

SOUTH AFRICAN AIRWAYS : STATE - OR PUBLIC ENTERPRISE?

A Thesis
submitted in fulfilment
of the requirements for a degree of
Master of Public Administration
UNIVERSITY OF CAPE TOWN.

BEN-ZION SURDUT

B.Soc.Sc. (Hon.) (Cape Town)

Attorney and Conveyancer.

1977

The University of Cape Town has been given
the right to reproduce this thesis in whole
or in part. Copyright is held by the author.

The University of Cape Town has been given
the right to reproduce this thesis in whole
or in part. Copyright is held by the author.

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

D77/249

SOUTH AFRICAN AIRWAYS : STATE OR PUBLIC ENTERPRISE.

South African Airways, the National Airline of the Republic of South Africa, is but one of the five transport services owned by the State, and operated and controlled by the South African Railways and Harbours Administration, a division of the Ministry of Transport.

This thesis, traces the administrative and organizational development of the Railways and Harbours Administration, and particularly the establishment of South African Airways, as a departmental undertaking within the Railways and Harbours Administration; examines other airline ownership possibilities, and submits, that the government department as an administrative unit is unsuitable for the entrepreneurial activities of an airline organisation; that consequently, South African Airways should extricate itself from the Railways and Harbours Administration, which is primarily concerned with surface modes of transportation within the Republic; and that ownership and control thereof, vest rather in a public corporation, an organizational device of some importance in South Africa, even for major public enterprises, and enjoying significant advantages.

BEN-ZION SURDUT

1977.

TABLE OF CONTENTS

Chapter		Page
I	Characteristics of Air Transportation.	1
II	The Establishment of Commercial Air Transport in South Africa - Union Airways - Birth of South African Airways.	10
III	Structure of the Department of Transport - National Transport Commission - Division of Civil Aviation - Aviation Legislation - International Status of SAA.	19
IV	Forms of Airline Ownership.	34
V	Central South African Railways - South Africa Act 1909 - Railways Board Act 1916.	47
VI	The Railways and Harbours Board - The Administration/Management Dichotomy - Structure of the Railways and Harbours Administration - Structure of South African Airways.	62
VII	Railways and Harbours Service Act 1960 - Control of South African Railways and Harbours Finances.	71
VIII	Forms of Public Enterprise in South Africa - Department of Posts and Telecommunications British Post Office - Public Enterprise in Canada - Advantages and Disadvantages of Departmental Enterprise.	85
IX	The Public Corporation.	104
X	The South African Iron and Steel (Industrial) Corporation, Limited - Accountability and Control of Public Corporations.	114
XI	The South African Broadcasting Corporation - The Weza Timber Company Limited.	127
XII	British Airways - Air India.	133
XIII	The Separation of S.A.A. - The Marais Commission, 1969 - The Joubert Memorandum, 1970 - Recommendations.	149

	Page
BIBLIOGRAPHY OF WORKS CITED.	165
APPENDIX:	
(A) Major Public Corporations of the Republic of South Africa.	172
(B) Selected Statistics and Data of South African Airways.	173 174
(C) State Departments.	175 - 176

LIST OF FIGURES

Figure	Page
1. The three divisions of the Ministry of Transport.....	18
2. Ownership possibilities for national airlines.....	33
3. The RailwayBoard Act No 73 of 1962.....	61
4. The South African Railways & Harbours management.....	65
5. South African Airways organisation.....	68
6. State - public enterprise in South Africa..	84
7. British Airways organisation.....	141

PREFACE

This Thesis does not purport to assess the performance or efficiency of South African Airways, nor is it concerned with the day to day management and operations of the airline. This would constitute an entirely separate investigation of a more technical nature.

Rather, the object of the Thesis is to appraise the concepts of Public and State enterprise using South African Airways and other national air carrier organisations as 'models'.

However, the appendix to the Thesis does include selected statistics appertaining to South African Airways and selected comparative statistics of other national airlines. The purpose of this data, is to help measure South African Airways in the field of international air transport, and to obtain some understanding of the dimensions of the Organisation.

A C K N O W L E D G M E N T S

I consider Inspiration to be an essential pre-requisite for a research project. Consequently, I was most fortunate, for inspiration was to be obtained at the unique post-graduate evening seminars conducted by Professor J F Beekman, Dean of the Faculty of Social Science and Professor of the Department of Public Administration - University of Cape Town.

Post-graduate study need not necessarily connote self-imposed chores - but rather many illuminating months of reading, discussion and inquiry, centred in the main, around academic seminars and reference libraries.

Particular mention should be made of the patience and helpfulness of the personnel of the South African Public Library in Cape Town, and Mrs E M Brits of the South African Railways Reference Library, Johannesburg, who certainly made my task at that library much easier. The Inter-Library Loan system at Jagger-Library and the specialised collection in the Department of Public Administration proved invaluable. Certain data was gleaned at the Cape Town Archives and my appreciation is duly accorded to the various State Officials who allowed me access to pertinent documentation.

My thanks go to my Secretary, Mrs M Burger, who so willingly assisted in the preparation of various drafts. Credit for the final document is due to Mrs L E Liedeman whose enthusiasm, co-operation and typing ability is appreciated and acknowledged.

BEN-ZION SURDUT.

When Governments assume responsibility for a new activity, they may decide to contract its operation to other societal institutions, to conduct its operation within the apparatus of the bureaucratic state, or to combine public and private performance

- Gerald E. Caiden, The Dynamics of Public Administration.

CHAPTER I

CHARACTERISTICS OF AIR TRANSPORTATION

It is necessary at the outset to determine the various essentials and characteristics of air transport, the advantages and disadvantages of air transport, the objectives of civil aviation and the very purpose of airline operation.

Air transport represents man's physical triumph over obstacles of geography.

The international airline ticket represents his triumph over quite a different, but even more formidable set of obstacles.

These are the barriers of difference between nations in law, language, currency and measurement and - above all - the invisible barriers around the compartments of national air space in which individual governments exercise complete and unchallenged control.

The unique feature of international air transport is that man, his goods and his mail can move quickly from any point on the world air network to any other - by any combination of routes, on a single ticket bought at a single price in one currency and valid everywhere for the same amount and quality of service.¹

Airlines operate for various reasons. They include the provision of a public transport service, the maintenance of strategic transportation and communication services, the development of national prestige, trade or tourism, the provision of employment for labour, and profit making and, as

will be seen, the advantages of a strong commercial air policy system is an immeasurable asset to foreign policy and national defence.

In this respect Lissityn¹ has made the following statement:

The possession of a well-developed air transport, especially in international traffic, is a factor enhancing the prestige of a nation at home, in its colonies and abroad. The very existence of such air transport seems to indicate that a nation is progressive, efficient and highly civilized, and that it is contributing its share to the progress of mankind. The prestige thus conferred has economic and military value. 2

The term 'prestige' requires further elucidation and the following remark uttered in 1939 is explanatory:

I hate the word prestige but I like to bring it in, for the reason that every English aircraft which travels from one side of the world to the other is a little bit of England. England will be judged by that little bit by those whom she is the only thing they know of England. 3

and so it is possible with even greater import that this can be applied to the Republic of South Africa and to its flag-carrier, South African Airways. The term flag-carrier as applied to South African Airways means an aircraft registered in the Republic of South Africa, subject wherever it goes, to the respective national jurisdiction of those states, as well as to the jurisdiction of the state in whose air space it is found at any given moment. 4

H A Wassenbergh has stressed that the transportation of traffic has economic value, and the carriage of air traffic represents a value which the State recognises as a potential

source of revenue to the benefit of the national economy. He explains that national sovereignty over the air space above its territory gives the State the means to trade in, the right to transport traffic to, from, via, and also the traffic passing over, its territory. Civil aviation, he says, is a business and therefore should make profits. It is also a public utility service which the public need and which would not exist on a continuous basis without subsidy. He further explains that in aviation the government should, by virtue of its sovereignty, enable and ensure the safest, fastest, and most efficient and most varied international air transportation possible. It should enable air carriers to carry as many passengers and goods as they can in the most economic way, and it should enable the most economic operation of an airline by its own nationals. He also stresses that a national civil aviation apparatus is a valuable defence reserve, and that the fact that governments often refer to their national carriers as a "national instrument", thus identifying themselves with the management of the carriers, illustrates the national approach of states to international civil aviation regulations. 5

(In 1976 the civil aviation policy of the United Kingdom was thus described) "civil air transport exists by serving the public; the Authority should inform itself of the public needs and take full account of them. The Authority should seek to maximize opportunities for the industry profitably to increase its share of the world's civil air transport market . . . it should encourage the provision of profitable services by British airlines that will foster the development of the United Kingdom's trade and tourism and strengthen the balance of payments."6

The Canadian air policy was described in 1973 as follows:

To ensure safe, efficient and convenient air services to meet the needs of travelling Canadians; to contribute to the economic and social well-being of the country; and to ensure that air transportation services are reasonably balanced to create an atmosphere in which the air line industry can continue to develop in an efficient and profitable manner without imposing undue burden on the taxpayer. 7

As defined by the Israel Government, the main shareholders of El Al, the objectives of El Al are to:

secure and maintain the regular civil airlink between Israel (a land with relatively little use for internal civil air transport, but with hostile neighbours) and the outside world in time of peace and war, within the framework of the maximum possible profitability. 8

But what of air transport itself. It has been repeatedly stressed that the outstanding characteristic of air transport is speed, but this is achieved only at cost and aircraft design together with the supporting ground equipment is most complex, despite enormous strides over the post-war period, the carrying capacity of the airplane is small in comparison with the railway, train or the ocean-going liner. From this it follows, that such high expenses must be borne by relatively small payloads. Air transport of course is not hindered by the physical barriers experienced by surface transport. Seas, mountains, deserts, jungles, swamps offer no resistance to the aircraft - of course aircraft require considerable length of runway for take-off and touch-down. One will also note that air terminals are extravagant and cannot conveniently be placed in the immediate vicinity of large cities. From this it follows that there must often be lengthy journeys by surface transport between the town centre and the airport, which are time consuming and the portion of air travel must be of sufficient length to make the overall journey time competitive with more direct travel by surface transport throughout. For this reason, unless there are special circumstances, it is believed that air transport seldom offers

advantage for distances of less than a few hundred kilometres. 9

The speed advantage which air transportation has over surface transportation has made air travel particularly worthwhile for business purposes and the speed advantage of transportation by air is of particular importance in the transportation of certain kinds of freight.

A further advantage of air transportation is the frequency with which such a service can be provided. Since the unit of operation, the aircraft, is comparatively small, frequent flights can be scheduled even though the total volume of traffic is not large. The advantage which air transportation has in this respect is shared by motor transport, with a unit of operation which is also small, but obviously localised to a comparatively small area of operation. 10

A yet further advantage of air transport, is that it can be made available to many areas which are not provided with surface transport facilities. Lastly, aircraft can be used to reach remote and inaccessible places, and also areas which are so sparsely settled that the volume of traffic will not support surface transportation agencies. 11

The advantages of air transport are summarised by Lissitzyn in the following terms:

The two main factors which give an advantage to air transport as a means of communication or transportation over various types of surface transport are its speed and its relative independence of surface conditions. An important consequence is the ability of aircraft to fly long distances in approximately straight lines, over both land and water. As the difference between the length of time required for transportation between any two given points by surface and the length of time required for transportation between the same two points by air increases, so the advantages of air over surface transport increases. The time difference, in turn, depends upon

various conditions on the surface and in the air. Thus, since transportation by water is not as rapid as transportation by land, air transport over stretches of water not wide enough to interpose technical obstacles to regular air service is particularly favoured. 12

But even air transport has its disadvantages. The main factors operating to the disadvantage of air transport are the low transport capacity of air transport, although with the advent of the so-called Jumbo-Jet this aspect has been largely improved upon, and the high cost of the service. 13 Aircraft are expensive to construct and, in addition, they can be operated only by very high consumption of energy per unit of weight carried, since, unlike surface vehicles, they require energy not only forward propulsion, but also for remaining in the air. This high energy consumption requires not only the liberal use of expensive fuel, but also makes it necessary to reserve a large proportion of carrying capacity for fuel rather than pay-load. Other factors which in the past have retarded the development of air transport, such as its dependence on atmospheric conditions for regularity, the danger of accident and the necessity for landings at frequent intervals for refueling, are being gradually overcome by technical progress. 14

In the early stages of air transport a major disadvantage was the then comparatively high degree of hazard. Airlines have however shown a remarkable improvement in passenger fatalities per passenger miles. In 1975, 467 passengers were killed in 16 fatal accidents - or only 0,12 fatal accidents per one hundred thousand aircraft hours flown and only 0,08 passenger fatalities per one hundred million passenger kilometres. 15 According to a recent publication South African Airways came 45th out of a total of 73 world airlines listed in a survey. According to this survey, in the period between 1970 and 1974 South African Airways flew 19,50 million

passengers, of whom 158 died in crashes. This gave a death rate of 8,10 for every million passengers flown, a ratio close to the world average. In the 25-year period South African Airways suffered four crashes. This was one more than the "expected" number, according to the world average. 16

It is submitted that such comparisons and statistics are unfortunately most misleading. According to the same survey the Portuguese Airline T.A.P. had the best safety record in the world, and that airline between 1950 and 1974 flew without loss of life - then, on the other hand, it only flew eleven million passengers on its schedule services. Therefore, in any comparison, the extent of the airline operation is a factor which must be taken into account.

A further disadvantage of air transportation is the amount of unreliability or uncertainty, due to weather interference which sometimes makes it necessary to delay or omit scheduled flights or to land planes at destinations other than those intended.

These are aviation disadvantages common to all carriers. South African Airways however, faces three additional problems peculiar to that airline alone. These are the geographical isolation of the airline's centre of operation in Johannesburg from its suppliers in the United States and Europe; the political isolation of South Africa which necessitates flying around the bulge of Africa on its northbound routes, as a result of which it costs the airline 15% more to serve certain routes than it does those competitors who are able to over-fly the air space of the African countries; and thirdly the high altitude and high temperature centre of operation at Jan Smuts Airport, Johannesburg which seriously curtails both payload and range. 17

It has become clear from the history of transport during the last two decades, that profit making is too simple an objective to be supported rationally as the sole raison d'etre of air transport operation. In this connection, Lord Latham, a former chairman of the London Transport Executive, maintained that profitability was not a reliable test of efficiency in a nationalized industry. 'If circumstances are favourable', he insisted, 'satisfactory profits can mask efficiency, while in unfavourable circumstances a proper degree of efficiency may be achieved despite an absence of profits.' 18

Whilst profitable operations are usually the principle criterion by which airline and management are judged, it is surely in the provision of efficient, convenient and competitive public transport service and the continuously decreasing level of fares with an increasing level of safety that the overall proficiency of the airline will be measured. 19

NOTES

1. 'How International Airline Fares and Rates are made'-
(IATA Public Relations Department) Geneva.
2. O.J. Lissitzyn. International Air Transport and National Policy - (Council on Foreign Relations, New York 1942)
p. 56.
3. Ibid. p.57
4. Ibid. p.2
5. H.A. Wassenbergh. Aspects of Air Law and Civil Air Policy In the Seventies. (Martinus Nijhoff, The Hague 1970).
6. Great Britain, Department of Trade, Future Civil Aviation Policy. (London. H.M. Stationery Office, 1976). p.9.
7. Canada, Statement of Air Policy, Canadian Year Book, 1974, Queens Printer, Ottawa.
8. Israel, El Al Publications Head Office, 'El Al at A Glance', 1974, p.53.
9. R.W. Faulks. Elements of Transport (Ian Allen, London, 1969) p.21.
10. D. Philip Locklin. Economics of Transportation (Richard D. Irwin Inc., Illinois, 1960) p.769.
11. Ibid. p.770.
12. O.J. Lissitzyn. op.cit. p.11.
13. Ibid. p.13.
14. Ibid. p.14.
15. Scheduled Airline Safety Statistics 1965 - 1975, IATA, Geneva, 1976.
16. Paul Eddy, Elaine Potter, and Bruce Page. Destination Disaster (Hart Davis, Mac Gibbon, London, 1976).
17. 'This is S.A.A.' (Thomson Publications, Johannesburg, 1976). p.5.
18. William A. Robson. Nationalized Industry and Public Ownership. (George Allen & Unwin, London, 1962). p.417.
19. Alan H. Stratford. Air Transport Economics In The Supersonic Era. (MacMillan, 1976). p.112.

CHAPTER II

THE ESTABLISHMENT OF COMMERCIAL AIR TRANSPORT IN SOUTH AFRICA - UNION AIRWAYS - BIRTH OF SOUTH AFRICAN AIRWAYS.

The Report of the South African Railways & Harbours Board in 1934, contained a chapter which was headed "South African Airways (S.A.R. & H)", and a marginal note reading "Establishment of Service". The first paragraph reads as follows:

In terms of Act No 21 of 1931, powers were granted to the South African Railways and Harbours Administration to operate its own departmental aircraft for the transport of passengers and goods, and with effect from the 1st February, 1934, the Administration took the first step to implement the passing of the Act referred to and assumed control, under the title of South African Airways (S.A.R. & H.), of the services hitherto operated by Union Airways between Durban and Cape Town and Durban and Johannesburg.

The concluding paragraph of chapter 3. of the Report reads as follows:

With the establishment of the Administration's Airways on a permanent basis and the extension of the air services, it became necessary to reorganise the Airways Branch, and a proper departmental organisation, responsible for the operation and co-ordination of the Administration's air services in the Union and South West Africa, was recently established under the control of an Airways Manager, with headquarters in Johannesburg, who is responsible to the General Manager.

In 1925 the Union Government had conducted a successful experimental airmail service between Durban and Cape Town, as a result of the recommendations of the newly-formed Civil Air Board, who recommended that the service be operated by the South African Air Force and that if it proved satisfactory it be taken over by a Government-subsidized commercial company. These proposals were approved by the then Minister of Posts and Telegraphs, Mr. Tommy Boydell, and the first official flight left Cape Town on the 2nd March 1925 and arrived in Durban some eight hours fifteen minutes later.

However, the commercial results of the service over a period of four and a half months were disappointing, and the experimental service was discontinued. But the experiment had shown the possibility of conducting a commercial air service and that year, 1925, a sum of £8,000 was included by the Government in the Parliamentary Estimates for the development of civil aviation in South Africa.

On the 24th of July, 1929 a company known as Union Airways Proprietary Limited was registered with a capital of £5,000 and under a government contract operated an inter-city airmail service. The contract also provided for a three-year Government subsidy and the Government were to pay £8,000 a year for the forwarding of mail.

The achievements of Union Airways placed South Africa on the world aviation map. Initially, the financial support of the Atlantic Refining Company, enabled the company to be launched, but the financial position of the company failed to improve and there were continuous calls for additional funds.

1931 saw two major setbacks when two aircraft crashed and Major Miller, the founder and major shareholder, set about reorganising the company's finances. Miller, having already

rejected a take-over bid by Imperial Airways, was determined to maintain the company as a South African enterprise, and it was his patriotism which prevented selling out to a foreign concern.

Further requirements for financial aid from the Government were unsuccessful, and an offer from the Junkers Company which controlled South-West African Airways was accepted. Herr Hoepfner, the Manager of S.W.A. Airways became a joint managing director of Union Airways and in return, Junkers Aircraft were supplied to Union Airways, indebting the airline to the sum of £5,500.

In August 1932 an airmail service was renewed with the Government and the service operated as a feeder service for Imperial Airways, which then left from the Rand to London every week. In December 1933, Union Airways suffered its second fatal accident. The crash of the Junker proved to be a final blow and in January 1934 Hoepfner commenced to negotiate the sale of the Airline Company to the Union Government, and on the 1st February, 1934 the Government acquired the assets and liabilities of Union Airways (Pty) Limited, thereby nationalising Union Airways (Pty) Ltd., and South African Airways came into being. A year later on the 1st February 1935 South West Africa Airways was also taken over and that year saw the amalgamation of the two pioneer air transport companies. 1

The term "nationalising" has been used. This term is generally understood to mean the taking over by the State of a complete industry so that it is owned by, managed and controlled for the community. 2 Nationalisation, transfers enterprises from private ownership to the public sector. 3

The Authority for the control and operation of the newly-formed state-owned system vested in the South African Railways and Harbours Administration. 4

The Report of the General Manager of the South African Railways and Harbours of 1934 states:

Although Union Airways maintained its services, it was evident towards the end of 1933 that, financially it would not be in a position to carry on much longer. There were three courses open to the Government, namely, either to allow the Company to collapse financially; to come to its assistance with funds to enable it to carry on, or to take over the whole concern. After carefully investigating the position the Government decided, with effect from the 1st February 1934, to take over the assets and services of Union Airways as a going concern and to vest the control and operation of the new state-owned airways in the Department of Railways and Harbours. 5

In explaining the motives of the Union Government the Report goes on to state:

The value of any air service depends largely upon the degree of efficiency of its organisation and in the preservation of continuity of such efficiency if ownership is changed; in other words, it was greatly to the advantage of the Government to acquire Union Airways as a going concern and not as "bankrupt stock". . . In view of the foregoing considerations it will be appreciated that the acquisition of the assets and services of Union Airways by the Government was decided upon in the public interest and with the object of providing the people of the Union with a thoroughly satisfactory and safe air transport service. 6

As early as 1935 it soon became apparent that because of contemplated extension of air services, it was necessary to re-organise the Airways Branch. A departmental organisation was introduced for the . . "operation and co-ordination of the Administration's services". .

in the Union and South West Africa under the control of an airways manager who was responsible to the General Manager of Railways and Harbours. The then internal organisation of the Airways consisted of three divisions, viz. commercial, flying operational and engineering, each under the control of a senior official responsible to the Airways Manager. 7

There is no doubt as to the policy of the Union Government in 1935 and this was clearly indicated by the General Manager of the South African Railways and Harbours when he stated that:

In pursuance of the policy of having a state-owned and-operated internal air service, the Administration took over the South-West African Airways as from the 1st February 1935 . . . 8

It has already been mentioned that the first airmail service in 1925 was conducted by the South African Air Force. In the House of Assembly in 1925, a Member indicated his hope that if the experiment was successful, the Minister of Posts and Telegraphs would extend civil aviation to a greater extent. He said:

The Honorable Minister will recognise at once that perhaps no part of the Empire is better suited or requires an aero-service more than South Africa . . . I would suggest at this stage . . . that he should seriously consider divorcing the whole of the air service from the Defence Department and making it a separate department altogether. 9 (Italics mine)

As early as 1931, various amendments were introduced to the Union Statutes which indicated the Government's readiness and interest in civil aviation. In 1931, Section 2 of Railways and Harbours Regulation Control and Management Act No 22 of 1916 was amended, so that the definition of the word "ship" was extended to include "aircraft". On the 11th May

1931 the Minister of Railways and Harbours explained that:

I think however that all will feel that a railway administration, as an administration that is responsible for transportation, ought to have the necessary powers to take action when the time comes for it (air services) to be done . . . Nothing more, therefore, is proposed here than to give the Railways Administration the power of controlling air services when the time comes. 10

Section 3 of Act 22 of 1916 was also amended by Act 21 of 1931, so that the particular section (which is presently Section 2 (2) of Act 70 of 1957) provides as follows:

To purchase or in any other manner acquire, sell or otherwise dispose of, build, construct, repair, hire, let or charter from or to any person, and control, manager, maintain and work ships and aircraft for the carriage of persons and goods and accommodation for such ships and aircraft, and any land and appliances required for the purpose of the landing or mooring of aircraft, and all things incidental thereto, and *to make contracts in connection therewith. (italics mine)*

In its present form the definition of "ship" in Section I of Act 70 of 1957 includes "any aircraft, ship, vessel, or boat of any kind whatsoever"

On the 5th March, 1934 in the Additional Estimates (Railways) Debate, the Minister of Railways and Harbours stated:

I merely want to say something about the new Head which appears for the first time on the Railway Estimates the item "airways". Members will see that under the heading of "capital expenditure" and under "revenue expenditure" certain provision has been made for the taking over of Union Airways by the South African Railways and Harbours Administration, and for the carrying on of certain services to the end of the financial year . . . there being provision in our legislation for the carrying on of such services, the Government has decided that Union Airways should be taken over, as a going concern, by the Railways.11

During the course of this debate an important point of view was put over by a Member, Mr Madeley, who suggested to the Minister that:

He should abandon the Railways Administration policy which has been adopted all through the years, of regarding State concerns as purely commercial ventures. What I mean is that the Railways always have the ledger method of examining the advantages or otherwise of such an enterprise to the public. The Railways never take into account the services rendered to the public, they never look at the matter from the point of view of how the services rendered to the public can be set off against your ordinary ledger method of examination. I want the Minister in starting this new system of transport, which is going to be the system of transport all over the world in years to come, to realise that such an enterprise has to be used and further extended in every possible way in the interest of the people of the country, regardless of whether in pounds, shillings and pence, it pays or not. 12

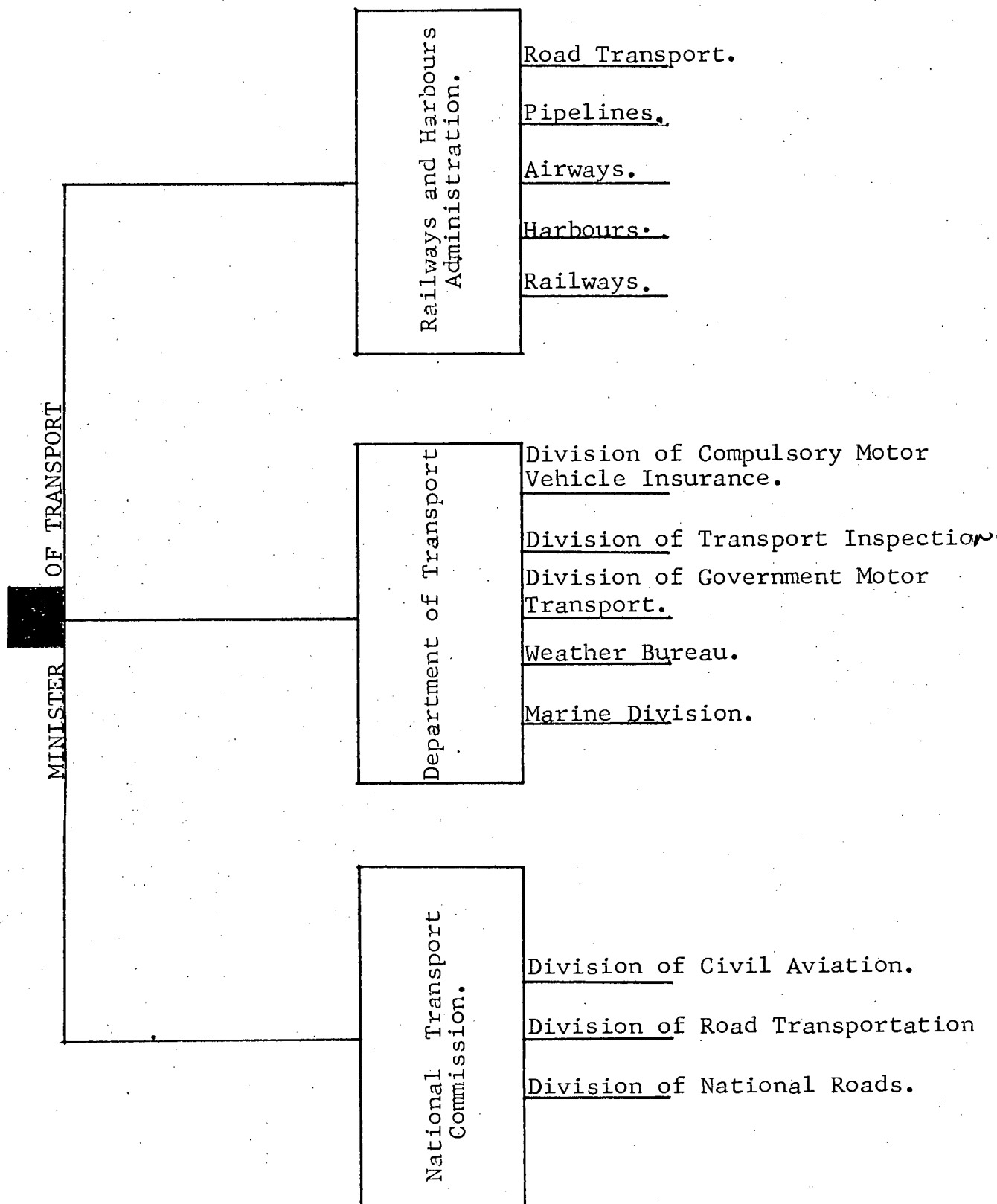
And so on the 1st March 1934, the Agreement between Union Airways (Pty) Limited and the Government of the Union of South Africa in its Railways and Harbours Administration, was tabled in Parliament. The heading to the Agreement reads:

Agreement of Purchase and Sale of the business and assets of Union Airways (Proprietary) Limited.

The contract was signed by "The Honourable Oswald Pirow K.C. in his capacity as Minister for the time being of Railways and Harbours in the Government of the Union of South Africa, and as such representing the said government in its Railways and Harbours Administration as defined by Section 2 of Act No 17 of 1916 . . . "13 The contract was signed by Mr Pirow on the 10th February 1934 and thereby through the nationalisation of Union Airways (Pty) Ltd., South African Airways, as an integral part of the South African Railways and Harbours Administration, was legally created.

1. Public Relations Division, SAA, comps. and ed, 50 Years of Flight, (De Gama Publishers, Johannesburg). 1970.
2. A.H. Hanson, ed. Nationalization: A Book of Readings. (George Allen and Unwin, 1963). p.23.
3. Ibid. p.18.
4. C. Verburgh. South African Transportation Policy. (Bureau of Economic Research, University of Stellenbosch, 1962). p.29.
5. At p.21. of the Report
6. At p.22.
7. Annual Report of the General Manager of South African Railways and Harbours, 1935. p.33.
8. Ibid. p.34.
9. Hansard (Assembly Debates). 5th March, 1925, col.625.
10. Ibid. 11th May, 1931, col.3601.
11. Ibid. 5th March, 1934, col.967.
12. Ibid. 5th March, 1934, col.993.
13. Parliament, (House of Assembly) Annexure 405/1934.

MINISTRY OF TRANSPORT
REPUBLIC OF SOUTH AFRICA



CHAPTER III

STRUCTURE OF THE DEPARTMENT OF TRANSPORT - NATIONAL TRANSPORT COMMISSION - DIVISION OF CIVIL AVIATION - AVIATION LEGISLATION - INTERNATIONAL STATUS OF SAA.

South African Airways constitutes one of five transport services which make up the South African Railways and Harbours Administration. They are, the Railways, Road Transport, Harbours, Pipelines and Airways. The Ministry of Transport (Fig. 1) consists of three separate divisions of departments; the Department of Transport, National Transport Commission and the Railways and Harbours Administration. It must be understood therefore, that the Railways and Harbours Administration is not part of the Department of Transport, although the three Divisions fall under the ministerial responsibility of the Minister of Transport.

The Department of Transport was established in 1943 to replace with "increased responsibilities", the then Department of Railways and Harbours, one of the original fourteen departments established at the time of Union. In terms of the 6th Report of the Public Service Commission of Enquiry, the Centlivres Commission and also the Farrar Committee, objections were raised against the manifold boards and bodies in connection with transport. In the course of years various bodies were established. There was the National Roads Act of 1935 which created a National Roads Board, the Motor Carrier Transportation Act of 1930 in terms of which a central road transportation board was established and the Aviation Act of 1923 which set up a civil aviation council. All these bodies functioned independently of each other, and in 1943 the Department of Transport was established with the

object of co-ordinating these functions and to bring about some measure of uniformity or co-operation in the activities of these boards. However, these boards continued to exist and their activities often over-lapped. It was an unsatisfactory state of affairs, having all these Boards which, in fact, had little to do with each other, come under the same Department. The purpose therefore of bringing into being the Department of Transport in 1943, (as a Minister of that time stated in the House), was to take over the control of the finances of the various statutory bodies and to thus control all functions of the State with regard to transport, excluding Railways and Harbours. 2

In 1948, the Transport (Co-ordination) Act came into being. The object of that measure was the abolition of the three statutory transport bodies, and in their stead a National Transport Commission was instituted. At that stage, the Government investigated the question whether civil aviation should fall under the Department of Transport or under the Department of Defence. On the 23rd September 1948, the Acting Minister of Transport, indicated that a departmental committee had gone into the matter and had recommended that civil aviation should remain under the Department of Transport. 3

In 1971 the Transport Co-ordination Amendment Act was passed, and as the then Deputy Minister of Transport explained, "(it) is essential for enabling the Commission to exercise its powers under that Bill with the greatest measure of efficiency". Subsection I(a) of Clause 2 vests in the National Transport Commission, the powers of a body corporate, capable of suing and being sued. It was deemed essential for the Commission to obtain the status of a body corporate, especially since the Commission may then sue, be sued, acquire, possess or dispose of property, conclude contracts enter into agreements, and perform any functions normally performed by a

body corporate. 4

The purpose of the Department of Transport is:

"To serve as executive body of the National Transport Commission and to regulate and control all other transport matters." 5

The main functions of the Department are:

- (a) The regulation and control of the activities arising from the object of the National Transport Commission;
- (b) the regulation and control of modes of transport which do not fall under the South African Railways and Harbours or the National Transport Commission. 6

The object of the National Transport Commission is:

To promote and encourage development of transport in the Republic and, where necessary, to co-ordinate various phases of transport in order to achieve the maximum benefit and economy of transport services to the public. 7

The Department of Transport constitutes the Marine Division, Transport Inspections Division, Weather Bureau, Division of Government Motor Transport and the Division of Compulsory Motor Vehicle Insurance. 8

The National Transport Commission consists of three divisions, being the Division of National Roads, the Division of Road Transportation and the Division of Civil Aviation, which is of particular relevance and concern; *vis-à-vis* South African Airways. The stated purpose of the Division of Civil Aviation is:

"To regulate and control the administration arising from under the promotion of civil aviation."9

Heading this Division is the Commissioner for Civil Aviation, responsible for no less than fifteen functions and/or services. It must be emphasised that the Division of Civil Aviation is not part of the Department of Transport or of the Railways and Harbours Administration.

The fifteen functions and/or services of the Division can be listed as follows:

- (i) Relations with the International Civil Aviation Organisation;
- (ii) Civil Aviation Advisory Committee;
- (iii) Aviation legislation;
- (iv) International schedule air services;
- (v) Administration of the Air Services Act No 51 of 1949;
- (vi) Airports and Aerodromes;
- (vii) Aviation statistics;
- (viii) Licensing and flight services;
- (ix) Civil Aviation Subsidy Scheme;
- (x) Air traffic services;
- (xi) Search and rescue services;
- (xii) Navigational aids and telecommunication facilities for navigation (including power and lighting);
- (xiii) Aircraft rescue and fire-fighting services;
- (xiv) Certification, maintenance and operation of aircraft;
- (xv) Aircraft accident investigation. 10

It must be emphasised that contrary to common belief, the various State Airports are not administered or controlled by the South African Airways nor by the Department of Transport, but by the Division of Civil Aviation of the National Transport Commission. State Airport Regulations (as promulgated in 1963) are made in terms of Section 22 of the Aviation Act, No 74 of 1962. The first legislation dealing with aviation in the Union of South Africa, was the Aviation Act No 16 of 1923 which was later repealed by the Aviation Act No 74 of 1962. The Aviation Health Act No 7 of 1935 adopted under the Hague Convention of 1933, for the sanitary control of aerial navigation, was repealed by the International Sanitary Regulations Act, No 38 of 1952 which applied the International Sanitary Regulations adopted by the World Health Assembly at Geneva in 1951. The Carriage by Air Act No 17 of 1946 was passed to give effect to the International Convention of Warsaw, 1929, but it was not brought into force until the 22nd March 1955. This Act gives effect to the Warsaw Convention of 1929 relating to international carriage by air.

The Air Services Act No 51 of 1949 (as amended) provides for the licensing and control of air carriers and air transport, and the Aviation Act No 74 of 1962 (as amended) enables effect to be given to certain international aviation conventions and makes provision for the control, regulation and encouragement of flying within the Republic. The most recent Act concerned with aviation, namely, the Civil Aviation Offences Act No 10 of 1972 (as amended), gives effect to the Convention on Offences and certain other acts committed on board aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. 11

There was a time when the Railways and Harbours Administration assumed control of civil aviation and in fact in 1920 the Cabinet decided that the Railways and Harbours Administration:

shall tentatively at least, assume control of civil aviation . . . A separate department is not called for in South Africa and the Government has decided that aviation should be regarded to all intents and purposes as an auxiliary form of transport. Control will presumably be largely administrative and it is unlikely that the Government will, for the time being, set out to create its own Commercial Aviation Service. Commercial Aviation will no doubt be left to private enterprise to develop; and this seems a prudent course to follow, that the enterprise will have to be controlled and regulated, as public interest is involved. 12 (*italics mine*)

In Britain, civil aviation started as an off-shoot of military aviation at the Air Ministry. After the Second World War, a separate Ministry of Civil Aviation was created to cope with the phase of rapid development. Subsequently civil aviation went in 1953 to the Ministry of Transport. From 1959 to 1967, however, an enlarged Ministry of Aviation took over civil aviation as well, but in 1967 civil aviation was passed to the Board of Trade. While this choice seemed less logical, the Board's responsibility for international trade was helpful for the negotiation of air landing rights and the co-ordination of civil aviation with inland transport.

Probably though the main reason for this arrangement was a wish, following experience with the Ministry of Aviation, to find a detached departmental sponsor for the Airline Corporations; a requirement much better met by the Board, through the nature of its responsibilities and history, than by the Ministry of Transport which was more interventionist. 13

In the United States of America, the Government's stated concern is to assist the development of commercial airlines, regulate rates and conditions of service and protect air safety. The Civil Aeronautics Board (C.A.B.) performs the economic regulatory task in inter-State commerce, and the Federal Aviation Administration (F.A.A.) allocates air space and controls air traffic, provides navigation aids, and issues and enforces safety rules. The National Transportation Safety Board is responsible for investigating civil aviation and major service transportation accidents, and state aeronautic commissions regulate small airlines and private aircraft operating within the particular State. In the United States, airport management is an indisputably major local government service, as cities and counties endeavour to improve and expand the publicly-owned airport buildings and facilities. 14

The Republic is a member of the international body known as the International Civil Aviation Organisation (ICAO) with headquarters at Montreal, Canada. This organisation is a specialised agency of the United Nations and its aims and objectives are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport. 15

International air transport could not be operated safely and efficiently without co-operation of states on a technical level, without uniformity of technical rules, and without mutual recognition of aircraft and air crew licences. At the Chicago Conference of 1944 the specialised inter-governmental body, the ICAO was created. The Chicago Convention which is the foundation of present legal structure of international air transport rests on the cardinal principle that each State has complete control over its own air space, and this cardinal principle is stated as follows in Article I :

The contracting States recognise that every State has complete and exclusive sovereignty over the air space of its territory. 16

South African Airways (not the South African Government) is a member of the International Air Transport Association (IATA) which was established ^X in 1945 to help meet the many technical, traffic, and other challenges created by the rapid expansion of civil aviation after World War 2. IATA is an association of carriers operating schedule air services for public hire, under proper authority, in the transport of passengers, mail or cargo under the flag of a State eligible to membership, *of the ICAO.* and its aims are :

- (a) To promote safe, regular and economical air transport for the benefit of the people of the world, to foster air commerce, and to study the problems connected therewith.
- (b) To provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport services.
- (c) To co-operate with ICAO and other international organisations.

IATA receives its legal existence from an Act of the Canadian Parliament and its membership comprises approximately 107 airlines flying the flags of 83 states. A most important function of IATA is the rate-making function. The IATA Traffic Conference provides the framework for negotiations of passenger fares and cargo rates. 17

As we have seen, the South African Airways is not a statutory corporation. It is merely the commercial name under which the South African Railways and Harbours Administration conducts the business of carriage by air. South African Airways has in law no independent existence apart from the

Administration, and any action brought by or against South African Airways must be brought in the name of the South African Railways and Harbours. 18 Although legal proceedings against the Railways and Harbours Administration must be taken in the name of the "South African Railways and Harbours", the real party is the State President acting on the advice of the Executive Council, in other words, the Government of the Republic. South African Airways and the South African Railways and Harbours, therefore stand in the same position in law as any other governmental department. 19 This legal status has been confirmed in various court judgments and particularly in a case where the Administrator of Natal sued the South African Railways and Harbours in delict for damages. It was held that the Provincial Administration represented the Crown in the Provincial Government of Natal, and that as the Railways and Harbours Administration was also a department of the Crown, one department could not sue another:20

Section 64 of the Railways and Harbours Control and Management (Consolidation) Act ²¹ prescribes that legal proceedings against 'the Administration' or servant of the Administration shall be commenced within 12 months after the cause arose. In addition, further onerous legal procedural requirements are laid down which require careful compliance. Consequently, South African Airways enjoys this element of privilege and protection as distinct from Corporations or other legal persona.

However, any right to damages relating to passengers and baggage under the Warsaw Convention is extinguished if the action is not brought within two years from the date of arrival at destination, or from date on which the aircraft ought to have arrived or from date on which the carriage stopped. South Africa has adopted the Convention and consequently it would seem to amount to a waiver of the 12 month limitation period. 22

The Warsaw Convention limits the number of forums in which actions for damages under the Convention can be brought. This includes the Court having jurisdiction, inter alia, where the carrier (South African Airways) is 'ordinarily resident' or has its 'principal place of business'. The latter form would be the place where the major part of its executive and administrative business is conducted i.e. Johannesburg. On the other hand, South African Airways is 'ordinarily resident' in Pretoria - since that is where the supreme governing body of the airline (Minister of Transport) is located. 23

South African Airways can be described as the "flag-carrier" airline, the National Airline of South Africa and also the "chosen instrument" airline. No airline has a natural right to fly where it likes or land where it likes. The right to fly, to land, and to pick up or discharge passengers is a jealously guarded right of sovereign nation States, a right which they will usually grant to others in return for considerations. A National Government, because it is concerned with prestige and defence, seeks to use its airlines as instruments of national policy. Governments tend to choose one airline to be their flag-carrier abroad. This is the "chosen instrument" airline. 24 On the 16th July 1948, for example, the Minister of Transport on the recommendation of the National Transport Commission approved the designation of South African Airways as the chosen instrument for the operation of reciprocal air transport services between the then Union of South Africa and United States of America, and between the Union of South Africa and the Netherlands. 25 There are many reasons why the requirement of a "national airline" is so strongly felt throughout the world. Prestige and political communication are perhaps the most obvious, but there has been the strategic considerations that aircraft available to carry civilians in time of peace are also available to carry military equipment and personnel in time of war. 26 Furthermore, while it may be possible for a country to get cheaper services by leaving them to the airlines of other

countries to operate, no country cares to feel entirely dependent upon another for the transport of people and goods across its boundaries, especially when this dependence represents a permanent drain on foreign exchange resources. There have been few departures from the principle that each country should have a single flag-carrier airline. However, the United States, France and Canada do allow as a matter of policy more than one flag-carrier on international scheduled services. 27 X

In a Supreme Court case for damages, due to loss of a parcel, which took place in the Republic in 1965, involving Pan American World Airlines Incorporated, it was contended that as Pan American World Airlines Incorporated had been designated by the Government of the United States to carry airmail to and from South Africa, it was entitled to the same rights as the United States Government itself, including the relative immunity afforded by Article 71 of the Universal Postal Convention limiting the liability of the carrier. This contention was rejected on the ground that the Universal Postal Convention conferred rights on the Governments of respective States alone, and not on designated private carriers. This decision appears to emphasize a possible disadvantage imposed on a private enterprise in international law, for it would seem that in similar circumstances, a state-owned airline, being an "administrative unit" of the State, would have been able to plead successfully every immunity to which the State itself was entitled. 28

In December 1969, the Attorney-General of New York filed a complaint with the New York State Division of Human Rights charging that South African Airway, "a commercial carrier owned by the Republic of South Africa", was practising racial discrimination in the transportation of passengers to the Republic of South Africa. South African Airways challenged the Division's jurisdiction in the matter, on five grounds.

Such proceedings, it challenged:

would constitute an unconstitutional state interference in the foreign relations of this country; it would amount to an attempt to interfere with United States commitments under international civil aviation agreements . . . and complainant had failed to join the Republic of South Africa as an indispensable party.

With a public hearing scheduled for September of that year, South African Airways petitioned the New York Supreme Court for a judgment prohibiting the Division from holding such a hearing. The Court granted South African Airways' motion and said:

On the face of the complaint it is thus apparent that any action which Respondent (Attorney-General of New York) could take would necessarily be directed against a foreign government or its consular agent, exercising sovereign power. This it may not do, for such action would interfere with an act of state and with a foreign policy of the United States, which has seen fit to permit petitioner (South African Airways) to operate in and out of the United States, carrying passengers to and from the Republic of South Africa. Foreign policy is a Federal concern, not amenable to State action . . . Our courts and administrative agencies have no power to act when the remedy sought calls into question the sovereign power of a foreign government . . . Respondent is without jurisdiction to conduct a hearing on the visa policy of the Republic of South Africa, as it affects petitioner in carrying passengers. 29

As this legal action was directed against South African Airways, it is clear from the judgment, that South African Airways, which is owned and controlled by the Republic of South Africa, is politically identifiable in all respects with the Government of the Republic of South Africa.

N O T E S

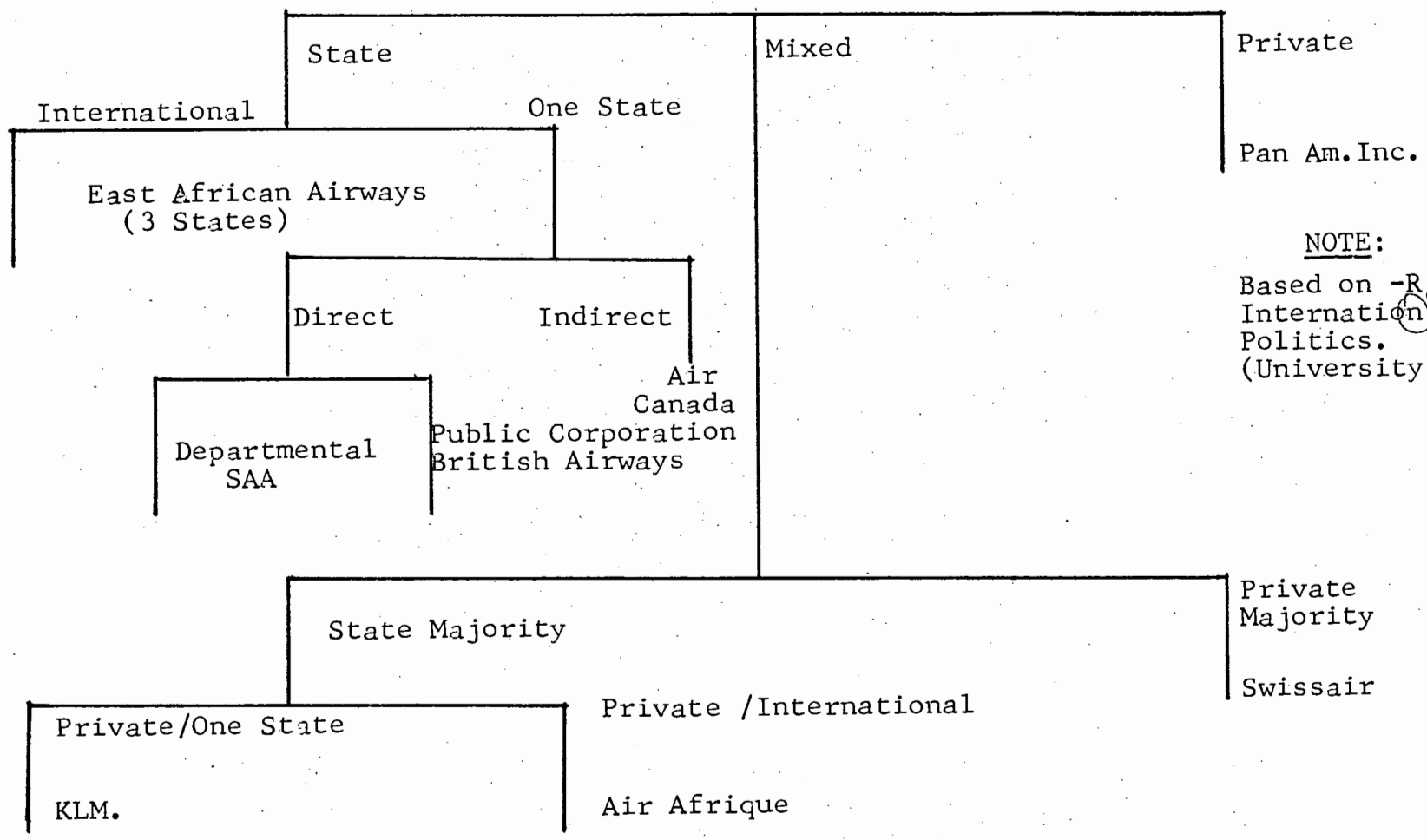
1. 'Department of Transport', Standard Encyclopaedia of Southern Africa, 1974, Vol. X., p.568.
2. Hansard (Assembly Debates) 23rd September, 1948, co. 3193.
3. Ibid. col. 3194.
4. Ibid. 3rd May, 1971, col. 5832.
5. Guide to State Departments, (Harold MacCarthy Publications, Johannesburg) 1972/1973, p.107.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.
10. Annual Report of the Department of Transport 1974/1975.
11. Statutes of The Republic of South Africa - Aviation - (Butterworths).
B. Bamford, Law of Shipping and Carriage, 2nd ed. (Juta and Company 1973) Chapter 39.
Official Yearbook of The Republic of South Africa, 3rd Ed. 1976, Chapter 26.
12. Sir William Hoy, General Manager, S.A. Railways, 'Control and Development of Aviation in South Africa', 19th January, 1920 (S.A.R. Reference Library, Johannesburg).
13. Peter Self, Administrative Theories and Politics, (George Allen and Unwin, 1974) pp. 60-61.
14. Felix A. Nigro and Lloyd. G. Nigro, Modern Public Administration, 3rd Ed., (Harper and Row, 1973) p.32.
15. George N. Barrie, 'The Legal Structure of International Air Transport', The Comparative and International Law Journal of Southern Africa, vii, No. 1, (March 1974).
16. Ibid.
17. Ibid.
18. W.A. Joubert, ed., The Law of South Africa, Vol. I (Butterworth and Co., 1976), p.361.

19. Herbstein and Van Winsen, The Civil Practise of the Superior Courts in S.A., 2nd ed., (Juta, 1966) p.40. Act 70/1957, S.65.
20. Natal Provincial Administration v. The South African Railways and Harbours, 1936, (N). 643.
21. The Act, No 70/1957, Consolidates the laws relating to the Regulation, Control and Management of Railways, Ports, and Harbours in the Republic and sets out the powers, jurisdiction, duties and obligations, of the Railways and Harbours Administration.
22. W.A. Joubert,ed., op.cit., p.406.
23. W.A. Joubert,ed., op.cit.,p.389,390.
24. David Corbett, Politics And The Airlines, (George Allen and Unwin, 1965) pp.20-21.
25. Government Gazette Extraordinary, (24th June, 1949) No.1238.
26. In May 1940, the then skeleton air service of SAA became an entirely military unit and all commercial air services were suspended. (Annual Report S.A.R. & H. 1940).
27. Great Britain. 'British Air Transport in the Seventies', Cmnd.4018 (London, H.M. Stationery Office, 1969) p.4.
28. Pan American World Airways Inc. v. S.A. Fire and General Accident Insurance Company Ltd. 1965 (3) S.A. 150 (A.D.).
29. South African Airways v. New York State Division of Human Rights 64 Misc. 2D. 707,305, NYS 2d 651. - and see American Journal of International Law, Vol. 65,1971, pp403-405.

FIG. 2

OWNERSHIP POSSIBILITIES FOR NATIONAL AIRLINES

7



NOTE:
 Based on -R.L. THORNTON
 International Airlines And
 Politics.
 (University of Michigan)p.6

CHAPTER IV

FORMS OF AIRLINE OWNERSHIP

The Chicago Convention provides that aircraft have the nationality of the State in which they are registered and that every aircraft engaged in international civil navigation shall bear its nationality and registration marks and that information concerning the registration and ownership of any aircraft shall be supplied to any State on demand. 1 (*italics mine*)

South African Airways is State-owned. With the exception of United States Carriers which are all privately owned, the most prevalent form of airline ownership has been government ownership. However, many unusual approaches to ownership have been adopted by airlines around the world. There are joint ventures, mixed ventures, joint mixed ventures, full public ownership, masked public ownership, private ownership, and government ownership by two different levels of government within the same country. Figure 2 depicts the various ownership possibilities for national airlines. It will be observed that whereas South African Airways is a form of direct government ownership, Air Canada is a form of indirect government ownership. These two aspects will be qualified at a later stage. Since Nations regard air transport primarily as an instrument of national policy, for the development of which they spend large sums of money, there has been a growing tendency throughout the world for governments to exercise a more intimate type of control over air transport enterprises by participating directly in the ownership and management. Governmental participation has taken different forms which may be outlined as follows:

1. Government participation in the management of otherwise privately-controlled enterprises, through the appointment, or a voice in the appointment, of one or more directors or officers.
2. Government ownership, direct or indirect, of capital stock in enterprises having the form of a company or corporation. The government may own a minority, majority or all of the stock.
3. Formation of a public corporation with government appointed members. 2

Table I ranks the thirty largest world airlines as at 1967. The ranking is based on scheduled international and domestic traffic, but excludes the U.S.S.R. and the People's Republic of China due to the paucity of data. The first six airlines are all United States airlines and constitute private enterprise in the form of public listed airline operating companies. Whilst, however, these commercial air transport enterprises are privately owned and operated, air transport being an activity "effected with a public interest" is one of the most closely regulated of industries. 3 In the evolution of United States airlines the real start came in 1918 when the Post Office Department itself began airline operation. The years 1925 and 1926, saw the entrance of private capital into scheduled airline facilities. The underlying philosophy of those in power in Washington was against permanent government operation of a transportation agency such as airlines, though waiting for the day when private enterprise would enter this field. But they were equally strong for the provision by the government of airways with emergency fields, beacons and weather services. As might be expected from the form taken by private enterprise in other types of business, the corporate type of organisation was adopted. 4

TABLE I

Ranking of the Thirty (30) Largest World Air Lines in 1967 listed according to Load Ton Miles (LTM) each sold. LTM is a measure of Transport sales and is the product of Revenue load in tons and the distance in miles over which it is carried.

Rank	Airline	Load ton miles millions
1	UNITED	2,362
2	PAN AMERICAN	2,273
3	TWA	1,967
4	AMERICAN	1,863
5	EASTERN	1,258
6	NORTHWEST	896
7	DELTA	751
8	BOAC	751
9	AIR FRANCE	677
10	AIR CANADA	647
11	BRANIFF	610
12	CONTINENTAL	605
13	LUFTHANSA	545
14	KLM	480
15	ALITALIA	423
16	JAL	410
17	NATIONAL	390
18	SAS	345
19	BEA	299
20	QANTAS	266
21	SWISSAIR	245
22	IBERIA	205
23	SABENA	199
24	CPA	184
25	VARIG	165
26	EL AL	132
27	AIR INDIA	132
28	UTA	132
29	SAA	132
30	TAA	125

SOURCE: Great Britain, Report of The Committee of Inquiry into Civil Air Transport, Cmnd. 4018 (London: H.M. Stationery Office, 1969) p. 24.

There has been no public sentiment in the United States in favour of nationalising any of the airlines. The idea that both domestic and international airlines should be privately owned has never been seriously questioned. Instead, political controversy has concerned the extent of government regulation. 5 The fact that there has been no political agitation for public ownership of airlines in the United States ought not to be misunderstood. It does not mean that laissez-faire prevails. The characteristic American form of state intervention in the economy is regulation rather than public ownership. 6 The overall picture in the United States was succinctly stated by Lissitzyn in the following words:

In its expansion to date, American-flag international air transport undoubtedly has been benefited, politically and economically, by its private enterprise form and content. American-flag companies have on the whole remained loyal to the national interests of the United States. Their continued purely private character seemed to depend, aside from the fate of the United States in general, upon the readiness to co-operate with the Government of the United States in carrying out certain policies, upon their prospects for eventual self-support and upon their preserving, in spite of dependence upon governmental assistance, the spirit of initiative and progress for which American Aviation has always been noted. 7

In order of ranking, 8 the eighth largest airline and the first outside the United States, was in 1967, B.O.A.C., which at the present time has since amalgamated with British European Airways (number nineteen in order of ranking) to be now known as British Airways. British Airways is a state-owned corporation and, in a later chapter, the form, structure and administration of British Airways will be investigated.

Air France is a nationally owned airline, having been nationalised in 1945, and is now known as Compagnie Nationale Air France. Overall control of Air France is exercised by an

administrative board called the Council of Administration. Most of the Council's sixteen members are government appointees. Five are civil servants, one of whom is appointed by the Prime Minister, two by the Minister responsible for civil aviation, and two by the Minister of Economics and Finance. Five others are nominated by the Civil Aviation Minister, at least one of whom is chosen from the industrial and commercial sector of metropolitan France, and another from overseas. Another four are selected by particular groups of employees, such as flying personnel, after a secret ballot. The final two places are allotted to representatives of any non-State shareholders. This split representation on the board of a nationalised corporation was originally designed as a check against concentrated state management. 9

Air Canada is also a nationally-owned airline. In 1952 the Trans-Canada Airlines Act created a corporation managed by a seven-man board of directors, four being elected by the shareholders and three being appointed by the Governor-in-Council. Canadian National Railways (C.N.R.) was authorised to subscribe for, hold, and dispose of shares provided that it should not sell or dispose of more than 24,900 of the 50,000 shares authorised without the approval of Parliament. As no shares were purchased by private interests, the Government owned Canadian National Railways was charged with the responsibility of developing the airline, and holds the stock in the now called "Air Canada". Gradually the airline took over more and more of the management functions so that today, while the current Board of nine members includes five elected by the shareholders, (C.N.R.), Air Canada makes its own report annually to Parliament and is free to develop a sound, competitive position with the full co-operation of any Railway officers involved. At present Air Canada has been categorised as a "Crown Corporation", and various aspects of this definition will be dealt with at greater length in Chapter 8. 10

The next two airlines in order of ranking, numbers 11 and 12, both again constitute private U.S.A. airline corporations, and the next airline to be dealt with therefore, is the "Deutsche-Lufthansa A.G." commonly known as Lufthansa, which is an industrial corporation with a private law status owned by the Federal German Government. Lufthansa is a joint stock company whose shares are owned by the Federal Government (75%) and private enterprise. The Company is managed strictly on business principles with a supervisory board consisting largely of officials and other state representatives. Aside from this Board, the Government has no possibility to intervene in the business of "its own" company. 11

Next in order of ranking is the K.L.M. Royal Dutch Airline which is a limited liability company whose shares are owned 50,5% by the Nederlands Government and 49,5% by private shareholders. 12

Linee Aeree Italiane S.P.A. or Alitalia, is a limited liability company whose activities are largely regulated by the Italian Government through its majority holding (75,5%), which is not directly vested in the company, but in the State Holding Company IRI, with remaining shareholders, being the Fiat Motor Corporation and Banca D'Italia. Alitalia can be regarded as an example of IRI's policy of fostering managerial economy in the enterprises which it controls. From the standpoint of Alitalia personnel, the role of IRI remains at a high level. Apart from the regular meetings of the Board of Directors of which IRI representatives are members, only the top management of Alitalia have direct contact with IRI. Ostensibly the role of IRI is restricted to that of providing the capital and, by its name, guaranteeing the credit-worthiness of the airline. The rest, the commercial, technical and managerial success of Alitalia, is the work of the airline itself. Alitalia has been remarkably free from political interference in its commercial policy. 13

operate in direct competition on the domestic trunk routes. 16

Swissair, or Schweizererische Luftverkehr A.G., is a form of private enterprise to the extent of 76,4% with the remaining minority holding in the hands of public institutions.

All the stock in the Spanish Airline, Iberia, Lineas Aereas de Espana, S.A. are held by the Spanish Government, 18 and in order of ranking Sabena, Belgium World Airlines, or "Societe Anonyme Belge pour l'Exploitation de la Navigation Aerienne" follows, as an enterprise entrusted with the establishment and operation of an airline. The enterprise has a legal form of a joint stock company, that is controlled by the State which has a majority in its general assembly. The Government exercises permanent control through two delegates, and supervision, characterised by the right of veto, through the administrators whom it appoints. On the other hand, the representatives of the private investors have a majority on the Board of Directors. The Company enjoys wide financial autonomy. Its budget and balance sheet are not subject to government or Parliamentary approval. The status of its personnel is governed by private law and is not subject to the rules applying to civil servants or to any other regulations of public law. At present the State enjoys a 90% holding in the Company. 19

Canadian Pacific Airlines is a form of private enterprise which shares the international services of Air Canada, but in a separate sphere of operation. 20

Varig, (S.A. Empresa de Viacao Aerea Rio Grandense) the Brazilian flag-carrier enjoys private interests to the extent of 97% and State interest to the extent of only 3%. The majority of its capital, is in fact, held by a Foundation constituting the employees and executives of the airline. 21

El Al Israel Airlines Limited, the Israel flag-carrier, is a public company whose shares are held by the Government as to 99%. The remaining shareholding is enjoyed by the Jewish Agency, Zim, the government-owned shipping line, and the Histadrut and yet in major policy matters which determine its profitability, it is bound by Government decisions and directions. 22

Air India is a public corporation very much along the lines of British Airways and a closer look will be given to this corporation in Chapter 12. 23

U.T.A. or Union de Transports Aeriens S.A. is a private enterprise, as a subsidiary of a shipping corporation. 24

South African Airways ranked 29 in 1967, and was followed by Trans-Australian Airlines which is owned and controlled by the Commonwealth Government, but which only operates domestic routes in Australia. 25

In order to obtain a proper perception of air carrier ownership possibilities, the Soviet aviation system is pertinent.

International and domestic air transport of the Soviet Union is a monopolistic function of the State, and the responsibility of Aeroflot, the popular name for the government owned organisation and the world's largest air carrier, controlled by the Ministry of Civil Aviation, with the Minister of Civil aviation as head. 26

As at August 1976, of a total of 110 airlines who were members of IATA, 43 were state controlled, 34 privately owned, 24 a form of mixed state and private ownership in which the state enjoyed majority holdings, and 9 mixed state and private

ownership holdings, in which the state only enjoyed a minority holding. 27

The authoritative journal Flight International in its world airline directory of 1976, lists nearly 500 scheduled airline and charter companies operating commercial aircraft throughout the world. An analysis of these airlines indicates that South African Airways which is state-owned, but departmentally administered and but one of five transport services controlled by the South African Railways and Harbours Administration, is a clear exception in form and structure to any other national airline.

The only exception to this conclusion was to be found in South Africa's two Portuguese neighbours, possibly as a result of the influence of the South African Railways Administration. Delta Mozambique Airlines was formed in 1936 by the Government of Mozambique as a division of the Railways, Harbours and Airways Administration, and D.T.A.-Angola Airlines which began operations in 1940 (until 1973) was a division of the Ports, Railways and Transport Authority of Portuguese West Africa. 28

Lissitzyn in his authoritative work entitled, "International Air Transport and National Policy", states as follows:

The Government of the Union of South Africa has developed since 1934 a policy of ownership and operation by the State of all the air services of the Union to the exclusion of private enterprise. By entrusting the operation of the services (South African Airways) directly to a government department (The South African Railways and Harbours Administration), instead of a State controlled corporation, and by eliminating private companies, South Africa has adopted a more extreme form of statization than any other part of the British Empire. 29

It is of relevance to record that notwithstanding the obvious influence of the South African Government, the Transkeian Government on the 24th September, 1976, established the Transkeian Airways Corporation, a corporate body with limited liability, to own and operate Transkei Airways, the National Airline to be. The Corporation was constituted by virtue of the Transkeian Corporation's Act which is administered by the Minister of Finance. This Act was created 'to provide for the establishment of a Development Corporation and other Corporations'. The fledgeling Airline is to be managed by an eight-person Board of Directors. 30

The Report of the Committee of Inquiry into Civil Air Transport entitled "British Air Transport in the Seventies", or better known as the Edward's Report devotes a chapter to the question of ownership of the airline industry. It would be fitting to conclude this chapter with the following thoughts taken from the report.

In our view there is no reason why a state-owned airline should be any less efficient than a privately owned one, unless public ownership itself creates conditions which make for inefficiency. There has been a good deal of controversy on this point centred around the problem of so-called "interference". . . . We believe that a more important question than ownership is environment. An environment in which industrial efficiency is strongly sought after and highly valued will be more important than who owns the equity. Such an environment is likely to develop when competition is strong Our attitude to public and private ownership is pragmatic rather than philosophical. We believe that it is not ownership as such that is crucial to the quality of performance; it is the drive, enthusiasm, skill and dedication of the managements and their teams that really determines whether an airline is good or bad. These qualities will be encouraged or inhibited according to the environment and according to the behaviour of Parliament, Ministers and Civil Servants; we believe that competition and rivalry, where these can be secured without loss of scale economies, have an important part to play. 31

NOTES

1. W.A. Joubert, ed. The Law of South Africa, Vol. 1, (Butterworth and Co., 1976) p. 331.
2. O.J. Lissitzyn, International Air Transport and National Policy, (Council on Foreign Relations. New York, 1942)p.108.
3. O.J. Lissitzyn, 'International Aspects of Air Transportation in American Law', Journal of Air Law And Commerce, 1967,p.86.
4. Kent T. Healy, The Economics of Transportation in America, (The Ronald Press Company, N.Y.) 1946, pp.123-124.
5. David Corbett, Politics And the Airlines (George Allen and Unwin, 1965) p.298.
6. Ibid. p.301.
7. O.J. Lissitzyn, op.cit., p.136.
8. See Table I.
9. Neville Abrahams, Big Business and Government: The New Disorder (MacMillan, 1974, London) pp. 153-154.
10. World Airline Directory, Flight International, 10 April, 1976. Grant H. Nerbas, 'Canadian Transportation', Journal of Air Law and Commerce, 1967, p. 245.
11. Gerd Rinck, 'The International Factors in German Air Transport' Journal of Air Law and Commerce, 1967, p.103.
12. World Airline Directory, loc.cit.
13. Stuart Holland, ed., The State as Entrepreneur, (Weidenfeld and Nicolson, London 1972). pp.131-133.
14. World Airline Directory, loc.cit.
Shareholding data compiled by IATA, Geneva.
15. Great Britain, 'British Air Transport In The Seventies'. Cmnd. 4018 (H.M. Stationery Office, 1969). p.360.
16. Ibid. pp. 308-309, 355.
17. World Airline Directory, loc.cit. Shareholding Data, compiled by IATA, Geneva.
18. World Airline Directory, loc.cit.

19. A.H. Hanson, ed., Public Enterprise, (Brussels International Institute of Administrative Sciences, 1955) p.528.
20. World Airline Directory, loc.cit.
21. Ibid.
22. G.E. Caiden, 'Prospects For Administrative Reform in Israel', Public Administration, 1968, vol.46, p.31.
23. See Chap.XII.
24. World Airline Directory, loc.cit.
25. Ibid.
26. Hugh MacDonald, Aeroflot Soviet Air Transport Since 1923, (Putnam, London, 1975) p.31.
27. IATA, Geneva.
28. World Airline Directory, loc.cit.
29. O.J. Lissitzyn, op.cit. p.114.
30. Transkeian Government Gazette No.40, 24th September, 1976.
Transkeian Corporation Act No.10/1976 s.3.
Transkeian Philatelic Services, Bulletin TPT 2, February, 1977.
31. Cmnd.4018 (H.M. Stationery Office, 1969) p.119,125.

CHAPTER VCENTRAL SOUTH AFRICAN RAILWAYS - SOUTH AFRICAACT 1909 - RAILWAYS BOARD ACT 1916.

During the South African War, the railways of the Transvaal and Orange Free State, when they fell under the control of the British, were administered jointly. On Peace, this practice continued, the lines, called the Central South African Railways were administered by a Commissioner of Railways, subject to the High Commissioner.

In 1903, a railway committee of the inter-Colonial Council took over general control, subject to the High Commissioner, day to day administration being left to a general manager. In this way the two new colonies, the Transvaal and Orange River Colony, were spared the political pressures that lay like a blight on the railway of the older colonies. Then with the coming of responsible government, the new system remained in operation and the Central South African Railways became a corporate body which, although the majority of the members of its controlling body, the Railway Board, were Ministers, was not run as a department of State with all the concomitant political overtones found with the Cape and Natal railways, but as a commercial enterprise free of governmental and parliamentary interference, so long as it kept within the confines of the general policy laid down. Then came the South Africa Act of 1909, but the Founding Fathers did not fashion the South African Railways in the corporate form of the C.S.A.R., instead the South African Railways were treated as a Department of State. 1

In terms of Section 125 of the South Africa Act 1909, all ports harbours and railways belonging to the several colonies at the establishment of the Union were vested in the Governor-General-in-Council, and the principles which it was hoped would govern their control and management were laid down after protracted discussions at a National Convention in some seven additional clauses of the Act. Frankel, makes it quite clear that having decided on unification it was necessary to consider the form of management and the policy to be adopted for the new railway system. The undesirable influence of politics on railway administration had not been confined to questions of foreign policy. The railways of the Cape and Natal had quite openly been used as instruments of taxation and their management had been subject to all the evils of political interference. This undesirable state of affairs could be contrasted with the success with which the Central South African Railways had functioned since their control by an independent committee, which at that time was probably subject to less outside interference than any other South African railway system had been before or has been since Union. 2

The Commissioners appointed in 1907 to report on the organisation and administration of the Central South African Railways, uttered warnings against the danger of allowing political influences to intrude upon questions of railway construction and management. 3 The following quotation from a memorandum on "South African Railway unification" put it in the following manner:

The arguments brought forward in this paper point conclusively in favour of abandoning the system of working the railways as a government department, amenable to political influence, and of handing them over to an independent body whose sole purpose

it would be to administer them in the best interests of the community and to reduce rates to the lowest possible level. 4

It was thought that the first essential of efficient management of railways should be to free it from political influences, and that this could only be achieved "by handing over the actual railway management to an independent commission endowed with statutory powers and beyond the control of the executive."5

The whole problem was summarized in the following manner:

The object in removing South African Railways from political control should be to combine flexibility of private system with fact of State ownership. 6

These then were the views of the Cape Parliamentary Railways Commission appointed in 1907.

Frankel, emphasises that it is clear that the framers of the Constitution were profoundly influenced by the hope of remedying both the evils of disunion and those of political railway management, through the provisions referring to Railway Management and Administration which they incorporated in the South Africa Act. 7 This was the basic intention of the Constitution and the raison d'etre for the establishment of a separate Railways and Harbours Administration and Railways and Harbour Fund. 8

The Constitution contained elaborate provisions with regard to the administration of the railways and harbours of the Union, and according to Brand are without parallel in any other British Constitution and a good indication of the immense importance of the administrative side of a modern state.

They point equally to the dangers which experience has shown to arise when a government becomes responsible for the administration of commercial undertakings. 9

Brand, considered that a single idea, the prevention of political jobbery and the administration of the railways and harbours, so far as is possible for government undertaking, on commercial principles runs through all the railway provisions of the Constitution. 10 It is clear that the various sections of the Act of Union which specify in great detail how the railways and harbours of the Union were to be administered and their rating principles determined, is unusual and possibly unique in constitutional law. 11 But non-political control and operation of the South African Railways seemed of the essence and hence the unusual incorporation of certain basic principles of railway management into the Act of Union itself. 12 These sections of the Act were devised and virtually written by non-South Africans, they were written by the Milner Kindergarten and more especially Philip Kerr and R.H. Brand. 13

Section 126 of the South Africa Act provided that:

Subject to the authority of the Governor-General-in-Council, the control and management of the railways, ports and harbours of the Union shall be exercised through a Board consisting of not more than three commissioners, who shall be appointed by the Governor-in-Council, and a Minister of State, who shall be Chairman.

It should be noted that this Section contains the phrase "shall be exercised through a board". From the day of appointment of the first Railway Commissioners in 1911, until the passing of the Railway Board Act in 1916, much controversy raged over the real meaning of this clause. Much discussion took place as to whether the Board was to control the railways independently of the Minister and responsible to Parliament

only, or whether it was to be responsible to the Minister and, in fact, merely to advise him. The Railways and Harbours Commissioners maintained strongly that the first interpretation was the correct one. 14

Walton, in his "The Inner History of the National Convention of South Africa" suggests:

Since however the principle had been adopted to separate the railway accounts from the general revenue and expenditure accounts it was felt to be essential that authority apart from, and independent of the Government should be created which would be empowered to carry the principle into effect. What was in the minds of delegates was probably a kind of "trust" which should be responsible to Parliament and not to the Government and the Commissioners were therefore secured in the tenure of their offices for a period of five years and their salaries protected. 15

According to Frankel, the success of the Central South African Railways was essentially due to the fact that they were not managed as a department of state, but as a commercial concern by a railway committee which was independent of parliamentary or ministerial interference, so long as its actions conformed to the general policy which it was required to administer. 16 Frankel, believes that the Act of Union clearly was intended to embody exactly the same administrative principle:

it lays down a general policy for the reorganisation and future management of the railways and provides an independent body of commissioners to carry out its instructions. 17

The next clause 127 which attends to define the powers and duties of the Railway Board was the cause of almost endless discussion and of many divisions and much re-drafting by the National Convention. 18 This section provides that railways and harbours should be administered on "business principles" and much play was made of the phrase and its possible

interpretation. Frankel believes that this provision makes it clear that it was intended that the Railways and Harbours Administration should be guided by commercial principles and not by the considerations which influence the policy of a department of state. 19

Norval, in an analysis of the term "business principles", maintains that the term must be construed to mean that the railways are to be administered on "economic principles". 20

Sections 130 and 131 of the South Africa Act, according to Frankel, made the intentions of the framers of the Constitution even clearer.

The realised that the Board might be influenced to act contrary to the business principles by which it was to be guided. Special provision was therefore made to safeguard the independent judgment of the Board in those matters which experience had shown that undesirable political influences were most likely to be encountered. 21

Section 130 therefore reads that:

Every proposal for the construction of any port or harbour works or any line of railway before being submitted to Parliament shall be considered by the Board, which shall report thereon, and shall advise whether the proposed works or line of the railway should or should not be constructed . . .

According to Walton, this section was an effort on the part of the Convention to avoid the evils which were freely admitted by all the delegates to exist, and it was felt necessary to create some impartial authority which would stand between Parliament and the Government, and protect the Union from ill-judged expenditure upon the railways which was not warranted by the conditions of the country. 22

It seemed clear that at the time the intent was that the control and management of the South African Railways and Harbours would be by a Board of Commissioners. On that Board the Minister of Railways would be ex officio a member, but with no more authority than that of chairman. According to Horwitz:

It was surely intended to be a fully responsible executive Board. 23

From the outset, however, the Cabinet and the Minister of Railways claimed that the real legislative purpose was that the Board should advise the Minister. 24 In 1915 an Act was passed renewing the appointment of two of the retiring Commissioners for one year only. The Commissioners regarded this as indicative of an intention to make some alteration in the status and functions of the Board and they therefore submitted a Memorandum to Parliament on the whole question. In this Memorandum they state:

. . . that the railways and harbours should be regarded and administered in the interests of the whole Union and not as an adjunct of the party that is in power. The view of the Commissioner is that there should be a railway board generally on the lines laid down in the Act of Union, to whom should be assigned such duties, responsibility and authority as Parliament may deem necessary and that the general manager and his staff should be under the control of such Board. The Board should be responsible direct to Parliament whose authority should be exercised and whose general directions should be given through the Governor-General-in-Council. The Board should submit to Parliament an annual report, and such special reports as Parliament or its committee may call for, and the Commissioners should appear before a select committee each year to afford such detailed information or explanation as the committee may require, and to make such representations as they consider it would be in the public interest to bring forward. 25

A subsequent memorandum by Sir William Hoy, the then General Manager of the Railways, followed from which it appeared that the methods adopted in the administration of the railways, in no way differed from the methods adopted by the Government with respect to any other department. 26

In 1916 the Government passed the Railway Board Act which settled the points at issue and provided that:

The railways, ports and harbours of the Union . . . shall be administered and worked under the control and authority of the Governor-General-in-Council to be exercised through a Minister of State . . . who shall be advised by the Board.

It further provided that:

The management and working of the railways and harbours shall, subject to the control of the Minister, be carried on by the general manager, who shall be governed by such regulations as the Minister may from time to time frame, after consultation with the Board . . .

Frankel, makes it clear that the administrative machinery contemplated by the Act of Union as a check to the evils of State railway management existing before Union and as a means of carrying out a railway policy based on business principles, unhampered by political interference, was never established. He believed that for all practical purposes the Railway Board Act of 1916 shattered the hope that the railways would be controlled and managed very differently, than had been under the pre-Union system of a Minister of Railways and a General Manager. The system finally established in 1916, differed only from that existing in the Cape and Natal, in that there had been a partial separation of railway and government finance and the addition of a railway board which, "to a certain extent lightens the work of the Minister, but possesses and exercises little independent power or judgment." 27

Frankel offered a solution to the so-called problem of railways and harbours management in South Africa, and suggested that such solution lay on the lines of the recommendations made by the Canadian Railway Enquiry Commission in 1917, and on the lines of certain of the recommendations made in the General Report on the Future Administration of the German Railways of 1924. In both cases the primary aim of the Commissioners was to prevent the evils of state management, and to ensure that:

The management of the railways should be that of a commercial enterprise, and should be carried on by an independent company, although the ownership of the railways should remain in the hands of the State. 28

The Railway Board Act No 73 of 1962 in its present form, clearly spells out that:

1. Subject to the provisions of this Act the railways and harbours shall be administered and worked under the control and authority of the State President, to be exercised through a Minister of State who shall be advised by the Board.
2. The management and working of the railways and harbours shall, subject to the control of the Minister, be carried on by the General Manager who shall be governed by such regulations as the Minister may from time to time frame, after consultation with the Board in accordance with the provisions of this Act.

Section 4 of the Railway Board Act goes on to provide that:

- (i) The Minister shall consult the Board upon, and act and it shall be the duty of the Board to deal with, and advise the Minister upon, all matters of policy concerning the administration and working of the railways and harbours, more particularly the following matters; . . .

Section 99 of the Republic of South Africa Constitution Act No 32 of 1961 creates the Railway and Harbour Fund:

. . . into which shall be paid all revenues raised or received by the State President from the administration of the railways, ports and harbours, and such funds shall be appropriated by Parliament for the purposes of the railways, ports and harbours in a manner prescribed by this Act.

Section 102 of the Constitution Act stipulates that the Railways and Harbours Board shall consist of not more than three Commissioners, who shall be appointed by the State President and a minister who shall be chairman. The Provision that the railways, ports and harbours are to be administered on business principles is carried forward from the Act of Union in Section 103 of the Constitution Act.

The respective functions of those concerned with the South African railways and harbours (and of course airways) has been described in the following way:

The South African Railways which also embraces harbours, the South African Airways and departmental road transport and cartage services, are controlled in the first place by a management organisation on which all branches of the service are represented, with the general manager as the head of the organisation and responsible for the co-ordination of the various types of transport services provided. The management's function is largely executive, while the administration of policy side is directed by the Minister of Transport, assisted by the Railways and Harbours Board comprising three members appointed by the State President. The functions of the Railways and Harbours Board, which are largely advisory, were set out in Act 73 of 1962. It may be mentioned that the Act of Union initially gave the Railways Board also certain executive powers, but with the lapse of time it became apparent that there were definite disadvantages associated with such a set-up and in 1916 new provisions became operative which limited the Railways Board's functions largely to those of an advisory body. 29

Pursuant to the Provisions of the Railways Board Act, the Board is required to submit an Annual Report covering its functions. In a recent report its functions were described as follows:

The functions of the Board are defined in Section 4(1) of the Railway Board Act. In terms thereof the Board is called upon to deal with all matters of policy concerning the administration and working of the railways and harbours . . . and to advise the Minister in regard thereto. 30

In the House of Assembly in 1962, a Member made the following remarks regarding the Railway Board:

I think it is high time this House re-examines with great care the functions and personnel of the Railway Board . . . it is necessary, Sir, briefly to go back to the beginnings and examine the original reason for the existence of the Railway Board. The stated aim at time of Union, was to protect the railways from undesirable political influences. It was to ensure that the railways will be operated on businesslike, as distinct from political, lines. I quote Mr Hull speaking to the National Convention. He said:

"It is hoped and believed that by having a Board of Commissioners consisting of non-party, non-political men it will be possible to divorce the management of the railways from everyday party politics". 31

In 1975, a Member spoke about the Railway Board in the following light:

I would refer the Honourable the Minister to . . . where I specifically suggested that the Railway Board should be abandoned in its present form and that it could become a planning organisation, a planning organisation which I visualise as a body co-ordinating the railways, commerce, industry,

mining, finance, with planning experts and specialist advisers in different fields serving on it. Here we have a body which is ready made to act as a planning and co-ordinating body . . . Why not convert this Board from a duplicate rubber stamp, or an advisory body to the Minister, into a real planning organisation? 32

7

NOTES

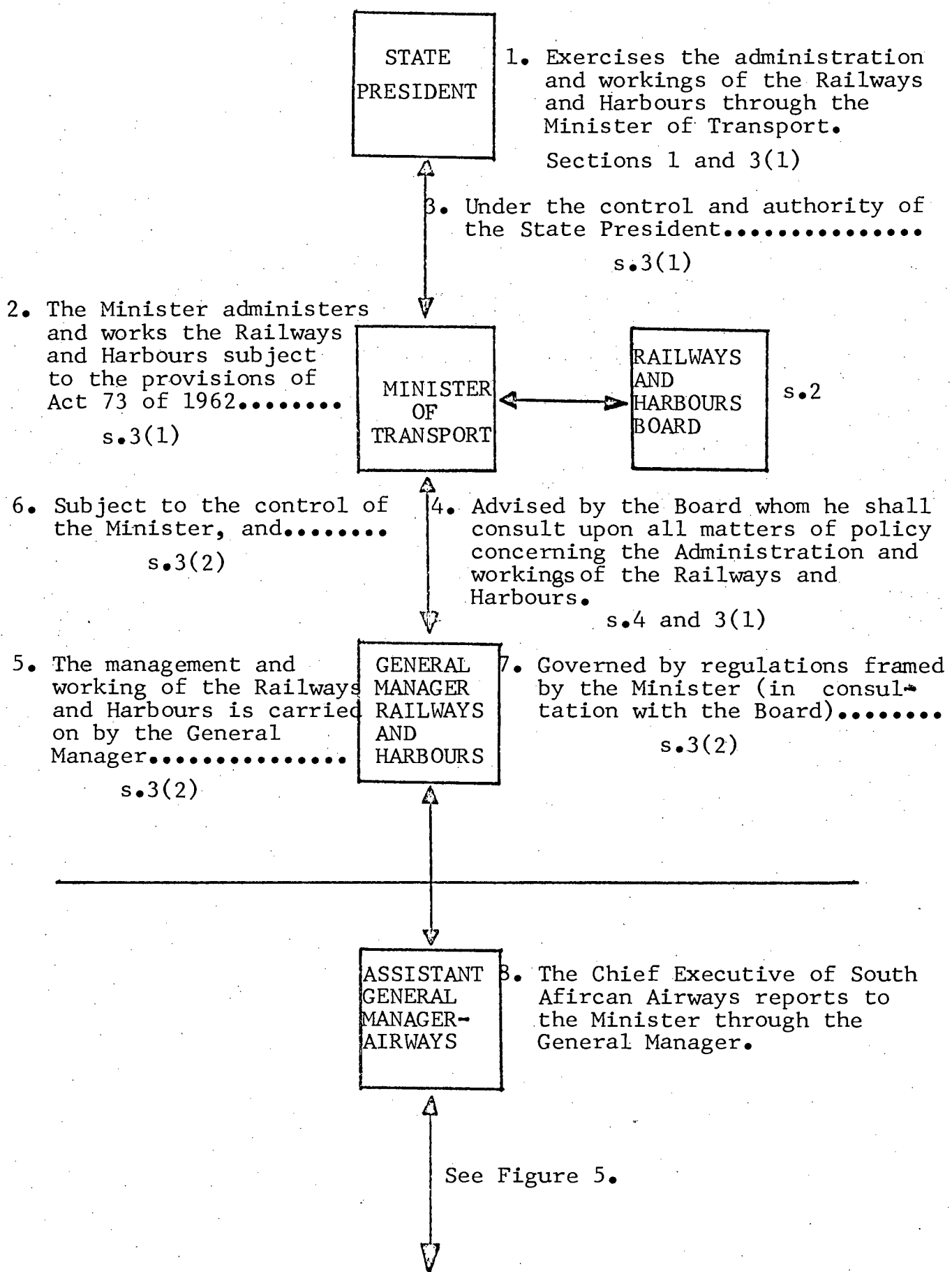
1. Elison Kahn, 'Public Corporations in South Africa', The South African Journal of Economics, 1959, 27(4),p.282.
2. S. Herbert Frankel, The Railway Policy of South Africa, (Hortors Limited, Johannesburg, 1928) p.26.
3. Ibid, pp.56-57.
4. 'A Review of the Present Mutual Relations of the British South African Colonies', 1913. p.68.
5. Ibid. pp.89-90.
6. Ibid. p.71.
7. Frankel, op.cit. p.58.
8. Frankel, op.cit. p.59.
9. The Hon. R.H. Brand, The Union of South Africa, (Oxford,1909) p.91.
10. Ibid. p.92.
11. Ralph Horwitz, The Political Economy of South Africa, (Frederick A. Praeger, New York, 1967) p.74.
12. Ibid. p.112.
13. Ibid. p.113.
14. Frankel, op.cit. p.60.
15. The Hon. Sir Edgar H. Walton, (T. Maskew Miller, 1912) p.248.
16. Frankel, op.cit. p.62.
17. Ibid.
18. Walton, op.cit. pp.248-249.
19. Frankel, op.cit. p.64.
20. A.J. Norval, The Administration of The South African Railways on Business Principles, (J.H. De Bussy, Pretoria, 1930) p.23.
21. Frankel, op.cit. p.65.
22. Walton, op.cit. p.252.

23. Horwitz, op.cit. p.114.
24. Ibid.
25. Cape Times, 27th November, 1915.
26. Cape Times, 3rd March, 1916.
27. Frankel, op.cit. p.76.
28. Ibid. pp.253-254.
29. Republic of South Africa, Report of the Commission of Inquiry into the Co-ordination of Transport in South Africa, RP.32/1969, p.120.
30. Report of the Railways and Harbours Board, 1973, RP.69/74.
31. Hansard (House of Assembly). 12th March, 1962, col.2359.
32. Ibid. 10th March, 1975. col.2197.

FIG.3

RAILWAY BOARD ACT -73/1962

To consolidate the laws designating the authorities charged with the control, management and working of the Railways, Ports and Harbours.....



CHAPTER VI

THE RAILWAYS AND HARBOURS BOARD - THE ADMINISTRATION/MANAGEMENT DICHOTOMY - STRUCTURE OF THE RAILWAYS AND HARBOURS ADMINISTRATION - STRUCTURE OF SOUTH AFRICAN AIRWAYS

Sections 3 and 4 of the Railway Board Act I contain a dichotomy of concepts inasmuch as the railways and harbours are to be administered and worked under the control and authority of a State President, to be exercised through a Minister of State who shall be advised by the Railway Board. However, the management and working of the railways and harbours shall, subject to the control of the Minister be carried on by the general manager. The Act further provides that the Minister shall consult the Board upon, and it shall be the duty of the Board to deal with, and advise the Minister upon, all matters of policy concerning the administration and working of the railways and harbours. There is clearly an intended differentiation between the administration and working of the railways and harbours and the management and working of the railways and harbours.

Figure No 3 depicts the above line of authority with the Minister of Transport in the key role in the administration of the railways and harbours and immediately in control of the General Manager, and with the Railways and Harbours Board as the compulsory adviser to the Minister on all matters of policy, although these "matters of policy" are particularised in ten matters in terms of Section 4 of the Act. But the ultimate control and authority of the Railways and Harbours remains with the State President although the administration and working is exercised "through" the Minister of Transport, as duly advised.

We are thus faced with a dichotomy of the concepts of "administration" and "management". Baker endeavours to separate these two concepts. He states that "administration" has a rather more subtle and more extended meaning than merely "looking after things" or "taking charge of", or "getting things done". He emphasises that term administration is more usually found in the public sector than in the private and, in general carries an implication, not of ultimate sovereign control, but of directing and co-ordinating things on behalf of other people or authorities. 2

The term "management" however, he states, carries rather more than a suggestion of authoritarianism. However administration is a more appropriate word than management in co-ordinating complex situations where there is no one single criterion of efficiency. It is also slightly more embracing in that it includes a lot of preparatory and supportative work for high level decision making. 3

However "administration" must also be distinguished from "policy". Politics is concerned throughout the sphere of Government, with the whole business of deciding what to do and getting it done. Policy is decision as to what to do; administration is getting it done. 4

The Fulton Report on the Civil Service in 1968 provides a definition of management in the following terms:

Management as we understand it, consists of the formulation and operation of the policy of the enterprise. This can be seen as a continuum ranging from first line supervision through a hierarchy of the managers to the board of directors. At each level assets - whether human, financial or material - have to be deployed in a manner best calculated to achieve particular objectives which contribute to the overall policy objectives formulated by the board. 5

The frontiers of management are further extended in the Fulton Report and four aspects "make up the total management task of the civil service". They are:

- (a) Formulation of policy under political direction;
- (b) creating the "machinery" for implementation of policy;
- (c) operation of the administrative machine;
- (d) accountability to Parliament and to the public. 6

Keeling believes that in the public service administration has been differentiated from management as it has tended to be regarded as the higher of the two activities - administration meaning policy advice and the making of important decision rules; management meaning the implementation of the policy in accordance with decision rules. Keeling tries to preserve the use of the word administration to describe the traditional "control" or "regulatory" functions of government. 7

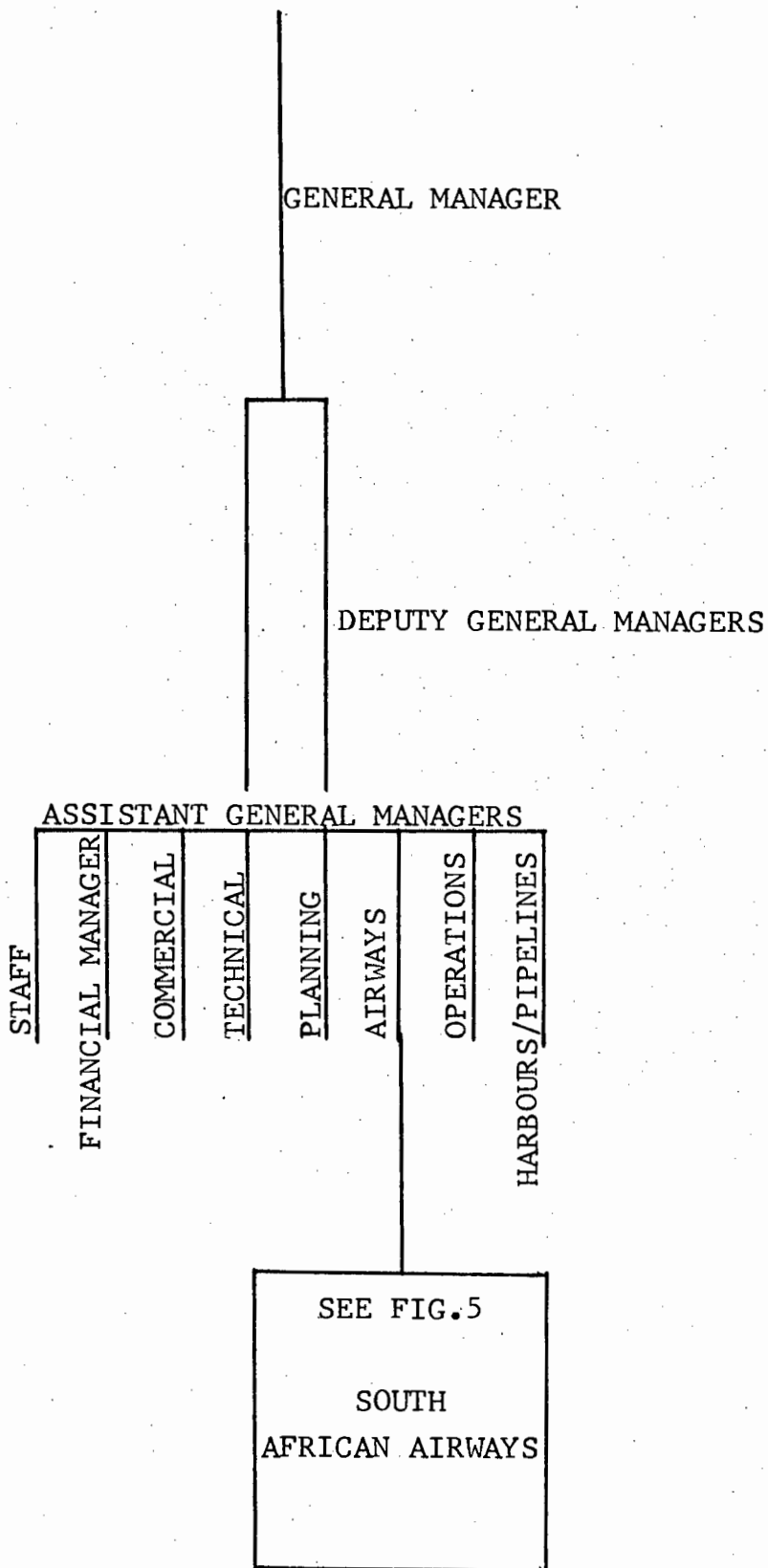
Thus even Public Administration has its problems of nomenclature. Marx sums up the administration - management dichotomy as follows:

Thus one may say that managers supervise the fulfilment of work programmes under the general direction of administrators, who in turn carry responsibility for broad assignments given them by executives . . . Administration is always the servant of policy. Management - the largest part of administration - denotes means and means have no significance except in terms of ends. 8

However, within the context of this thesis the dichotomy may be concluded in the following fashion:

FIG. 4

SOUTH AFRICAN RAILWAYS
AND HARBOURS MANAGEMENT



Politics is . . . an inevitable and necessary part of the process of government. It must however be controlled and confined to its proper sphere which is the determination, crystallisation, and declaration of the will of the community. Administration, on the other hand, is the carrying into effect of this will once it has been made clear by political process. From these premises, therefore, is derived the key-stones of the new public administration - the conclusion that politics should stick to its policy determining sphere and leave administration to apply its own technical processes free from the blight of political meddling. 9

It can, then be concluded with the submission, that the so-called dichotomy, was after all, surely deliberate. There seems to be more than a hint at the desire, (in 1916) to create a non-departmental type corporate structure for the Railways and Harbours Administration ('Manage and Work') as opposed to the related political functions of the now State President, Minister of Transport and Railways and Harbours Board ('Administer and Work'). Caiden, lends credence to this submission with his theory on these administrative terms:

Management is the term preferred in business to separate the activities of the bureaucratic elite from those of the subordinate submanagerial classes. Administration is the term preferred in public administration to refer to the similar activities performed by officials sandwiched between the political executive and the subordinate submanagerial classes, with the accent more on external responsibilities than internal controls. 10(*italics mine*)

Figure 4 is a diagrammatic representation of the present organisation of the top echelon within the railways management. It will be noted that a general manager is supported by two deputy general managers, who in turn are supported by seven assistant general managers and a financial manager. It will also be noted that one of the assistant general managers is concerned with harbours and pipelines and a second with airways. The Assistant General Manager (airways) is also known as the Chief Executive of South African Airways. But one should not

lose sight of his official status as one of seven assistant general managers within the whole Railways and Harbours Administration.

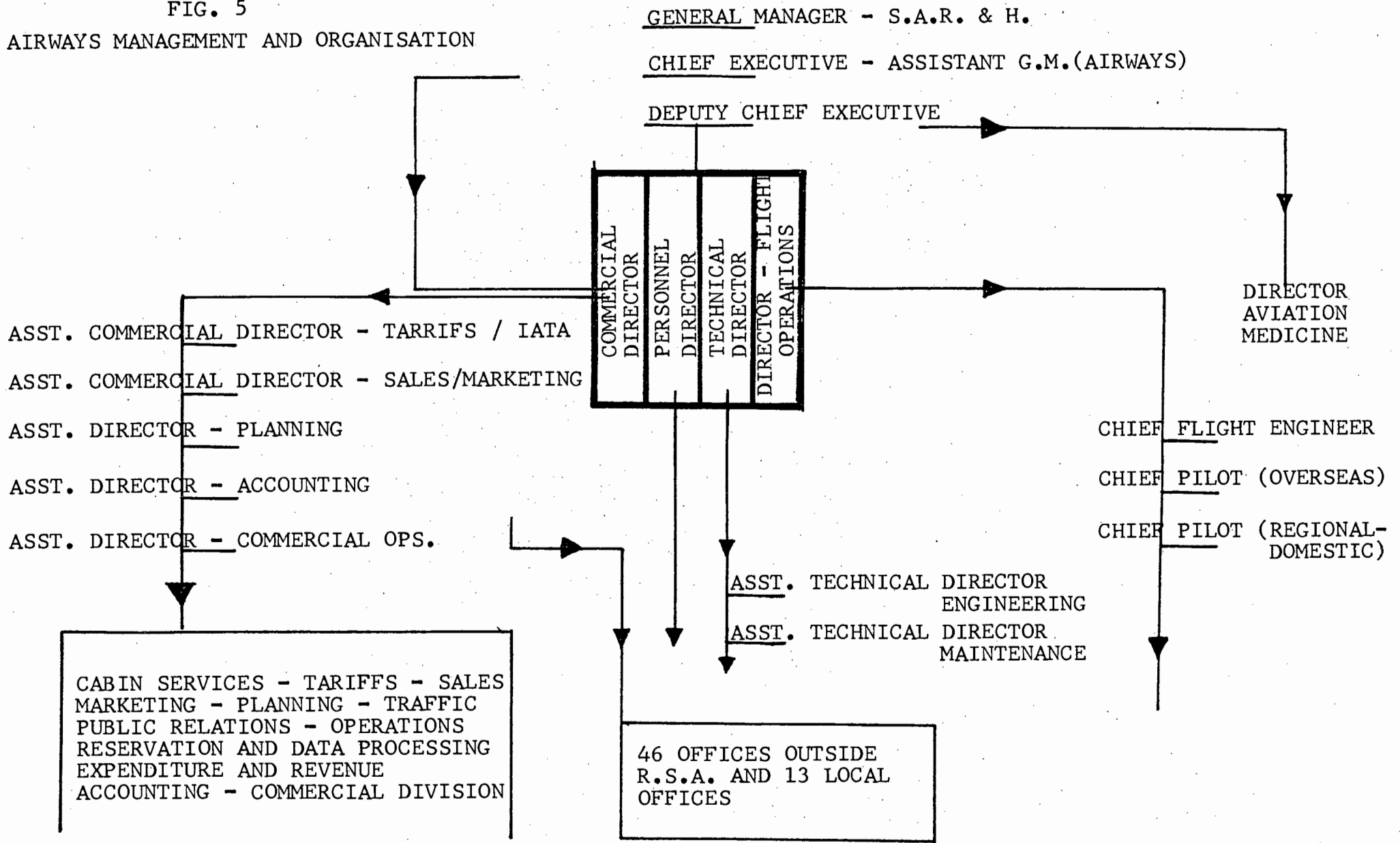
It is convenient at this point to clarify that the Railways and Harbours Administration consist of Five "main services", that is, Railways, Road Transport, Harbours, Pipelines and Airways. 11

The railways are primarily concerned with the transportation of goods, passengers and parcels, coal and coke, live-stock etc., whilst the harbours are responsible for the handling of ships, cargo, passengers, and for dry docks, harbour craft, salvage and towage services and navigational needs. Pipelines presently are mainly utilized in the transportation of petroleum products, whilst the airways service undertakes the transportation of passengers and cargo through an international service, neighbouring territories service and a domestic service. It must be emphasised and appreciated that the Railways and Harbours Administration constitute five services of which South African Airways is but one partner. 12

In figure 5 a diagrammatical representation is given of the organisation and management of South African Airways. It will be noted that the Chief Executive (assistant general manager airways) together with his chief airways manager, commercial director, technical director and director of flight operations represent the "management" of the Airways whilst the group managers, deputy directors, personnel director, director of aviation medicine, managers, deputy managers, chief pilots, and accountants constitute the "executive officers" of the airways. In addition to the executive officers there are various regional managers scattered over the globe and at least forty-eight so-called local managers scattered amongst the neighbouring territories of the Republic and throughout the world. 13

FIG. 5

AIRWAYS MANAGEMENT AND ORGANISATION



As at the 1st March 1975 the total number of staff employed by South African Airways was 8,691 persons of which 376 were pilots, 984 other air crew, 3,213 aircraft maintenance and servicing staff and 4,118 traffic and other staff. 14 And yet this whole complex and specialised transportation service merely constitutes one of five main services in the Railways and Harbours Administration.

It is of interest to note that until 1970 the Chief Executive, Deputy Chief Executive, Commercial Manager, and Engineering Manager of South African Airways were designated as the "executive officers", whereas from 1971 their status and designation was changed to Chief Executive, Commercial Director, Technical Director and Director (flight operations) under the general grouping of "management". 15 It is submitted that the various nomenclature changes in the status and designation of senior members of the Airways as distinct from the remaining branches of the Railways and Harbours Administration clearly indicates an endeavour by Airways to assume a corporate image within the huge Railways and Harbours Administration. This is particularly understandable and desirable when one bears in mind that whereas the activities of the Railways, Harbours and Pipelines relate mainly within the borders of the Republic of South Africa Airways operates both domestically and to a greater increasing extent beyond the borders of the Republic.

7

NOTES

1. No. 73/1962.
2. R.J.S. Baker, Administrative Theory and Public Administration. (Hutchinson University Library, London, 1972) p.13.
3. Ibid.
4. Ibid.
5. Desmond Keeling, Management in Government (George Allen and Unwin, 1972) pp.22-23.
6. Ibid. p.23.
7. Ibid. p.27.
8. Fritz Morsten Marx, ed., Elements of Public Administration, 2nd ed. (Prentice-Hall, 1959) p.7.
9. J.M. Pfiffner, 'Public Administration', in Administration the Word and the Science, A. Dunsire. (Martin Robertson 1973) p.91.
10. Gerald E. Caiden, The Dynamics of Public Administration, (Dryden Press, Illinois, 1971) p.232.
11. Annual Report, South African Railways and Harbours, 1974-1975 p.31.
12. Ibid.
13. Compiled from various South African Airways Annual Reports (and) - 'This is SAA' (Thompson Publications, Johannesburg, 1976).
14. Annual Report South African Airways, 1974.
15. Annual Reports - South African Airways, 1960-61, 1963-64, 1971-72, 1974-75.

CHAPTER VIIRAILWAYS AND HARBOURS SERVICE ACT 1960 -
CONTROL OF SOUTH AFRICAN RAILWAYS AND HARBOURS
FINANCES.

The South African Railways and Harbours (including South African Airways) has been described as "State enterprise possessing separate legal personality, separated from the public service, but otherwise in much the same position as ordinary State departments."¹ Two basic arguments have been advanced to justify the separate identity of the South African Railways and Harbours namely:

- (a) The fact that they are commercial undertakings requiring greater managerial flexibility and planning scope, especially in the field of capital formation, than other state departments, and
- (b) the relatively larger scope of their activities compared with other units operating on a commercial basis.²

The term:

"Separated from the public service",

requires greater attention. The ordinary State departments and their personnel make up the statutorily defined "public service". The South Africa Act which defined the executive, legislative and judicial powers to be exercised in the Government of the Union, vested generally in the Executive Government the power to appoint and remove officers of the public service of the Union. Since that time, however, Parliament has legislated more specifically in regard to the matter and has:

in effect provided two parallel statutory service codes or charters governing the terms and conditions of employment in: (a) the public service and (b) the railway service. (to which can now be added the post office organisation). 3

The original Railways and Harbours Service Act No 28 of 1912 provided:

for the organisation and discipline of, and the payment of retiring allowances and financial benefits to persons in the employment of the department of railways and harbours of the Union . . .

The Railways and Harbours Service Act No 22 of 1960 (as amended) now provides:

To consolidate the laws relating to the organisation of and discipline and conditions of employment in the department of Railways and Harbours of the Republic.
(italics mine)

The main statutory provision relating to the public service, is, the Public Service Act 1957. The reason for the division of government service into these various branches is to be found:

. . . not in any difference in the basic nature of the duties and responsibilities of the two groups or servants or their relationship to the Crown, as employer, but in the fact that the financial resources of the Union Government are separated and accrue to either (a) the Consolidated Revenue Fund, or (b) the Railways and Harbours Fund, from which respective sources Parliament appropriates monies annually.

- (a) for the services of the Union, and
- (b) for the services of the railways and harbours.

"Moreover, notwithstanding the injunction in Section 127 of the South Africa Act that the railways and harbours shall be administered on business principles, the Railway Administration is none other than a department of State in terms of section 14 of that Act and its functions as such are essentially those of government and remain executive". 4

Each group of statutes, together with the regulations framed thereunder and the rulings and instructions issued in regard thereto by the department responsible for regulating and administering the public service or the railway service, or the postal service, as the case may be, constitute the service code applicable to that particular branch of government service in the Republic. 5 So, for example, Section 16(d) of the Railways and Harbours Service Act ⁶ which stipulates that the pilots and other flying crew in the airways department

"shall be retired from the Service on obtaining the age of 58 years".

It is interesting to note that the heading to this section is "retirement of servants on attaining age limit"? (italics mine)

Although employees of the South African Railways and Harbours Administration are not subject to the jurisdiction of the Public Service Commission, but are instead subject to the South African Railways and Harbours Service Commission, prior to 1940 the Chairman of the Public Service Commission was also Chairman of the S.A.R. & H. Service Commission. Put in another way:

Die Kommissie van die Suid-Afrikaanse Spoorweg en Hawediens is klaarblyklik op die voorbeeld van die Staatsdiens-kommissie gebaseer . . . 7

The basic qualification for appointment to the Railways and Harbours Service is spelled out in Section 4 of the Railways and Harbours Service Act and provides that:

. . . no person shall be appointed in a permanent capacity or on probation or in a temporary capacity in any office of post in Service unless such person is a citizen of the Republic of South Africa and is of good character and free from any mental or physical defect, disease or infirmity which would be likely to interfere with the proper performance of his duty or to render necessary his retirement therefrom earlier than the prescribed age of retirement . . .

Table 2 presents a break-up of South African Airways personnel, into various working categories, racial groups, and in relation to the total personnel employed by the South African Railways and Harbours Administration as at 31st March, 1976. 8

T A B L E 2

PILOTS	404
OTHER CREW	905
AIRCRAFT MAINTENANCE AND SERVICING PERSONNEL	2945
TRAFFIC, SALES AND ALL OTHER PERSONNEL	5668
<hr/> TOTAL	<hr/> 9922
WHITES	8050
NON-WHITES	1872
<hr/> TOTAL S.A.R. & H. PERSONNEL	<hr/> 254,735

During the 1976 Parliamentary Session the Minister of Transport was asked whether any posts in the South African Airways were open only to persons of a particular race, and if so, what posts and to persons of what race they were closed. The Minister replied as follows:

There are no provisions in terms of which specific posts are open only to persons of a particular race. Changes in respect of the allocation of work to the different racial groups are effective in consultation with and with the concurrence of the various Staff Associations.

The Minister was also asked whether difference salary and wage scales on a basis of race are applicable in the South African Airways for any posts entailing the same duties, responsibilities, and qualifications for incumbents and if so what posts. The Minister replied:

Yes. It is, however, the policy to narrow the gap between the races of remuneration of the different racial groups, as economic conditions permit. 9

In the House of Assembly in 1961 a Member appealed to the Minister:

Once again that he should treat the Airways as an independent unit and not as a sub-unit of the Railways. The South African Airways, has a very high reputation and a very high standard . . . but I feel that those who are employed in the Airways deserve better of the government and of the Minister. If you compare the conditions of service and the salaries of the South African pilots for instance with that of the pilots of any other airline in the world today, it makes us look as though we are already a fifth-rate Republic, unable to remunerate our people as they should be remunerated for specialised work. 10

More recently in 1975 the following words were heard in the House:

Then too, there is the example of the chief pilots of the South African Airways, who are officials of the South African Railways. Their salaries - so as to compare with conditions in the rest of the world - are approximately equal to the salary of the General Manager. Our chief pilots could not therefore, qualify for salary increases without their salaries exceeding that of the General Manager. 11

The concept of the public corporation will be dealt with in some detail but it is opportune to record that in Canada the public corporations have entirely followed the rule that their employees should not have the status of civil servants. This is an outcome of the conception that a corporation should, as far as possible, approximate to the idea of business management and not be tied too closely to Civil Service. One consequence of this freedom has been the possibility of paying somewhat higher salaries to the leading executives of corporations. 12 In the realm of the personnel structure of public enterprise it has been suggested that ideally a public enterprise should be as free as a private enterprise to devise its own system of grading, classification, promotion, discipline, etc.

Sometimes conditions in public enterprise are completely assimilated to those in the rest of the Government Service, even to the extent of being subjected to the same law. This, however, is rare except for departmental enterprises. 13

On the question of autonomy in personnel administration the following statement has been made:

In some countries, personnel management practices are strongly influenced by Civil Service regulations. Political authorities often succumb to pressures for the application of uniform rules through all branches of the Public Service. The effect of such uniformity on the performance of public enterprises is generally unfavourable. When it becomes a kind of satellite of the civil bureaucracy, most of the autonomy which it is supposed to possess simply disappears. 14

Apparently the above dangers have been recognised by the South African Railways and Harbours. Recently in a move widely welcomed by industry the General Manager:

swept away hide-bound civil service promotion patterns and instituted instead a rigorous selection process scientifically designed to spotlight top-quality management material. 15

Until then the Railways (and Airways) top management had qualified for promotion on:

1. length of service;
2. academic background;
3. general knowledge;
4. overall ability.

Whilst this had produced many excellent men both in the technical and administrative fields, "today's transport pressures are such that additional qualifications are clearly needed and must be assessed in the promotion process." 16

A new and much tougher executive selection process has been installed. The trend of qualities now coming under review include:

1. speed and efficiency in decision making;
2. determination to keep abreast of development in his particular field;
3. insight into technical and managerial problems, ability to evaluate the economic climate, to adapt to ceaselessly changing demands from the commercial and industrial sectors;
4. ability to understand human behaviour, attitudes and motivation;
5. efficiency in the art of communication, both with staff and with the community at large;
6. conceptual abilities - the ability to foresee transport demand in all its forms, understand new

technology, help plan a long-term, up-to-date rail system and ensure continuous smooth management. 17

There are two further statutory provisions which affect the employee of all the services of the Railways and Harbours Administration and which tend to lead further substance to the proposition that the personnel of the Railways and Harbours Administration are in reality hardly separated from the general public service.

Section 42 of the Exchequer and Audit Act ¹⁸ provides that:

. . . (2) The Auditor-General shall investigate, examine and audit all the accounts of the Railways and Harbours Administration and of all persons in the employ of that Administration entrusted with the receipt, custody, payment or issue of monies . . .

The State Liability Act ¹⁹ makes it abundantly clear that employees and personnel of the Railways and Harbours Administration are to all intents and purposes treated as any other servant of State and the laws relating to the liability of the State in respect of the acts of its servants apply equally to the employees of the Railways and Harbours Administration. This is made abundantly clear in Section 3 which provides:

. . . but the amount, if any, which may be required to satisfy any judgment or order given or made against the nominal defendant or respondent in any such action or proceedings may be paid out of the Consolidated Revenue Fund or the Railways and Harbours Fund, as the circumstances may require. (*italics mine*)

The desirability of extricating South African Airways from the Government Railways Department, and its personnel from the Public Service ethos, was brought to a head in 1974 in the so-called 'Sky Spies' incident.

The incident allegedly involved a South African Railways Police Officer who asked prospective cabin staff of South African Airways to supply him with information, that might be of use to him in the exercise of his security duties at Jan Smuts Airport. 20

In a later incident in 1976, a Kwa Zulu Government representative was approached by two South African Railway Police Constables at Jan Smuts Airport and led to a Permit Office, after a member of the cabin staff on a South African Airways domestic flight radioed ahead to alert the Police about a passenger whom he thought was reading subversive matter. The Minister of Transport later apologised to the Kwa Zulu Government for the incident. 21

In this context, it should be noted that South African Railway Police are servants of the South African Railways Administration and are specifically empowered to exercise their functions 'with respect to any aircraft belonging to the Administration'. 22 Consequently they enjoy jurisdiction over South African Airways aircraft and have access to South African Airways personnel by virtue of the status of South African Airways within the Railways and Harbours Administration. Amongst their functions are included the 'preservation of internal security of the Republic'. 23

The system of control over the Railways Administration's finances is laid down by the Exchequer and Audit Act and provides primarily for control by Parliament. All revenue is paid into the Railways and Harbours Fund constituted under the Exchequer and Audit Act and may be withdrawn therefrom only under the warrant of the State President. Expenditure requirements for the coming financial year are set out in detailed estimates, and Parliament each year approves through an Appropriation Act of expenditure as estimated by the Administration. In this way the necessary control over

expenditure is exercised by Parliament. Parliamentary control is also exercised through the medium of the Select Committee of the Railways and Harbours, before which the General Manager of Railways, as accounting officer for the Administration, is required to appear. 24

It has been suggested that while the Railway Administration is subject to controls similar to those applied to State departments, it is detached from the ordinary government procedure in that its funds are in no way controlled by the Government Department of Finance²⁵, as the Treasury's control functions in respect of government departments do not extend to the railways.

However, since a substantial portion of the capital requirements of the railways administration is obtained from the Central Government's Loan Votes, and these requirements are put on the Estimates by the Minister of Finance, the Treasury has de facto power to vary railway capital spending. 26

The Auditor-General appointed by Parliament is responsible for auditing the accounts of the Railways Administration as well as those of Central Government Departments. A separate report on the railway accounts is presented by him every year to Parliament, which refers the report to the Select Committee of the Railways and Harbours. 27 It should be emphasised that whereas ordinary revenue from taxation, fees, custom duties, etc., is received by the Exchequer Account, the Railways, Airways and Harbour revenues are paid into the Railway and Harbour Account, from which money may be withdrawn only under appropriation made by law. No railways or harbours may be constructed without the sanction of Parliament, nor have the South African Railways independent borrowing powers, their capital requirements being obtained largely from or through Parliament. 28

Thus, the Railways and Harbours Appropriation Act 29 provides:

- (1) The Railways and Harbours Fund is thereby charged with such sums of money as may be required for the services of the railways and harbours of the Republic for the year ending on the 31st March, 1977, not exceeding in the whole for revenue services, the sum of . . .
- (2) The monies appropriated by this Act for revenue services shall be applied to the purposes set forth in Schedule I . . . and for capital and betterment services to the purposes set forth in Schedule 2 . . .

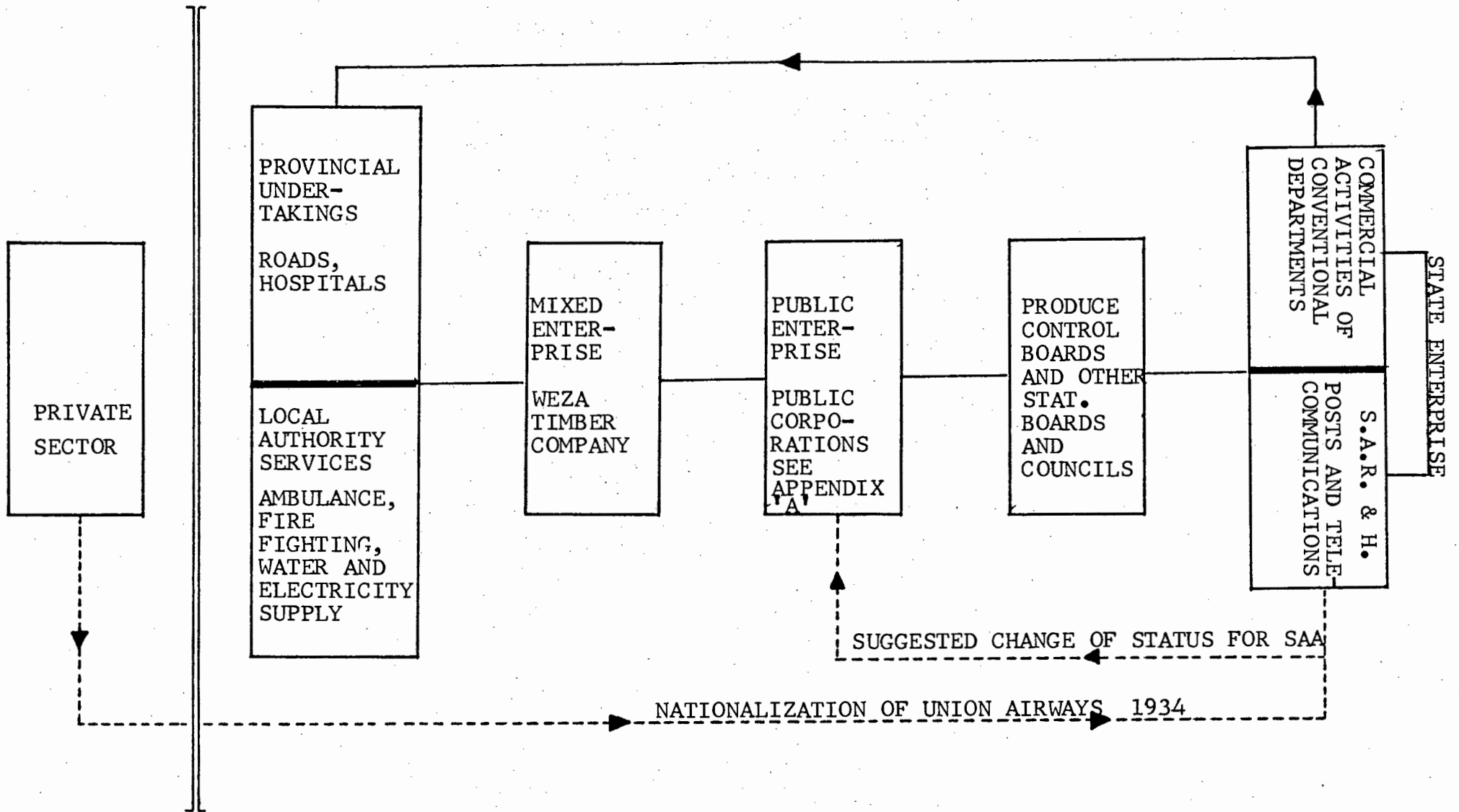
Schedule I contains four heads, namely, railways, harbours, airways and pipelines, and Schedule 2 nine heads, one of which relates to airways (R141,542,100). The Estimates of Expenditure on Capital and Betterment Works for the year ending 31st March, 1977³⁰ (a separate prior official publication) details how the above amount is calculated and indicates for example that provision is made for the purchase of various aircraft. These Estimates are presented to both Houses of Parliament for approval.

N O T E S

1. Denis Worrall, ed. South Africa: Government and Politics, 2nd ed. (J.L. Van Schaik, 1975) p.99.
2. Ibid. pp.99-100.
3. R.P. Plewman, 'Employment In The Public Service', South African Law Journal, 1955, vol.72,p.73.
4. Ibid.p.74.
5. Ibid. p.75.
6. No.22 of 1960.
7. J.J.N. Cloete, Personeel - Administrasie, (Van Schaik, 1975) p.59.
8. Annual Report, S.A. Railways and Harbours, 1975-1976.
9. Hansard (Assembly) 8th June, 1976, col.1161-1162.
10. Hansard (Assembly) 16th March, 1961, col.3139-1162.
11. Hansard (Assembly) 13th March, 1975, col.2495.
12. W. Friedmann and J.F. Garner, eds. Government Enterprise: A Comparative Analysis, (Stevens and Sons, London, 1970) p.317.
13. United Nations, Selected Papers, 'Organisation and Administration of Public Enterprise', 1968, p.80 (ST/TAO/M/36).
14. United Nations, 'Report of the United Nations Seminar on Organisation and Administration of Public Enterprise', 1967, p.21.
15. South African Financial Gazette, 27th February, 1976.
16. Ibid.
17. Ibid.
18. 66/1975.
19. 20/1957.
20. Cape Times, 21st December, 1974.
21. Ibid. 20th October, 1976.
22. Act 70/1957, s.57 A(2).

23. Act 70/1957, s.57 A.
24. A Century of Transport, 1860-1960, (Da Gama Publications, Johannesburg). p.32.
25. Ibid.
26. T. Van Waasdijk, Public Expenditure in South Africa, (Witwatersrand University Press, 1964) p.95.
27. A Century of Transport, op.cit.p.33.
28. T. Van Waasdijk, op.cit. p.94.
29. s.1 and 2. of Act 49/1976, published in Government Gazette No 5049, dated 31st March, 1976.
30. South African Railways and Harbours, R.P.9-1976,p.193.
31. Various aspects of the administration and control of the financial system of the Railways and Harbours Administration have been consolidated and up-dated and are now regulated by the Railways and Harbours Finances and Accounts Act, No. 48 of 1977. The provisions include, inter alia, the power of the General-Manager to raise money by way of loans to finance anticipated expenditure on capital and betterment works (S.16) and the abolishment of the State President's special Warrants for unforeseen expenditure. Instead, the Minister of Transport is now empowered, pending Parliamentary approval, to withdraw limited amounts from the Railways and Harbours Fund (S.7).

FIG. 6 STATE - PUBLIC ENTERPRISE.



CHAPTER VIII

FORMS OF PUBLIC ENTERPRISE IN SOUTH AFRICA - DE-
PARTMENT OF POSTS AND TELECOMMUNICATIONS
BRITISH POST OFFICE - PUBLIC ENTERPRISE
IN CANADA - ADVANTAGES AND DISADVANTAGES OF
DEPARTMENTAL ENTERPRISE.

"Die Suid-Afrikaanse Spoorweg-en Hawe-administrasie staan halfweg tussen die tradisionele staatsdepartemente en die staatsbeheerde korporsasies . . . "1

The South African Railways and Harbours has also been categorized as being a form of state enterprise possessing separate legal personality, separated from the public service, "but otherwise in much the same position as ordinary state departments". 2

But what constitutes a department? It has been defined as "an administrative unit comprising one or more organisational components over which a Minister has direct management and control."3 Put in another way, it is also understood to mean "a central government body staffed by civil servants and receiving its funds directly out of monies provided by Parliament. 4

The Public Service Act ⁵ defines a 'Department' to mean 'any bureau, office or other departments of State, including a provincial administration or administration of the territory, which has been established under any law and is mentioned, . . . in the first column of the first Schedule to this Act, as amended from time to time'.

In terms thereof, no less than Forty-Three State Departments are listed (see Appendix C) - to which should still be added the 'Department of Railways and Harbours' and the Department

of Posts and Telecommunications'. 6 In explaining why the four provincial authorities and the territorial authority of South West Africa are also counted as 'departments', Ben Roux held that this was so, 'because their annual financial grants from the Central Authority are appropriated just like the 'votes' of the ordinary departments in the Central Budget'. 7 If this line of thought is followed, then clearly the South African Railways and Harbours Administration constitutes a State Department, for as previously stated, its separate budget is similarly submitted to Parliament for annual approval (unlike public corporations) albeit from the Railways and Harbours Fund as opposed to the Consolidated Revenue Fund.

Accordingly, any distinction between the Railways and Harbours Administration and the conventional State Departments, lies more in the complex nature and extent of its functions, than in its formal structure or organisational typology.

The five main transport services of the Railways and Harbours Administration remain a major form of State Enterprise, in contrast to the traditional functions of the State, such as defence, law and order and taxation, and its extended regulatory functions, or even, the various, comparatively minor, Commercial Departmental undertakings and activities, such as the Mint, Government Printer, Guano Island Works of the Department of Agriculture, Government alluvial diggings of the Department of Mines, sawmills of the Department of Forestry, and sealing and whaling of the Department of Industries.

An unorthodox description of the South African Railways and Harbours, enunciated in 1953 by Mr Justice Van Den Heever in these words '. . . it must be remembered that although the South African Railways and Harbours is called a Department, it is in fact a Trading Corporation performing many functions'. 8

Thus, 'State Enterprise' could be defined as some commercial activity or undertaking carried on by a State Department, or division or agency, of such department.

Figure 6 attempts to categorize "public enterprise" in relation to the various other forms of enterprise in South Africa. Until 1968, the Post Office constituted a conventional state department, at which stage the Post Office Re-adjustment Act 9 made the Administration of the Department of Posts and Telegraphs "an autonomous business undertaking, on similar lines to the Railways and Harbours Administration".¹⁰ As early as 1911, the Public Service Commission appointed in terms of Section 141 (1) of the South Africa Act 1909, to make recommendations on the re-organisation of State Departments, found that the Post Office was a commercial undertaking and should be divorced from other departments. A proposal that the Post Office be put on an autonomous basis in the same way as the Railways and Harbours Administration was made by the Postmaster-General as far back as 1919.¹¹

In moving the Second Reading of the Post Office Re-adjustment Bill, the Minister of Posts and Telegraphs explained that:

The measure seeks to readjust completely the position occupied by the Post Office in the overall setup of our Public Service. The Post Office is in point of fact a business undertaking which belongs to the State, and not a Department of the State in the sense that it is a public body, as most other State Departments are. The Post Office provides commercial services, and it is now the intention to adjust the arrangements whereby it is being financed and administered so that they may correspond more closely with the needs of a commercial undertaking. We want to place it on an autonomous basis. By doing so we think that it will not only be possible to make the Post Office more efficient, but also enable the Post Office to meet the public demand for essential Post Office services more effectively . . .

As the demand for the services of the Post Office grew and it developed into a major business undertaking, more and more people began to point out that in the restrictive atmosphere of a state department there was insufficient opportunity for the development of that spirit of enterprise which is essential for the efficiency and progress of a major business concern. It was pointed out that the development of the Post Office was being impeded and hampered by the many restrictions which, however necessary they may have been in an ordinary public body, could not belong in a commercial undertaking. 12

The two main principles of the Bill were the provision of "autonomous financial arrangements" for the Post Office, "quite separate from the Treasury" and the establishment of a statutorily "autonomous staff board" for the Post Office which, with certain provisos, "would take over all the functions of the Public Service Commission as far as the Post Office is concerned". 13 Section 2 of the Act is phrased similarly to Section 103 of the Constitution Act of 1961, which itself was a replica of Section 127 of the South Africa Act, in effect, that the affairs of the Department of Posts and Telegraphs be administered on business principles, with due regard to the economic development of the Republic and that, as far as possible, earnings should not exceed expenditure. 14

On the 26th May, 1976 a Debate took place in the House of Assembly dealing with the Post Office Amendment Act of 1976. During the course of the Debate a Member described the Act in the following terms:

The main principle of this legislation, in our opinion, is the profit motive of the Post Office. This is being introduced into the Post Office for the first time . . . The other point which is also considered to be very important . . . is the fact that he (the Minister) is now paving the way for a new status for the Post Office, that of a state corporation . . . certain other amendments to the Post Office administration create the impression that the Minister is paving the way for a kind of institution which will no longer be a department, but which will be a state corporation. 15

Thus, it will be seen that in 1968, the organisational structure of the Post Office changed from that of a conventional state department, to a form of state enterprise within a departmental structure, but still far from the "public enterprise" concept of a public corporation.

In Britain, the Post Office, as in the Republic, provides two major public utilities, that of Posts and Telecommunications, which play a vital part in the economic and social life of a nation. In 1961 its finances were separated from the Exchequer but constitutionally it was still a government department, with a minister at its head who was answerable to Parliament for its day-to-day operations. Then in 1967 the Post Office which was still a department of State was involved in a major constitutional change and the Post Office became a public corporation. 16

Its accountability to Parliament will be different from that at present. There will no longer be a Minister answerable to Parliament for its day-to-day activities. But both Houses will have the opportunity to consider the Report and Accounts of the Corporation when these are laid before Parliament every year. The work of the Corporation will be subject to scrutiny by committees of the House of Commons. The Government's objective was to create an authority which would be responsible for developing the most efficient services possible, at the lowest charges consistent with sound financial policies, and to carry on in a worthy manner, deposed of its tradition of service to the public and also to develop relations with the staff in a forward looking and progressive way. 17

The traditional form of public enterprise is the government department, but more-up-to-date forms of organisation are the "public corporation" and the state-owned or "mixed" corporation, both of them ultimately dependent upon the political authorities but endowed with certain immunities supposed to facilitate their performance as a commercial type of function. Whereas,

there is still some doubt as to the suitability of the corporation as a means of combining operational freedom with public control, there is apparently general agreement that, other things being equal, both the co-pany and the corporation are "superior to the department". 18 According to a United Nations investigation, departmental forms of organisation are either abandoned or transformed out of all recognition.

In Africa, for instance, departmental enterprises such as Sudan Railways and Ghanian Electricity have been converted into public corporations or endowed with many of the "immunity and operational flexibility" of such corporations. 19

In a publication devoted to the study of public enterprise in various countries, Hanson observed:

It must be recognised that the South African Railways Administration is much closer to the "departmental" than to the "public corporation" type, and that attempts made by the South Africa Act to remove it from political influences has not been successful. In any rapidly-developing country attempts to insulate the railway administration are almost inevitably doomed to fail and the Act of 1916, which by reducing the Railways Board to an advisory status, placed railway policy entirely in the hands of the Minister, may be regarded as a recognition of this fact. 20

Like most other countries Canada, at the national level, early settled on a departmental form as the most logical device for compartmentalizing the various programmes to be undertaken by the Public Service. The business of government at first, could quite easily be absorbed by the available portfolios, and their elastic sides were subsequently stretched to take in a vast number of new programmes. But the constant expansion of government responsibility ultimately proved too much for the departmental containers, and recent years have witnessed the proliferation of various non-departmental administrative entities. 21 In Canada, the resort to non-departmental forms of administrative units is rooted on two basic considerations. First, there is the straightforward simple proposition that as a work load of a

conventional department expands, a point is reached where the tasks become unmanageable and ways must be sought to lighten the load. The obvious response when this situation arises, is to create another department, but the political conventions surrounding the Canadian Cabinet system impose a limit on the number of departments. Thus, a solution had to be found by adopting some administrative variant of the departmental form. The second governing consideration which has grown in importance, is that not only do the functions of government expand but, to an increasing extent, they tend to differ so much in kind from the traditional functions, that the conventional department is no longer deemed appropriate. 22

Major changes in the character of government functions have been occasioned by the advances of the Government into various commercial and industrial undertakings, infrequently as a monopolist and more often to supplement facilities and services provided by private enterprise. It has been argued, that whenever such entrepreneurial activities are undertaken, they ought to be assigned to organisations that are moulded to the pattern of private enterprise. Thus, the public corporation has come into existence, endowed with special autonomy in financial and staffing matters, and removed from the direct play of politics so that policies can be evolved independently of the normal "line" operations of departments, and day-to-day administration can be conducted on business lines. 23 These public corporations are managed by a Board rather than by a single head, and "one must assume that collegial management is deemed more appropriate for the particular functions than is the conventional one-man direction provided through the departmental hierarchy." 24

In Canada, the work of government is conducted by Federal Departments, special boards, commissions and Crown corporations. 25

The Financial Administration Act of 1970 provides a uniform system of financial and budgetary control of accounting, auditing and reporting for Crown corporations. One of the more interesting features of the Act, is the attempt that has been made to define and classify Crown Corporations. A Crown Corporation is defined in the Act As:

A corporation that is ultimately accountable through a Minister to Parliament for the conduct of its affairs.

A three-fold classification of Crown Corporations as departmental, agency and proprietary bodies was established, and a systematic pattern of relationship between each class, on the one hand, and Parliament and Ministers on the other, developed.

The "departmental corporations" are defined as Crown corporations that are responsible for administrative, supervisory and regulatory services of a governmental nature, and that are servants or agents of Her Majesty. They are in fact regarded as ordinary departments of Government, performing essentially departmental services that for one reason or another have been given corporate status. "Agency Corporations" are defined as Crown Corporations that are agents of Her Majesty in right of Canada, and that are responsible for the management of procurement, construction or disposal activities on behalf of the crown.

"Proprietary corporations" are defined as Crown corporations, but are responsible for the management of lending or financial operations or for the management of commercial and industrial operations involving the production of, or dealing in, goods and the supplying of services to the public and are ordinarily required to pay their own way, or, in the words of the Statute, "to conduct the operations without appropriations". They are

usually given a considerable degree of managerial freedom. Air Canada is classified as a Proprietary Corporation as compared to the Medical Research Council which is classified as a Departmental Corporation, and the Royal Canadian Mint which is an Agency Corporation. 26

Hanson describes departmentally-managed undertaking as the "traditional" type of public enterprise both in developed and under-developed countries. 27 According to a United Nations publication, departmental undertakings in their pure form display the following characteristics:

1. The enterprise is financed by annual appropriations from the Treasury and all, or a major share of its revenues, are paid into the Treasury;
2. the enterprise is subject to the Budget, accounting and audit controls applicable to other government departments;
3. the permanent staff of the enterprise are civil servants, and the methods by which they are recruited, and the conditions of service under which they are employed, are ordinarily the same as for other civil servants;
4. the enterprise is generally organised as a major sub-division of one of the central departments of government and is subject to the direct control of the head of department;
5. whenever the supplies in the legal system of the country concerned, the enterprise possesses the sovereign immunity of the State and cannot be sued without the consent of Government. 28

What then, are the disadvantages of this form of organisation? According to Hanson, departmental management, particularly for an enterprise which is markedly of an industrial or commercial character, tends to raise "the power of government" to the maximum and to reduce "initiative and flexibility" to the minimum.

Hanson believes that this disadvantage is relative, not absolute, and that its seriousness depends firstly upon the extent to which initiative and flexibility are needed for the efficient operation of the enterprise concerned. If the activities, although industrial or commercial, have a large element of the routine, then departmental management may not seriously hinder them. (certainly not the case of an airway organisation). It depends also on the specific governmental procedures and conventions to which the enterprise becomes subject. At what levels in the administrative hierarchy will day-to-day decisions be taken? What kinds of budgeting, accounting and auditing controls are prescribed by law? How responsive are Ministers to pressures from both Parliamentary and extra-Parliamentary sources? How are the departmental civil servants recruited, trained, promoted and disciplined? How far is initiative encouraged? Does advancement depend on seniority or merit? What provision is made, if any, for the acquisition of the special skills required for managing economic enterprises? 29

Even in a developed country, with an intelligent and adaptable civil service, the operation of making a genuine public enterprise out of a government department is not one to be lightly undertaken; in an under-developed country it is often impossible. Special forms of organisation, therefore, are usually necessary. Therefore, of all non-departmental forms of public enterprise, the public corporation is the most highly regarded, in developed and under-developed countries alike. 30

In Britain, the opposition to nationalisation made a great deal of the argument that the Civil Service and the normal government department were quite unsuited for the efficient management of a large industrial undertaking. Lord Haldane was quoted as saying:

Unless you grow up in an atmosphere where it is encouraged you do not have initiative. That is where the business man has the strength and the advantage. He is in an atmosphere of initiative. The civil servant is not . . . 31

There was also the fear of political influence if the industry were to be managed by a Minister.

It is an inseparable feature of departmental government that each man instead of taking responsibility for any proposed action should pass it on to his superior; and the final responsibility of the department must always be Parliament. Its actions are thus inevitably governed by political considerations and the interests of political parties. 32

In comparing the main types of public enterprise, Friedmann, when dealing with administration by government departments, describes how as the tasks of government multiplied, the framework of Civil Service administration became increasingly insufficient for the handling of the new tasks which were often of a specialised and highly technical character. The distrust of Government by Civil Service, justified or not, was a powerful factor in the development of a policy of public administration through separate corporations which would operate largely according to business principles and be separately accountable. 33 In 1954, it was noted that in the United States, there had been a marked tendency to revert from the semi-autonomous public corporation to the departmental administration, although this appeared to be largely due to the limination of all the advantages of management by public corporations, by hostile legislation. 34 Again, according to Friedmann, the German position shows clearly that

"We should not become the slaves of terms and classifications".

The two giant State enterprises in Germany, the Railways and Postal Services, which for generations had been conducted by the State, were reconstructed, not with full legal personality, but with most of the essential attributes of public corporations. However, according to a long German tradition, the permanent senior employees not only of the

Post but of the more autonomous Railways, have civil service status and are known as "Beampte". In Germany, railway and post officials are civil servants of a special functional and technical character, but they are in every respect equal to their Ministerial colleagues in status and emoluments. 35

In 1950, the Klipfontein Organic Products factory was a State owned enterprise. In that year, the Klipfontein Organic Products Act ³⁶ was passed providing for the incorporation of the factory as a state-controlled undertaking. The Minister concerned, when addressing Parliament as to the reasons which necessitated the incorporation of the factory, made the following observation:

If it is run as a State factory and it has to make purchases, it has to go to the Tender Board every time it wants to buy raw materials, and by the time a reply received from the Tender Board the offer has lapsed and then it may be necessary to purchase at a higher price. For that reason it is impossible to run a factory by a department, and in those circumstances it is necessary to incorporate the factory. 37

However, a third stage was yet to follow some fifteen years later, when by virtue of the Klipfontein Organic Products Corporation Transfer Act ³⁸, the Corporation was converted from a Public Corporation into a regular Commercial Corporation in private law. Not a common practise however, in South Africa or elsewhere. Dr N Diederichs, the then Minister of Economic Affairs, in motivating this change, explained that the Government were not desirous of participating in fields of economic activity in which private enterprise had shown it was willing and able to carry on activities essential in the National interest. 39 Reference has been made above to the disadvantages of the Tender Board procedure and to how this procedure would, it was thought, hamper the commercial activities of the Klipfontein Organic Products Factory. This Tender Board

procedure has been described in the following manner in the American context:

Thus to spend legally, an agency must comply with an Act requiring competitive bidding in the making of public purchases. If all bids are alike, the accepted etiquette is to advertise again or to draw lots to determine the successful bidder. It has been pointed out that if this procedure had been required of the Tennessee Valley Authority when it received identical bids for cement, it would have had to pay excessive prices. Instead it negotiated lower prices. It was able to bargain, with the intimation that it could construct its own cement plant. Such a tactic would have been illegal under ordinary procedures, and the Comptroller-General would have blocked payment on a purchase so made. Naturally, in commercial enterprise, freedom in purchases from hampering routines, bulks much larger in importance than in the ordinary department, which usually has to make only small purchases for its office needs. 40

The South African Railways and Harbours Administration are subject to the Railways and Harbours Tenders Board⁴¹ whose policy laid down in the regulations⁴² which govern the Tender Board, is summarised as follows:

It shall be the policy of the Administration to purchase its requirements, obtain its services and dispose of its surplus stores with a maximum of economy and efficiency, due regard being had to the importance of encouraging local industry and merchants trading in the Union.

Clearly, South African Airways are subjected to this purchasing procedure, which prescribes that generally speaking, all services, supplies, purchases, sales and trading concessions shall be arranged through the medium of public tenders duly advertised in the Government Gazette, and such newspapers as the General Manager may prescribe from time to time. 43

The Report of the Committee on the Civil Service in 1968 (the Fulton Commission) concluded that to function efficiently, large organisations; including government departments, need a structure in which units and individual members have authority that is clearly defined, and responsibilities for which they can be held accountable. The organisation of a government department, usually defines with great clarity the area of a civil servant's responsibilities: his position within his hierarchy is also clearly and distinctly to allocate to individuals or units the authority to take decisions. There are two reasons for this. Decisions often have to be referred to a higher level than their intrinsic difficulty or apparent importance merits; this is because they involve the responsibility of the Minister of Parliament, and may be questioned there. At the same time many problems overlap departments; they often involve wide consultations at many different levels, both between departments and with a variety of interests outside the Service. Decisions therefore, are frequently collective decisions achieved through a sequence of committees - culminating, if need be, in the collective responsibility of the Cabinet. 44 For these reasons, clear delegation of authority is particularly difficult in the Civil Service.

This has led well-informed observers . . . to conclude that large scale executive operations cannot be effectively run by government departments, and that they should be "hived off" wherever possible to independent boards . . . It has been put to us that accountable management is most effectively introduced when an activity is separately established outside any government department, and that this solution should be adopted for many executive activities, especially the provision of services to the community . . . There are a number of commercial enterprises within the public sector that are already run on this principle, and it is also shortly to be applied to part of the Civil Service by "hiving off" the Post Office. 45

It is submitted that this principle of "hiving off" of certain areas of the public service to autonomous public corporations,

could well be applied to the Airways Service of the South African Railways and Harbours Administration.

In Britain, the main reason for vesting the ownership of nationalised industries (including the airlines) in semi-autonomous public corporations, instead of bringing them within the framework of normal department administration, was to encourage a competitive spirit of initiative and enterprise.

The Civil Service ethos would it was thought, inhibit the managerial staff of the industries from making untried experiments in new fields; it would induce an excess of caution and addition to precedent; officials would always be looking over their shoulders, apprehensive of the Parliamentary inquisitor. 46

The 'hiving-off' of industrial undertakings by Government Departments in favour of Public Corporations, is not unknown in South Africa.

The Armaments Development and Production Corporation was created in 1968 to meet the Armaments requirements of the country through taking over and expanding undertakings of the then Armaments Board or any of its interests in any Armament undertakings. The purpose of the relevant Act, No 57/1968, was 'to establish a Corporation for the development and production of Armaments, . . . ' .

Section 3 of the Act, reveals that the object of the Corporation 'shall be to meet as effectively and economically as may be feasible the Armament requirements of the Republic, ...'

The Corporation was formed, rather than Armaments manufacture undertaken departmentally, because in the words of the Minister of Defence (Mr P W Botha M.P.)

'Experience in our country as well as in overseas countries has proved that State-managed industrial undertakings do have certain limitations which could sometimes hamper speedy adaption to changing circumstances and thus progress in general'. 47

N O T E S

1. J.J.N. Cloete, Sentrale, Provinsiale en Munisipale Instellings van Suid-Afrika. (J.L. Van Schaik, 1973) p.118.
2. Denis Worrall, South Africa: Government and Politics J.L. Van Schaik, 2nd ed. 1975. p.99.
3. J.E. Hodgetts, The Canadian Public Service: A Physiology of Governments, (University of Toronto Press, 1973) p.8.
4. S.A. de Smith, Constitutional and Administrative Law, (Penguin, 2nd ed. 1973) p.182.
5. Act 54/1957, but excludes the Railways and Harbours Administration and Posts and Telecommunications.
6. Index to the Government Gazette for December, 1976, where departments, including the Railways and Posts, are listed alphabetically.
7. Worrall, op.cit. p.82.
8. R. v. Lusu, SALR 1953(2) May, 496.
9. No 67/1968.
10. Annual Survey of S.A. Law, Constitutional and Administrative Law, (Juta 1968) p.13.
11. Hansard (Assembly) 30/4/68 col.4394.
12. Ibid. col.4395.
13. Ibid. col.4399.
14. Annual Survey of S.A. Law, 1968, op.cit. p.14.
15. Hansard (Assembly) 26th May, 1976, col.7677-78.
16. Leonard Tivey, ed., The Nationalized Industries Since 1960, (George Allen and Unwin, London 1973) pp.56-57.
17. Ibid. pp. 57-59.
18. United Nations, selected papers, 'Organisation And Administration of Public Enterprise', 1968, p.25.

19. Ibid. p.26.
20. A.H. Hanson, ed. Public Enterprise, (International Institute of Administrative Sciences, Brussels) p.385.
21. J.E. Hodgetts, op.cit. p.88.
22. Ibid. p.139.
23. Ibid. pp 155-156.
24. Ibid. p.141.
25. Canada Year Book, 1973, (Queens Printer, Ottawa) p.126.
26. Public Administration, 'The Financial Control and Accountability of Canadian Crown Corporations', 1953, vol. 31, pp.130-132.
27. A.H. Hanson, 'Public Enterprise and Economic Development, (Routledge & Kegan Paul, London 1959) p.337.
28. Ibid. p.338.
29. Ibid.
30. Ibid. p.342.
31. Public Administration, 'Management and Accountability In The Nationalized Industries', 1952, vol.30, p.37.
32. Ibid. p.38.
33. W. Friedmann, ed, The Public Corporation, (The Carswell Company Limited, 1954) pp.547-548.
34. Ibid. p.548.
35. Ibid. p.551.
36. 40/1950.
37. Hansard (Assembly) 2nd May, 1950, col. 5515-16.
38. Act 77/1965.
39. Hansard (Assembly) 7/6/1965, col. 7376-78.
40. Fritz Morstein Marx, Elements of Public Administration, 2nd ed. (Prentice-Hall Inc., 1959) p.235.

41. Act 73/1962 S.3(2).
42. Government Gazette 3336, 5th May, 1944.
43. A Century of Transport 1860-1960, (Da Gama Publications, Johannesburg). p.42.
44. Report of the Committee on the Civil Service (The Fulton Committee), Cmnd.3638, London: HMSO, 1968, p.50.
45. Ibid.
46. S.A. de Smith, op.cit. p.221.
47. Hansard (Assembly) 8th May, 1968, col.4867.

CHAPTER IX

THE PUBLIC CORPORATION.

One of the recommendations of the Marais Commission¹ was that South African Airways be divorced from the control of the South African Railways and Harbours Administration and that South African Airways should become a "public utility" corporation modelled on the lines of ISCOR in which the government should have a controlling interest which would enable it to exercise control of the Airline and direct its major policies. At this point, it is necessary therefore to deal with the suggested concept of the "public utility corporation".

This concept appears to involve two conditions:

1. That the Service be considered to be so essential that it requires public regulation, ownership or operation and,
2. that the service should be monopolistic. 2

It goes without saying that an airline requires public regulation, but it is certainly not essential for an airline to be publicly owned or operated.

The Edward's Report maintained that no airline was so large that it was beyond the capacity of private enterprise to finance, nor was it necessary for an airline to be state-owned to operate as a country's flag carrier. Apart from the American airlines, all of which are privately owned, Swissair is mainly privately owned, yet it is Switzerland's chosen instrument. Again, in France, U.T.A., is one of the two chosen instruments and it too

is privately owned. In so far as airlines are expected by the government to behave in a specially responsible manner, governments are able to bring adequate pressure to bear through licensing and regulatory procedures. 3

As far as the monopolistic requirement is concerned, divergent views are expressed to the Marais Commission on the subject of the advisability of permitting competitive service on scheduled air routes, within the Republic of South Africa, and the Commission concluded that the arguments in favour of protecting the existing airline were valid particularly in the Republic where by comparison in general terms, the effective population could be regarded as small. The Commission was also of the opinion that the present volume of air traffic did not justify more than one air carrier on any one route in the provision of air services, while retaining the benefits of large scale operations. 4

The existing commercial aviation structure in South Africa, allows ten privately owned commercial scheduled air transport carriers, which do not compete with South African Airways, but merely 'serve as an essential and official feeder service', for the national carrier. 5

Now to return to the first concept of a public utility corporation and to enquire as to what is "essential". This has been expressed by Robson in the following terms:

This is a matter which depends on circumstances of time and space, of economic and technological development, of social custom and popular psychology. The luxuries of one age become the necessities of the next; and the services which are today widely recognised as public utilities were for long the luxuries of the well-to-do. We can say however that water, gas, electricity, ports and harbours are indubitably public utilities. Some people may wish to include public transport services and telecommunications, but I find it better to place these under a separate heading. 6

According to Robson airlines should be rather placed in the category of "transport and communications" and not as a "public utility". 7

Now to return to the concept of a "public corporation". The classic statement as to the nature of public corporations has been expressed by Robson and his theory of the public corporation, it is submitted, applies equally well to South Africa as to Britain. His theory is of such importance that it deserves to be stated in toto:

The public corporations are organs of public administration. As such they are instruments of public policy just as much as the older departments exercising conventional functions. They are distinct from the regular departments under the control of Ministers; but they are sub-ordinate to Parliament and the Executive.

The organisation, assets, functions and powers of the public corporation spring from the creative act of the legislature; the purposes and property given to them by Parliament. The public corporation cannot by its own authority modify these purposes, nor sell, terminate, liquidate, or pledge the undertaking with which it is entrusted.

To foster initiative and enterprise in the conduct of the nationalized industries, the public corporation has had conferred upon it a substantially greater degree of independence in its daily working than is possessed by departments in charge of a Minister. In matters of finance and personnel, budgeting and accounting, production, distribution and development, it enjoys a large measure of freedom. The public corporation is, however, not an autonomous institution and was never intended to be.

The public corporation is based on the theory that a full measure of accountability can be imposed on a public authority without requiring it to be subject to Ministerial control in respect of its managerial decisions and multitudinous routine activities, or liable to comprehensive Parliamentary scrutiny of its day-to-day working. The theory assumes that policy, in major matters at least, can be distinguished from management or

administration; and that a successful combination of political control and managerial freedom can be achieved by reserving certain powers of decision in matters of major importance to Ministers answerable to Parliament and leaving everything else to the discretion of the public corporation acting within its legal competence. The government are further endowed with residual powers of discretion and appointment which mark their unquestionable authority. 8

There are certain universal legal characteristics of public Corporations which are usually applicable to all types, and it is possible to outline these characteristics as follows:

1. The public corporation is normally created by special statute or by charter;
2. the public corporation has no shares and no shareholders, either private or public. (This characteristic does not apply to the "mixed enterprise" form of public corporation of which ISCOR is a prime example).
3. The responsibility of the public corporation is to the Government, represented by the competent Minister, and through the Minister to Parliament.
4. The administration of the public corporation is entirely in the hands of a Board which is appointed by the competent Minister. Neither the Board members nor any employees of a Board are civil servants. Where a public corporation needs capital it is provided in the case of public corporations managing nationalised industries, through assets taken over from private ownership and capitalised through the issue of interest bearing stock. The financial assets of public corporations which have not acquired the assets of formerly private industries consist of corporation stock with a Treasury guarantee, supplemented by power of the Minister to give certain exchequer grants during the formative period. The industrial public corporations (like ISCOR) have furthermore the power to borrow money, with the consent of the supervising Minister and the Treasury, within limits fixed by the Act.
5. the public corporation has a legal status of a corporate body with independent legal personality.

6. All public corporations are supervised by independent accounting and auditing as well as some form of public control.
7. All public corporations have a dual nature; they are instruments of national policy but they are autonomous units with legal independence and certain aspects of commercial undertakings. The degree of independence varies, however, according to the type and purpose of the public corporation. 9

President Roosevelt succinctly defined the public corporation in his Message to Congress in 1933 when he recommended the formation of the Tennessee Valley Authority as:

A corporation classed or clothed with the power of government but possessed of the flexibility and initiative of private enterprise. 10

When referring to the British nationalized industries, Mr Herbert Morrison described the public corporation in a similar fashion:

A public corporation gives us the best of both worlds, for with it we can combine progressive modern business management with a proper degree of public accountability. 11

In the history of the public corporation in Australia, those who advocated the advantages of a corporation claimed that its advantages were the political advantage of an administration, free from the irrelevant issues of partisan politics at the time, with consequent ability to concentrate on short and long term policies appropriate to the activity, and on technical and managerial efficiency, and the administrative advantage of building up a personnel structure free from the rigidities of ordinary civil service rules, giving more emphasis to efficiency than seniority, encouraging an esprit de corps within the organisation instead of resort to Parliamentary pressure to gain advantages. 12

Initially in the United States of America, no distinction was drawn between public enterprises and traditional government functions. The oldest public enterprises such as postal services, telegraph services and railroads were generally financed, organised and controlled in much the same way as other government departments, but this type of organisation:

fell far short of providing the flexibility essential to effective operations. Under this system, public enterprise often became synonymous with excessive red tape, inexcusable delays, inadequate services, and general insensitivity to consumer needs. 13

According to Friedmann, two major motives exist for the establishment of public corporations. One of these motives is practical necessity, the indispensable need, in undeveloped countries usually those of vast areas and relatively scarce populations as well as insufficient resources - to intervene, in the interest of the general development of the country, in ventures which private capital is either not willing or not able to launch.

It is not therefore surprising that railways constitute a favourite field of public enterprise such as the contributions of Australia, Canada, South Africa and Germany show. 14

Friedmann, it is submitted has incorrectly categorised the railways enterprise in South Africa as "public enterprise" as distinct from State enterprise. According to Friedmann, the other main inspiration is political philosophy and states that in the great majority of cases a blend of political and practical factors has been the determining motive for the constitution of public corporation. He concedes that:

a maximum of practical considerations and a minimum of socialist or even semi-socialist philosophy may be said to have availed in such countries as Canada and South Africa which . . . are singularly free of socialist philosophy in government. 15

Mr Justice Landau of Israel, described the policy reasons for the setting up of public corporations, and the possibilities implied in this form of organisation in the following terms:

In our times the legislator employs this instrument of the public corporation whenever he considers it advisable to take the implementation of a certain governmental task out of the framework of the ordinary government apparatus and to entrust it to an autonomous altruistic person especially created for the implementation of that task . . . by means of this separation from ordinary government apparatus the legislator achieves a great measure of flexibility, as he is at liberty to design the legal structure of each public corporation according to his needs and the nature of the task which the corporation is destined to fulfil. 16

The concept of "autonomy" requires further investigation. Dimock defines autonomy to mean:

Concentrating managerial powers in the hands of competent people and giving them enough free rein to achieve the desired results. It is a privilege of being left alone so long as you do not over-step the rules laid down in advance. 17

There are various arguments in favour of autonomy for public Corporations. Autonomy, it was thought was supposed to keep politics out of public enterprises and public enterprises out of politics. It was meant to give public enterprise managers the same degree of freedom and flexibility in making decisions as the private business managers with whom they had to compete. Good salaries could be paid to attract the best men into public enterprise management. Keeping the funds and accounts of a public corporation separate from government funds and accounts,

would force public enterprise Boards and managers to watch the costs, profits and losses. This would heighten the efficiency of public enterprises and raise them above the standards of efficiency expected in government departments. 18

According to Friedmann there are four main types of public control over the public corporations; Ministerial direction; Parliamentary control; audit control and judicial control. 19 According to the Report of the United Nations Seminar on Organisation and Administration of Public Enterprises controls should at a minimum be designed effectively to ensure that:

- (a) National policy directives, including the relevant targets embodied in the national plan are implemented;
- (b) the policies and operations of public enterprises are consistent with and likely to promote the basic objectives established by the governmental authorities;
- (c) public enterprises co-operate with agencies of a non-commercial kind in support of the government's objectives;
- (d) purposes are pursued with maximum economy and efficiency and in accordance with the law;
- (e) sufficient information is provided to enable the appropriate authorities and interested members of the public to appraise the effectiveness of the enterprise's performance. 20

It is now necessary to investigate these concepts and theories of the Public Corporation, in the South African context.

NOTES

1. See Chapter xiii - p. 152 (Report of the Commission of Inquiry into the Co-Ordination of Transport in South Africa (Marais Commission) R.P. 32/1969).
2. William A. Robson, Nationalized Industry and Public Ownership, (George Allen and Unwin, London 1962) p.17.
3. Report of the Committee of Inquiry into Civil Air Transport. (The Edwards Report) Cmd. 4018. London, H.M.S.O. 1969, p.118.
4. Marais Commission, op.cit. p.60, para.473.
5. To The Point, 'Flying in South Africa', 14th May, 1976, p.25.
6. Robson, op.cit. 17.
7. Ibid. p.18.
8. Ibid. pp.74-76.
9. W. Friedmann, ed. The Public Corporation: A Comparative Symposium. (The Carswell Company, London & Toronto, 1954) pp.164-165.
10. Public Administration, 'Management and Accountability in The Nationalized Industries', D.N. Chester, Spring, vol.30, 1952, p.27.
11. Ibid.
12. W. Friedmann and J.F. Garner, eds. Government Enterprise, (Stevens and Sons, London, 1970) p.227.
13. Public Administration Review, 'The Government Corporation: Organisation and Controls', Harold Seidman, 1954, vol.14.p.183.
14. W. Friedmann, ed. The Public Corporation, op.cit. pp.542-543.
15. Ibid. pp.544-545.
16. Friedmann and Garner, op.cit. p.262.
17. Public Administration Review, 'The Theory of the Autonomous Government Corporation: A Critical Appraisal'. Harold Seidman, 1952, vol.12.p.91.
18. David Corbett, Politics and The Airlines, (George Allen and Unwin, 1965) p.188.

19. W. Friedmann, op.cit. p.576.
20. Department of Economic And Social Affairs, United Nstions,
New York, 1967, p.14.

CHAPTER X

THE SOUTH AFRICAN IRON AND STEEL (INDUSTRIAL)
CORPORATION, LIMITED - ACCOUNTABILITY AND CONTROL
OF PUBLIC CORPORATIONS.

A recommendation of the Marais Commission as stated at the commencement of the previous Chapter, was that after separation from the Railways and Harbours Administration, South African Airways should become a public utility corporation

"modelled on the lines of ISCOR"

It has already been indicated that ISCOR is not a "public utility company" but rather an "industrial public corporation" and a form of "mixed enterprise". Robson, has held that there are two conditions which must be fulfilled to create a genuine "mixed enterprise".

1. The State must own a substantial part of the capital side by side with private ownership and,
2. that public authorities must participate in the direction or administration of the enterprise, usually through representation of the Board of Directors. 1

The South African Iron and Steel Industrial Corporation, Ltd. (ISCOR) was constituted and incorporated by the Iron and Steel Industry Act No 11 of 1928 (as amended by 16 subsequent Acts). The Headnote to the Act reads:

To promote the development within the Union of the Iron and allied industries and for that purpose to constitute the South African Iron and Steel Industrial Corporation, Limited.

The Corporation is given a comprehensive list of objectives which includes the establishment for the benefit of the employees of the Corporation of medical benefits societies, sporting and entertainment societies, townships, housing utility companies, home ownership schemes, social and health services, pension and provident funds, farms, stores, hospitals, hostels, hotels, restaurants and "any other similar undertaking which may seem to the Corporation beneficial or capable of being beneficial to the employees of the Corporation."² Thus, employees of public corporations are not "public servants" in terms of the Public Service Act of 1957 and each corporation employs and utilizes personnel to suit its own needs.

The Act contains a clause which would be most suitable and adaptable to South African Airways. This clause provides that "any operations which the Corporation is authorised to undertake and any act which it is empowered to perform in connection with the attainment of its objects, may be undertaken or performed within or outside the Republic!"³ (*italics mine*)

Control and management of the Corporation is vested in a Board of Directors consisting of nine members of whom five are appointed by the State President and four by private shareholders.⁴

This Act further contains an important provision that no person shall be qualified to be appointed by the State President as a member of the Board, who is a member of the Senate or the House of Assembly or a Provincial Council.⁵ From a reading of the Act however, it appears that there is no restriction on the appointment of such members of the Board by private shareholders. There is no restriction however against the appointing of former members of Parliament to the Board. Robson has stated that:

In my view the Party politics of a candidate for office should be disregarded unless they are likely to interfere with his whole-hearted devotion to the job, to restrain the energy and enthusiasm which he will put into it, or to undermine the confidence of employees or the public. The major emphasis should be placed on ability, judgment, knowledge and experience. 6

According to the provisions of the Act, the managing director is the chief executive officer of the Corporation and he "shall devote his whole time to the affairs thereof".⁷ The Board is therefore a "miscellaneous Board" consisting partly of selected members and partly of members representing groups with specific interests. This type of Board is created where the shares of the Corporation are held in the hands of the State and partly in the hands of private individuals or companies. The share capital of the Corporation constitutes two types of shares, the "A" shares which are held by the State President and which carry the majority of voting power and which were paid for by the State President from funds appropriated by Parliament for that purpose, and "B" shares which were originally offered for subscription to the public. 8

Among the obligations of the Corporation to Parliament is the requirement of the tabling of "an Annual Report giving in detail all particulars relating to the operations of the Corporation along with the financial results."⁹ The Annual Report of a public corporation is a document which is, or should be, of first-class importance. It affords an opportunity to the Board to explain and justify their policy and to show the results of the administration. It forms the main source of public information on which debates in Parliament can be founded. 10

Parliament may exercise control over public corporations through the Auditor-General's inspection of books of account. This is confined to those institutions whose accounts are subject to public audit and do not include ISCOR, whose auditors are private auditors who "publicly carry on a profession of accountants". These two auditors are appointed by the Board upon the nomination of the Minister (of Economic Affairs) and the other, upon the nomination of the private shareholders. 11

In a democratic society an important premise is that governments, and their agents entrusted with administering public resources, have a responsibility to provide a full accounting of their activities. In view of this, the primary, general objective of a public sector audit must be to maintain the public's confidence in the administration of government activities through enforcing and strengthening the process by which complete accountability can be realised. 12

According to Robson, three fundamental objectives are to be attained in the field of "accountability". One is to satisfy the Government, Parliament, and the public, that the (nationalised) industry is being run efficiently and aggressively, the second is to prevent consumers from being exploited by an undue use of the monopolistic position enjoyed by the public corporation, and the third is to ensure labour relations and personnel management are sufficiently good to avoid large scale stoppage of work owing to trade disputes from occurring.

The function of accountability is to throw light on the activities and policies (of the nationalised industries) by providing whatever information is necessary to show whether these objectives are being pursued with a reasonable degree of success . . . In the last analysis, however, we should consider public accountability not as a mere giving of information in vacuo but in terms of its effect on the behaviour of those who are called upon to account. The most obvious and important influence which may be traced to accountability is in inducing or enhancing a sense of responsibility in those who are called upon to account. 13

Questions about public corporations may be put to Ministers during Question Time, but the Member who asks the question has no inherent right to dispute the reply if the Minister claims that the subject matter of the question is beyond the scope of his responsibility. In Britain, it has long been recognised that while Parliament has a right to discuss and determine matters of major policy concerning the nationalised industries, the day-to-day conduct of their business by the public corporations should be immune from Parliamentary inquisition. It has been repeatedly stated that Ministers are not responsible for the day-to-day administration of the corporations. 14

Mr Herbert Morrison once phrased the situation in the following manner:

A large degree of independence for the Boards in matters of current administration is vital to the efficiency as commercial undertakings. A Minister is responsible to Parliament for action which he may take in relation to a Board, or action coming within his statutory powers which he has not taken. This is the principle that determines generally the matters on which a question may be put down for answer by a Minister in the House of Commons. Thus the Minister would be answerable for any directions he gave in the national interest . . . It would be contrary to this principle . . . if Ministers were to give, in replies in Parliament information about day-to-day matters. Undue intervention by the Minister would tend to impair the Board's commercial freedom of action. 15

It has been repeatedly held that unrestricted Parliamentary questioning would cause a loss of managerial efficiency and have a bad effect on the initiative of staff, who trained in industry were not accustomed to civil service methods.

It would encourage caution in centralization. Above all it would make the executive positions in the nationalized industries less attractive to men of outstanding ability. 16

During the Third Session of the Fifth Parliament in 1976, numerous questions dealing specifically with South African Airways were addressed to the Minister of Transport. According to the official Hansard Reports which are contained in 21 weekly issues, 12 of these issues detailed questions and replies to the Minister. In order to emphasize the unwarranted information required of the Minister regarding the date-to-day workings of South African Airways it is revealing to consider these questions in detail. They are accordingly enumerated hereunder:

House of Assembly Debates
(Hansard Weekly Edition
volume No)

Nature of Question
put to Minister of Transport
vis-à-vis South African Airways

- | | |
|----|---|
| 1. | Negotiations re the Concorde aircraft and the use of the Concorde. New scheduled flights and details of terminated flights. |
| 2. | Details of flights during 1975, details of lateness, cancellation of flights and South African Airways policy re women pilots. |
| 3. | Details of any illegal entry into the Republic through South African Airways flights. |
| 4. | Details of negotiations regarding the Lockheed Aircraft Corporation and who conducted such negotiations. Whether conditions of employment for men and women differed. |
| 5. | Flight delays, cost of liquor on aircraft and the quality of meals. |
| 6. | Internal flight accommodation, special seat reservations, the converting of the Boeing 747 engine, flight delays, cancellations and diversions. The employment of Chinese and Japanese girls. |

7. Purchases of aircraft and details of orders.
10. Passengers on the first Boeing 747 ST Flight.
11. Durban Air Terminal and the future employment of navigators.
18. Free-rail baggage allowance for air passengers.
19. Air hostesses, crew rest facilities on the Boeing 747 ST and differentiation between race groups.
21. Catering charges.

The extent of Parliamentary control over public corporations, was questioned in the House of Assembly during the Debate on the Second Finance Bill in 1966. Certain Opposition Members voiced their disquiet at the growth and extension of operations of the Industrial Development Corporation, a public corporation formed under the Industrial Development Act No 22 of 1944. Parliament, they contended had no check over the Corporation. No Minister was accountable for its actions "as the Minister of Transport was accountable for the running of the railways". There should, they urged, be an investigation into the Corporation and consideration paid to the transfer of its actual industrial operations to a State department. 17

The then Minister of Economic Affairs, Dr N Diederichs, replied that:

This is a body which performs a major function on behalf of the State . . . The State cannot manage any business . . . Are we now to manage them as a Government department? . . . It is entirely out of the question to expect that the State itself should establish businesses and should manage them. It must have an organisation through which to do so.

The Minister went on to state that Members of Parliament could discuss the broad policy of any public corporation, by way of a motion or in considering the particular Appropriation Bill or otherwise, but not confidential business matters. He explained that autonomous boards must be trusted to spend Parliamentary grants according to business principles. Parliament could not interfere directly with the business aspects of the Industrial Development Corporation. 18 The problem of Parliamentary control was written about by Ellison Kahn in the following terms:

Opinion has still not crystalized however as to a workable method of Parliamentary control. It seems clear that the Select Committee on public accounts cannot be looked to, at least as at present constituted, for it cannot cope with its existing work adequately . . . Should there be a select committee on public corporations as favoured by the United Kingdom's Select Committee on Nationalised Industries? Should there be a State Comptroller as in Israel or the similar efficiency Audit Commission as recommended by Robson? Does the remedy lie in a day being allocated in the House to a debate on the policy of public corporations, along the lines of the discussion of the policy of various State departments in the Senate? . . . The problem remains of finding a via media allowing the Lower House to keep the reins on what amounts to the expenditure of public funds and at the same time perserving the raison d'etre of the public corporation, considerable freedom of action. 19

In the Republic, the extent of State control over public corporations varies considerably. In some cases the direction is entirely in the hands of government nominees, in others the Board is "mixed", with representatives of shareholders or other interested parties as well as government nominees, who are usually but not always in the majority, or are vested with over-riding powers. Besides the power of nominating directors, the Government usually reserves the power of making regulations, controlling the functioning of the Corporation.

The general practice, however, is to leave the general business enterprise to be controlled by the Board of Directors on the lines of a private corporation. 20

Financial support by the State may take the form of subsidies or grants in aid, but in the case of public corporations engaged in commercial or industrial enterprise, usually consist in the purchase of shares in the corporation. Further control is exercised by ensuring that the majority of the shares are held by the government, or that only government shares carry full voting powers at shareholders' meetings. In general, restrictions are also placed on the power to sell or transfer shares, and upon borrowing powers and the making and allocating of profits. 21

There has also been a gradual change in the auditing policy of public corporations. From a tendency to require auditing by the Auditor-General the policy has moved towards the appointment of private auditors, by the Board, on the nomination of the Minister. 22

Opinion has been expressed in the Republic for the need for a thorough appraisal of:

our whole public institutional network; next a special evaluation and perhaps a rationalization of existing public corporations; and, finally, periodic efficiency auditing of all public corporations, not by some new body, but by personnel of existing State departments, e.g., the Controller and Auditor-General's Department, the Department of Industries, and the Treasury. The existing control system comprising unverifiable, rudimentary annual financial statements, and part-time Ministerial supervision, has proved to be totally inadequate in preserving and honouring the basic principles of public administration in a democratic society. 23

The author of the above statement, has further expressed his concern, by repeating the classic formulation of the problem, of Marshall Dimock, as follows:

How to bring managerial independence and public accountability into a working accord, so that neither efficiency nor necessary controls will be neglected, is a fundamental problem arising out of the operation of government corporations.

Roux considers that from the public control and efficiency point of view the public corporations in the Republic constitute "a rather alarming picture". But, he says,

"a plea is not made for a wholesale conversion of these corporations into ordinary State departments". 24

This concern however is not generally shared by the various authorities who have written about public corporations in the Republic. In a study of the organisation and management of public enterprise in various countries of the world, it was concluded in dealing with the Republic, that government control over the corporations although variable in both matter and manner "is quite substantial". 25 This source quotes a statement by the one-time Minister of Economic Affairs, Mr Louw:

Each one of these government-sponsored undertakings is managed by a Board of Directors who apply the usual business principles. As a responsible Minister, I interfered as little as possible with the work of the particular Boards. I am only consulted on matters concerning general policy. The success of the various government-sponsored undertakings is, in my opinion, largely due to this policy. 26

The study however states that:

The Railway Administration may provide the exception to this rule. It has certainly been the recipient of a great deal of criticism of the too much political interference type. 27

Reference has already been made to the Israel State Comptroller who is now known as the Commissioner for Complaints from the Public. This unique post was conceived to establish

an institution which would be independent of the executive arm, but to which complaints from the public could be directed against government bodies. Although the Parliamentary Commissioner for Administration in Britain is precluded from investigating complaints against public corporations,²⁸ the Israel Commissioner is entitled to do so, and in his first year of office investigated a complaint against the El Al Israel Airline with regards to certain inaccurate information contained in an El Al's advertisement. The Commissioner recommended that the complainant be compensated for certain expenses which she had incurred arising therefrom.²⁹ The relevant Israeli legislation authorises the Commissioner to "inspect", inter alia, "every enterprise, institution, fund, or other body in the management of which the government has a share."³⁰

Various theories, concepts and problems facing public corporations have been enumerated and the suitability or otherwise of such an administrative body vis-à-vis South African Airways will have to be decided upon. At this stage however the overall picture may be stated in the following terms:

In spite of notorious difficulties in establishing a balance between autonomy and control, it may be concluded that the experience of many countries has demonstrated the possibility of establishing organisational relationships assuring public accountability without impairing the flexibility necessary for the effective operation of a business enterprise in the public sector. ³¹

7

NOTES

1. William A. Robson, Nationalized Industry And Public Ownership, (George Allen & Unwin, London 1962) p.27.
2. S.2 (j).
3. S.2 (4).
4. S.3
5. S.3(3).
6. Robson, op.cit.p.219.
7. S.5(3).
8. S.7.
9. S.8(3)(d).
10. Robson, op.cit.p.73.
11. S.14.
12. Canadian Public Administration, Summer 1974, vol.17,p.260.
13. Robson, op.cit.p.210.
14. Ibid. p.165.
15. Ibid.
16. Ibid.p.173.
17. Hansard (Assembly) 14th October, 1966, col.4320-4331.
18. Ibid.
19. The South African Journal of Economics, 'Public Corporations in South Africa'. Ellison Kahn, 1959, 27(4).p.292.
20. W. Friedmann, ed. The Public Corporation, (The Carswell Company Limited, Toronto, 1954) p.313.
21. Ibid.
22. Ibid.
23. New Nation, 'South African Public Corporations - need for vigilance?' Ben Roux, February, 1968, p.8.

24. Ibid.p.3.
25. A.H. Hanson, ed, Public Enterprise, (International Institute of Administrative Sciences, Brussels,) p.394.
26. Ibid.p.395.
27. Ibid.p.395.
28. S.A. de Smith, Constitutional And Administrative Law, 2nd ed, (Penguin 1973) p.630.
29. State of Israel, The Commissioner for Complaints From The Public, Annual Report 1, 1972. p.152.
30. United Nations, 'Report of the U.N. Seminar on Organisation And Administration of Public Enterprise', 1967, p.17.

CHAPTER XITHE SOUTH AFRICAN BROADCASTING CORPORATION -
THE WEZA TIMBER COMPANY LIMITED.

The Marais Commission¹ recommended that South African Airways be divorced from the South African Railways and Harbours Administration, and that its status as a State Department be altered to that of a public corporation. Such a change of organisational form is not unknown in the Republic, and mention has already been made of Klipfontein Organic Products which was originally an enterprise under the control of the Department of Commerce and Industries and which in 1950 became a Statutory Corporation. 2

Initially, broadcasting in the Republic was conducted by private enterprise, but in 1936 it was considered necessary and desirable in the interests of broadcasting, to form a public utility corporation. The government of the time decided that broadcasting was a "public utility service" which should be under public control in one form or another, and were faced with the decision as to what such form of control should be.³ The choice before the government was whether there would be a government monopoly operating broadcasting through the Post Office Department or, alternatively, 'a public utility company largely independent, both politically and financially'. 4 The motivations which led to the government deciding upon the creation of a public corporation was stated to the House by the then Minister of Posts and Telegraphs in the following words:

In considering the form of organisation to be erected we start from two principles namely:

1. That the exportation of electrical communication is a State privilege which can only be operated by private enterprise under a licence or concession from the Government, and,
2. broadcasting is what is known as a public utility service . . . Study of the experience of the important countries forces us to the conclusion:
 - (a) that broadcasting is a public utility service which should be under public control in one form or another, and that the controlling body should have a monopoly de facto not de jure.

Having reached these conclusions, it only remains to the Government to decide what form that control should take. There are different methods. One form is that of a statutory company under regulated control. Another a department of state, as a public undertaking. A further a public utility trust . . . We are going to control broadcasting as a public utility trust . . . Now a public utility trust can be either a very great success or failure. It depends on its management and control; it is essentially a business concern but must be run on "business first" principles, run to give satisfaction to those who make use of it . . .5

In replying to the Minister a Member commented by saying that he was firmly convinced that a public utility company was the best means of controlling radio or broadcasting in the country.

It is neither a government department nor a private enterprise; it is free from the red tape of the one and probably the commercial motive of the other.⁶

Consequently, the Broadcasting Act of 1936⁷ was established, but the S.A.B.C. in its present form is constituted by the Broadcasting Act of 1976.⁸

Before proceeding to analyse legislation under which airline corporations have in other parts of the world been constituted and established, it is relevant in order to obtain a complete picture of the present Government's attitude towards public enterprise, to briefly examine a new concept in public enterprise which was created by the Weza Timber Company Limited Act 42 of 1976.⁹ This Act was established:

To promote the processing and reprocessing of timber and for that purpose to establish the Weza Timber Company Limited.

This Act established a timber processing company in which the State, through its Department of Forestry, and the Hans Merensky Foundation are equal shareholders.¹⁰ In Parliament the Act was described as:

a new kind of creature; a sort of hybrid creature with the State on one side and private industry on the other.¹¹

The motivation behind the Act was declared to be

'in the interests of more effective utilization of manpower, capital and raw materials, a rationalization of the country's sawmill industry has become essential".¹²

It was also stated that this was the first occasion in which the State had undertaken an operation (of this sort) in such close co-operation with private enterprise.¹³ In reality this type of administrative organisation can be classified as 'mixed' enterprise through the creation of a joint stock company.

Although the company is a juristic person, it is not a public corporation in the usual sense of the word but rather a public company registered under the provisions of the Companies Act

of 1973,¹⁴ in which the share capital of the company has been equally divided between the Minister of Forestry and the Hans Merensky Foundation. The affairs of the company are managed and controlled by a Board of Directors of which three are officers of the Department of Forestry appointed by the Minister, three appointed by the Foundation and one appointed by the Minister in consultation with the Foundation who is neither an officer or employee of the Department or an officer or employee of the Foundation and who is named as the 'independent member'. This independent member (appointed by the Minister) is the Chairman of the Board.¹⁵ It will thus be seen that the above corporate conception, in which the State actively participates in every aspect, is a unique form of public enterprise in the Republic.

Section 3 of the Act (42 of 1976) which details the numerous objects of the Company, repeatedly includes the clause

"Subject to the approval of the Minister";¹⁶ which further strengthens the control of the company by the State".

Further restrictions on the Foundation are to be found in the provisions which restrict the Foundation from transferring any shares held by it to any other person, other than a Minister, unless it has first been offered to the Minister,¹⁷ and the borrowing powers of the company which can only be implemented by the Board with the approval of the Minister, who in turn is required to consult with the Minister of Finance.¹⁸

Although the Company does not have the usually accepted status of a public corporation, nevertheless it is required to lay before the Houses of Parliament a copy of all balance sheets, accounts and reports.¹⁹ Yet, the provisions of the Companies Act do not apply to the Weza Timber Company'.²⁰ A further unique concept relates to the employees of the company. Their status is explained by the Minister of Forestry:

The position is that staff will be seconded to the new Company for a period of six months. After that it will be for the staff themselves to decide whether they are prepared to continue to work for the company or whether they would rather stay in the service of the Department. All the necessary arrangements regarding pensions, and so forth, will be made with the new company in collaboration with those staff who are prepared to work for it . . . If they are not satisfied, they remain in the service of the State and the State transfers them to various other places, where there will be similar work for them. 21

Seidman, has written that the problem of organisational relationships is greatly complicated when ownership of public enterprises is shared with private individuals or groups:

Mixed ownership enterprises tend to demand all the privileges of governmental status while refusing to accept any of the obligations. 22

According to Seidman, mixed ownership as a permanent arrangement appears to afford few tangible advantages. A government does not have to rely on private investors to provide equity capital. Access can be had to private money markets without sharing ownership. 23 This is confirmed by the Weza Timber Company Limited Act which stipulates that provided the Board obtains the approval of the Minister, it may borrow money 'from any source'. 24 The purpose of a public enterprise is to accomplish a public purpose. The object of private enterprise is to earn a profit for the proprietors.

A mixed enterprise is likely to accomplish neither of these objectives very well. Where mixed ownership enterprises are permanent, the trend is towards increased control of specific matters with the consequent loss in flexibility. 25

NOTES

1. See Chapter 13.
2. See Chapter 8 at p.96.
3. Hansard (Assembly) 29/4/36 col.2719.
4. Ibid. col.2745.
5. Ibid. col.2719.
6. Ibid. col.2954.
7. Act 22/36.
8. 73/76.
9. See Fig. 6 at p.84.
10. Hansard (Assembly) 2nd March, 1976, col.2318.
11. Ibid.
12. Ibid. col.2314.
13. Ibid. col.2320.
14. Act 42/1976 s.2 (3).
15. Ibid. s.5.
16. eg:s.3(b).
17. s.18(2).
18. s.16.
19. s.24(2).
20. s.26(1).
21. Hansard (Assembly) 3rd March, 1976 col.2414 and 2423.
22. Harold Seidman, 'The Government Corporation: Organisation And Controls', Public Administration Review, vol.14, 1954,p.191.
23. Ibid. pp 191-192.
24. Act 42/1976. s.16.
25. Seidman, op.cit. p.192.

CHAPTER XII

BRITISH AIRWAYS - AIR INDIA.

It now remains to look into the formal structure of public corporations in various countries, which have been specifically adapted to airline operation, bearing in mind that this form of public enterprise remains the most prevalent administrative organ utilised for airline ownership and operation.

British Airways, which is the commercial term for the British Airways Board, is the "chosen instrument" and the national flag carrier of Britain and the British Airways Board, which operates the airline is a public corporation which falls into the classification of a 'commercial undertaking'. 1

In this group, the functions carried on by the particular corporation are really commercial businesses, and because of the nature of the work undertaken, the managing body resembles the Board of Directors of a public company.2

It is usually, but not necessarily, contemplated in the constituent statute that such a corporation should be financially self-supporting. The enterprise is usually a monopoly and therefore the corporation is expected and often expressly required to conduct its affairs in the public interest, and not exclusively for profit, as in private industry.

It is claimed by the supporters of this kind of state business that the elimination of competition favours efficiency and obviates waste and extravagant advertising. The device of the public corporation is of particular value in this context as it allows some measure of commercial enterprise and control in management by persons of practical experience, while avoiding detailed Parliamentary and Treasury control which would be inseparable from direct administration by the central government.³

The British Airways Board was established by the Civil Aviation Act of 1971 to control the public sector airlines as a group. It is a body corporate consisting of between eight and fifteen persons appointed by the Secretary of State for Trade and Industry. As has already been stated, civil aviation in 1967 was passed from the Ministry of Aviation to the Board of Trade and not Transport.

While this choice seemed less logical, the Board's responsibility for international trade is helpful for the negotiation of air landing rights. Probably though the main reason for this arrangement was a wish, following the experience of the Ministry of Aviation, to find a detached departmental sponsor for the airline corporations, a requirement much better met by the Board, through the nature of its responsibilities and history, than by the Ministry of Transport which was more interventionist. ⁴

In 1972 the Secretary of State for Trade and Industry was thus responsible for the fuel, power, energy and airways corporations, and the Secretary of State for the Environment, for the other transport Corporations. ⁵

In the Republic, the Minister of Transport is ultimately responsible for all forms of transport both surface and air, and in this respect it must be emphasised that whereas surface transport relates mainly to internal forms of transport,

aviation applies to both national and international. It is submitted that the Minister responsible for surface transport should not also bear the responsibility for aviation, because different transport concepts and considerations apply to a form of transport which operates both in the national and international sphere.

The British Airway Board has power to provide air transport services and to carry out all other forms of aerial work in any part of the world. It may promote the formation of air transport undertakings, acquire such an undertaking or a financial interest in one, or lend money to one.⁶ Until recently the Board controlled the activities of BOAC and BEA, but both air corporations were dissolved on the 1st April, 1974 and the property, rights and liabilities of the corporations are now vested in the British Airways Board.⁷

After consultation with the British Airways Board, the Secretary of State may give the Board directions concerning the performance of its functions in relation to any matter appearing to him to affect the national interest. The British Airways Board is also under the general duty to provide the Secretary of State with such information as he may require relating to the property, financial position, activities or proposed activities of the Board and all of its subsidiaries. With the consent of the Secretary of State, the Board may borrow temporarily and for capital purposes, the Secretary of State may lend to the Board sums which the Treasury issues out of the National Loans Fund.

It is obligatory upon the British Airways Board to keep proper accounts, proper records and it must prepare in respect of each accounting year a statement of those accounts in the form which the Secretary of State directs. Such statement must show the state of affairs and the profit or loss of the Board, and the accounts and statements require to be audited by auditors appointed annually by the Secretary of State. These statements and reports must be laid by the Secretary of State

before each House of Parliament.

As soon as possible after the end of each accounting year, the British Airways Board must make a report to the Secretary of State dealing with its operations and such report must also set out any directions given to the Board unless the Secretary of State has notified the Board, that in his opinion it would be against the national interest to do so.⁸

In its most recent Report, the British Airways Board described itself in the following manner:

The British Airways Board which is accountable to Parliament through the Secretary of State for Trade, aims to compete in world markets by offering business, holiday and personal passenger air travel, together with cargo distribution, safely, efficiently, and at competitive prices, thereby generating sufficient cash not only to remunerate the capital investment involved, but also to meet the replacements costs of its assets. In its relationship with Government, customers, employees and the community at large it seeks to earn their loyalty, to be a responsible employer, to promote technical and commercial innovative growth, and to adopt a tacticle attitude to environmental problems . . . British Airways is responsive to the views of Parliament and public, and to the needs of passengers. We are well aware that only five per cent of our fellow citizens have so far experienced air travel. But, passengers or not, we believe they all can and do take pride in the country's national airline. That is a further reason for ensuring that, at all times, the product and its price are right . . .

. . . Government and Government Agencies inevitably interact with civil airlines, whether the latter are government owned or not, and British Airways has a constructive relationship with Whitehall. ⁹

The decision to nationalize overseas air services had been taken in 1939 when the British Overseas Airways Corporation was created by legislation:

It was generally recognised that for some time ahead no international airline could hope to maintain itself without a substantial subsidy of one kind or another; and if this was necessary, it would be better that the money should go to a public undertaking rather than into private pockets. 10

During the debate on the Bill which was to become the British Overseas Airways Act, the Marquess of Zetland said:

In our view, a non-profit making public corporation, set up by statute, will offer greater possibility of advancing British civil aviation than a limited liability company, which must of course quite properly watch its shareholders interests and also be sure of its subsidies and contracts before it can embark on a far-sighted development programme for the operation of new air services with up-to-date and increasingly costly aircraft.11

During the various arguments for public ownership, Lord Morrison had offered other reasons specifically related to Britain's airlines. Firstly, he objected to the railway and shipping companies, the only substantial sources of capital for privately owned airlines, having control of the airlines:

It is not desirable . . . that there should be an interlocking of managements between private railways and private shipping and public owned air transportation. We are utilizing the services of a certain number who are experienced in railway and shipping transportation, but we do not wish to be suspected of putting air transportation under the thumb of the surface means of communication. 12 (*italics mine*)

Lord Morrison had two further reasons in favour of public ownership. They were, that public enterprise meant that Parliament would have a more effective say in the general policy which should govern civil aviation policy and that Parliament and Ministerial control should be limited to questions of general policy, and that in matters of day-to-day administration the airline corporation should be free.

He also contended that:

"under this public ownership policy, it will be easier to give the staff employed by the corporation a better status". 13

Although the two air corporations were dissolved in 1974, and the British Airways Board remains the body corporate empowered to provide air transport services, the evolution of the public airline corporation in Britain began with the establishment of BOAC as a public corporation in 1939. The Corporation's duty was:

to secure the fullest development, consistent with economy, of efficient overseas air transport services to be operated by the Corporation and to secure that such services are operated at reasonable charges. 14

To enable it to perform this duty the Corporation was given a very comprehensive grant of power but although such power was ostensibly broad, BOAC was subject to a considerable degree of Ministerial supervision. For example, the Corporation required the Minister's permission if it wished to purchase aircraft designed or manufactured in a foreign land. In addition, the Minister was given a comprehensive power to issue directives to the Corporation. 15 As has already been stated the Secretary of State is at present entitled to give the British Airways Board directions concerning the performance of its functions in relation to any matter appearing to him to effect the "national interest".

In various financial matters the Corporation was explicitly subject to Treasury and/or Ministerial control and was required to have Treasury approval before borrowing money by the issue of stock or by overdraft or otherwise. 17

In 1946, the Labour Government rationalised all scheduled air services, created two new air corporations and re-organised BOAC. The three air corporations which emerged from the 1946 legislation were even less free than BOAC had been in terms of its formal powers. The Act had given a comprehensive grant of powers to the Corporations but then had qualified these powers as follows:

The Minister may, by an order relating to any of the three corporations, limit the power of the corporation, to such an extent as he deems desirable in the public interest, by providing that any power of the corporations specified in the order shall not be exercisable except in accordance with a general or special authority given by him. 18

Corbett has commented on the relationship between these Ministerial directives and the idea of public corporation autonomy as follows:

Why then retain the public corporation form as distinct from the departmental? The answer in 1946 was probably the public corporation's greater flexibility in handling its funds and in making personnel policy. The corporations could recruit and dismiss their own staffs and pay them according to their own schedules, though in this as in everything else they were subject to the Minister's general power to issue directives. 19

On the Ministry's side, the theory of its relationship with the air corporations is that the Ministry does not interfere in the corporation's affairs. Sir Gilmour Jenkins wrote that "it is a key principle of relations between the Ministry and the corporations that their management . . . should be left full discretion in their day-to-day conduct of business and the exercise of essential commercial judgments". 20

The Select Committee on Nationalised Industries has also brought to light the remarkable extent, to which Ministers are exercising control over the Air Corporations without having

statutory authority to do so. The Committee considered it essential for the efficient management of the Air Corporations that there should be a clear-cut division of responsibility between the Chairman and his Board on the one hand and the Minister and his Department on the other.

When a Minister wishes to override the Board on a commercial question for reasons of national interest, he should do so by a published directive. 21

In practice, Ministerial control over matters of policy in a particular Nationalised Industry such as the Air Corporations, goes much further than an account of the formal means of control would suggest. The members of the governing body of the corporation will know the Minister and his senior civil servants personally and many opportunities will arise for the Minister's views to be made known to the management of the corporation.

It is because of the close but undefinable links that the formal control powers, by way of the issue of directions, or the dismissal of members, are rarely exercised. 22

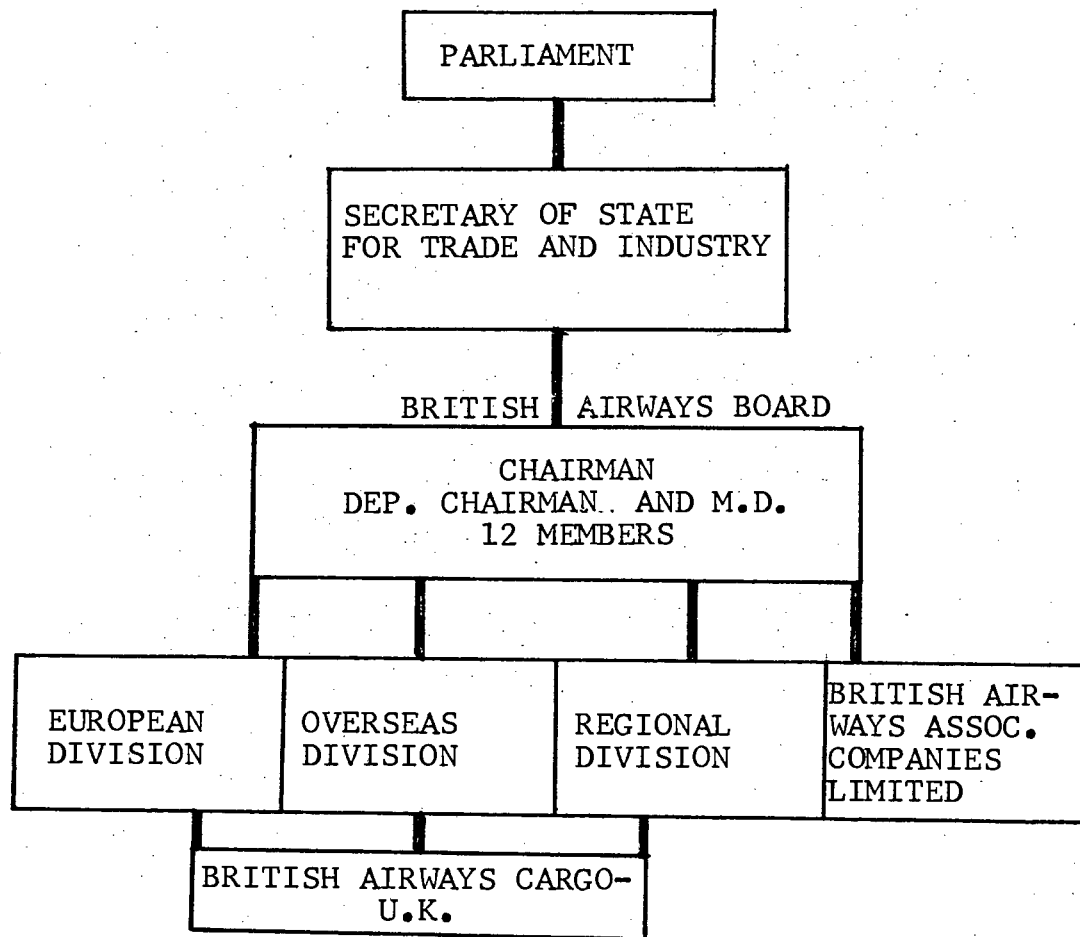
During their existence the Air Corporations were required to keep proper accounts and proper records and were required to prepare in respect of each financial year a statement of accounts in a form "which shall conform with the best commercial standards". The Edwards Report noted that since 1960:

There has been steadily growing acceptance of the basic principles that each public undertaking should be given a financial target at which to aim; they should also be instructed to behave commercially, save in so far as it is specifically required to take public interest considerations into account by statute or by public government direction. 23

In a White Paper of 1963 on the Financial Problems of the BOAC the following conclusion was reached:

FIG. 7

BRITISH AIRWAYS ORGANISATION



The Government think it necessary to reaffirm that the Corporation must operate as a commercial undertaking. If the national interest should appear, whether to the Corporation or to the Government, to require some departure from commercial practice, this should only be done with the agreement or at the instance of the Minister of Aviation. 24

Thus, the British Airways Board, a public corporation, is accountable to Parliament through the Secretary of State for Trade. The Board is divided into five major divisions which indicates the enormity of its operations. Figure 7 depicts the organisational structure of British Airways.

Air-India, India's international airline is a public Corporation which corresponds in many essentials to the public corporation of the British pattern. It has been constituted as a corporate legal body separate from the Government and is governed by an independent Board appointed by the Government, but none of its employees are civil servants. The Corporation has no shares and no shareholders and its capital assets are derived from the properties of the airline which is nationalised. The Corporation is directed to act: 'as far as may be on business principles', and its balance sheet and profit and loss accounts are entirely separate from those of the Government. 25

The Corporation is autonomous in its management, but is subject to general Government direction and requires Government consent for certain major transactions. In particular, for capital expenditure exceeding a certain amount, but each year the corporation is required to prepare and submit a programme of work to the Government and to submit an annual report through the Government to Parliament. There are certain basic differences between the Indian corporation and the British. Firstly, the power of the Government to provide further capital is not circumscribed by any other limitation other than that it must be connected with the business of the corporations or any

or any purpose connected with the business of the corporations therewith. In the second place, the power of the Government to give directions to the corporations is generally not restricted. An important difference between the corporations is that the accounts of Air-India, unlike those of British Airways are audited not by commercial auditors, but by the Comptroller and Auditor-General.

On the whole it seems clear that the Indian Republic in its important legislative measure has deliberately chosen a British form of public ownership of a commercial service as its model. It has preferred this form to either operation by government department or the pattern of the commercial company with a controlling government interest through the acquisition of the majority of shares. 26

It is a function of the Corporation to:

provide safe, efficient, adequate, economical and properly co-ordinated air transport services, whether internal international or both, and the corporations shall so exercise their powers as to secure that the air transport services are developed to the best advantage and, in particular, so exercise those powers as to secure that services are provided at reasonable charges. 27

There are certain aspects of the administration of Air-India which require special emphasis. Section 5 of the Indian Air Corporation Act No 27 of 1953 deals with

"Conditions of service of members". In this regard Corbett has written:

One of the hall-marks of beaucratic organisation is rational, objective standards for recruitment and promotion of personnel. Indian business management has traditionally fallen far short of the beaucratic model in this respect . . . In one respect, Air-India has had to assert its rationalistic principles of personnel selection in the face of governmental recommendations. As a government corporation, Air-India would normally require to give preference to applicants from the Scheduled Castes and Scheduled Tribes. Other governmental corporations are commonly held to

this rule. But there has been some relaxation of this rule in Air-India's case, because Air-India persuaded the government that, in a technical activity like airline operations, it was not possible to give preference to particular communities. 28

Air-India is managed at top level by a General Manager, an Assistant General Manager, and seven department managers each of whom has substantial decentralized authority to run his own department. Five of the seven department manager meet together with the General Manager and Assistant General Manager as a Board of Management; they normally meet once a week. The Board of Management is the power centre of Air-India as an organisation. Its size has varied from time to time, and whereas until 1960 it had five members, in 1963 this was increased to a membership of seven. While the Board of Management is a power centre, there are other officers who have very important executive responsibility as well. Altogether one could list a dozen top executives who constitute in effect the management of Air-India. 29

If one wishes to determine the extent to which Air-India has come under the sway of the central civil service one may begin by considering the civil service's influence over these twelve important executive offices of the Corporation. 30

Only three of Air-India's senior executive officers were drawn from the civil service. 31

Those who have joined Air-India from the civil service have gone over enthusiastically to the 'business outlook'. As one of them explained:

In the Ministeries, one must avoid mistakes. The way to avoid mistakes is not to make decisions. Here I have to make decisions, and still I can't afford mistakes. I like the challenge. 32

The accounts of the Corporation are audited annually by the Comptroller and Auditor-General of India. But this is primarily a 'procedural' or 'sanctioning' audit rather than a commercial audit. However, Air-India has its accounts audited both by the Auditor-General and by a firm of commercial auditors. The latter kind of audit is required under the terms of a loan agreement between Air-India and five American commercial banks, of which, along with the World Bank, lent Air-India the money to pay for the dollar-content of six Boeings. But:

Even if there were no such loan agreement, Air-India's management policy would still be to have a commercial audit, because it believes this to be essential as a form of business control. 33

Corbett, has also written that Air-India's record suggests that governmentally owned, bureaucratically-organised enterprises can have a dynamic, enterprising character.34

It has been possible to show that a strong bureaucratic organisation can operate in a predominantly non-bureaucratic social environment, and that a technically orientated and business-minded group within a predominantly non-business minded community can launch and sustain an international enterprise in a highly competitive technical field of operation. In accounting for Air-India's success these are more important considerations than the somewhat narrower questions of its relations, as a public corporation, with the relevant Ministries, with Parliament, the Cabinet and the Planning Commission. 35

Finally, an air corporation nearer to home. The Report of a Commission of Enquiry into the Conduct and Management of the African Airways Corporation in 1948, offers certain illuminating submissions in connection with the relationship between an air corporation and its responsible Authority. The Central African Airways Corporation (a Public International Corporation) as it existed in 1948, was responsible to three participating

Governments through the Central African Air Authority. One of the functions of the Authority was:

To exercise supervision and control over the Central African Airways Corporation . . . 36

The Commission submitted that:

The Authority should be responsible for setting the policy and task; the Corporation is responsible for the proper execution of that policy and task. The Authority must have facilities to ensure that their policy and task is being carried out effectively, but it must not interfere with the Corporation. 37

NOTES

1. J.F. Garner, Administrative Law (Butterworths, London, 1974) p.321.
2. Ibid.
3. Ibid.
4. Peter Self, Administrative Theories and Politics (George Allen and Unwin, 1974) p.61.
5. S.A. de Smith, Constitutional And Administrative Law, (Penguin Education, 1974) p.180.
6. Halsbury's Statutes of England 3rd ed. vol.2:Aviation.
7. Air Corporations (Dissolution) Order 1973, S.1,1973. No 2175, art.3.
8. Halsbury, op.cit.
9. British Airways Report and Accounts - 31st March, 1976, British Airways Board, London.
10. Robson, Nationalized Industry and Public Ownership. (George Allen and Unwin, 1962) p.34.
11. O.J. Lissitzyn, International Air Transport And National Policy, (Council on Foreign Relations, New York, 1942) pp. 110-111.
12. David Corbett, Politics And The Airlines, (George Allen and Unwin, London 1965) p.104.
13. Ibid. p.105.
14. Ibid. p.248.
15. Ibid. p.249.
16. Halsbury, op.cit.
17. Corbett, op.cit. p.250.
18. Ibid. p.251.
19. Ibid. p.252.
20. Ibid. p.260 - from 'The Ministry of Transport and Civil Aviation', the New Whitehall Series, London (George Allen and Unwin, 1959) p.163.
21. Robson, op.cit. pp 156-157.

22. Garner, op.cit. p.332.
23. Great Britain, 'British Air Transport In The Seventies', Cmnd. 4018 (H.M. Stationery Office, 1969) p.7.
24. Ibid.
25. W. Friedmann, ed., The Public Corporation: A Comparative Symposium. (The Carswell Company, London and Toronto, 1954) p.190.
26. Ibid. p.192.
27. The Indian Air Corporations Act No 27/1953, S.7.
28. Corbett, op.cit. p.306.
29. Ibid. p.311.
30. Ibid.
31. Ibid.
32. Ibid. p.312.
33. Ibid. p.315.
34. Ibid. p.321.
35. Ibid. pp322-323.
36. Southern Rhodesia, Act 11 of 1946, Part II S.5(c).
37. Report by Sir Frederick Bowhill, Appendix 'A' p.38. para.1(d).

CHAPTER XIIITHE SEPARATION OF S.A.A. - THE MARAIS COMMISSION,
1969 - THE JOUBERT MEMORANDUM, 1970 - RECOMMENDATIONS.

Since Union many proposals have been put forward for the re-organisation of the Government's ownership and control of transportation and included amongst these proposals is the divorcing of the airways services from the Railways Administration and the operation of the Airways through a separate public utility undertaking. 1 The reasoning behind these early proposals was that a more objective approach to transport problems may be possible when political considerations are only of minor importance to a semi-independent body, and that:

the delay and cost which may result from the traditionalism and bureaucracy of a vast government organisation will be diminished when a number of rather independent undertakings operate in the transport field. 2

Verburgh, concedes that though rail, harbour and road services could be profitably operated within one undertaking because of their inter-relationship in a chain of transport movements, the same:

is not necessarily true of air and sea transport which are technically much more on their own.3

According to Verburgh, in the present stage of the development of South African Airways the question may be raised whether the Airways should not be converted into an "independent company" financed jointly by the Government and from private funds.

South African Airways has reached a state of maturity where distinct possibilities exist for such a re-organisation. The Railways Administration will then be relieved of a duty which it has carried out effectively but which was more or less incidental to railway operations. The Administration could then concentrate on its main function the operation of an integrated railway, harbour and road transport system, which forms the backbone of the country's transport network.⁴

The same author mentions however, that a "re-organisation" took place in 1961 according to which:

South African Airways are separated administratively to such an extent that they now fall directly under the General Manager of the South African Railways and Harbours Administration. Although still formally connected with the Railways Administration, South African Airways are now managed much more independently than ever before. The case for a separate company is therefore no longer pressing. ⁵

An examination of this change merely reveals that the then Assistant General Manager (Airways, Catering and Publicity), was relieved of control of all catering and publicity matters and his designation became Assistant General Manager (Airways): The reason for this change is given to the 'ever-growing airways activities and the high standard to be maintained in modern air transport.'⁶ This obvious change in the then administration of Airways, cannot alter the case for the separation of Airways.

In 1952, a Past President of the Durban Chamber of Commerce proposed that the railways, harbours and airways be administered separately and summarised the problem in the following way:

To most South Africans the centralization of control of railways, harbours and airways is so much an accepted fact that we are inclined to believe that such a combination of transport interests is not only the most natural, but the most efficient form of administration. If, however, we turn our eyes abroad and examine conditions in other countries, particularly those which are highly industrialised and play a prominent part in international commerce such as Britain and America, we find that it is the exception rather than the rule for harbours or railways to be administered as part of a railway organisation.⁷

At the same Congress a resolution was adopted calling for the re-organisation of the Railways and Harbours Administration and the resolution was put in these terms:

Congress is of the opinion that the recent vast development of railways, airways and harbours has increased the size of the Union's undertaking to the stage where there is excessive concentration of management of a wide and often conflicting diversity of interests and claims; and, therefore, urges that the railways, airways and harbours be split into three independent groups each with separate staff establishments and financial organisations under the management of deputy general managers and under the co-ordinating control of a General Manager of transport.

Congress believes that such a re-organisation would secure:

- Greater technical efficiency
- Improved esprit de corps
- Adequate recognition of the legitimate requirements of each section
- Regular development and improvement of each section unprejudiced by the abnormal demands of any other section
- Lower operating costs
- Administration of each section on sound business principles. 8

Paragraph 798 of the Report of the Committee on the Railway Rating Policy and Industrial Location in South Africa (SCHUMANN Committee) in April 1964 recommended that a thorough study be made, preferably by a special commission of enquiry, of the machinery and measures required to ensure the efficient co-ordination of transport in South Africa. 9

In March, 1965 a Commission of Enquiry was appointed to investigate and report upon:

1. The role which the different forms of transport such as railway, road, air, pipeline and shipping in the Republic of South West Africa . . . must fulfil to promote the development of the national economy in the most efficient manner and,
2. nature of the control measures and administrative machinery necessary to ensure that the role determined for each form of transport, in accordance with paragraph (i), is fulfilled in the most efficient manner, either separately or by way of co-ordination with one or more of the other forms of transport and,
3. any other matter which the Minister of Transport may refer to the Commission. 10

This Commission was called the Commission of Enquiry into the Co-ordination of Transport in South Africa and is generally referred to as the Marais Commission. (The Chairman of the Commission being Dr M.D. Marais).

The Report of the Commission which was tabled and published in 1969 concedes that:

Although there has been a definite movement towards greater autonomy for the South African Airways, it is still, financially and in certain other respects, an integral part of the South African Railways and Harbours, and the General Manager is responsible to the Minister of Transport for all matters relating to the Air Services, and all submissions to the Minister of Transport relating to the South Africa Airways are made through the General Manager. 11

An aspect of South African Airways on which divergent views were submitted was the question as to whether South African Airways should remain an integral part of the South African Railways and Harbours Administration or whether it should be controlled as a separate entity.

Commercial organisations submitted that although pressure of competition from overseas airlines had forced some freer development in external commercial practices and modern aircraft were from time to time injected into the domestic network, fundamentally the position remained unchanged and South African Airways continued to be relegated to the role and status of a subordinate subsidiary, and the consensus of opinion was that the South African Railways had unduly dominated the South African Air Transport scene. 12

In evidence placed before the Commission, the following reasons were given for the submission as to the subordination of the airways:

1. Airways have been fitted into an administrative structure geared to railway requirements;
2. these structures have been transliterated and warped in an attempt to meet airway requirements with not very satisfactory results;
3. South African Airways must obviously keep in step with modern practices, which it cannot properly do tied as it is to surface transport approaches. Aviation sells SPEED and all functions must be geared accordingly.
4. Past tendency to inject men ex railway into airways at management level . . . deprives South African Airways of the opportunity of building up its own corps of specialists . . .
5. A single general manager through whom all major decisions must be channelled under the present setup. It is asking too much of one man, and unfair to him, to expect him to cope with such a variety of specialist departments . . . each one of which is a job on its own.

6. South African Airways local fares are always cast above those of railways whereas in other countries air fares are allowed to find their own level. 13

The attitude of Commerce was summarised in the following manner:

We think that Airways should have a different approach to the Minister . . . we feel that a body like a public utility corporation will probably be the ideal. In the absence of such a body though, we feel that we must try for a separate department, with a man at the top who is able to devote his entire energies to aviation, and at the rate of which aviation is developing, we feel that this is necessary. 14

Another commercial organisation put its attitude on the existing Airways setup in these terms:

There are two types and totally different types of transport being controlled under one umbrella . . . this would have the tendency for the one to lose itself in the other, rather than to promote development each in its own field. 15

In rebuttal of the suggestion that Airways be separated, the Railway Administration submitted that:

1. South African Airways was today encountering strong competition but was holding its own on the international level;16
2. Initially staff for the airways was drawn from the railways because it was easier and more convenient and because staff was not available from other sources. Today, with the exception of the staff section, and to a certain extent the accounting section, there actually was no interchangeability between the airways and the railways above the grade of clerk Grade II;
3. Modern aviation technology had developed so rapidly that personnel must be able to keep pace with it;

4. Promotion of airway staff did not take place only according to seniority. The Railways and Harbours Act laid down that efficiency was the primary requisite, and only when all other aspects are equal, was seniority the decisive factor . . .
5. Railways denied that airways was being treated as a stepchild. Both the Minister and the General Manager regard airways as a most important department in the Railway Organisation . . .
6. Railways also mentioned the question of combined services which were provided by railways for airways, which not only promoted a great saving but exonerated the Chief Executive of Airways and his superior officers from such duties. An example of such combined services included purchases, for which railways had an enormous organisation specializing in that direction; the whole expenditure, accounting and audit function of Airways was undertaken by railways. 17

The Railways Administration further contended that:

1. The fact that airways passenger traffic operated at a profit whereas railways passenger traffic operated at a loss did not necessarily mean that airways revenue subsidized railway operation . . . 18
2. . . .
3. A General Manager for the South African Railways with no airways experience could cope with the complexity of running the South African Railways and at the same time control airways as, operationally, the Chief Executive of South African Airways made the decisions. A difference existed as far as points of policy are concerned. It was noted, however, that the Chief Executive of South African Airways reported to the Minister through the General Manager of the South African Railways.
4. It was economic and advantageous to tie airways advertising to railways . . .
5. South African Airways had no difficulty in obtaining the best staff. Airways personnel had the security of a moneyed pension fund and enjoyed the privilege of the Railways

Administration's Sick Fund. 19

The Commission summarised the arguments of the protagonists of separate control for Airways as follows:

1. The development of South African Airways, if from the outset on the basis of separate control, would have occurred in any event and in fact would have been accelerated - developments in other countries being quoted as examples.
2. South African Airways is a fast developing department of the Railways Administration, but, against the background of the bast railway organisation, is probably considered as a minor department.
3. Adequate attention to the major problems confronting the rapidly expanding national airline in the competitive international field is not always given owing to the management complexities of the Railways Administration.
4. The South African Airways ties with the Railway Administration are more of a burden than an advantage to the efficient operation of the airline. South African Airways already has its own accounting system and its commercial activities are virtually conducted on a separate basis. For practical purposes its catering services are provided by itself.
5. Better results and greater efficiency would be achieved if control of its advertising requirements was vested in South African Airways. This is especially necessary having regard to the considerable volume of publicity required in overseas countries.
6. It is not in the best interests of South African Airways, with its specialised personnel requirements to be tied to railway service conditions.
7. During the next decade South African Airways will be confronted with major problems such as the acquisition and operation of very large jet transport and supersonic aircraft requiring undivided and specialised management.

8. South African Airways as presently constituted and as members of IATA are at a disadvantage against international carriers having a non-IATA arm, able to provide cheap 'package' tours for tourists. 20

The Commission concluded that for an airline to develop - for its policies to be correctly set and to develop correct philosophies in its personnel - it must have independence and have ultimate responsibility.

For an airline to be part of, and subject to the often conflicting policies and dictates of a surface transportation system, can only lead to stultification and frustration. This conclusion is inescapable and all evidence produced by the Railways Administration has not been able to contravert this. 21(*italics mine*)

The Commission recommended that:

South African Airways be divorced from the control of the South African Railways and Harbours Administration. The South African Airways should become a public utility corporation modelled on the lines of ISCOR in which the government should have a controlling interest which would enable it to exercise control of the airline and direct its major policies. 22

The Commission in its study of the machinery and measures which were necessary to ensure the efficient co-ordination of transport in South Africa also arrived at the following important conclusion:

In those cases where the capital outlay or other factors make it unavoidable that the State or some other public authority must be the owner of the service concerned - as for instance in the case of the South African Railways or South African Airways - the only way to establish an effective countervailing power is to divorce the administration and operation as far as possible from the controlling authority and from such other governmental functions as can be so divorced without undue loss of co-ordination. 23 (*italics mine*)

=

Subsequent to the tabling of the Marais Commission Report the Minister of Transport tabled a White Paper²⁴ on certain aspects of the Report. The Minister firstly dealt with the financial implications of the proposed separation and before doing so noted that the recommendation of the separation of Airways was not a unanimous recommendation of the Commission and that in fact the Chairman and two members had not fallen in line with the separation recommendation and had submitted minority reports. 25

The Minister held that from a financial point of view the separation of the Airways did not involve such serious implications as in the case of the Harbours. Nevertheless, he considered that although the Airways to a large extent already bore a proportion of the general expenses, the service undoubtedly derived certain financial benefits from being part of such a large organisation as the Railways. The South African Railways was about to embark on a programme of tremendous capital expenditure and he thought it was doubtful whether it would as a separate enterprise, find itself in the same favourable position as in its present state. 26

The Memorandum also mentioned that as in the case of the Harbours, Airways would, as an autonomous body:

Forfeit the benefit of various services which it shares with the Railways. If it is considered necessary to grant the Airways a greater measure of autonomy e.g., in respect of staff management, the purchase of operational requirements, stores control, publicity, and capital provision, this could be done administratively within the framework of the present organisation. 27

The Memorandum concluded, that the Government held the opinion, that the proposed separation of the South African Railways, Airways, and Harbours, and the ultimate denationalisation thereof,

will neither contribute towards a more efficient and better co-ordinated transport system nor be in the interests of the national economy. 28

After the tabling of the Marais Commission Report, a journal of a South African commercial organisation published an article entitled: "The Message of the Marais Commission". It stated:

The South African economy has greatly changed since 1910, but there has been no radical change in the official philosophy underlying the country's transport system. That philosophy can be summed up as a thinking of transport in terms of railways, and as an equating of the interests of the railways with the welfare of South Africa. The majority recommendations of the Marais Commission must be seen as an attempt to substitute new thinking; the long minority report by Mr P.G. Joubert then appears as an attempt to preserve the old. 29 (*italics mine*)

In 1970 Mr P G Joubert, the then Deputy General Manager of the South African Railways and a member of the Marais Commission, prepared a memorandum dealing with the Marais Commission Report. In his memorandum he conceded that the South African Airways was an integral part of the South African Railways and Harbours and that the General Manager was responsible to the Minister of Transport, "vir alle aangeleenthede rakende die SA Lugdiens". 30 He also made the following interesting observation:

Die Assistent-hoofbestuurder (lugdiens) (met die ampstitel 'Bestuurshoof' vir alle kontak buite die Administrasie) is egter verantwoordelik vir die daaglikse bestuur en direkte beheer van die lugdiens en hy rapporteer regstreeks van die Hoof-bestuurder. 31 (*italics mine*)

In commenting on the allegation that the Airways had been fitted into an administrative structure geared to railway requirements he conceded that:

Whilst it is correct that the South African Airways has been fitted into the structure of the Administration's transport services, it must be emphasised that this arrangement has not resulted in South African Airways providing inefficient services to the public . . . the personnel conditions and grading are allied to those of the overall services of the Administration. 32

In reply to the allegation that each form of transport must in the overall national interests be free to develop in its own right and along its own special lines, he stated that

that had been the case in so far as SAA was concerned. 33

In a general comment on the question as to whether S A A should be controlled and administered as a separate entity, he presented the following standpoint of the Railways Administration:

Concerning the separation of the Airways from the Railways the suggestion should be tested according to the following two considerations, namely firstly, whether the South African Airways is functioning as an integral part of the Railways Administration or not, and secondly, whether the advantages of separation exceed the disadvantages thereof. The test for the first consideration is contained in the question of whether the South African Airways is exploited effectively and in the best interests of the country. If these requirements are complied with it is reasonable to accept that solely on the grounds of these considerations a change in the present system of management is not justified . . . The only apparent advantage the Airways organisation can achieve by its separation from the Railways, would perhaps be the obtaining of greater identity (esteem) as an autonomous body. On the other hand, the disadvantages of separation are numerous. As an autonomous organisation the South African Airways will no longer have the advantage of services presently rendered by other departments and branches of the integrated organisations . . . From a staff point of view, there are also serious disadvantages associated with separation. The personnel of the South African Airways will then no longer have the security of a pension fund well provided with capital and will no longer enjoy the advantages which the Sick Fund of the Administration offers its members. . . . 34 (Translated)

Whether it overtly recognises it or not South African Airways certainly does yearn 'greater identity as an autonomous body'. This is abundantly clear from the latest Annual Report of South African Airways.

The Annual Report of the South African Railways and Harbours is a statutory report addressed and submitted to the Minister of Transport and includes one chapter and other statistical data on the activities of South African Airways.

In contrast, the Annual Report of South African Airways is not required by statute. This report is far more 'commercialised' than the report of the South African Railways and Harbours and is clearly a public relations venture.

However, the desired corporate image is quickly dispelled in the report's introduction which contains the following words:

'published by authority of
(Signature) J.G.H. LOUBSER
General Manager
South African Railways'.

A reminder of South African Airways' present status.

A statement made in evidence before the Marais Commission by an Association concerned with commercial aviation puts the question of the separation of Airways from the Railways and Harbours Administration succinctly:

. . . Aviation is in a constant state of change as is evident by the fact that I.C.A.O. is in continuous session . . . These changes are taking place so rapidly that it is felt that if South African Airways is to keep abreast of the times, both in the international and domestic spheres, . . . it can only do so effectively in the future if it can function as an independent organisation. As an independent organisation, managed and manned by a staff of specialised professional people, we believe that it can and will grow into an airline of which we will all be justly proud. 35

However, the Government has no intention of releasing air transportation from the national surface transportation organisation of the Railways and Harbours Administration. On the contrary, the Minister of Transport has stated that the designation South African Railways and Harbours:

does not adequately describe the multi-modal services that the department (Railways and Harbours) operates, namely railways, harbours, airways, pipelines and road transport. A new name such as South African Transport Administration . . . would reflect more appropriately the department's present functions. 36

N O T E S

1. C. Verburgh, South African Transportation Policy, (Bureau for Economic Research, University of Stellenbosch, 1962), p.33.
2. Ibid.
3. Ibid. p.35.
4. Ibid. p.36.
5. Ibid.
6. Hansard (Assembly) 8th March, 1961, col.2583-2584.
7. R.R. Butcher, Commercial Opinion, 'Reorganize Transport', December, 1952 p.341.
8. Ibid. p.343.
9. Report of the Commission of Inquiry into The Co-ordination of Transport in South Africa, (The Marais Commission) R.P.32/1969 - para 2.
10. Ibid. para 1.
11. Ibid. para. 90.
12. Ibid. para 486.
13. Proceedings of the Commission - Government Archives.
14. Ibid.
15. Ibid.
16. For the period April-December, 1976, SAA suffered a negative passenger growth on external flights and a 2% decrease of passenger kilometres compared to the corresponding period of the previous year. - Hansard (Assembly) 9th March, 1977 col.3157.
17. The Marais Commission, op.cit. para 487.
18. For the year ended 31st March, 1967, the operations of all services resulted in a net deficit of R51 465 341 of which the Railways, the major transportation service reflected a total deficit of R123 205 588. Against these deficits, Airways with a revenue of R272 458 386 (which represents 15% of the total transportation revenue) and an expenditure of R264 837 544 produced a surplus of R7620 842. - Annual Report South African Railways and Harbours, 1975-1976.

19. The Marais Commission, op.cit. para 487.
20. Ibid. para 488.
21. Ibid. para 489.
22. Ibid. para 490.
23. Ibid. para 687.
24. Ministry of Transport, Memorandum By The Minister Of Transport On Certain Aspects of the Report of The Commission of Inquiry into the Co-ord. of Transport in S.A., W.P. C-1970.
25. Ibid. para 3.
26. Ibid. para 6.8
27. Ibid. para 7.3.2. and 7.3.3.
28. Ibid. para 9.
29. Commercial Opinion, 'The Message of the Marais Commission ', July, 1969, p.3.
30. P.G. Joubert, Deputy General Manager, S.A. Railways, 'Ondersoek Na Koordinasie Van Vervoer In Suid-Afrika', Memorandum, 1970. p.61.
31. Ibid.
32. Ibid. p.147.
33. Ibid. p.149.
34. Ibid. pp 153-154.
35. Proceedings of the Commission, Government Archives.
36. Hansard (Assembly) 9th March, 1977, col.3164.

B I B L I O G R A P H Y

- Abrahams, Neville. Big Business and Government: The New Disorder. London, MacMillan, 1974.
- A Century of Transport, 1860-1960. Johannesburg, Da Gama Publications.
- Annual Survey of South African Law. Produced by The Faculty of Law, University of Witwatersrand. Wynberg: Juta and Company, 1968.
- Baker, R.J.S. 'The Financial Control and Accountability of Canadian Crown Corporations'. Public Administration, (1953) Vol.31, Summer, pp.127-143.
- Bamford, B. Law of Shipping and Carriage. 2nd ed. Juta and Company, 1973.
- Barrie, George N. 'The Legal Structure of International Air Transport'. The Comparative and International Law Journal of Southern Africa. vii, No. 1, (March, 1974).
- Brand, R.H. The Union of South Africa, Oxford, 1909.
- Butcher, R.R. 'Re-organise Transport'. Commercial Opinion. (December 1952), p.341.
- Caiden, G.E. 'Prospects for Administrative Reform in Israel'. Public Administration, 1968, Vol. 46, p.31.
- The Dynamics of Public Administration. Illinois. Dryden Press, 1971.
- Canada. Canadian Year Book, 'Statement of Air Policy', Ottawa, Queens Printer, 1974 and 1973.
- Cape Times, 27th November 1915.
- _____ 3rd March 1916.
- _____ 21st December 1974.
- _____ 20th October 1976.
- Chester, D.N. 'Management and Accountability in The Nationalized Industries'. Public Administration. Vol.30, (Spring 1942)
- Cloete, J.J.N. Personeel-Administrasie, Pretoria, J.L. Van Schaik, 1975.

- Sentrale, Provinsiale en Munisipale Instellings van Suid-Afrika. Pretoria, J.L. Van Schaik, 1973.
- Corbett, David. Politics and the Airlines, London. George Allen and Unwin, 1965.
- Denham, Ross A. 'The Canadian Auditors General - What is their role?'. Canadian Public Administration (Summer 1974), Vol.17,p.259.
- 'Department of Transport', Standard Encyclopaedia of Southern Africa. Vol.X, 1974.
- Dunsire, A. Administration: The Word and the Science, London, Martin Robertson, 1973.
- Eddy, Paul, Elaine Potter and Bruce Page. Destination Disaster, London, Hart-Davis, MacGibbon, 1976.
- Faulks, R.W. Elements of Transport, London, Ian Allen, 1969.
- 'Flying in South Africa'. To the Point. 14th May, 1976, p.25.
- Frankel, Herbert S. The Railway Policy of South Africa. Johannesburg, Horters, 1928.
- Friedmann, W. ed. The Public Corporation: A Comparative Symposium. Toronto, The Carswell Company Limited, 1954.
- _____ and J.F. Garner, eds. Government Enterprise: A Comparative Study. London, Stevens and Sons, 1970.
- Garner, J.F. Administrative Law. London, Butterworths, 1974.
- Great Britain. Report of The Committee of Inquiry into Civil Air Transport (Edwards Report) London. Her Majesty's Stationery Office, Cmnd. 4018, 1962.
- _____ Department of Trade. 'Future Civil Aviation Policy'. London. H.M. Stationery Office, 1976.
- _____ 'British Air Transport in the Seventies', Cmnd. 4018, London, H.M. Stationery Office, 1969.
- _____ British Airways Report and Accounts, British Airways Board. London, 1976.
- _____ 'Report of the Committee on the Civil Service' (Fulton Committee). London. H.M. Stationery Office. Cmnd.3638,1968.
- Guide to State Departments. Johannesburg, Harold MacCarthy Publications, 1972/1973.

- Halsbury's Statutes of England. 'Aviation'. 3rd ed. Vol.2.
- Hanson, A.H. ed. Nationalization: A Book of Readings. London: George Allen and Unwin, 1963.
- Public Enterprise, Brussels, International Institute of Administrative Sciences, 1955.
- Hanson, A.H. Public Enterprise and Economic Development, London, Routledge and Kegan Paul, 1959.
- Healy, Kent T. The Economics of Transportation in America. New York, The Ronald Press Company, 1946.
- Herbstein and Van Winsen. The Civil Practise of the Superior Courts in South Africa, 2nd ed., Juta and Company, 1966.
- Hodgetts, J.E. The Canadian Public Service: A Physiology of Government. University of Toronto Press, 1973.
- Holland, Stuart, ed. The State as Entrepreneur, London, Weidenfeld and Nicolson, 1972.
- Horwitz, Ralph. The Policital Economy of South Africa. New York, Frederick A. Praeger, 1967.
- Hoy, William. 'Control and Development of Aviation in South Africa'. S.A. Railways Reference Library, Johannesburg, 19th January, 1920.
- International Air Transport Association, Public Relations Department. 'How International Airline Fares and Rates are made'. Geneva.
- Israel. The Commissioner For Complaints from the Public. Annual Report No. 1, 1972.
- Joubert, W.A., ed. The Law of South Africa, Vol.1. Butterworth And Company, 1976.
- Kahn, Ellison. 'Public Corporations in South Africa: A Survey'. The South African Journal of Economics, 27(4)(1959) pp 279-292.
- Keeling, Desmond. Management in Government, London, George Allen and Unwin, 1972.
- Lissitzyn, O.J. International Air Transportation And National Policy. Council on Foreign Relations, New York, 1942.
- Locklin, D. Philip. Economics of Transport. London, Ian Allen, 1969.

- MacDonald, Hugh. Aeroflot Soviet Air Transport Since 1923, London, Putnam, 1975.
- Marx, Fritz Morstein, ed. Elements of Public Administration, 2nd ed. Englewood Cliffs, N.J.: Prentice-Hall, 1959.
- May, Henry John. The South African Constitution, 3rd ed. Juta and Company, Cape Town, 1955.
- Ministry of Transport and Civil Aviation. New Whitehall Series. London, George Allen and Unwin, 1959.
- Nerbas, Grant H. 'Canadian Transportation Policy, Regulation and Major Problems'. Journal Of Air Law And Commerce, vol.33, No.2, (Spring 1967) pp 242-268.
- Nigro, Felix A. and Lloyd G. Nigro. Modern Public Administration, 3rd ed. Harper and Row, 1973.
- Norval, A.J. The Administration Of The South African Railways On Business Principals. Pretoria, J.H. de Bussy, 1930.
- Plewman, R.P. 'Employment In The Public Service'. South African Law Journal, vol.72, (1955) p.73.
- Public Relations Division, South African Airways, comp. and ed. Fifty Years Of Flight. Johannesburg, Da Gama Publishers, 1970.
- Rinck, Gerd. 'The International Factors In German Air Transport'. Journal of Air Law and Commerce. vol.33, No.1, (Winter 1967), pp 101-116.
- Robson, William A. Nationalized Industry And Public Ownership. London. George Allen & Unwin, 1962.
- x Roux, Ben. 'South African Public Corporations - Need For Vigilance?'. New Nation, February, 1968, p.8.
- Seidman, Harold. 'The Government Corporations: Organisation And Controls'. Public Administration Review. Vol.14(1954) p.183.
- _____ 'The Theory Of The Autonomous Government Corporations: A Critical Appraisal'. Public Administration Review, vol.12, (1952) p.91.
- Self, Peter. Administrative Theories And Policies. George Allen and Unwin, 1974.
- de Smith, S.A. Constitutional And Administrative Law, 2nd ed. Middlesex, Penguin Education, 1973.

South African Financial Gazette, 27th February, 1976.

South Africa. Annual Report Of The General Manager South African Railways and Harbours, 1935, 1940, 1974-1975, 1975-1976.

Annual Reports of South African Airways. 1974-1975, 1960-1961, 1963-1964, 1971-1972.

Annual Report Of The Department Of Transport, 1974-1975.

House of Assembly Debates (Hansard) 5th March, 1925.

House of Assembly Debates (Hansard) 11th May, 1931.

House of Assembly Debates (Hansard) 5th March, 1934.

South Africa. House of Assembly Debates (Hansard) 23rd September, 1948.

House of Assembly Debates (Hansard) 3rd May, 1971.

House of Assembly Debates (Hansard) 12th March, 1962.

House of Assembly Debates (Hansard) 30th April, 1968.

House of Assembly Debates (Hansard) 26th May, 1976.

House of Assembly Debates (Hansard) 20th May, 1950.

House of Assembly Debates (Hansard) 7th June, 1965.

House of Assembly Debates (Hansard) 8th May, 1968.

House of Assembly Debates (Hansard) 14th October, 1966.

House of Assembly Debates (Hansard) 2nd March, 1976.

House of Assembly Debates (Hansard) 3rd March, 1976.

House of Assembly Debates (Hansard) 8th March, 1961.

House of Assembly Debates (Hansard) 9th March, 1977.

Official Year Book of the Republic of South Africa, 1976.

Report of the Commission of Inquiry into the Co-ordination of Transport in South Africa, R.P. 32/1969.

South African Airways v. New York State Division of Human Rights.
The American Journal of International Law. Vol.65 (1971)
pp 403-405.

South African Law Reports. Pan American World Airways Inc.
v. S.A. Fire and Accident Insurance Company Limited, 1965(3)
S.A. 150 (A.D.)

_____ Natal Provincial Administration v. The South African
Railways and Harbours, 1936(N) p. 643.

_____ R. v. Lusu. 1953(2) May, p.496.

South African Statutes.

South Africa Act 1909.
Railways and Harbours Services Act 28/1912.
Railways Board Act 17/1916.
Railways and Harbours Regulation, Control and
Management Act 22/1916.
Aviation Act 16/1923.
South African Iron and Steel Industry Act 11/1928.
Railways and Harbours Regulation, Control and Management
(further amendment) Act 21/1931.
Aviation Health Act 7/1935.
National Roads Act 42/1935.
Broadcasting Act 22/1936.
Carriage By Air Act 17/1946.
Transport Co-ordination Act 44/1948.
Air Services Act 51/1959.
Klipfontein Organic Products Act 40/1950.
State Liability Act 20/1957.
Public Service Act 54/1957.
Railways and Harbours Control and Management
(Consolidation) Act 70/1957.
Railways and Harbours Services Act 22/1960.
Republic of South Africa Constitution Act 32/1961.
Railways Board Act 73/1962.
Aviation Act 74/1962.
Klipfontein Organic Products Transfer Act 77/1965.
Armaments Development and Production Act 57/1968.
Post Office Re-adjustment Act 67/1968.
Transport Co-ordination Amendment Act 59/1971.
Civil Aviation Offences Act 10/1972.
Exchequer And Audit Act 66*1975.
Weza Timber Company Limited Act 42/1976.
Railways and Harbours Appropriation Act 49/1976.
Broadcasting Act 73/1976.
Post Office Amendment Act 113/1976.
Railways and Harbours Finance and Accounts Act 48/1977.

Stratford, Alan H. Air Transport Economics In the Supersonic
Era. MacMillan, 1967.

'The Message of the Marais Commission'. Commercial Opinion.
July, 1969.

- 'This is South African Airways'. Johannesburg: Thomson Publications, 1976.
- Thornton, Robert L. International Airlines and Politics: Study in Adaption to Change. Programme in International Business, University of Michigan, 1970.
- Tivey, Leonard ed. The Nationalized Industries Since 1960. London, George Allen and Unwin, 1973.
- Transkei. Transkeian Corporation Act, 10/1976.
 _____ Government Gazette, No.40, 24th September, 1976.
 _____ Philatelic Services, Bulletin TPT 2, February, 1977.
- United Nations. Department of Economic and Social Affairs. Organization and Administration of Public Enterprises: Selected Papers. New York, 1968.
 _____ Seminar on the Organization and Administration of Public Enterprise. Geneva, 1966. Report. New York, 1967.
- Van Waasdijk, T. Public Expenditure in South Africa. Witwatersrand University Press, 1964.
- Verburgh, C. South African Transportation Policy, Bureau of Economic Research, University of Stellenbosch, 1962.
- Wassenbergh, H.A. Aspects of Air Law and Civil Air Policy in the Seventies. Marthinus Nijhoff, The Hague, 1970.
- 'World Airline Directory'. Flight International, 10th April, 1976.
- Worrall, Denis, ed. South Africa: Government and Politics, 2nd ed. Pretoria: J.L. Van Schaik Limited, 1975.

APPENDIX 'A'
 MAJOR PUBLIC CORPORATIONS OF THE REPUBLIC OF
 SOUTH AFRICA.

(In Chronological Order)

1.	Electricity Supply Commission.	Act 44/1922
2.	South African Iron and Steel Corporation (and various subsidiaries).	11/1928
3.	South African Broadcasting Corporation (Now Act 73/1976)	22/1936
4.	Industrial Development Corporation of South Africa.	22/1940
	<u>Subsidiaries</u>	
	a) South African Coal, Oil and Gas Corporation (SASOL);	
	b) Phosphate Development Corporation (PHOSKOR);	
	c) Aluminium Corporation of South Africa;	
	d) Southern Oil Exploration Corporation (Proprietary Limited).	
5.	Land and Agricultural Bank.	13/1944
6.	The South African Reserve Bank.	29/1944
7.	Fisheries Development Corporation.	44/1944
8.	South African Tourist Corporation.	54/1947
9.	National Finance Corporation of South Africa	34/1949
10.	Rand Water Board (originally 1903 Transvaal Act)	17/1950
11.	Bantu Investment Corporation (now 46/68)	34/1959
12.	Coloured Development Corporation.	4/1962
13.	South African Invention Development Corporation.	31/1962
14.	Xhosa Development Corporation.	86/1965
15.	Armaments Development and Production Corporation	57/1968
16.	Rehoboth Development Corporation.	84/1969
17.	Bantu Mining Corporation. (i.t.o.)	46/1968

18. Uranium Enrichment Corporation of South Africa. 33/1970

Source:

- i) Statutes of the Republic of South Africa, Butterworth and Company (S.A.) (Proprietary) Limited, Durban;
- ii) Official Year Book of South Africa 1975, South African Department of Information.

APPENDIX 'B'

STATISTICS AS AT 31ST DECEMBER, 1975.

AIRLINE	TOTAL EMPLOYEES AS AT 31ST DECEMBER, 1975.	PILOTS AND CO-PILOTS AS AT 31ST DECEMBER, 1975	FLEET AS AT 31ST DECEMBER, 1975.	PASSENGERS IN 000's COMBINED SERVICES OF SCHEDULED IATA MEMBERS.	KILOMETRES FLOWN IN 000's -INTERNATIONAL SERVICES.	PASSENGER LOAD FACTOR INTERNATIONAL AND DOMESTIC IATA MEMBERS.	WEIGHT LOAD FACTOR INTERNATIONAL AND DOMESTIC IATA MEMBERS.	PASSENGER DEATHS PER MILLION PASSENGERS.
Air Canada	20589	1523	120	10394	71155	58.0	45.1	2.79
British Airways	49447	2742	153	12372	211322	60.5	55.9	4.48
EI AL	5045	194	13	678	25530	65.3	62.6	8.19
JAL	21288	984	72	8888	99406	57.5	55.5	1.90
KLM	16698	701	51	3130	89255	53.3	53.5	7.29
PAN AM	28348	1804	118	7431	204300	48.5	47.3	4.03
QANTAS	13222	608	25	1403	64506	61.1	56.0	0.61
SAA	9944	400	35	2878	30525	60.6	54.3	8.10
SABENA	9790	384	32	1585	47802	54.3	57.2	8.29
SWISSAIR	14360	757	57	4691	80274	54.8	51.8	2.23
VARIG	14621	641	56	3014	52652	60.2	57.0	12.45
<u>WORLD AVERAGE IATA MEMBERS.</u>						56.3	50.6	

SOURCE.

World Air Transport
Statistics 1975 IATA
Geneva.

'Destination Disaster'
Paul Eddy et al, Hart-
Davis, London 1976.

APPENDIX 'B'

YEAR	HOURS FLOWN	NUMBER OF FLIGHTS	KILOMETRES FLOWN	NUMBER OF PASSENGERS
INTERNATIONAL				
1965	12141	3107	9196	57356
1975	33885	6756	27467	385155
DOMESTIC				
1965	29944	20905	11668	583846
1975	41139	42320	26594	2285823

SOURCE.
SAA STATISTICS 1976
DEPT. OF STATISTICS
PRETORIA.

SAA FLEET
AS AT FEB.
1977.

Boeing 747 S.P.	6
Boeing 747 Super B	5
Boeing 707	8
Boeing 727	9
Boeing 737	6
Air Bus A 300	3
Hawker Siddeley	3
TOTAL	40

SOURCE.
'This is
SAA'
Thomson
Publi-
cations
1976.

INTERNATIONAL SERVICES

Europe and U.K.	16 services per week			
North America	2	"	"	"
South America	3	"	"	"
Australia	2	"	"	"
Far East	1	"	"	"

NEIGHBOURING TERRITORIES

RHODESIA	17	"	"	"
MALAWI	3	"	"	"
MOZAMBIQUE	4	"	"	"
BOTSWANA	9	"	"	"
LESOTHO	3	"	"	"
SWAZILAND	3	"	"	"
MAURITIUS	1	"	"	"
REUNION	1	"	"	"
SEYCHELLES	1	"	"	"

DOMESTIC ROUTES - 501 FLIGHTS PER WEEK

APPENDIX 'C'

DEPARTMENTS OF STATE-IN TERMS OF FIRST
SCHEDULE TO THE PUBLIC SERVICE ACT
No 54/1957, AS AMENDED.

Bureau of State Security.
Department of the Prime Minister.
Department of Agricultural Credit and Land Tenure.
Department of Agricultural Economics and Marketing.
Department of Agricultural Technical Service.
Department of Bantu Administration and Development.
Department of Bantu Education.
Department of Coloured, Rehoboth and Nama Relations.
Department of Commerce.
Department of Community Development.
Department of Controller and Auditor-General.
Department of Customs and Excise.
Department of Defence.
Department of Finance.
Department of Foreign Affairs.
Department of Forestry.
Department of Health.
Department of Immigration.
Department of Indian Affairs.
Department of Industries.
Department of Information.
Department of Inland Revenue.
Department of the Interior.
Department of Justice.
Department of Labour.
Department of Mines.
Department of National Education.
Department of Planning and the Environment.
Department of Prisons.
Department of Public Works.
Department of Social Welfare and Pensions.

Department of the South African Police.

Department of Sport and Recreation.

Department of Statistics.

Department of Tourism.

Department of Transport.

Department of Water Affairs.

Office of the Public Service Commission.

The Provincial Administration of the Cape of Good Hope.

The Provincial Administration of Natal.

The Provincial Administration of the Orange Free State.

The Provincial Administration of the Transvaal.

The Administration of South-West Africa.