴⁸, representing a variable cost which, in terms of agent's commission component, is reflected in the ticket price. It would therefore seem useful to examine this commission more closely. In the EU today commission accounts for on average 13% of price of tickets sold, but it is even more significant if we look at how this component is made up: the basic commission is around 9-10% for national flights and 7-10% for international flights; in addition to this commission, payable on each individual ticket, there is commission in the form of incentives, calculated on the basis of the overall turnover produced by a given agency and with regard to the fulfilment of objectives set and growth in comparison with the previous year.

It is clear that under these circumstances the high distribution costs are borne by the end consumer. The introduction of new ticket management systems does not affect the agencies' commission and thus the price reduction margin is reduced to the elements not passed on to the price of the ticket. Chipcards are actually to the travel agent's advantage in that the GDSs are excluded from the sale, the involvement of the latter only being justified when the [issuing of the] ticket and the reservation occur at the same time.

From the consumer's point of view it would be useful to introduce in Europe and elsewhere a system for ticket sales employed in the USA: *the price of the tickets stated by the airline company is net of commission, and this is liberally applied by the agency when selling the ticket; in this way the agencies enter into competition with one another on the cost of their services.* However, it would seem difficult to introduce such a commercial practice to any effect, especially

in view of the fact that prices in this sector have already fallen: at best it might be possible to fashion legislation in this area so as to encourage this practice.

5. The Frequent Flyer Programmes (FFPs)

These are promotional schemes, with significant impact in terms of competition, aimed at gaining the customer's loyalty by offering him or her travel incentives, usually based on journeys already completed and targeted essentially at business customers; these have gained ground in the USA with the deregulation of air transport. The philosophy behind these programmes is that of making the airline seem more attractive in terms of price, the price/quality ratio and other factors of interest, taking advantage of either the natural predisposition people have to receiving gifts, the fact that participants in FFPs are normally travelling at the expense of their employer, or passing on the cost of travel to third parties, while the passengers themselves accumulate miles.

The development of this scheme in the US market raises a number of interesting points: originally it was introduced by the CRS Sabre to attract traffic to its network; subsequently it was adopted by other individual airlines. This scheme was developed in the USA in the 1980s where it met with significant success⁴⁹ and, following its introduction to international routes, it has been adopted in the present decade by European airlines, demonstrating its effectiveness in terms of competition.

The success of the FFPs is demonstrated by a survey of 520 US travel agents, of whom 81% said that their *business customers* took account of the possibility of accumulating further air miles for the FFP to which they subscribed, in more than half of flight purchase decisions. The same survey also showed that such programmes offered by airline companies were particularly successful if they provided a high number of flights from a given town⁵⁰.

In some FFPs the function of *loyalty* is accentuated by the reduced number of miles necessary to obtain a further advantage: for example, to obtain the first free flight one may need 30,000 miles, while the second requires only 20,000, so those participating in the programme are encouraged not to leave the scheme. However, the success of the FFPs, which has probably been beyond expectations, has also been accompanied by various management problems and even financial problems.

In a highly competitive air transport market, where the management of turnover per seat is a critical element, the obligations arising out of the FFPs can reduce the profitability of a seat, and this is all the more serious because of the difficulty of forecasting when, and on what flights, this entitlement to free travel will be exercised. For this reason methods to control the FFP commitments have been introduced to the CRSs to avoid, or reduce to the minimum, the lost profitability per seat resulting from free flights, for example by seeking to prevent free travel entitlement from being exercised on the better covered flights.

These facts did not emerge until some companies⁵¹ had already suffered significant financial losses as the result of having to honour commitments to an enormous number of free and discount flights all at once, flights to which their FFP participants were entitled, and this had negative consequences for the company's financial balance. The reaction of companies to these

risks is not limited to the yield management instruments, but has also involved amending the regulations governing FFPs with the aim of making it more difficult to accumulate miles and to make use of them⁵². We therefore witnessed a second phase in which the programmes became less attractive, and in which the progressive extension of the FFPs to non air-related services and products may be explained as a sort of compensation for the fewer flight benefits and as a way of channelling part of the accumulated miles to other benefits, thereby redistributing the costs of these programmes among a larger number of companies.

Table II/1 is of interest in terms of the services offered to participants in these programmes; this shows the development of the FFPs from programmes which were wholly air-related, to loyalty programmes which also included suppliers from other sectors, usually operating in the tourism or travel sector: the headings *non air-related goods* and *others* include services provided by car hire firms, tour operators, hotel chains, telephone companies and, to a lesser extent, the purchase of products of various kinds; in some cases the FFP miles from flight promotion schemes become a channel for other products⁵³. One wonders whether some FFPs may still be regarded as air travel-related marketing tools, or whether they have become promotional tools of a general nature.

This situation has attracted the attention of the authorities who have been conscious of the risks involved, both in terms of the financial sustainability of the airline companies, and in terms of the setting up of obstacles to market entry because of the high degree of loyalty to existing companies⁵⁴. These facts have emerged from a General Accounting Office (GAO) survey of travel agents, to which we have already referred above.

As yet no regulations have been adopted in this area⁵⁵, though it is thought that the exchange of miles between the participants of different FFPs will re-establish the normal conditions of competition between the airlines, and an airmile exchange market exists in the USA. Though this is not unlawful, it violates the FFP rules and the companies reserve the right to refuse to carry anyone who has obtained an air ticket using this market; the GAO is proposing banning this refusal option⁵⁶.

The European airline companies have introduced FFPs in order to respond to competition from US airlines when the latter have opened up these programmes to residents in Europe, and initially they had to overcome difficulties posed by the legislation of certain European States (including that of Germany) which banned such schemes but were unable to prevent their citizens from subscribing to the US programmes. Some European companies have formed associations with the US FFPs, but most European companies have now introduced their own programmes⁵⁷, and these have become well developed so that they do not differ from the programmes offered by the US airlines. Having had the advantage of learning from US experience, the European airline companies immediately adopted *the model of the second phase, the one that provides the greater control over the mile/benefit ratio and a form of FFP management which is integrated with yield management*.

Participation in FFPs by European residents has a long way to go to catch up with US levels, but one can foresee its development as of April 1997 when the deregulation of air transport is completed. In Europe, however, the greater competition between forms of transport and the

shorter distances involved, which mean that it takes longer to accumulate miles, may act as a brake on the development of FFPs.

Table II/1 - The main FFP services⁵⁸

	Annual number of long-distance business trips				Class of travel				Discount travel	
	1-4	5-10	11+	Total	First	Bus	Econ./disc.		Yes	No
<i>Cases</i>	62	30	16	108	4	66	21	16	17	90
Services										
Good mile/benefit ratio	19.4	20.0	37.5	22.2	50.0	22.7	9.5	31.3	17.6	23.3
Transferable miles	1.6	3.3	-	1.9	-	1.5	4.8	-	-	2.2
Use of more airlines	14.5	3.3	-	9.3	25.0	7.6	4.8	18.8	5.9	10.0
Superior FFPs	19.4	23.3	25.0	21.3	-	25.8	19.0	12.5	23.5	21.2
Use of less-limited ticket	3.2	-	-	1.9	-	3.0	-	-	-	2.2
Free flights	22.6	26.7	18.8	23.1	25.0	19.7	28.6	25.0	29.4	21.1
Non air-related goods	1.6	-	-	0.9	-	-	-	6.3	-	1.1
Use of Lounges	9.7	13.3	6.3	10.2	-	12.1	9.5	6.3	11.8	10.0
Others	8.1	10.0	12.5	9.3	-	7.6	23.8	-	11.8	8.9
TOTAL	100	100	100	100	100	100	100	100	100	100

6. The drawing up of fares and yield management

Fares policy cannot be taken in isolation from service, and in this respect the differentiation that exists in this area, depending on class of travel, is of particular importance. The commercial policy for the *First Class* category of travellers, who often travel at the expense of the companies they work for, is geared primarily towards service, and the promotion of this class of travel is focused on the conditions and comfort of travel⁵⁹ and on the services provided on the ground. Moreover the Frequent Flyer Programmes tend to be targeted at this category of traveller. It is the obvious intention here to maintain high fares, maximising turnover per passenger/kilometre. In the context of an aggressive commercial policy, First Class may be regarded as the category which, in a climate of fierce competition, compensates for the significantly discounted fares in

Economy Class. However, a fares policy is beginning to be introduced similar to that employed for the other classes of travel.

The drawing up of rates takes place on the basis of the rates drawn up by the IATA, the latter being adapted by a given airline company to meet its specific situation, which requires monitoring what competitors are doing in the area of prices. This, then, is how the *public fares* are arrived at, i.e. the fares that an airline charges without any discounts and with the minimum of restrictions⁶⁰. On the basis of these the airlines formulate the other discount fares which are normally subject to more restrictions. A well known European airline company informed the author of this study, in connection with group fares: "*fares for groups are examined on a case-by-case basis, depending on factors such as the number of passengers, how full the flight is at the time of the request, the final destination and the fares mix for the flight in question*". This in fact summarises the philosophy of yield management, according to which the group is taken into consideration solely in terms of its size on the basis of other factors that might determine the profitability of the flight from the point of view of revenue.

Therefore the crucial factor for drawing up fares, as already mentioned several times, is *yield management*. This is based⁶¹ on the flexibility of offer made possible by computerized systems and computer reservation services. Since it relies on sophisticated software, the development of which is itself an area of competition between companies, the principles on which it is based are relatively simple: each *class of seats*⁶² is divided up into *subclasses*, each of which is assigned a fare, starting with 0 which represents free seats, e.g. for FFPs, all the way up to full fare. Yield management is managed centrally (for each company there is a single office which manages the seats on all flights); depending on demand, seats are assigned to each subclass and, apart from seats already reserved, a seat may be transferred at any time from one subclass to another.

This means that the market sets the price at which a seat is sold; as a result two seats in the same class may be sold on different days at different prices, and it is not necessarily the seat sold first that cost less: if there is limited demand for that class, it may very well mean that prices fall. In general different prices will mean different restrictions, but even this is a decision for which the only governing factor is the market situation at the time.

It would seem, then, that the buyer is in a situation of very limited transparency, in which all the data on the market is known only to the airline company. In reality, even if travellers cannot see exactly where they stand in terms of the fares policy decisions of a single company, they can at least compare the offers (at a given point) of the various airline companies operating on the same route.

It will be appreciated that this is the position in which the consumer finds himself in the context of any purchase: the ability to compare prices on the market, but not to have knowledge of the price decisions of the various sellers. The problem in the area of air transport occurs on those routes for which there is no competition, where competition is limited, or where the route is operated as a public service commitment: in this case the absence of transparency is not compensated for by being able to choose between a number of carriers.

To conclude our overview of the fares that operate on the European market, it would seem useful to classify these along general lines: first of all there are the **more flexible fares**, also referred

to as *full* fares, which include those in economy class without restrictions and those in the economy classes⁶³; then there are **promotional fares**, that is to say discount fares or fares with restrictions⁶⁴, and finally there are the **special fares**, which are limited offers at a particular time.

7. Community legislation with regard to fares

The European Community has introduced legislation on fares, most recently with a regulation⁶⁵ adopted in the context of the third air transport deregulation package which does not apply either to flights linking the Community with non-Community countries⁶⁶, or to flights which are compulsory services.

With regard to the transportation of passengers the regulations in question govern the **passenger air fare**, that is to say the fares paid by a person using a flight service operated by an airline company, the **seat fare**, which is the rate paid by the charterer of an aircraft, and the **charter fare**, which is the fare paid by the passenger to the charter flight operator. For all these fares Article 2 of the regulations state that they include "*the sums payable and the conditions offered to travel agencies and other auxiliary services*".

In accordance with the deregulatory philosophy behind the third package, the regulations, which apply only to the Community carriers, guarantee freedom of fares, the only obligation, if stipulated by the Member State concerned⁶⁷, being to register the new fares before they come into effect⁶⁸.

A given Member State may decide to withdraw a *normal fare*⁶⁹ which is found to be excessively high, taking into account the fares structure for the route, the competition and the return on capital, or it may decide to block further fares reductions on a market, in a non-discriminatory way, when its fares are falling significantly, excluding seasonal and normal effects, causing general losses to all air carriers. These decisions must first be reported to the Commission, to the carrier and to the Member States involved⁷⁰. In the case of an interested Member State or the Commission giving notice of their disagreement within fourteen days, a consultative procedure will be opened, and this may be concluded with a Commission decision.

Apart from this procedure, the initiative for which is left with the States, the Commission, at the request of any party with a legitimate interest, may ascertain whether a given air fare constitutes one of the situations in which an interested Member State may adopt the decisions described above. The public control introduced by the regulations is therefore of an exceptional nature, designed to protect the consumer in the first case and the economic balance of carriers in the second.

Some final remarks may be made on these regulations, from the traveller's point of view. Though they have deregulated fares, they may have been over-concerned with protecting the commercial interests involved from what was regarded as excessive competition. Firstly we see the protection of the agencies: the definition of fares contained in the regulations, which includes agents' costs, makes it impossible to establish fares in the Union which are net of agents' commission, commission which would encourage competition between agencies for the services they provide⁷¹.

Even the power to block excessive reductions, allowing for the fact that this is permitted on the conditions indicated, is an imposed limitation of competition, to the detriment of the traveller.

8. The development of fares following deregulation⁷²

Over the last few years, air passenger transport has become more convenient and credit for the reduction in fares is attributed basically to increased competition. Certain factors clearly confirm this correlation: first of all the 20% reduction in revenue per passenger, which was the average reduction on Community routes between 1985 and 1995; secondly, the comparison between full fare increases between 1986 and 1996 in relation to the number of carriers operating on the 40 routes taken into consideration. For *business class* the increase over the decade in question was 36% on routes with a high level of competition and 48% on routes with little or no competition; the corresponding data for *economy class* was 28% and 46% respectively. The increases in the full fares on routes with a high level of competition correspond to a reduction in real terms, since in the period under examination inflation was 45% at a Community level.

However, competition has not yet had its full effect, in that the European airline companies have shown a preference for keeping the full fare rates relatively high and for taking advantage of the possibilities offered by yield management in order to introduce a large number of special discount fares. This phenomenon is clearly illustrated by the increased use of reduced price tickets, rising from 60.5% in 1985 to 70.9% in 1995, and this, together with the percentage of charter flights out of the total Community air transport services, i.e. between 50% and 55%, means that travellers buying full-price tickets can be put at only 5-10%.

However, this situation only applies if one takes the Union as a whole. In reality the market situations *of the national airlines* are very different and we can identify three types depending on the degree of competition: *active*, *less active* and *closed* markets. The first, involving fierce competition in terms of prices, are the German, French and Spanish markets, and the Rome-Milan service; the second, in which competition is minimal and has more to do with service than fares, are the Italian (excluding the Rome-Milan service), Portuguese and Finnish markets; and the closed markets, where national routes are managed as monopolies, are the Irish, Austrian, Greek and Dutch markets⁷³.

The European market is therefore divided up into four segments: the segment represented by **international flights**, in which only 27% of routes offer travellers the choice between two or more carriers, and thus effective competition on fares; the segment represented by **services within the Community and national flights operating in an active market** and the other two segments providing less active and closed national flights. Unfortunately, only 6% of routes within the Community and national routes are served by two or more carriers.

The situation is therefore not as good as it could be, and it is likely that the European air transport market needs further deregulation measures in this area.

CHAPTER THREE

COMPUTERIZED RESERVATION SYSTEMS

1. Computerized reservation systems: definitions

Before discussing this area, it would be useful to provide the legal definitions of some of the terms relating to the SIRs used in the text⁷⁴:

Computerized Reservation System (CRS): *a computerized system containing information about, inter alia, air carriers' schedules, availability, fares and related services with or without facilities through which reservations can be made or tickets may be issued to the extent that some or all of these services are made available to subscribers;*

Distribution facilities: *facilities provided by a system vendor to a subscriber or consumer for the provision of information about air carriers' schedules, availability, fares and related services and for making reservations and/or issuing tickets, and for any other related services;*

System vendor: *any entity and its affiliates which are responsible for the operation or marketing of a CRS;*

Parent carrier: *an air carrier which is a system vendor or which directly or indirectly, alone or jointly with others, owns or controls a system vendor;*

Participating carrier: *an air carrier which has an agreement with a system vendor for the distribution of its air transport products through a CRS. To the extent that a parent carrier uses the distribution facilities of its own CRS, it shall be considered a participating carrier*

Subscriber: *a person or an undertaking, other than a participating carrier, using, under contract or other arrangement with a system vendor, a CRS for the sale of air transport products directly to individual members of the public;*

Principal display: *a comprehensive neutral display of data concerning services between city pairs, within a specified time period, containing inter alia all direct flights by participating carriers;*

To these official definitions we would add the commercial definition of **Global Distribution System (GDS):** *a CRS separate from the internal system of an airline company.*

2. Computerized reservation systems: background notes

The CRSs came into being in the 1950s as internal systems within individual companies, which as technology developed meant that they increasingly became available to travel agencies and thus to other companies on the basis of bilateral agreements. Their history is an interesting example of how a commercial operating tool can become an independent activity in its own right. They first developed by way of the extension of their functions: from reservation systems to yield management systems, in addition to containing information on passengers and seat coverage. They thus became an essential tool for competition, in that they enable companies to improve their profitability in a deregulated market competing on prices. A further stage in their development was their shared use by a number of companies⁷⁵ and their extension to services other than transport. The penultimate phase was the so-called *dehosting*, that is to say their separation from the internal reservation system of one or more airline companies participating therein. This phase has been a crucial one, and will be examined in depth in the following section.

This progressive dissociation and the obligations imposed by US and Community legislation have eliminated the interest of airline companies in controlling the CRSs and we have now witnessed the start of the phasing out of their financial participation in the companies selling the systems. At the same time a commercial war has been fought, with important legal consequences, between the European CRSs and their US counterparts⁷⁶.

Today, and this is the final stage, the GDSs are vital channels of communication between the airline and the traveller, and they have become highly profitable companies which have attracted shareholders and investors from outside the air transport sector. The quotation of GALILEO on the New York Stock Market, which occurred in 1997, represents a further step towards the development of an independent economic sector.

The progressive departure of airline companies from the shareholders of the CRSs, the increase in their profitability and the requirements of competition are encouraging merger processes that indicate a shift towards an oligopolistic structure for the sector worldwide, with dominant participants at a local level, which translates into a quasi-monopolistic situation with regard to participating airline companies, but it is just as likely that the airlines will tend to resist an increase in the CRS charges implied by the market structure contemplated here⁷⁷.

3. Computerized reservation systems: the market

The situation of the GDS market in the USA is different from that in EUROPE: while in the former the large volume of air traffic makes it possible for individual companies to manage their own GDSs, in Europe there are two GDSs which take the form of joint ventures between a number of airline companies. The worldwide market is divided up as shown in Table III.1⁷⁸.

It will be noted that the first three GDSs account for almost three quarters of the sales outlets and over four fifths of terminals. The GDSs are distributed at a national level by the so-called *national marketing companies*, generally owned by the national airlines⁷⁹, which primarily perform technical tasks, ensuring connections between the GDSs and the users.

The GDSs are companies that achieve good balance sheet results and offer airlines services at moderate prices: on average their services claim 1% of the ticket cost in the context of the 20% required for covering the airline companies' marketing costs. However, there are complaints concerning the financial problem of cancellation of reservations which amount to almost 50% of reservations made. Consequently some GDSs now claim a minimum charge for any reservation, even if it is cancelled.

In most cases it is not only a matter of financial investment, but of processes of integration and diversification, on the part of both firms operating in adjacent sectors and the GDSs themselves in the context of a strategy of geographic expansion. Therefore the first mergers are occurring, involving delicate problems of competition, and it is on these that the public authorities have focused their attention⁸⁰.

The delicate nature of the problem lies not so much in achieving a dominant market position, but in close relations, including share ownership, between the GDSs and associated airline companies, which can cause real distortion of competition for other airlines. There is thus the problem of protecting all airlines, particularly participating companies⁸¹, from discriminatory practices, and the US and Community authorities have been attentive to this.

Table III/1 - The main GDSs and their presence on the market

GDS	Shareholder airline companies	sales outlets		terminals	
		number	%	number	%
AMADEUS (1)	Iberia, Air France, Lufthansa, SAS, Continental Airlines	33,293	26.3	93,147	23.1
GALILEO (2)	United Airlines, British Airways, Swissair, KLM USAir, Alitalia, Olympic Airways, Air Canada, TAP, Austrian Airlines, Aer Lingus	30,161	23.82	115,454	28.62
SABRE	American Airlines	29,277	23.13	119,546	29.64
WORLDSPAN	Delta Airlines, Northwest Transworld Airlines	14,102	11.14	45,104	11.18
AXESS	Japan Airlines	6,195	4.89	11,340	2.89
ABACUS	Singapore Airlines, Thai Airways and Cathay Pacific	4,200	3.32	10,500	2.6
INFINI	All Nippon Airways	6,195	4.89	7,700	1.9
GETS	SITA (3)	3,150	2.49		
TOTAL		126,573	99.98	403,271	99.93

(1) AMADEUS has the structure of a holding company operating across three companies that perform development, marketing and operational functions respectively. This GDS also provides tourist information on the flights of 700 participating companies, and on a vast range of transport, tourist and hotel services; the reservation services relate to the flights of 430 airline companies and 29,000 hotels; it also provides information and reservation services for some fifty car hire firms. This information has been obtained from the GDS Internet site: <http://www.sysl.com>.

(2) GALILEO operates in North America, Mexico and Japan under the name APOLLO. It provides information and reservation services for over 500 airlines, 37,800 hotels and 45 car hire firms and 47 tour operators or cruise organisers. This information has been obtained from the GDS Internet site: <http://www.galileo.com>.

(3) SITA is a telecommunications company specialising in air transport, established in 1949 by 11 airline companies.

The types of discrimination affecting a company can vary:

- **price**, when the GDS offers the associated companies a lower price than that offered to the others;
- **service**, when the GDS provides the associated companies with certain facilities from which the others are excluded;
- **security of data** if, thanks to certain facilities, a company is able to access data relating to other companies and their passengers;
- **display** of the flights of various companies on the screen: this is probably the most subtle discrimination, consisting of giving priority to the flights of a company depending on the order in which companies are displayed on the screen⁸².

Most of these forms of discrimination have their origin in *hosting*, already referred to in the preceding section. The CRSs used to host, and in part still host, the own reservation system belonging to a single company or a group of companies, to which access was open only to the employees of the latter; in some cases this took the form of a service which a large CRS offered to a number of smaller companies. Though this "cohabitation" did not create any problems as a general rule, in 1992 the American authorities had recorded some complaints, in that some CRSs maintained that the way they were set up "made it easier to obtain more reliable information and a simpler reservation from the host company than from other companies"⁸³. The US report on this indicated that this type of set-up "could adversely affect competition, resulting in the transfer of passengers, and thus of earnings, from the companies that did not control the CRSs to those that did control one, which would create unfair conditions for the sale of air transport services"⁸⁴. This explains why the authorities were inclined to promote dissociation, a move which, at the European level, has been expressed in Community legislation since 1989 and which meant that the two major European CRSs were designed from the outset as dissociated CRSs. It is this dissociation which really marks the beginning of what were given the name GDSs.

4. Reservations via the Internet and by computer

The Internet sites of airlines enable consultation of the timetables of their flights and in some cases those of the competition. A smaller number also allow booking, sometimes only for Frequent Flyers. As many act as GDS for their services.

Finally there are on-line reservation services that use the telephone, developed primarily in the USA.

These systems give travellers the advantage of immediate access to flight timetables, and thus make it easier to choose an itinerary than is the case through a travel agent's where the sales assistant acts as a filter between the screen and the customer, and where the need to serve other

customers reduces the time available⁸⁵. However, the main advantages are the economic benefits companies gain in terms of the cutting of distribution costs: a reservation via the Internet with a GDS as an intermediary costs just 2 dollars, via a GDS it costs 3.5 dollars, and by telephone it can cost up to 15 dollars.

However the airline companies have not yet taken full advantage of the possibilities offered by this outlet for their sales, for reasons to do with the security of data and because they have not yet found means of promotion other than the travel agencies. For this reason in the USA, whose airline companies have developed sales over the Internet more than their European counterparts, the proportion of Internet sales out of the total number of tickets sold is no more than 5 percent at best. Consequently, the lower distribution costs made possible by the Internet have not yet become a financial benefit for the traveller, for whom the Internet so far offers special fares for only a limited number of flights and destinations. Of more dynamic significance to the airline companies, however, is the use of the Internet when dealing with their FFPs, because the latter can be rewarded with points.

Despite the present uncertainty, the Internet is arousing attention: it may be used to sell the last available seats, and some travel companies are specialising in this area, as well as for auctioning tickets, but the author is not aware of this possibility having yet been used, though the theory has been considered in terms of optimising yield management.

As things stand, then, the debate on computerized reservations remains in the realm of the CRSs and GDSs, and it is on these that Community legislation is focused.

5. Computerized reservations systems: hosting and Community legislation

The question of hosting was not clearly formulated when the Community began to take an interest in CRSs in 1989 with regulations in the form of **a code of conduct in the area of computerized reservation systems**⁸⁶, the purpose of which was to resolve the problems raised by the CRSs in terms of distorting competition, but the introduction to which also addressed the interests of passengers, defining the problem in these terms: the "*improper practice in terms of denied access to systems, or discrimination in the area of supply, access to the data display system, or the unfair conditions imposed on participants or subscribers may represent a serious loss for air carriers, travel agencies, and ultimately for the consumer*". The regulations of 1989 were limited by incomplete knowledge of the problem or, what is more likely, by the absence of technical instruments for resolving the matter of hosting in a way acceptable to all. They nevertheless filled a void in the regulatory provisions represented by the absence of agreements between companies in connection with the acquisition, development and joint management of computerized reservation systems; this took the form of Article 85(1), of the treaty ratified by Regulation 2672/88. From the outset Community legislation has been based on a philosophy shaped by the policy of competition, with the aim of ensuring equal treatment for participating companies and of protecting them from harsh conditions. But it was with the regulations of 1993 that the legislation began to have a significant effect on the sector, and also began to produce positive results for protection of the consumer.

For a thorough examination of Community legislation in effect, it is necessary to refer to the debate on hosting that took place in Europe when the European Commission began to tackle its revision of the 1989 regulations. Though it fully appreciated the role played by hosting in connection with the problems of distortion of competition, the Commission doubted that dissociation would in itself be sufficient for eliminating practices that favoured the controlling companies, and took the view that the adoption of barring techniques (*Chinese walls* as they became known) might guarantee the hoped - for equal treatment. The European airline companies were involved in this debate, perhaps not only because they were concerned about distortion of the air transport market, but also because they were eager to support the two CRSs in which they participated, AMADEUS and GALILEO, against the US system SABRE which had already acquired 11 percent of the European market.

It is in this context that we must read the position expressed by the AEA in some of its letters to the Commissioners for Transport and Competition in March 1993⁸⁷: *"in view of the unfair advantages that might be enjoyed by competing companies, those subscribing to the AEA demand that the CRSs operating in Europe, and enjoying the completely neutral environment created by the CEAC and EEC codes of conduct, be required to dissociate ... [the Commission's position] is not acceptable to the AEA. If it is thought that a dissociated CRS is still able to offer favourable treatment to a controlling company, that same CRS might also evade all the mechanisms introduced by a Community code aimed at achieving the said objectives of dissociation. Secondly, in a dissociated environment the parent carriers could not automatically enjoy the current technical advantages. Thirdly, by requiring dissociation, the undue burden of statutory equality between the parent carriers and the subscribers would be transferred from the latter to the former who would have the burden of dissociating the system"*.

The debate at the technical level was a difficult one because no one was then able to say with any certainty whether the *Chinese walls* and the process of dissociation would work in practice and it was further complicated by the relations with the USA which feared, not without justification, that dissociation was a barrier to entry to the European market, in as much as this would mean high reprogramming costs for the systems and would therefore make the European market unattractive below a certain high percentage. In the end the solution adopted was that of the *Chinese walls*, accompanied by the separation of the company of the system vendor and the owner/carrier⁸⁸. The fact that after the 1993 regulations the airline companies started to phase out their stockholdings in the GDSs is evidence that they had begun to lose the competitive advantages that accompanied control of the systems and that the Community decision was therefore a good one⁸⁹.

6. On-line reservation systems: current Community legislation

Community legislation **applies to all the CRSs, anywhere in the world, that are offered for use and/or used in the Community.**

With regard to the clauses of the **contract between the system vendor and the participating carrier**, these may not be unreasonable conditions or conditions which, in light of their nature and in accordance with commercial practice, do not have any connection with participation in the CRS; indeed exclusive CRS clauses are banned⁹⁰. Furthermore, the rates and other conditions

applying to use of the system must not discriminate between the various participating carriers, including parent carriers. In addition to these bans, the code of conduct recognises that the participating carrier has the right to withdraw, the only requirement being that six months' prior notice is given once the contract has been in effect for at least one year, and that it pays the costs incurred by the vendor in connection with this termination of the contract.

Alongside this ban on an exclusive clause, the parent carrier is also prohibited from refusing to provide other CRSs, *on request and with the same degree of promptness*, with information on timetables, fares and availability, and from refusing to distribute its own services through them⁹¹. We would stress that this ban on refusal relates only to parent carriers and not to participating carriers: the reasoning here is that of avoiding the creation of dominant positions between the CRSs through the conduct of the carriers that control them, but the result is a better service for the consumer.

During **execution of the contract** the rules of conduct imposed on the carrier and on the system vendor are a mirror image of one another. The first has the obligation of providing the CRSs with *accurate, transparent and complete information*, without discriminating between CRSs, including those competing for subscribers, and information which is particularly suited to enabling the vendor to observe the classification criteria applying to data displayed.

For its part, the system vendor must ensure a prompt, accurate presentation of data which has not been tampered with for all participating carriers, taking into account the technical requirements governing the method of entering data chosen by the carrier and the standard formats of the system. Moreover, it is required to ensure that every participating carrier has the same functions and in particular to maintain a distinction, *in a clear, verifiable way*, between its distribution facilities, on the one hand, and the administrative, commercial and data storage functions of the carriers, on the other. The ban on transferring data of a personal nature on passengers to third parties not involved in the transaction (and thus in the first instance to other participating carriers) constitutes the specific details of the obligation of separation, the aim of which is to prevent any carrier from accessing data on the sales of its competitors.

Further specific details of this regulation are found in the series of provisions governing **display**, to which the attachment to the 1993 regulations is devoted. This display is in fact a crucial element in this area, both in terms of competition, and in terms of protecting the traveller: the system vendor must provide for the initial display of each individual transaction with the data supplied by the various carriers, *in a clear, complete, impartial and non-discriminatory manner, with regard in particular to the order of presentation stated in the attachment*. It is only at the request of the consumer that display of scheduled flights or non-scheduled flights may be omitted, or that the data displayed be based on departure times, arrival times or flight duration, but a request to modify the displayed information on the part of the consumer would seem to eliminate any liability of the vendor on the grounds of infringement of the code of conduct. Further regulations ensure the neutrality of the CRS in the display of fares.

The regulations also govern relations with the **subscriber**, on the part of both the carriers and the system vendors. The philosophy on which these regulations are based is that of ensuring that the subscriber has the greatest possible degree of freedom. Thus the carrier may not make the use of a CRS dependent on a commission or on some other incentive or disincentive for the sale or

issuing of tickets for its services, nor may it stipulate the use of a given CRS. Since these regulations affect relations between the airline companies and the agencies, the regulations disregard any conditions imposed by the latter in connection with the sale of tickets: thus the only ban that the agencies may impose is that relating to stipulating a given CRS.

As for the system vendor, this party is required to comply with similar rules to those laid down for the contract with the carriers, and their purpose is to exclude the creation of dominant positions⁹²; in particular the rules ban exclusive rights and the principle of equal treatment of subscribers is safeguarded: an integrated service must be offered to all subscribers. Finally, the contract *must* contain two provisions that forbid the subscriber from modifying the displays⁹³ and from tampering with the data supplied by the CRS.

The Commission has the appropriate powers of control and will accept appeals against any infringement of the code of conduct.

7. The application of Community legislation and proposed amendments

The assessment which the Commission's offices reach on the current Community legislation is positive, but with the modifications that those offices recommend from their experience. This experience includes both the points of view that can be concluded from the Commission's control activities, and the observations gleaned from contact with carriers, system vendors, subscribers and their associates, and finally the changes that one observes in the market and about which we have already spoken in the preceding sections.

The Commission's control activities include first of all an examination of the claims submitted to it. Since the 1993 regulations came into effect there have been 21 of these, of which 20 have already been prepared for trial: 6 relate to the favourable treatment which a CRS granted to its parent carriers, 4 relate to CRSs showing discrimination between companies in the area of fares; 2 relate to the security of data, 5 to the display of flights, 2 to access to the market, and finally one claim relates to the refusal of the US CRSs to provide foreign carriers with commercial information on internal traffic⁹⁴. Sixteen of these cases, only three of which were unfounded, had to do with discrimination in the form of favourable treatment, fares, the display of information and the refusal of information on US internal traffic. This fact may mean that such discriminatory practices are very widespread, or that the airline companies are more active in defending their interests than are other categories of users. It is likely that the second interpretation is closer to the truth, since the overall number of claims is very low in terms of the number of carriers, subscribers and transactions that the CRS sector has experienced during the period lasting more than three years between the 1993 regulations coming into effect and the date of the communication from the executive body, and in as much as the Commission's other control activities⁹⁵ would seem to confirm that essentially the regulations work well.

Although limited for statistical purposes, the cases that have occurred permit us to highlight certain significant problems and if we also take into account the problems that have arisen outside the control activities, we can draw up the following list of problems: the obligations of subscribers, fares, the display of flights in the context of *co-sharing*, passive reservations and advertising in the display screens.

One gap in the current code of conduct, pointed out by the consumers' and users' associations, has to do with the **obligations of subscribers**, that is to say the neutrality of travel agencies both towards the carriers and towards their customers. Indeed the current code of conduct, as we have already seen in the preceding section, stipulates that the subscriber must not tamper with the data supplied by the CRS, but the current wording of the Community regulations does not seem sufficiently detailed. The Commission's proposal⁹⁶ requires a specific attachment to govern the subscriber's conduct and to protect both the carriers and the customers. The carriers are protected by the ban on multiple bookings by the same passenger⁹⁷, and the obligation of immediately deleting a reservation in the event of a customer cancelling. This solves two yield management problems for companies. Establishing a legal obligation upon subscribers makes it possible to anticipate problems. However the author is of the view that the regulations should have provided a better definition of *double booking* by referring not only to the unique nature of the customer but also to that of the destination in a given period of time.

Nevertheless, the following obligations apply to travellers: reservations may only be made at the request of the passenger; the travel agency must ensure the correctness of the fare and may not issue a ticket until the seat has been confirmed.

The CRS **fares** have been the object of lengthy discussions with the interested parties in order to guarantee equal treatment of carriers, avoiding external restrictions on competition between CRSs. Moreover, the problem of fares is of a two-fold nature: it relates to those of the carriers, as the amount involved in transactions carried out through the CRS, and those requested of subscribers for use of hardware and software. The two problems are linked, since the airline companies complain that the incentives, in terms of discounts, granted to subscribers to promote the use of the CRS mean an increase in the fares they are charged. The Commission's proposal resolves the problems of fare discrimination between carriers, limiting the principle of equal treatment to the carriers alone, and considering the incentives given to subscribers as distribution costs. In this way a complete distinction is made between the fares applied to carriers and to subscribers, solving the problem at its root. Connected with the question of fares is that of **passive reservations** which is essentially the problem of the carrier's right to be informed of a reservation made via a CRS, for which a commission is charged, and to cancel it. The Commission's proposal does not change the existing regulations, but the executive has promoted the drawing up of a code structure for the reporting and cancellation of these reservations, and this has been adopted by the sector.

The displaying of **co-sharing flights** is a problem arising out of a change in the transport sector; there has been a recent proliferation of associations between airline companies, in many cases in the form of co-sharing in terms of flight codes. This is a practice which also favours the traveller, in that it improves the corresponding services, but it has also been subject to criticism in terms of transparency. A contribution towards eliminating this drawback may be found in adapting the criteria applying to display in the case of co-sharing. The existing regulations permit the display of no more than two flights, and in cases where the flights involved in co-sharing are greater than that number this requires making an arbitrary choice.

At the technical level a CRS has found a solution to the problem, but it is not without drawbacks. There is thus need for a legislative solution, and there are two possibilities for this: to permit the displaying of all flights involved (the actual flights and those indicated for the sole purpose of

commercial promotion), or to limit display to the actual flight. The first solution involves the risk of displaying the actual flight on the second or third screen, whereas the passenger normally opts for the first; the second solution has the overall effect of cancelling the advantages of co-sharing for the passenger. The Commission's proposal has not imposed a choice, but it showed a preference for giving the system vendor a right to make a non-discriminatory choice if the actual carrier has not indicated the two carriers who must appear in the display. *This choice seems more likely to favour carriers than to provide passengers and subscribers with full information.*

With regard to **advertising**, the possibility of including this in the display has been requested by the CRSs for the obvious reason that it would increase their revenue, and the Commission has resolved the matter at an administrative level, stipulating the condition that there must be a distinction between this and the information contained on the screen, in order to avoid distorting competition.

In its first reading⁹⁸ of the Commission's proposal, the European Parliament approved, amongst others, amendments aimed at strengthening protection of the traveller, especially in terms of the clarity of displays to which there is direct access, e.g. via the Internet.

The Council of Transport Ministers, at their meeting of 17/18 June 1998, reached an agreement on a common position which "*after it has been developed ... by the Committee of Permanent Representatives ... will be formally adopted in one of the forthcoming Council sessions*"⁹⁹.

CHAPTER FOUR

TRAVEL

1. Travel problems: delays and cancellations in particular

Air transport may involve a number of often significant inconveniences: the most frequent instances are delays, cancellations, overbooking, as well as physical injuries and the loss of baggage¹⁰⁰. Some of these are not always the fault of the airline.

The first two in particular may be the result of circumstances contrary to the wishes and not involving responsibility on the part of the carrier, as happens when they are caused by strikes and traffic congestion, or circumstances contrary to the wishes but involving responsibility on the part of the carrier, as happens when the delay or cancellation is due to technical problems as the result of poor maintenance of an aircraft, or to overuse of the latter¹⁰¹. Delays and cancellations may also be intentional, when in order to cover the remaining seats the departure is delayed, or a flight is even cancelled, because the coverage in terms of seat sales is not profitable.

The main causes of delayed and cancelled flights contrary to the wishes of airline companies, and not involving responsibility on their part, are strikes and traffic congestion. Strikes in the air sector, and in transport services in general, are a problem which is generally tackled in the area of regulations on union rights and of the expression of those rights in a way that is compatible with the main requirements of the company as a whole, included among which without any doubt is that of mobility. Traffic congestion too, often caused by strikes, causes crisis situations in the transport system: this second problem affects the whole organisation of the civil aviation sector, the distribution of routes, of time bands, flow intensity, *architecture* and the methods of air control. Strikes and congestion are phenomena of which the traveller is victim, but they cannot be solved in the context of a policy for the protection of rights; they require a broader sector policy and industrial relations policy.

It is important to remember, however, that both the Commission and Parliament have intervened on these matters, setting the problem in the context of improvement of the air traffic control system, the technical problems of which emphasise tensions of a social nature¹⁰².

For its part, Eurocontrol has recently improved its own traffic management system, achieving a net improvement in flight punctuality, but it is expected that the situation will inevitably worsen in the coming years because of the great rate at which traffic is developing¹⁰³ and the first signs of this regression were being recorded between 1995 and 1997¹⁰⁴. During the course of almost every month the percentage of flight delays in 1997 was 5 points higher than in 1995, and in the three years in question this peaked in June, whereas in January the effect on delays was minimal.

For this reason a special programme has been launched, ATM 2000 which, in contrast with the existing programme, does not only monitor flights in the area for which Eurocontrol is

responsible, beyond 8000 metres, but from take-off to landing, involving the authorities with jurisdiction in the States, and airport authorities in particular.

2. Overbooking

Overbooking¹⁰⁵ occurs when the number of confirmed reservations (and tickets sold) exceeds the number of available seats on the aircraft. The sophisticated yield management instruments we have already examined make it practically impossible, except on rare occasions, for such situations to arise due to errors at the reservation stage; on the contrary, airline companies calculate that a proportion of travellers who have booked seats do not "show up"¹⁰⁶ and, if they have already bought a ticket without restrictions, use it subsequently. This conduct causes a loss to the airline companies if they are unable to fill the unoccupied seats with other passengers from the waiting-list. Hence the practice of overbooking which finds a versatile instrument in yield management, the latter supposedly being able to avoid this problem.

The almost absolute reticence of airline companies in this area makes it impossible to illustrate with any certainty how overbooking is managed. On the basis of what we already know about yield management, however, we can surmise with a high degree of confidence that it manages overbooking¹⁰⁷ on the basis of the historical data relating to no-shows and to demand for seats. The soundness of the system depends on the accuracy of statistical research which makes it possible to calculate overbooking on the basis of no-shows; and the value of a management system will depend on how small a disparity there is between excess reservations made and the number of people who fail to take up those reservations. Obviously the objective would be to keep this difference as close to zero as possible, which would result in passengers being unaware of overbooking.

However, there are cases in which overbooking is not due to a commercial choice on the part of the airline company, but to objective operational reasons, the most frequent being the replacement of the planned aircraft, for technical reasons, with another which has a smaller capacity, the cancellation of a flight for technical reasons¹⁰⁸ and the delay of coinciding flights which makes it necessary to put passengers on a flight different from the flight originally planned. In certain cases liability for overbooking may also be attributed to the airline company: if, for example, the replacement of an aircraft is due to technical problems resulting from its poor maintenance, or if the delay in connecting flights is the result of too intense a scheduling of flights.

3. Delays under the Warsaw Convention

Delays are not fully regulated at a Community and international level. Article 19 of the Warsaw Convention, following the amendments made by The Hague Protocol, declares the carrier liable for the "*damages resulting from delays in the transport of passengers, baggage and goods by air*"¹⁰⁹, but the concept of damages adopted by the Convention in terms of delays is very limited.

For the purpose of carrier liability, delay has been defined as *the untimely fulfilment of the contract of carriage by air*¹¹⁰, not by the Convention, which is silent on the matter, but by legal

practice and theory, according to which a flight is regarded as *delayed* when the scheduled time has not been fulfilled on arrival, with respect to the time of the flight on which the passenger had reserved a seat¹¹¹, even if the carrier has put the passenger on another aircraft. Another problem that arises, once we have established which flight determines the reference flight time, is what that flight time in fact is: in terms of the flight time scheduled by the airline company, legal practice has declared null and void the general conditions - both of IATA and of non-participating companies - that limited the liability of the carrier with respect to scheduled flight times. If the flight is not a scheduled one, a solution proposed by legal theory is that of referring to the average duration of the flights of other carriers on the same route¹¹².

However, the delay thus defined is of importance for the purpose of liability only when the duration of the journey that a reasonable passenger might expect¹¹³ has been *exceeded unreasonably*. The interested associations have discussed what we should understand by *unreasonably* and legal theory proposes a table indicating what is a tolerable delay on the basis of a decreasing percentage of the scheduled flight duration¹¹⁴.

These damages arising out of a delay are not normally recognised solely on the grounds of the expected arrival time being exceeded, but only on the basis of the additional costs that the passenger must incur or the financial losses suffered as a result of the delay, and within those limits. In general this will have to do with costs connected with the loss of a connecting flight and will therefore mean hotel costs and the cost of replacing a ticket¹¹⁵.

It appears to the author that, in light of the nature of these damages, the considerations contained in legal theory on the degree to which delays are *tolerable* are merely of speculative interest, at least with regard to passenger transport: the cases of delay that the courts have been asked to consider¹¹⁶ are in fact clearly *intolerable*. Moreover, in the event of delays, the airline companies seek to provide their customers with connections, for instance by requesting the delayed departure of a flight to which the passengers on their own delayed flight need to transfer. In such cases the degree to which the delay is *tolerable* is in fact assessed by the airline company managing the departing flight on the basis of its own operational requirements¹¹⁷.

4. The legal aspects of *denied boarding*

Denied boarding includes all cases in which an airline company refuses to carry out this transport contract, that is to say allowing a passenger who has reserved a seat and bought the corresponding ticket to board a given flight. The main types of denied boarding are flight cancellations and overbooking.

Since refusal to carry out a contract is not governed by the Warsaw Convention, with the limitations on liability that that entails, it is necessary to distinguish denied boarding from delay in cases in which these two problems present similar characteristics. This is the case where the carrier proposes that a passenger board an alternative subsequent flight, because the flight on which he or she had a reservation has been cancelled or is overbooked¹¹⁸. It is therefore an offer of a service in substitution for the service agreed upon.

The question as to whether a replacement service constitutes a delay¹¹⁹ or is an *alternative*, and thus a refusal to fulfilment of a commitment, is not clear from legal theory, whereas legal practice tends to accept it as a delay¹²⁰. Anyone disagreeing with this interpretation is automatically invoking, in formal terms, the precise terms defining the air service confirmed to the passenger (date, time, flight number) and, in practical terms, the obligations assumed by the passenger in order to use the service, in terms of the arrival time for checking in¹²¹.

However, legal theory seems more consistent in its assertion that the replacement service may be regarded as a delay only if the replacement flight is cancelled for technical reasons and not for reasons of economic convenience. In the case of overbooking the term replacement service applies only to the service provided by the aircraft performing the confirmed flight (that is to say with the same flight number): in this case one cannot correctly speak in terms of a replacement service, but of an independent decision by the airline company regarding the technical resources to be used in carrying out the contract, and thus delay will exist because it fulfils the requirements for this default to apply, as we saw above, and not because of the theoretical or jurisprudential assimilation of what are essentially different facts.

Another case is that of a carrier replacing its own cancelled or delayed flight with another airline company's flight: it would not seem that this change can be considered a replacement service without the passenger's consent¹²².

In all cases in which denied boarding occurs, the Warsaw Convention does not apply and thus the carrier is liable in accordance with national law which does not normally impose any limit on liability for contractual default.

For the sake of completeness I would point out that the other cases of denied boarding give rise to varied treatment in court cases. The refusal of a pilot to allow a passenger to board because his or her condition (e.g. drunkenness, handicap or illness) puts safety at risk is in principle legitimate, but the justification of such a refusal has been assessed differently by the courts¹²³. These cases are also taken into account by IATA's General Conditions¹²⁴.

Denied boarding must not be confused with refusal to enter into a transport contract, a situation not governed by the Warsaw Convention, but one considered in the light of national legislation on contractual independence, transport contracts and public service obligations.

5. The IATA regulations

The **IATA General Conditions of Carriage (GCC)**, adopted by that organisation's 1970 General Assembly in Honolulu¹²⁵, introduced rules on denied boarding, assimilating cancellation with delay, including the former, which constitutes a refusal to fulfil an obligation, which is not governed by the Warsaw Convention, in the context of the limitations on liability contemplated in the latter, and having the effect of reversing the burden of proof that the Warsaw Convention placed on the carrier. This has to do with Article X, entitled *Flight times and cancellations*, the first two paragraphs of which are reproduced below¹²⁶:

"Carrier undertakes to use its best efforts to carry the passenger and his or her baggage with reasonable dispatch and to adhere to published schedules in effect on the date of travel.

If due to circumstances beyond its control Carrier cancels or delays a flight, is unable to provide previously confirmed space, fails to stop at a passenger's stop-over or destination point, or causes the passenger to miss a connecting flight on which the passenger holds a reservation, Carrier shall either:

- (a) carry the passenger on another of its scheduled passenger services on which space is available; or
- (b) reroute the passenger to the destination indicated on the ticket or applicable portion thereof by its own scheduled services or the scheduled services of another carrier, or by means of surface transportation. If the sum of the fare, excess baggage charge and any applicable service charge for the revised routing is higher than the refund value of the ticket or applicable portion thereof, Carrier shall require no additional fare or charge from the passenger, and shall refund the difference if the fare and charges for the revised routing are lower; or
- (c) make a refund in accordance with the provisions of Article XI;

and shall be under no further liability to the passenger."

This clause thus relates to all forms of denied boarding: delay, flight cancellation (including failure to stop at stop-over points) and overbooking ("*is unable to provide previously confirmed space*") and exempts the carrier from liability for damages caused when these facts are due to *reasons beyond its control*, leaving it up to the passenger to prove the contrary.

On the positive side it limits itself to reasserting the carrier's obligation to fulfil the transport contract, laying down procedures for the delayed service. Many courts have criticised the illegitimate aspects in that the Warsaw Convention, which presumes this liability¹²⁷ except in cases where the carrier has shown that it has adopted "*the measures necessary for avoiding the damage or that such measures were impossible*"¹²⁸, stipulates the invalidity of clauses aimed at exonerating the carrier¹²⁹.

Article VIII of the GCC also stipulates cases in which the carrier may deny boarding to a given passenger (or to baggage) for reasons which may be classified as follows:

- **problems with the police:** when the passenger does not have the necessary documents, or because it is necessary to respect the laws and regulations of the State of departure, destination or transit; when the passenger has not complied with the carrier's instructions and refuses to submit to a security check;
- **subjective problems:** when the passenger presents problems in terms of health, age or behaviour which require special assistance causing disturbance to other passengers or when such passengers are a danger to themselves or to others;

- **contractual problems:** in the event of denied payment of the ticket price, or because this has been purchased illegally, falsified in full or in part, reported stolen, and when the passenger cannot prove he or she is the true holder.

6. The Community regulations

It will be remembered first of all that the recent Community regulations on **air carrier liability in the event of accidents**¹³⁰ have extended the Warsaw Convention to all Community carrier flights, limited to injuries, and implicitly excluding [damage to] property, delays and denied boarding.

In the context of the second of these, the problem of overbooking has been tackled by the European Community in Reg. 295/91 of 4 February 1991 which establishes **common rules for a denied-boarding compensation system in scheduled air transport**¹³¹. The regulations apply to all flights departing from a Community airport, irrespective of the carrier's nationality, and may be invoked by holders of valid tickets, who have a confirmed reservation¹³², and who have presented themselves for check-in by the time stated in the conditions.

A preliminary obligation in connection with overbooking situations is that the carrier must establish the rules it intends to follow for transporting passengers in the event of an overbooked flight. The content of these rules, which must be declared to the interested States and to the Commission and be made available to the public at travel agencies and check-in desks, is at the discretion of the carrier, and the terms laid down in the regulations are expressed on a conditional basis: these are the prior exclusion of boarding for **voluntary [passengers]**¹³³ and "*priority boarding for legitimate reasons, such as persons with mobility problems, and unaccompanied children*"¹³⁴.

A traveller, voluntary or otherwise, who is denied boarding has a choice of three options: repayment of the ticket price in full for the unused part, carriage to the final destination¹³⁵ as soon as possible, or carriage on the most convenient date for the passenger. In any event the traveller is entitled to ECU 150 to 300, depending on whether or not the final destination is further than 3500 kilometres¹³⁶. This compensation may be limited to the ticket price and, with the agreement of the passenger, may take the form of travel vouchers or other services¹³⁷.

In the author's view, this compensation is not understood as a criminal liability, but as a contractual repayment of all costs, not precisely identifiable which the travellers have sustained on their journey, especially in the case of holiday travel, and the enjoyment of which has been badly affected by the disruption to the air transport service caused by overbooking.

To this financial compensation are added certain services which the carrier must define: a telephone call or fax to a communications centre, adequate refreshments during the wait, hotel accommodation for the nights the traveller is forced to stay, and any transport to the airport from which the replacement flight is to depart.

A passenger who has been allowed to board an overbooked flight, but travelling at a lower class than that for which the ticket was issued, is entitled to repayment of the difference. The carrier is also under obligation to pay compensation to a tour operator which is liable to the passenger who has been denied boarding, on the basis of Directive 90/314/EEC on package travel, package holidays and package tours. The tour operator is required to pay the passenger compensation without this affecting the operator's liability as defined in the said directive.

However, though certain instances might justify this, there are no regulations governing the opposite case to overbooking, i.e. the cancellation of a flight because the airline company does not consider it appropriate to run the service as a result of the low number of passengers. This is less frequently the case than overbooking and in general is covered up by technical explanations without giving any precise details.

If Article I of Regulation 295/91 does not expressly state that it applies to overbooked flights, some of its provisions would also be directly applicable to the cancellation of a flight: this is the case with the provisions of Article 4 relating to compensation for which overbooking is not a prerequisite for their application, and the text of this article refers in general terms to *denied boarding*. *Only the definition of the area of application of the regulations contained in Article I frees a carrier from the obligation to observe the said provisions in the additional case of a flight cancellation.*

7. Current amendments to regulation 295/91

The 1991 regulations met with some degree of success, the word *degree* serving to indicate that a lack of information on the regulations sometimes made it possible for airline companies to avoid paying the compensation and damages due, either in full or in part. Moreover the air passenger transport sector has undergone these changes over the last seven years, making amendment of the regulations necessary.

The new factors in this area are *co-sharing*, as a result of which a reservation may be confirmed by a carrier other than the one operating the flight, thereby increasing the margin of errors of reservations; *ticketless* travel means that passengers do not in fact have a proper document with which to exercise their rights, thus leaving them at the mercy of the airline companies; the requirement of *subsequent confirmation of a reservation*, a practice which has now become firmly established in order to avoid no-shows, the fulfilment of which requirement the passenger has no evidence of; and lastly there is the development of *non-scheduled flights*, these being excluded from application of the 1991 regulations. In fact, as things stand, these regulations protect passengers on scheduled flights against overbooking; those travelling on an all-in basis are protected, whatever type of flight they travel on, by the Directive governing this type of service: the only group of passengers who have no protection are those travelling on non-scheduled flights on an independent basis.

These reasons are the basis for the proposed amendment of regulation 295/91, submitted by the Commission in January 1998¹³⁸, which is awaiting examination by the Council following its approval at first reading by Parliament¹³⁹.

The text approved by Parliament reduces the limiting effect of the regulations on scheduled flights, and extends that effect on the flights of Community companies when the destination is an airport within the Union¹⁴⁰. In terms of contents, the text introduces clear provisions to strengthen the procedures for making known the rules that govern denied boarding; in particular it makes obligatory the criteria for determining priority in the case of voluntary [passengers] not allowed to board and in the case of passengers with valid reasons who are allowed to board¹⁴¹.

Furthermore, before an overbooking situation materialises, the carrier is under obligation to fill all available seats on an aircraft, the only technical limitations being those to do with load, at no additional charge to passengers allowed to board in a class higher than that for which their tickets were issued, or with repayment of the difference and compensation if the opposite is the case, subject to the carrier's right to deny boarding the aircraft in a lower class supplemented by entitlement to compensation if this is greater than that envisaged for denied boarding. When overbooking does take place, the provisions already formulated in the 1991 regulations are for the most part confirmed, but the compensation sums are higher, ECU 185 and 370 respectively.

Lastly, a consultative committee is set up and sanctions are introduced for carriers who fail to comply with the national provisions for implementation of the text.

CHAPTER FIVE

RUINED AIR TRAVEL

1. Definition of the problem: the notion of accident and incident

The starting point for defining the problem considered in this chapter is found in the concepts of accident and incident¹⁴². The term **accident** means:

"any occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which:

a. a person is fatally or seriously injured as a result of: being in the aircraft (1) - or direct contact with any part of the aircraft, including parts which have become detached from the aircraft (2) - direct exposure to jet blast (3), except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

b. the aircraft sustains damage or structural failure which: adversely affects the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except (1) for engine failure or damage, when the damage is limited to the engine, its cowlings or accessories; or (2) for damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin; or

c. the aircraft is missing or is completely inaccessible."

The term **incident**, on the other hand, means *"an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation"*.

The long definition of **accident** illustrates the connection between the event and the flight operation; the latter does not necessarily require take-off, but the simple fact of allowing persons to board the aircraft, which may mean no more than the crew members. The main requirement is the existence of injuries or damage. The concept of **incident**, on the other hand, does not require the existence of injuries or damage, but an adverse influence, or at least a potential one, on the safety of the aircraft.

Anyone can readily appreciate the damage that may be caused by an accident, even if in just a few cases it assumes the proportions of a catastrophe, which is the first mental picture the general public has when the word is used¹⁴³.

Less serious is damage resulting from an incident: excluding injuries or damage to the aircraft, which would qualify as an accident, an incident will involve only objects, primarily baggage.

However, in order for damage to be the result of an incident it is essential that the accidental event is one that jeopardises the safety of the aircraft; otherwise we would be dealing with an instance of **negligence** on the part of the *airline company, its employees or suppliers of services on the ground*. In addition to accidents and incidents there is a third category of facts likely to cause damage, but not injury, to the traveller. The damage included under this category, from the passenger's perspective, may be of a financial nature, e.g. lost baggage or a delay resulting in financial losses. Accidents, incidents and negligence pose the problem of airline company liability and the problem of compensation, or damages, payable to the passenger.

2. The Warsaw System

At the international level the carrier's liability is governed by the so-called *Warsaw System*, considered to be one of the two pillars on which international regulations in the aeronautical sector are based¹⁴⁴. This description is perhaps somewhat exaggerated since, as we will see, the System now seems to be in crisis: its value today is very often that of a uniform legal framework applied to liability, whereas the substantive regulations applied, particularly with regard to its limits and to compensation, have now become fragmented into different agreements and laws which apply at a regional level, even only to specific routes¹⁴⁵. Despite this, the System is still of considerable importance.

Its basis is the *Convention for the unification of certain regulations relating to international air transport* of 1929, generally known, and referred to in this document, as the "**Warsaw [Convention]**", which concluded negotiations at the two conferences in Paris (1925) and in the Polish capital (1929)¹⁴⁶. The purpose of the conferences and of the Convention was that of harmonising the different national regulations and imposing a limit on airline companies' exposure to claims for damages, thereby containing insurance premiums. The contracting parties had to face the fundamental problem of avoiding conflicts with the applicable law which was developing in the absence of a treaty, conflicts which could seriously jeopardise the development of civil aeronautics. The objectives of the Convention may be summarised as follows¹⁴⁷:

- to standardise national legislation systems in order to avoid unfairness in their application to similar cases;
- to ensure that the risks of catastrophes associated with an air accident might not depend solely on performance of aeronautical activities;
- to create a basis for insuring against air risk liability, which would not be possible without a limitation of liability;
- to make life assurance possible independent of carrier liability;
- to shorten dispute procedures and to make solutions easier to achieve;

- to restore the balance of the burden of liability on the part of the carrier;
- to protect a financially weak industry.

These reconstructed aims of legal theory coincide, in more general terms, with the declared aims of legal practice: to reduce scope for litigation and to permit the development of air transport by reducing insurance costs¹⁴⁸.

These might at first appear to be a simple justification of the wish to protect the interests of airline companies, but they are confirmed by the essential balance that the Convention adopts in its treatment of the two parties. It adapts the interests of the two parties to the transport contract, limiting the degree of liability of the airline companies, but reversing the burden of proof of guilt. On the other hand the *wilful misconduct or equivalent negligence*¹⁴⁹ of the carrier excludes application of the limits on liability.

The Warsaw Convention was followed by a series of further international acts which amended and added to the Convention, bringing about the *System*, the title given to this section. These acts are as follows:

- **The Hague Protocol** of 1955, ratified by 120 States¹⁵⁰, amending the Convention in terms of *travel documents*; these regulations represented a substantial rewording in a simpler, more up-to-date form, the *doubling of the limits* and the concept of *wilful misconduct or equivalent negligence* which is defined more precisely¹⁵¹.
- **The Guadalajara Convention** of 1961, ratified by 66 States, which supplemented the Warsaw Convention in terms of the contracting company's liability in cases where the transport is provided by another carrier: essentially it relates to charter flights in the context of an association.
- **The City of Guatemala Protocol** of 1971 has not yet come into effect because the necessary ratification has not taken place¹⁵²; in addition to introducing further simplification to the travel documents, this protocol objectively intensifies the carrier's liability, further increasing its limits, and introducing two important new factors: *the settlement inducement clause*¹⁵³ and the *domestic supplement*¹⁵⁴.
- The four **Montreal Protocols** of 1975 which amended the earlier acts in terms of the limits of liability, and the fourth in particular which specified that the Warsaw System did not apply to postal transport; of these protocols the first two only came into effect on 5 February 1996, while the third and fourth have not yet been ratified by a sufficient number of States. The United States has signed only the last two and has ratified none of them. Only nine Community States have ratified the four protocols¹⁵⁵.

These progressive amendments may be explained as the consequence of a difficult balance between the body of international law and that of the USA regarding the protection of passenger rights, especially in terms of the limits on carrier liability. The US standard of living and the particular trends displayed by jurisprudence in that country in terms of compensation for damages have meant that the Washington government has sought to impose higher levels than the

international ones, resulting, as we will see below, in the requirement that airline companies sign better agreements for their links with the USA¹⁵⁶.

3. The scope of the Warsaw System¹⁵⁷

The Warsaw System applies to the international carriage of persons and therefore excludes national flights. Furthermore it excludes international carriage governed by any international postal convention, the carriage of post and postal packages, test flights for the establishment of regular routes and flights operated under exceptional circumstances and outside the normal activities of an airline company. In addition, in terms of a flight's departure and destination, transport must take place between States which are signatories of the Warsaw Convention¹⁵⁸. Since not all States have signed either the Warsaw Convention or any other acts making up the System, legal theory and jurisprudence, at least with regard to The Hague Protocol are engaged in a debate on whether ratification of the latter also implies application of the basic Convention¹⁵⁹.

For the system to be applicable, other formal conditions must be present: the existence of a contract of carriage between the parties and the issuing of a ticket in accordance with the provisions of the System. It does not therefore apply to liability for damage or injuries caused to persons on the ground (for example if an aircraft falls from the sky) or to hijackers who are essentially passengers.

In practical terms, the applicability of the System is subject to another limitation in terms of its object which related exclusively to *certaines règles* [certain rules] of international air transport, that is to say it does not in general regulate the liability of the carrier, but applies only to certain events involving damage. Apart from these cases, the carrier's liability is regulated by national legislation: for example, *damage resulting from the cancellation of a flight is regulated by national law, while a delayed flight comes under the Warsaw System, on the basis of Article 19 of the Convention*¹⁶⁰.

Furthermore, national law also complements the Warsaw System when the latter is applicable. This is the case with national regulations that govern the aspects of relations between carrier and passenger for which the System, though applicable to liability for the event on the basis of the dispute between the parties, has not made specific provision in terms of regulations¹⁶¹. Thus national legislation already contains provisions that regulate the legal personality of the carrier and the latter's relations with its employees, the legal capacity to act in connection with the contract of carriage, the legal unfolding of the contract, and the way in which lists of passengers are drawn up.

The intense interaction that exists between the Warsaw System and national law¹⁶² requires an examination of the points of connection between the latter and the damaging events resulting from air transport, when the System is applicable. The possible points of connection are three: *lex loci delicti commissi*, that is to say the law of the State in which the offence has occurred, *common law*, that is to say the law of the State to which the injured party belongs, and that of the State of the offending party, and the *principle of nationality*, that is to say the law of the State in which the aircraft is registered.

The first criterion is one of a more general application, though it may pose problems when the damage occurred in a State other than that in which the offence was committed. In this case the law most favourable to the injured party is generally applied¹⁶³. When the unlawful act occurs in international space, that is to say outside the territorial jurisdiction of a State, the criterion of *lex loci* does not apply, and it will be necessary to resort to **common law**, where applicable¹⁶⁴. If it is not possible to do so, the **principle of nationality** will come into play, and one wonders whether this might be more widely applied, in that it provides greater certainty than the place of the offence, which may be the result of random circumstances and may, in some cases, be difficult to determine accurately¹⁶⁵. Another, less frequently encountered, connecting criterion is that of the **Responsible State**, applicable when the offence is committed by State employees in the exercise of their duties.

4. The carrier's liability in the Warsaw System

The main new features introduced by the Convention, and reinforced by the subsequent acts, is the presumption of the carrier's guilt when one of the facts contemplated in the Convention itself is found to apply:

- the death of the traveller, or injuries as a result of damage suffered on board the aircraft, during boarding and disembarking operations¹⁶⁶;
- the destruction or loss of baggage¹⁶⁷, or damage thereto, during air transport, understood as the period during which the baggage "*is in the charge of the carrier in the aerodrome or in any location in the event of landing outside an aerodrome*"; though non-air transport outside an aerodrome is generally excluded, transport provided "*in execution of the air transport contract in connection with loading, delivery or transshipment*" is regarded as coming under the cover of the aircraft¹⁶⁸;
- delay¹⁶⁹.

In none of these cases is the injured party required to prove the carrier's guilt; on the contrary, it is up to the carrier to demonstrate that it put in place "*the necessary measures for avoiding damages, or that it was impossible to do so*"¹⁷⁰. Under those circumstances it is not held liable, and the judge may qualify or even rule out liability if the carrier can prove that the passenger caused or even contributed [to the damage]¹⁷¹.

The provisions illustrated here are more favourable for the injured party than the national legislation governing civil liability in general. The compensation given to the carrier takes the form of a limitation of the sums payable as damages.

Over time these provisions have been reassessed on the basis of various acts making up the System, and the original designation Gold Franc¹⁷² has gradually been replaced by *Special Drawing Rights (SDR)*¹⁷³. The limits are to be regarded as maximum sums only if no higher limits have been agreed by the carrier and the passenger, and they do not apply in the case of *wilful misconduct or equivalent negligence*, that is to say if "*the damages are the result of an action or omission on the part of the carrier or its employees, with the intention either of causing*

*damage [wilful misconduct, author's note] or committed rashly and aware of the likelihood of the resulting damage [equivalent negligence, author's note] provided, in the case of an action or omission on the part of employees, it is also proven that the latter were acting in the exercise of their duties"*¹⁷⁴. Table V/1 shows the limits that apply currently.

The terms of carrier liability are combined with the right that the Third Montreal Protocol, not yet implemented, accords to signatory States to make additions to the compensation provisions allowed by the System without this involving excessive burdens or obligations on the part of the companies, taking into account the collection of contributions from the passenger. In effect this constitutes compulsory supplementary insurance cover on the part of the passenger.

Table V/1 - Current limits on the basis of various acts making up the Warsaw System¹⁷⁵

	Warsaw/The Hague Gold Francs	Guatemala City Gold Francs	Montreal Protocols SDRs
Injuries	250,000	1,500,000	100,000
Damage to, or loss of, baggage	5,000 (1)	15,000	1,000
Delay		62,500	4,150

(1) The limit indicated in the table refers to *hand* baggage; for checked-in baggage a limit of 250 Gold Francs per kilogram is provided.

5. Current problems with the Warsaw System

As pointed out above, the System remains one of the two pillars on which international air transport law is based, but it is now seen as somewhat dated because of the changes that have occurred in civil aviation and in the world economy since it first saw light in 1929, and in particular because of the difficulties encountered in bringing it up to date.

Civil aviation is no longer the weak industry it was in 1929; in addition to which the insurance sector has developed and become stronger over the intervening 70 years, and it is widely thought that the limitation on liability is no longer necessary for the survival of these two sectors of the economy.

On the fiftieth anniversary of the signing of the Convention, W. Guldemann was already listing other changes that had occurred: the disparity of the standard of living in different countries, the increasing diversity of their legal provisions and the complexity of these, the inadequacy of the limits contemplated in the Convention in industrially developed countries, and inflation which has served to highlight this inadequacy, the increase in litigation due to the *consumer mentality*, the greater complexity of legal cases¹⁷⁶ and that of the transport system¹⁷⁷.

However, the difficulty of reforming the System, which is also evidenced by the fact that many countries, including the main players, have failed to ratify the acts that have amended or supplemented the basic Convention demonstrates that the framework described by Guldemann involves significant conflicts of interest which are difficult to resolve. The main disparity of interests is between the industrially developed States and the others, but even between the industrially developed countries there is a disparity which has caused tensions, with the USA threatening to pull out of the Convention¹⁷⁸.

At the substantive level, the central economic focus is the provision of liability limits for cases of death and injury and the limits thereon. This focus of attention presents two aspects, one of an internal nature regarding the public policies on passenger protection, the other of an international nature relating to the aeronautical interests of the industrially developed and developing countries.

In some countries, and not the least significant ones, there are strong currents of public opinion to the effect that the existence of limits is incompatible with a correct public policy for the protection of passenger interests, but Tobolevsky points out that the severest critics of these limits are the lawyers who do not necessarily have the interests of passengers as a category at heart¹⁷⁹, whereas the passenger interest groups recognise the validity of the Warsaw System for passengers, though they recommend that the limits be increased¹⁸⁰.

The problem has to do with the great variety of the forms of damages in terms of death and injuries, depending on the economic and social status of the victim and the environment in which he or she lives. As a consequence the limits of liability do not permit complete compensation for the damages suffered by those passengers who fall in the category *above the average potential compensation level*, which makes it necessary to make provision for additional insurance cover. On the other hand, in the absence of limits, the carrier would be under an obligation to obtain cover for unlimited civil liability.

This question is considered in relation to the effect of insurance costs on the ticket in terms of the aforesaid *potential compensation*. With limited civil liability the effect is equally divided among passengers in terms of the maximum limit; in the case of unlimited liability, it is only the insurance costs that have an equal effect on tickets, while potential compensation will vary from one passenger to the next, thus advantaging passengers who receive compensation *above the average level*.

Marek Zylicz plays down this dilemma, pointing out that the additional cost per ticket for unlimited insurance cover would not be excessive, and that already the uncertainties about the Warsaw Convention, and in some cases the national obligations, are forcing airline companies to take out unlimited civil liability cover¹⁸¹.

As very often happens in economic matters at the international level, the disparate interests exist primarily between industrially developed and developing countries. To illustrate this disparity of interests, we might consider the frequently quoted example of a route linking an industrially developed country and a developing country, served by carriers from the two countries. Very probably the carrier of the latter, however efficient, will have a weaker financial structure; at the same time, the passengers of the former will be likely to receive compensation *above the average*

level, while those of the latter will be below that level. It is clear, therefore, that the position of the two governments regarding the question of liability will reflect the respective differing national interests: the government of the industrially developed country will be favourably disposed towards unlimited liability or to an increase in the limits; that of the developing country will be in favour of keeping the limits as they are and against increasing them.

6. Future prospects of the Warsaw System

If, however, we examine the countries that have signed and ratified the additional Montreal Protocols, we will note that the delay in their coming into effect is not attributable only to developing countries but, for different reasons, to countries in all categories.

Let us take the example of the Third Protocol, the one that increases the limits, particularly those for physical injuries. Its coming into effect is subject to ratification by 30 countries. By 8 November 1996 (the last ratification received) it had been signed by 33 States and ratified by 22. The composition per geographic and economic area is as follows:

- of the 33 **signatory States** 12 are members of the EU, 5 are industrially developed countries, one is a CEEC, 3 are Mediterranean or Middle Eastern, 4 are African and 8 are Latin or Central American.
- the 22 **ratifications** originate from 10 EU Member States, 3 non-Community industrialised countries, the CEEC state and the 3 Mediterranean and Middle Eastern states, 2 African states and 3 Latin American states.

The reasons for non-ratification, of course, are different. In particular it can be assumed that developing countries are reluctant to sign, let alone ratify, Montreal 3 because they regard the limits it contemplates as too high, while industrially developed countries do not sign or ratify it for different, contrasting reasons, the most likely of which are the following: pressure from their respective airline companies, but this should not be the prevailing reason; an agreed preference for other regulations or agreements, either national or inter-company and, linked to this, the wish, albeit a Machiavellian wish, not to strengthen the Warsaw System so as to favour the recognition of unlimited liability.

An authoritative current of opinion, shared by the ICAO¹⁸², expresses the fear that, if Montreal 3 cannot be brought into effect, the System will not be able to contain the growing discontent, being abandoned by industrially developed countries, and then ending in crisis, which will benefit only the strong participants and the lawyers, while the renegotiation of a new international convention could take decades for negotiation and ratification to materialise. This would mean depriving airline companies of any protection against passengers claiming substantial compensation.

However, the measures that the supporters of the Warsaw System invoke for strengthening it, apart from ratification of its amendments, seem to be precisely those that justify a disinterest in the System: the introduction of national regulations, recourse to the additional measures allowed by Montreal 3, inter-company agreements such as the *Montreal Interim Agreement* of 1966 and

voluntary action on the part of airline companies¹⁸³. There are two questions that this current of opinion appears not to ask:

- why is it that the States interested in creating a series of such measures, which presuppose the wish to expand carrier liability, cannot follow the simpler, and more immediate, path of ratifying the Montreal protocols?
- why is it that, once these measures have been created, they cannot revitalise the Warsaw System, rather than replace it, outside a harmonised framework at an international level?

The most appropriate solution would probably be the long-term one contemplated by the Legal Committee of the ICAO: a new convention to replace the existing one after 2000¹⁸⁴.

7. National legislation

In the meantime, many States have adopted their own regulations in this area to supplement those of the System and to increase the maximum levels. In Community States the situation is as follows¹⁸⁵:

- **Belgium:** the System has been extended to all flights and has been fixed at a maximum level of 100,000 SDR for all Sabena flights and those of affiliated airlines, and at 58,000 SDR for charter and 'aerotaxi' services.
- **Denmark:** the maximum has been increased to 100,000 SDR for all flights.
- **Germany:** for Lufthansa a maximum of DM 150,000 has been fixed and DM 320,000 for all national flights; in other cases the System is applied, the values of which are converted into DM.
- **Greece:** for national flights a maximum of 4 million drachmas has been introduced.
- **Spain:** a maximum of 3,500,000 pesetas has been fixed for all flights.
- **France:** a maximum of 100,000 SDR has been fixed for all flights, limited to the eventuality of death, while for other damages the System levels remain in effect.
- **Ireland:** a maximum level of 100,000 SDR has been fixed for all international Aer Lingus flights.
- **Italy:** a maximum level of 100,000 SDR has been fixed for international flights and 195 million lire for national flights.
- **Luxembourg:** the System has been extended to all flights and fixed at a maximum level of 100,000 SDR for all flights of carriers registered in Luxembourg.

- **The Netherlands:** the System has been extended to all flights and has been fixed at the maximum level of 100,000 SDR for all major carrier flights in the Netherlands.
- **Austria:** a maximum level of 100,000 SDR has been fixed for the national carrier and 430,000 schillings in other cases; insurance has been made compulsory.
- **Portugal:** for national services objective liability applies, and for all services there is a maximum level of 12 million escudos, the terms of the Convention being followed for baggage.
- **Finland:** a maximum level of 100,000 SDR has been fixed for flights the destination of which is a country that does not belong to the System, for national services and for all Finnair flights;
- **Sweden:** a maximum level of 100,000 SDR has been fixed for all air services;
- **United Kingdom:** the System applies to all air services with a maximum level of 100,000 SDR.

The Community States have adjusted the maximum levels, converging on the level of 100,000 SDR contemplated in the Third Montreal Agreement¹⁸⁶, or introducing maximum levels expressed in the national currency and adapted to the standard of living in a given country. However, the differences in terms of regulations are quite significant and mean a different treatment of accident victims who are subject to different national legislative systems; in many cases this means differences between passengers flying with Community airline companies.

8. Agreements between companies in the area of standardisation of liability

The international regulatory situation illustrated in the preceding sections has been a spur for filling in gaps, or for exploiting inherent weaknesses, through acts of a private nature which have their legal basis in Article 33 of the Convention, permitting carriers to introduce provisions of a general nature which do not contravene the Convention.

The primary candidates for inclusion in this category are the important **IATA General Conditions of Carriage (GCC)**, adopted by that organisation's 1970 General Assembly in Honolulu. These general conditions, which have the civil status of contractual clauses produced by one party, make allowance for application of the Montreal Interim Agreement and the Warsaw Convention, though the latter two acts are adjusted by means of certain exemptions from liability based on a, perhaps somewhat broad, application of Article 33 of the Convention.

In general the GCC re-establish the burden of proof on the side of the injured party in connection with transport not regulated by the Convention, and leave definition of the limits to the applicable law or, where legally permissible, to the independent judgement of each individual carrier.

Also affecting the types of transport governed by the Warsaw Convention on the basis of the already mentioned Article 33, the GCC provide for certain exemptions from liability the most

relevant of which, and one that has raised concerns on the part of the National Transportation Agency of Canada¹⁸⁷, has to do with exemption from liability for the death or injuring of a passenger whose age or physical condition were in themselves a risk factor for that passenger. The exemptions in terms of damage to baggage tend to reduce the carrier's liability for damage occurring under certain circumstances, and in particular provide for specific cases in which the passenger shares the blame, including damage to third parties.

It is worth noting that certain exemptions, which do not formally go against the Convention, actually have the effect of significantly countering the contents of the System where the latter remains applicable. This adverse effect is all the more serious in that the GCC, which are formally a contractual model made available to those subscribing to the IATA, and who have the legal power to supplement that model, modify it or even disregard it, are in fact equivalent to regulations from which the passenger cannot escape. The reason for this situation, criticised by the consumers associations, is the absence of international or national standardisation which opens up the way for the standard contractual treatment of carriers.

However, to a more limited extent, the 1966 **Montreal Interim Agreement**¹⁸⁸ and the 1995 **Kuala Lumpur Agreement**¹⁸⁹ must be seen as intercompany agreements. The former, entered into by 34 airline companies, increased the liability limits and applies only to passenger transport with a point of departure, stopover or destination in the USA. Instead of reversal of the burden of proof, this recognises the carrier's objective liability, the limits on which are fixed at \$75,000 and \$58,000, including legal costs, for death and injuries to passengers respectively.

The latter was signed at the IATA 1995 General Assembly in the Malaysian capital, and has been signed by twelve carriers, including the Community carriers Austrian Airlines, KLM and SAS. This agreement removed the maximum levels of liability contemplated by the System, making reference to the law of the State in which passengers have their place of domicile, but it has the serious limitation of the very small number of participating carriers.

9. Community initiatives

The situation described in the preceding sections is evidence of a high degree of regulatory uncertainty, and of fragmentation, not only internationally, but also at a Community level, and the European Community has started to show concern about this. In the third package it had already introduced compulsory civil liability insurance cover for air carriers¹⁹⁰. However, it did not specify the mechanisms for implementation, and was not therefore able to provide the rules governing liability with a uniform treatment compatible with an effective single market, eliminating the distinction between international flights, which are subject to the Warsaw Convention, and internal flights, a distinction which has now disappeared within the Community.

These requirements have recently been fulfilled by the regulations on *air carrier liability in the event of accidents*.¹⁹¹ These regulations apply to Community air carriers in the event of death or injuries to passengers on one of their flights. In other words the Warsaw System continues to be applied to the flights of Community carriers in terms of damage/injury and delays. The Warsaw Convention, which the regulations define as the combination of the original [Convention] and

of The Hague Protocol and the Guadalajara Convention, represents the reference text for the legal concepts not otherwise defined by the regulations.

One point which has been the object of detailed consideration in drawing up the text has been its applicability to the flights of Community carriers for flights whose point of departure or destination is in Community territory. The original intention was that it should also be applicable to these, but it became clear that the States that signed the Warsaw Convention cannot impose on airline companies of non-Community countries limits higher than those of the Convention. They have therefore given up extending to airline companies outside the Community the maximum levels contemplated in the regulations, but have nevertheless required that they inform their passengers, when the latter buy their tickets, that the maximum levels applied are lower than the Community levels, though there are no sanctions attached to this obligation.

As a consequence, the regulations apply to accidents for which a Community carrier is liable, wherever in the world an accident may have occurred. Moreover, the System continues to apply to flights operated by non-Community companies if the point of departure or destination is a Community airport.

With regard to content, the Regulations remove any maximum limits from carrier liability. Furthermore, it is only above 100,000 SDR that carriers may exclude or reduce their liability, providing evidence of having made every effort to avoid the damage or showing that such action was impossible, while it is still admissible to demonstrate that the passenger shared the blame. There are also provisions for a prompt advance payment of damages to those entitled to it, without this subsequently affecting the determination of liability, any share in that liability and the actual sum payable as damages. The regulations also stipulate a maximum compulsory insurance level of 100,000 SDR. In addition there are provisions for information to the passenger, particularly in the case of companies to which the Community liability provisions do not apply.

In this way an acceptable degree of harmonisation has been achieved with regard to the regulations on liability, not only for the purpose of ensuring that competition is not distorted, but also on the part of European passengers who should continue to consider the liability factors when choosing a carrier: in general they will be protected when travelling with Community carriers and with carriers that have signed the Kuala Lumpur agreement, or when travelling across the Atlantic using an airline which has signed the Montreal Interim Agreement. If they fly with other companies, even if it is very likely that the Warsaw System applies, the damages to which they may be entitled could be significantly lower than the real insurance value placed on their life.

CONCLUSIONS

In a working document whose purpose is to illustrate an argument, rather than to come up with solutions to its problems, there should not be any conclusions. However, during the course of this examination of the subject, problems have emerged and it is a natural response to offer some concluding recommendations, picking up on considerations already expressed on the preceding pages.

The starting point to be taken into consideration is **the purchase of the ticket and therefore fares**. This is an area where deregulation has already brought significant benefits for the consumer, thanks to the effects of competition. But since there is always scope for improvement, and bearing in mind the commission that travel agents receive on the final price, it would be useful to introduce the sales system used in the USA to encourage competition between agencies: *the ticket price indicated by the company is net of commission, the latter being liberally applied at the point of sale; in this way the agencies enter into competition with one another on the cost of their services*. At the Community legislative level an amendment of the directive on fares could be a more appropriate instrument.

Again on the matter of travel agency commission the fact that this is set *ad valorem* does not encourage agencies to adequately promote the lower-price options. However, it would be rather difficult to introduce legislation to limit the contractual autonomy of the parties.

Even the power to block excessive reductions, albeit on the conditions already illustrated¹⁹², which the regulations on fares grant to States constitutes an interventionist limitation of competition to the detriment of the traveller.

Rather, Community legislation should intervene, as it has for overbooking and carrier liability for physical injuries, to protect passenger rights in terms of flight delays and cancellations, especially since in many cases, as we have seen, these are deliberate non-fulfilments of obligations. Moreover, the way has already been marked out in this area, because even if Article 1 of Regulations 295/91 did not expressly state that they applied to overbooked flights, some of their provisions would still appear to be directly applicable to flight cancellations. This is the case with the provisions of Article 4 on compensation, for application of which overbooking is not a prerequisite, and the text of the article speaks in general terms of *denied boarding*. *Only the definition of the field of application of the regulations contained in Article 1 allows a carrier to escape from compliance with those provisions in the case of flight cancellations*.

A more complex problem, on the other hand, is that of carrier liability for delays, on which the extensive jurisprudence and legal theory relating to application of the Warsaw Convention might shed the necessary light. However, it does not seem that with regard to delays an adjustment of the maximum levels will be sufficient, as in the case of physical injuries; what is needed instead are proper regulations on compensation, not only monetary provisions as in the case of overbooking.

CRITICAL NOTE ON SOURCES AND BIBLIOGRAPHY

1. Community sources

The primary documentary basis in the area of air transport is made up of the acts of the various Community institutions which are normally available in all Community languages.

First of all *The European Union Treaty*, of which there are various editions: that used for this working document was the EUROPE¹⁹³ edition, *European Union*, a collection of Treaties, Volume I, Luxembourg, 1993.

The Official Journals of the European Communities report the regulations, draft regulations and resolutions of the European Parliament. The footnotes accompanying the text contain the reference of each act quoted.

Of particular interest are a series of Commission communications already referred to in the text, the references of which are repeated below:

- Commission Communication, *Impact of the third package of air transport liberalisation measures*, Com (96) 514 which represents an essential point of reference for the situation of the sector after deregulation and which, with regard to this document in particular, offers an overview of the problems affecting competition on Community air routes;
- Commission Communication, *Report on application of Council Regulation (EEC) 2299/89 establishing a code of conduct for computerized reservation systems (CRS)*, Com (97) 246, which accompanies the proposed amendment of the said regulations, and illustrates the problems that have emerged during its application: this is an important document for understanding the mechanisms for maintaining competition in the air transport sector and the first steps towards protecting the traveller at the time of purchasing the service;
- Commission Communication, *Congestion and crisis in air traffic*, Com/95/318, which is of importance in connection with the specific problem referred to in its title, and only by implication in connection with the problem considered in this document in terms of the occurrence of flight delays and cancellations.

Regarding Parliament's resolutions, the references to these have been given in the footnotes. For European Council decisions I have made use of the communications from the current Council Presidency, reported in the Bulletin on European Parliament Activities, edited by this institution's DG.I.

2. Other sources and basic literature

The important source here is the extensive series of regulatory provisions produced by the IATA, the International Air Transport Association, which covers most airline companies and serves as the focal point for decisions taken on fares, procedures and the code of conduct followed by companies when providing their services. Reference is made in particular to the GCC, the General Conditions of Carriage for passengers and baggage which, as illustrated in greater detail in the text, represent the clauses drawn up by a party and normally accepted by the airline companies. We would draw attention to the following from among this Association's many publications:

Passenger Services Conference Resolutions Manual, Montreal-Geneva, 1997 (17th), page 1214, which is a complete set of the basic rules recommended by the IATA and generally adopted by companies; this publication also contains the GCC;

Groevenenige A.D., *Compendium of International Civil Aviation*, Montreal-Geneva, 1996, page 982; this work, whose author is one of the directors of the IATA, is an essential list of the basis concepts and of what actually goes on in the air transport sector; among other things it contains a collection of basic international civil aviation texts, details of organisations in this sector, a glossary and a detailed bibliography.

A key work for studying the Warsaw Convention is the loose-leaf work by Giemulla, Schmidt, Ehlers, *Warsaw Convention*, (Commentary) London, The Hague, Boston, (Kluwer), 1994, an essential source for jurisprudence and for legal theory on this subject around the world.

Below are bibliographical details on the CRSs and on overbooking. For other subjects the reader is referred to the details provided in the footnotes

3. Bibliography on the CRSs

A study of particular interest on this subject is Humphreys B., *Les nouveaux développements des SIR - New developments in CRSs*, ITA (Institut du Transport aérien), Paris, 1994, in French and English, which presents a broad overview of the structure of the sector, how it is regulated and its prospects. I would also draw attention to:

- Fröling P., Godfroid M., "Examen de Jurisprudence: droit aérien communautaire 1986-1992", in *Revue de droit commercial belge - Tijdschrift voor Belgisch handelsrecht*, No. 5, Brussels, 1993, pages 467-488;
- Ligot M., "L'évolution de la politique communautaire de libéralisation du transport aérien", in *Assemblée nationale, Délégation pour les Communautés européennes*, No. 3111, Paris, 1992, pages 3-31;
- Derenne J., "Les systèmes de réservation informatisés pour les services de transport aérien face au droit européen de la concurrence", in *Droit de l'informatique et des télécoms*, No. 3, Paris, 1989, pages 25-33.

4. Bibliography on overbooking

Below is a list of titles and articles on this subject. As will be noted, most of these are articles devoted to other matters. It does not appear that specific studies have been carried out on this phenomenon:

- Lewis I., Talalayevsky A., "Travel agents: threatened intermediaries?" in *Transportation*, No. 36, 1997, pages 26-30;
- Office Fédéral de l'Aviation Civile, *L'aviation civile suisse en 1996*, Switzerland 1997, page 72;
- Morrison S., Winston C., *The fare skies: air transportation and middle America*, Brookings Fall, 1997;
- Grard, Loiec (compiler), "Dix ans de politique aérienne commune: bilan et orientations nouvelles", in *Revue des Affaires Européennes* 1997, No. 1, pages 3-8;
- Verburg P., "The little airline that could: tiny Westjet has done the impossible - whipped Air Canada and Canadian Airlines, and turned a profit" in *Can Bus*, April 1997;
- Miller, Lowry K., "Flying cheap in Europe: full deregulation of air travel looks like a bonanza for passengers", in *Bus Week*, March, 1997, page 50;
- Button, K.J., "Aviation deregulation in the European Union: do actors learn in the regulation game?" in *Contemporary Econ Policy*, January 1996, pages 70-80;
- Toy S., "Dogfight over London, and Paris, Rome, Madrid: with full deregulation slated for '97, airlines cut ticket prices" in *Bus Week*, August 1996, page 48;
- Miller K.A., "Storm over the English Channel: a fare war rattles carriers but ticketless travelers" in *Bus Week*, January, 1996, page 56;
- "Bandits at nine o'clock: despite a recent upturn in the fortunes of America's big airlines, the country's skies still favour the small and the nimble," in *Economist*, No. 17, 1996, page 57;
- Windle R.J., Dresner M.E., "The short and long run effects of entry on U.S. domestic air routes" in *Transportation*, winter 1995, pages 14-25;
- Borenstein S., Rose N.L., *Do airlines in Chapter 11 harm their rivals? Bankruptcy and pricing behavior in U.S. airline markets.*, working paper No. 5047, National Bureau Research, 1995, page 21;

- Baretje R., *Les agences de voyages agréées IATA-ATAF: parc et chiffre d'affaires 1985-1986* [= *IATA-ATAF approved travel agencies: numbers and turnover 1985-1986*], Centre des hautes études touristiques [= Centre for higher tourist studies], 1987, page 22;
 - Getschow G., Frazier S., "Changing skies: Texas Air's managers pushed deregulation, then put it to work; unlike rivals, Lorenzo team likes new climate, does anything to sell tickets" in *Wall Street Journal*, 1 March 1986.
 - Gottlieb D.W., "An automated teller, not a travel agent, may sell you a plane ticket in 1985: agents want Congress to overrule a Civil Aeronautics Board ruling to end antitrust immunity for ticketing agreements between agents and airlines" in *National Journal*, 14 April 1984.
1. Safety is without doubt a fundamental concern of the air traveller, but it is not dealt with in this document, partly because the aim is to focus on the traveller's "financial" rights, and partly because safety is a problem of the whole sector that also affects its employees and the whole of society because of the possible involvement of persons and property on the ground when air incidents occur, incidents which may often be very serious.
 2. The term *traveller* has been used in preference to *passenger* because the latter refers essentially to the stage at which the transport service reaches fruition, whereas the former includes users throughout the various phases of travel, as from the point of reservation; as we will see, this poses a number of problems regarding the traveller's rights.
 3. These, being paid on a commission basis tied to the ticket price, may be inclined not to provide the public with full information on the more economical travel possibilities.
 4. PE (DG IV), "Protection of Tourists", Working Document, *Transport Series*, W 12, 1995.
 5. Computerized Reservation Systems.
 6. Global Distribution Systems.
 7. This table has been produced on the basis of data contained in the IATA's *World Air Transport Statistics*, Geneva, 1997, pages 8-10.
 8. The main differences are as follows: the greater size of the US market; shorter "internal" flights in Europe; a more developed "charter" market in Europe; CRSs belonging to a single company in the USA, while in Europe they belong to a number of companies; intermodal competition over middle distance routes in Europe; greater public ownership of airlines in Europe.
 9. The characteristics of air transport in the USA are taken from PE-DG IV, "Social consequences of deregulation and liberalisation in the transport sector", Working Document, *Transport Series*, TRAN 101, 1997, pages 38-46.
 10. Cf. preceding endnote with regard to source. The percentages refer to kilometres per passenger.

11. This paragraph is based largely on the TTI (Travel & Tourism Intelligence) report, "Charter airlines in Europe", in *Travel and Tourism Analysis*, 1995, No. 4, pages 4-19.
12. Groevenenige A.D., *Compendium of international Civil Aviation*, IATA 1996, page 365. The definition quoted here is that of the **Charter flight** entry in the glossary which in English reads: *a revenue flight for a specified purpose and not listed in a published timetable*.
13. In the USA it is more common to use the expression *indirect air carrier*.
14. Programmed flights, i.e. published in an official timetable, are referred to as *scheduled* flights, and the others as *non-scheduled* flights.
15. *Flight-only* or *seat-only*.
16. TTI, *charter's airlines in Europe ...*, cit. pages 8-9, which contains data on the British market (as a market of departure): between 1993 and 1994 the increase in charter flights within the EU was 18.2%, and for flights to the rest of the world the increase was 11.8%. The markets in the other departure markets of northern Europe were in line with the British results.
17. This section is based largely on the TTI report, "No-frills airlines in Europe", in *Travel and Tourism Analysis*, 1996, No. 3, pages 4-19. This report looks at three commercial cases: Ryanair, Easyjet and EBA Express, now Virgin Airlines.
18. In fact the term normally used to refer to these companies is an abbreviation of the slogan "*low cost, no frills*".
19. TTI (Travel & Tourism Intelligence), *No-frills airlines in Europe ...*, cit., page 10.
20. Regarding *ticketless travel* see the thorough treatment of this in the next chapter.
21. This is the ratio between the highest EBA fare on the Brussels-Rome route and the highest Sabena/Alitalia fare; the ratio between the corresponding less expensive fares is 1:3.5.
22. PE (DG IV), "Protection of Tourists", Working Document, *Transport Series*, W 12, 1995, page 12.
23. For example, apex fares require that at least a Saturday night is spent at the place of destination.
24. Council Reg. No. 2407/92 of 23 July 1992, on the *licensing of air carriers*, in OJ [Official Journal of the European Communities] L 240, 24.8.92, p. 1.
25. Council Reg. No. 2409/92 of 23 July 1992, on *fares and rates for air services*, in OJ L 240, 24.8.92, p. 15.
26. Council Reg. No. 2408/92 of 23 July 1992, on *access of Community air carriers to intra-Community air routes*, in OJ L 240, 24.8.92, p. 8.
27. The part of this section devoted to consumer policy is taken from PE, *Factsheets on the European Union*, 1997, factsheet No. 4.10.1.
28. Council Dir. No. 90/314 of 13 June 1990, in OJ L 158, 23.6.90, p. 59.
29. Council Reg. No. 2299/89 of 24 July 1989, in OJ L 220, 29.7.89, p. 1.
30. Council Reg. No. 295/91 of 4 February 1991 establishing *common rules for a denied-boarding compensation system in scheduled air transport*, in OJ L 36, 8.2.91, p. 5.

31. The subject of this chapter is the marketing of transport services, apart from reservation which is covered in the next chapter. In this chapter we examine the areas of ticket management, fares policy and advertising policy.
32. The matters considered below are based on information obtained verbally and in confidence from certain European airline companies.
33. These instruments are not used only in connection with travellers, but also for travel agents who may be given benefits on top of their normal commission, depending on the number of tickets sold.
34. PE (DG IV), "Tourist Protection", Working Document, *Transport Series*, W 12, 1995.
35. Definition in English used by the IATA and taken from the entry for **ticket (tkt)** in the glossary of aeronautical terms in A.D. Groevenenge's *Compendium, ... cit.*, page 516. The text between speech marks is taken from the same entry.
36. For a more detailed treatment of this Convention, which is concerned primarily with the liability of carriers to passengers, see the last chapter in this document. The facts illustrated in the text are taken from Articles 3 and 4 of the Warsaw Convention, in the form adopted following the amendments introduced by The Hague Protocol of 1955.
37. *Billet de passage*, to give it the title used in the French version of the Warsaw Convention.
38. *Bulletin de Bagages*, to give it the title used in the French version of the Warsaw Convention.
39. Regulation 2027/97 has made the Warsaw Convention compulsory for Community and Community airline traffic with important additions solely in the area of carrier's liability, and does not make any mention of ticket management.
40. This section and the next are based largely on PE (DG IV), "Logistical systems in combined transport", Working Document, *Transport Series*, TRAN 102, 1998.
41. The *IATA Passengers Forms and Procedures Committee* is the body within this international association of companies with responsibility for drawing up *recommendations* in order to simplify and improve both manual and computerized ticket management. A significant part of these recommendations has been drawn up in agreement with the ATA (*Air Transport Association of America*). In the area of ticket management we would refer the reader, in particular, to the series of 17 resolutions, from No. 721 to No. 725d, occupying 372 IATA pages, *Passengers Services Conference Resolution Manual*, Montreal-Geneva 1997¹⁷, page 1216. In view of their specifically technical and operational nature, these are not illustrated here.
42. A stopover (STPVR) is a deliberate break in a journey, made by a passenger at a point between his place of departure and destination, and agreed in advance with the carrier. It is provided for in Article 4 of the IATA's GCC (General Conditions of Carriage).
43. In other cases it is a fax of confirmation containing the travel details.
44. A variation of this system is the system of prepaid coupons which are normally issued at special rates, for a given route.
45. At Frankfurt am Main Airport the boarding time using chipcards is 20 minutes, compared with 30 to 45 minutes using other systems.
46. Cf. Chapter IV.

47. In all Community countries the travel agencies represent a percentage of subscriptions which is in general greater than 60% of the total and in many cases higher than 80% (PE (DG IV), "Logistical systems in combined transport", *Transport Series*, TRAN 102, 1997, page 287). In Europe 90% of reservations are made through the GDSs and travel agencies, while in the USA 60% are made by telephone (*No-frills airlines in Europe ...*, cit., page 10).
48. TTI (Travel & Tourism Intelligence), *No-frills airlines in Europe ...*, cit., page 10.
49. It is calculated that in the USA 30 million people are involved in FFPs and that each of them takes part in an average of 4.6 FFPs
50. TTI, "Frequent Flyer Programme", in *Travel and Tourism Analysis*, No. 3, 1993, pages 5-19.
51. The most serious case quoted is that of PANAM.
52. TTI, "Frequent Flyer Programme", cit. ..., page 10.
53. We would mention the example of a pharmaceutical company which offered doctors the incentive of air miles in an FFP operated by an airline company.
54. The obstacles to entry do not affect only the new companies, but also have an effect on the introduction of new air services by existing companies when, through its FFP, a company already operating in the towns connected by the new service has gained the loyalty of the local residents.
55. At least up to the date of the article from which this information was taken: TTI, "Frequent Flyer Programme", cit. ..., pages 5-19.
56. *Ibidem*, page 13.
57. The first European company to launch an FFP was BA, in 1991. This was for three basic reasons: competition with the no-frills airlines; the opening up of the US FFPs to non-residents, and to British travellers in particular; and the alliance between BA and USair which made it necessary for BA to come into line with its US partner.
58. This table is reproduced from TTI, "Frequent Flyer Programme", cit. ..., page 8, which in turn obtained the data from IATA, *Corporate air travel survey*, 1993.
59. For example: more comfortable seats, sometimes supplemented with added services, and/or better meals.
60. That is to say the scope for use of the ticket or for changing the date of travel, or even for claiming a refund in the event of cancellation.
61. The illustration that follows is the result of explanations given to the author verbally by those responsible for sales at the Brussels offices of various European airline companies. It is significant of the confidential nature of this subject that, when asked for written information, the companies said they would prefer personal meetings.
62. Usually three: *First, Business and Economy*.
63. In the following section they are given their legal definition under Community law, which is taken into account for the purpose of controlling fares.
64. For example, Apex and Pex.

65. Regulation 2409/92/EEC of 23 July 1992 on *fares and rates for air services* in OJ L 240, 24.8.92, p. 15 which replaced the earlier Regulation 2343/90 on the same subject. The European Community first concerned itself with air fares in 1987 with Directive 87/601/EEC, later repealed by the regulations of 1990.
66. The fares for these flights are usually governed by the specific provisions of bilateral agreements entered into for this purpose.
67. The Member States between which, or within which (in the case of national flights) the fares apply. Normally these will be the Community States of departure and arrival for a given route, and those in which there are stopovers involving the embarkation and disembarkation of passengers.
68. The forms and terms are fixed by the Member State concerned and the latter may not be more than 24 hours. In the case of compliance with existing fares, instead of registering the fares prior notification is required.
69. This is the *lowest fully flexible fare, either one way or return, offered for sale at least to the same extent as any other fully flexible fare offered for the same service* (Article 2(K) of the Regulation).
70. The State that has issued the licence to the carrier.
71. Cf. section 4 of this chapter.
72. The data presented in this section is taken from the Commission's Communication, *Impact of the third package of air transport liberalization measures*, Com (96) 514, and pages 3-7 in particular, and from the arguments of the report of the European Parliament's Committee on Transport and Tourism (A4-15/98) on the aforesaid communication, page 9-10, which in turn quotes from British Midland, *Clearing the flight path for competition*, no further details.
73. Commission Communication, *The impact of the third package ...*, cit., page 6.
74. These definitions are taken from Article 2 of Regulation 2299/89, dealt with in detail in the following section. These may also be used outside the legal context and the Community context. The reader's attention is drawn to the fact that the initials CRS may be replaced by SIR.
75. Initially through a process of agreements, and then through mergers between CRS management companies participated in by the major air companies; this is the situation, one that still prevails, to which reference is made by both US legislation and the Community legislation illustrated in this document.
76. These will be referred to in part in the following sections, and in particular in section 5. Anyone wishing to examine more closely the questions of competition between the two sides of the Atlantic can consult Humphreys B., *Les nouveaux développements des SIR - New developments in CRSs*, ITA (Institut du Transport Aérien), Paris, 1994.
77. *Ibidem*, pages 77-85, which also refers to the UK House of Commons, *Airline Competition, Computerized Reservation Systems*, Transport Committee Third Report, Session 87/88, in which the same position is maintained, except for the reference to the possible resistance of the airline companies.
78. This table is taken from PE (DG IV), "Logistical systems in combined transport", Working Document, *Transport Series*, TRAN 102, 1998. The overall percentage totals are lower than 100% because certain figures are rounded down.
79. Alongside these *traditional* shareholders there are also the railroad companies, tour operators and shipping companies, which promotes the extension of the GDS services to other forms of transport and to services that may be of interest to the traveller.

80. It is remembered that the US Department of Transport refused to authorise the merger between SABRE and DATAS II in 1990.
81. For the distinction between *participating* and *parent* companies, see below.
82. This advantage is more significant than it may appear, since statistics indicate that 80% of reservations involve flights presented on the first screen and 80% involve those shown in the first two rows.
83. Humphreys B., *New developments with the SIRs ...*, *cit.*, page 49.
84. US. General Accounting Office, *Computerized Reservation Systems. Action needed to better monitor the CRS industry and eliminate CRS biases*, Washington DC, 1992, quoted in Humphreys B., *New developments ...*, *cit.*, page 49.
85. This means of access also encourages the phenomenon of the *virtual traveller*, that is to say those travellers who want only to find out about travel possibilities but have no real intention of taking advantage of these. This is a phenomenon known also to travel agencies for whom the faster consultation times via the Internet have caused queues at their sites.
86. Council Reg. (EEC) No. 2299/89 of 24 July 1989 in OJ L 220, 29.7.87, p. 1, subsequently amended by Reg. 3089/93 of 29 October 1993 in OJ L 278, 11.11.93, p. 1.
87. The excerpts that follow are taken from Humphreys B., *New developments ...*, *cit.*, page 54.
88. For a more detailed exposition of the events that preceded and coincided with the 1993 regulations, cf. Humphreys B., *New developments ...*, *cit.*, pages 53-59.
89. During the course of informal talks that the author has had with representatives of certain airline companies, these have rejected the view that the decision to sell the stockholdings in the GDSs was due to the reason stated in the text; indeed they could not have done otherwise without having to admit that in the past they had enjoyed an unfair advantage. But the author's view is shared by other commentators, including the already quoted Humphreys B., *New development ... cit.*, p. 81.
90. An air carrier may therefore subscribe to more than one CRS.
91. Departures from this ban are permitted in the case of CRSs that have been recognised as responsible for infringement of the provisions of the code of conduct relating to the equal treatment of carriers, or that are unable to provide adequate guarantees in terms of unauthorised access to information by their parent carriers.
92. The period of notice for withdrawal for subscribers is three months, following a minimum term of one year.
93. With the usual exceptions in the case of a request from consumers.
94. European Commission, *Report on the application of Council Regulation (EEC) 2299/89 establishing a code of conduct for computerized reservation systems (SIR = CRS)*, Com. (97) 246, pages 6-9. The same document also contains the proposed modification of the code of conduct currently being examined by Parliament.
95. *Ibidem*, pages 9-11.
96. Here, and hereinbelow, we are referring to the proposal contained in the aforesaid Com. (97) 246. The Commission's proposal also relates to the extension of the CRSs to rail transport, an area outside the scope of this document.

97. The practice of multiple bookings is required by a traveller wishing to retain the option of choosing the best flight combination for as long as possible, by reserving more than one. Airline companies are now tackling this by automatically cancelling reservations when they become aware of such instances.
98. 15 May 1998 (A4-89/98).
99. Council Communication Pres/98/207. At the time of writing this paragraph (23.7.98) the common position of the Council is not known.
100. Regarding injuries and lost luggage, cf. the next chapter.
101. For example, when the scheduling of the flights of an individual aircraft mean the minimum time on the ground between consecutive flights, thereby creating chain reactions in terms of subsequent flights.
102. European Parliament resolution of 16 November 1995 on the Commission's Communication on *Congestion and crisis in Air Traffic* (Com/95/318). The European Parliament approved these resolutions, taking into account the experience of that same summer when the unexpected air traffic controllers' strike at a single control station in southern France disrupted the whole transport system of the western Mediterranean.
103. According to IATA data, the number of flights delayed by over 15 minutes, after peaking in the early 1990s, has fallen back to 1986 levels, *Ibidem*, page 4.
104. Observations taken from the Eurocontrol/ECAC graphs, *Delays to air transport in Europe - Annual Report 1997*, typed document, page 9.
105. There are no statistics on this phenomenon. The BEUC mentions the case of an airline company which admits to covering one quarter of its seats by means of overbooking. In *BEUC comments on the consultation document on a proposal for a Council Regulation amending Regulation (EEC) No. 295/91 ...*, unpublished document BEUC/121/97 of 10.4.97, page 2.
106. These passengers are referred to as *no-shows*.
107. If it were managed separately from fares, this would create problems.
108. It is important to concentrate on technical reasons for cancellations, because a cancellation for commercial reasons (i.e. too few passengers) is a deliberate course of action which necessarily results in the overbooking of another flight in order to avoid liability for default in the case of denied boarding. In this case there will still be liability for delay in that the passenger will reach his destination after the scheduled arrival time for the cancelled flight.
109. This is the *Convention on the unification of certain rules relating to international air transport* of 1929, while The Hague Protocol dates back to 1955. Almost the whole of the next chapter is devoted to the Warsaw Convention, and the reader is referred to that for a fuller treatment.
110. *L'adempimento non tempestivo del contratto di trasporto aereo*. [the Italian equivalent is given here]. This definition is taken from Giumulla, Schmidt, Ehlers, *Warsaw Convention*, (Commentary, London, The Hague, Boston (Kluwer), 1994, Article 19, I, 1.
111. Though I do not believe this has been laid down specifically in legal practice and theory, it seems clear that, in addition to a reservation, the purchase of the ticket is a necessary condition for a flight time to be taken as a reference parameter in determining a delay.
112. Giumulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit. art. 19, II. 6, though this cites legal cases in support of excluding carrier liability when a flight is not scheduled and there are no agreements, on flight duration,

- between carrier and passenger.
113. *Ibidem*, art. 19, II, 6.
114. *Ibidem*, art. 19, II, 7. The tolerable delay, according to this table, would be 25% for a flight duration of one hour (i.e. up to 15 minutes), 20% for a flight of between 2 and 4 hours (in that case converted into an agreed delay of 24-30 minutes), and 10% for flights of 5 to 8 hours, this being agreed in the range 30-48 minutes.
115. *Ibidem*, art. 19, II.1.
116. The definition of the term *tolerable* adopted here is that of Giumulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit. art. 19, II, 9, which with regard to passenger transport mentions four cases: that illustrated in the preceding endnote (of a fairly unexceptional nature) and three of 11, 8 and 61 hours respectively.
117. Of interest with regard to delays due to waiting for connections is Corbeil-Esson's *Tribunal de Commerce* which defined as intolerable a one hour forty minute delayed departure of a national flight caused by waiting for an international flight. *Ibidem*, art. 19, II, 9, which in turn quoted the *Jardan -v- Air Inter* judgment, also referred to by *Shawcross and Beaumont*, VII-198, N. 7
118. Airline company personnel generally give technical reasons for cancellations and overbooking in order to preclude the company's liability.
119. Naturally if the replacement flight, taking off later, should arrive at the destination within the time contemplated for the original flight, one cannot talk of a delay
120. Giumulla, Schmidt, Ehlers, *Warsaw Convention ... cit.*, art. 19, X, 33, which only refers to two conflicting German judgments.
121. *Ibidem*, art. 19, II, 33.
122. This case is distinct from co-sharing in which the possibility of a flight being operated by a different carrier from that indicated on the ticket is known at the time of making the reservation.
123. Some cases one cannot help but find amusing. Leaving aside those involving black humour, there is the case of boarding being denied to a female passenger who fell to pieces when told at check-in that she could only take one of her four dogs into the cabin with her. This refusal was regarded as legitimate by a US court. Giumulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit. art. 19, II 38.
124. Cf. the end of the following paragraph.
125. These general conditions are contract clauses drawn up by one party. Each airline company, even those belonging to the IATA, may choose not to apply them. These are dealt with in greater detail in the next chapter.
126. The text that follows is our translation from the French, taken from IATA, *General Transport Conditions/passengers and luggage*, Montréal-Geneva, 1988.
127. Giumulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit. art. 19, II referring to a large number of French and German judgments.
128. Art. 20 of the Warsaw Convention.
129. Art. 23 of the Warsaw Convention.

130. Reg. 2027/97 of 9 October 1997 in OJ L 285, 17.10.97, p. 1.
131. In OJ L 36, 8.2.91, p. 5.
132. The term "confirmed reservation" means confirmation shown on a sold ticket which indicates the flight number, date and time and displays the letters "OK" or an equivalent endorsement.
133. That is to say a passenger who, at the carrier's request, gives up a reservation and accepts compensation.
134. Article 3, paragraph 4, of the regulations.
135. The term "final destination" means the destination stated on the ticket and, if this consists of a number of sections, the destination stated on the coupon for the last flight, disregarding any connections that may be made without problems, even if denied boarding causes a delay.
136. These sums are reduced by half if the carrier offers an alternative flight whose arrival at the final destination is not more than two or four [hours] later than the scheduled arrival time of the flight on which the seat was originally reserved, depending on whether the flight is more or less than 3500 kilometres.
137. There are specific regulations governing the repayment of tour operators who, with respect to their customers, have the responsibilities laid down in the directive on all-in travel.
138. Com 98/41.
139. 17 July 1998.
140. This regulation is very important because it protects the passengers using all air traffic within the Union, with the exception of flights into the Union by non-Community carriers. Community airlines will only accept application of this regulation to their flights which do not have the Union as their final destination, that is, a very limited number of flights.
141. Without excluding other *valid reasons*, the text, as the regulations in force, expressly mentions people with limited mobility, and unaccompanied children.
142. The concepts adopted here are taken from Groevenenge A.D., *Compendium ...*, cit., page 316 and page 321.
143. An example of non-catastrophic accident is one recounted to the author by a former officer of a liable airline company. On a certain aircraft, during a long ocean crossing, the crew switched over to automatic pilot, and contrary to regulations, took a break together. Being distracted, they did not notice an unexpected air pocket which caused fractures to many of the passengers who were not warned to fasten their seat belts.
144. The other column is the *Chicago System*.
145. As we will see below, there are international agreements which do not apply to all contracting parties of the Warsaw Convention, inter-company agreements (for example on routes to the USA), and which are superimposed on the System; relating more directly to the European Union, the commendable Reg. 2027/97 was recently introduced to provide Community carriers with a uniform application of the Warsaw Convention, adjusting its limitations.
146. This Convention, the original French title of which is used in the text, came into effect on 13 February 1933, and on 20 March 1997 was ratified by 138 States.

147. The following points are taken from Zylicz M., "International air transportation law", *Utrecht studies in air and space law*, Dordrecht, Boston, London (NISER) 1992, page 90, which in turn quotes from Tobolewesky A., *Just say no to the limitation of liability in air law*, paper distributed during the ICAO 27th Session, 1989, pp. 2-3.
148. These, for instance, were the reasons adopted by the US Government when it presented its bill to Parliament for ratification; in Senate Comm. on Foreign Relations *Message from the President of the United States transmitting a Convention for the Unification of Certain Rules*, Sen. Exec. Doc. No. G, 73rd Cong., 2nd Session, 3-4 (1934), quoted by Giumulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit., page 2.
149. Article 25 of the Convention, to which reference is made, reads as follows: "... out of its fraud or a fault which, pursuant to the law adopted by the court involved, is regarded as equivalent to fraud". The legal theory in English speaks of *wilful misconduct*.
150. At 20 March 1997.
151. Cf. paragraph 4 of this chapter.
152. The conditions for the convention coming into force are ratification by at least 30 States, and the fact that the regular international traffic of 5 of these, expressed in terms of passengers x kilometres, is equivalent to at least 40% of the total on the basis of the ICAO statistics for 1970. This second condition makes ratification by the USA a requirement, and this has not yet been obtained.
153. On the basis of this *settlement inducement clause* (Article VIII of the Protocol) the costs of the legal action, including solicitors' fees, are repaid to the claimant who has submitted his written claims, if within six months the company has not submitted a written settlement proposal at least equivalent to the compensation that may be granted within the applicable limit.
154. This is a right granted to States which have the power to complete the compensation payable for death of, or injuries to, passengers by means of a fund built up from contributions made by passengers and by the State, or by means of compulsory supplementary insurance cover which must not create any form of discrimination between carriers.
155. Denmark, Spain, Ireland, Italy, the Netherlands, Portugal, Sweden, Finland, the United Kingdom. France has signed them, but not ratified them; Belgium has signed only the fourth.
156. Cf. section 7 of this chapter.
157. In this section I attempt to illustrate the *Warsaw System* overall, not only in the form laid down in the "*Convention as amended in The Hague in 1955 and in Guatemala City on 1961*" in accordance with the formula introduced by the second of these protocols, but also with the additions introduced by the other acts referred to in the preceding section.
158. The Convention also applies when the State of departure and the State of Destination are the same, provided the flight makes at least one scheduled stop in another State.
159. Giumulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit. page 24.
160. In the preceding chapter we have already seen how the IATA's CGG attempt to categorise cancellation under the heading of delay in order to place all forms of non-fulfilment under the umbrella of the Convention.
161. The complementary nature of the national law is also the result of limiting the Convention to *certain rules*.
162. For the European Union *national law* also includes Community law.

163. Giemulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit., page 21.
164. However, the criterion of common law is a controversial one in the jurisprudence of States, according to Giemulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit., page 21, referred to by Kegel. However Giemulla (*Ibidem*) cites German regulations and case law which prefers this criterion to that of *lex loci*.
165. Giemulla, Schmidt, Ehlers, *Warsaw Convention ...*, cit. pages 22-23.
166. Article 17 of the Warsaw Convention, amended by The Hague Protocol.
167. For the sake of completeness, I would point out that the regulations regarding air carrier's liability for damage to baggage also apply to the carriage of goods.
168. Article 18 of the Warsaw Convention, amended by The Hague Protocol.
169. Article 19 of the Warsaw Convention, amended by The Hague Protocol.
170. Article 20 of the Warsaw Convention, amended by The Hague Protocol.
171. Article 21 of the Warsaw Convention, amended by The Hague Protocol.
172. The Gold Franc, or Poincaré Franc, is equivalent to 65.5 milligrams of gold of 900% standard.
173. On the basis of Montreal Protocol Supplement No. 1 of 1975. The SDRs are a basket of five currencies (US dollar, German mark, yen, pound sterling, French franc) created and managed by the International Monetary Fund.
174. Article 25 of the Warsaw Convention, amended by The Hague Protocol.
175. The Guatemala City Protocol and those of Montreal, Nos. 3 and 4, have not yet come into effect. For a correct comparison between various sums, it is necessary to bear in mind that the 250,000 Gold Francs regarded as the maximum limit for personal injuries, currently in force, corresponds to 16,600 SDRs, in contrast with the 100,000 SDRs laid down by the Montreal Protocols for the same damages.
176. An example of the complexity of a legal case involving civil liability following an air accident is that illustrated by M. Zylitz (in *International air transportation law*, op. cit., footnote 147, page 95) to provide evidence of the problems posed by the limits on civil liability: in the case against a Polish airline before a US court, the civil party sought to have a summons served on the aeronautical firm that had built the aircraft involved in the accident, on the company that exported it to Poland, and on Aeroflot, as operator between the USSR and the USA, all the Soviet companies and the Soviet State itself as their owner.
177. Guldemann W., *The Warsaw Convention of 1929: its past - its present - its future*, document presented to the IATA's 45th General Assembly Meeting, Warsaw, October 1979, page 2, quoted by Zylitz M., *International air transportation law*, op. cit., endnote 147, page 90.
178. Zylitz M., op. cit., endnote 147, page 93.
179. *Just say no to the limitation of liability in air law*, document distributed at the 27th Session of the ICAO Assembly, 1989, and quoted by Zylitz M., *International air transportation law*, op. cit., endnote 147, page 95.
180. IFAPA, *Fair compensation for passengers in aircraft accidents: actions for the 90s*, study for the Dutch Ministry of Transport, 1989, and quoted by Zylitz M., *International air transportation law*, op. cit., endnote 147, page 95.

181. Zylicz M., op. cit., endnote 147, page 94. This author, quoting from the opinion of experts, states that the additional cost for unlimited insurance cover should be kept below five dollars.
182. *Circular letter on the "Warsaw System"*, enclosure to the State letter LE3/27, 3/28-91/3 of 16 January 1991, referred to by Zylicz M., *International air transportation law*, op. cit., endnote 147, page 98.
183. Zylicz M., *International air transportation law*, op. cit., endnote 147, pages 97-102.
184. *Ibidem*, page 103, though it must be noted that Zylicz is numbered among the supporters of revitalisation of the Warsaw System, and in his writings expresses perplexity at a new convention which would take too long.
185. The data relating to individual countries is taken from Attachment I of the Commission's proposal, *Proposed Council regulation on air carrier liability in the event of accidents* (COM/95/0724).
186. In some cases the values expressed in national currencies are close to 100,000 SDRs based on the exchange rate of 2 July 1998 (available on website <http://www.imf.int> when this section was written), while others are significantly different. In view of the constraints on this document, it was not considered necessary to ascertain whether there was convergence at the time when the various national laws were approved.
187. IATA, *Passenger services conference ...*, cit., page 881.
188. This was filed with the US Civil Aviation Board: No. 18900 of 13 May 1966, US Federal Register, Vol. 31 (1966), 7302.
189. The complete title is *Agreement between IATA carriers on liability to passengers*.
190. Article 7 of Council Regulation 2407/92 of 23 July 1992, on *licensing of air carriers* in OJ L 240, 24.8.92, p. 1.
191. Regulation 2027/97 of 9 October 1997 in OJ L 285, 17.10.97, p. 1.
192. Cf. Chapter II, section 8.
193. The term EUR-OP here, and elsewhere, refers to the Office for Official Publications of the European Communities.