**RECENT APPROACHES TO AVIATION IN TRINIDAD AND TOBAGO**

**BY**

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**INTRODUCTION**

Trinidad and Tobago is an archipelagic state consisting of two main islands: Trinidad, the larger, and Tobago the smaller. There are other islands and islets fringing the coast of both these islands. In total the area of the country is 1864 square miles. The islands are the southernmost of the Caribbean chain of islands, Trinidad at the closest point being about seven miles from Venezuela its closest neighbor on the South American mainland.

The islands lie approximately three hours by air from Miami, one hour from Caracas, five hours from New York, six hours from Toronto, eight hours from London, three hours from Manaus, Brazil and about nine hours from Abuja, Nigeria and Accra, Ghana.

Trinidad is highly industrialized, the main export being petroleum and other energy products, rum, manufactured goods and agricultural products while Tobago is described as a tranquil tourist paradise. The islands complement each other by their differences.

In contrast with the Pacific where great distances separate countries, Caribbean islands are close to each other, forming a chain stretching from Trinidad in the south to the Bahamas, within touching distance of Miami in the north. It is in this geographical setting that Trinidad and Tobago has operated commercial aviation in one form or another since 1940. Among the early foreign operators into Trinidad was, Pan American Airways which commenced services in about 1927.

There was a period in the 1950 – 60’s when most of the major U.S., Latin American, Canadian and European carriers were household names in the Trinidad market – Pan Am, Air Canada, Aeropostal, Aerolineas Argentinas, Varig, Air France, BOAC, KLM, Viasa, Luftansa, later to be joined after deregulation by the likes of Eastern, American and Delta. In that mix was the locally-owned carrier BWIA, originally known as British West Indian Airways which was formed in 1940 by a New Zealander, Captain Lowell Yerex and which performed commercial services throughout the English-speaking Caribbean.

British West Indian Airways passed through various incarnations, zig-zagging between private and Government ownership until in 1961 while a subsidiary of BOAC it was bought by the Government of Trinidad and Tobago, then on the brink of Independence. It was partially privatized in about 1994, its management and control being surrendered to foreign interests because it was perceived to be a loss-making albatross draining the Treasury. Under foreign management things got worse and substantial injections of Government funds were required to keep the carrier afloat. By 2006 it was decided that BWIA should be liquidated. The airline was closed down on 31 December 2006 to morph as Caribbean Airlines (CAL) on 1st January 2007 as a wholly Government-owned airline. (See Article “Six Decades of Aviation Ups and Downs” by Suzann Sheppard in Trinidad and Tobago Newsday, 17th September, 2006. See also article by Ambassador Reginald Dumas “Cause for CALibration” in Trinidad Express, Wednesday 16th February 2011).

**THE REGULATORY ENVIRONMENT**

As a former British Colony Trinidad and Tobago inherited certain laws and regulations from Whitehall, London, under which civil aviation in Trinidad and Tobago was regulated. Such legislation survived Independence and was generally replaced by comprehensive local legislation in the form of the Civil Aviation Act, Chapter 49:03 of the Laws of Trinidad and Tobago in November, 2001, its long title being “An act to make provision for the establishment of the Trinidad and Tobago Civil Aviation Authority, for the regulation of all civil aviation activities, for the implementation of certain international conventions and for the institution of safety requirements.”

The Trinidad and Tobago Civil Aviation Authority, established pursuant to section 4 of the Act, is assigned the following functions under section 5 –

1. To maintain a standard of safety and efficiency in the civil aviation system that is at least equal to the standard of safety prescribed by the Chicago Convention and any other aviation convention, agreement or undertaking to which Trinidad and Tobago is a party;
2. To regulate, in accordance with this Act or other written law:-
3. civil aviation operations in Trinidad and Tobago;
4. the operation of Trinidad and Tobago aircraft; and
5. the operation of maintenance organisations in respect of aircraft on the Trinidad and Tobago register;
6. to license aerodromes with or without conditions to regulate the same;
7. to provide technical advice, assistance or training for any person in respect of any matter in which the employees of the Authority have the requisite skill or training;
8. to issue, renew, vary, extend and amend licences and other aviation documents in respect of Trinidad and Tobago aircraft in any part of the world, and to collect fees in respect thereof;
9. to provide an adequate system of air traffic services in the Piarco Flight Information Region and such other airspace as may be the subject of a treaty or an agreement between Trinidad and Tobago and any other state or organisation;
10. to carry out an investigation of any aircraft accident occurring in or over Trinidad and Tobago or in relation to any Trinidad and Tobago aircraft;
11. the development of civil aviation and the maintenance of a civil aviation system that is consistent with national security policy
12. to advise the Minister on matters relating to civil aviation;
13. to utilize the property of the Authority in such a manner as may appear to the Authority to be requisite, advantageous or convenient with a view to making the best use of any of the property of the Authority in relation to its functions under the Act; and
14. such other functions as are for the time being conferred upon it by virtue of this Act or any other written law.

Further, pursuant to Section 7 (a) the Authority is empowered to “engage in any activity that promotes and develops civil aviation, either alone or in conjunction with other civil aviation authorities, international agencies or organisations.”

Under the Act the Authority is to have as its paramount consideration the safety of aviation. (Section 8 (1) ) and subject to that paramount consideration it must ensure that the environment is protected from the detrimental effects of the use of aerodromes and aircraft. “(Section 8 (2) ).” It is worth noting that under section 10 the Authority is given exclusive right to provide certain navigation services within Trinidad and Tobago. These are listed as :

1. aerodrome control services at the international aerodromes (Piarco the main international airport being in Trinidad and the ANR Robinson International Airport located in Tobago);
2. approach control services;
3. area control services;
4. flight information services;
5. air navigation facilities; and
6. aeronautical information services.

For the purpose of carrying out and giving effect to the Chicago Convention the Authority is empowered by section 33 to make Regulations (subject to the approval of the Minister) for a number of matters, including, licensing, inspection and regulation of aviation aerodromes; national registration of aircraft; issuance of certificates of airworthiness; certification of air operators and airmen; certification of aviation training, maintenance and repair facilities; conditions of carriage of passengers and goods, and ensuring the safety of the same; prohibiting carriage of certain types of cargo; ensuring that foreign carriers operating in Trinidad and Tobago comply with the safety and security requirements of the Chicago Convention; giving effect to the Rules of the air and any other matters required or necessary to implement the Act.

Apart from the fact that the Board of the Authority may delegate to the Director General any of its functions or powers under the Act (section 9 (1), the Director General is granted tremendous powers in his own right under a number of provisions in the Act and Section 13 (2) provides that:

**“The Director-General shall have and may exercise such powers or functions as may be conferred or assigned to him by this Act or Regulations made hereunder, and such powers as may be delegated to him by the Authority.”**

Examples of the statutory powers of the Director General include the right to conduct tests or inspections (Section 37), maintain a system of national registration of aircraft (Section 38), re-inspect or re-examine any civil aircraft, engine, school or repair station or any airman holding a certificate. To enable the Director General to properly carry out his functions section 40 (1) authorizes him in the following terms:-

“**40 (1) In addition to the right of access granted under section 37, the Director General shall have access to civil aircraft without restriction wherever they are operated in Trinidad and Tobago and to civil aircraft registered in Trinidad and Tobago wherever they are operated in the world for the purposes of ensuring that those aircraft are airworthy and being operated in accordance with this Act.”**

This paper does not permit a more extensive examination of the Civil Aviation Act. Suffice it to say that a fair description of the Act would be that it enables Trinidad and Tobago to carry out its international obligations under the Chicago Convention and other relevant international aviation agreements while ensuring an efficient system of supervision, oversight and control over aviation and aviation-related activities to, from and within Trinidad and Tobago in accordance with the highest internationally accepted standards for safety and security of civil aviation.

**BILATERAL AND MULILATERAL AIR SERVICES STRATEGY**

As can be seen from the geographical description of the Caribbean at the Introduction of this paper, Trinidad and Tobago, prior to the introduction of very long range aircraft was a very attractive hub for traffic between North and South America as well as Europe and South America. It can also serve as a convenient take off point for travel between the Caribbean and West Africa over Manaus, Brazil. The introduction of extended range aircraft has dulled this attractiveness somewhat. That notwithstanding, an aggressive push by the national airline of Trinidad and Tobago toward consolidation and marketing arrangements with appropriate legacy carriers could result in the kind of returns now being realized by the consolidation of certain Central American carriers with Continental to form COPA Airlines. In the negotiation of bilateral agreements allowance is made for this sort of pragmatism by the local aviation industry.

In the 80’s and early 90’s Trinidad and Tobago’s negotiating policy was dictated by the need to protect the interests of its national carrier BWIA by insisting on restrictive agreements so far as capacity, frequency, tariffs, route rights, ownership and control, number of designations permitted, charter operations etc. were concerned. At the same time BWIA was expanding services, flying not only an expansive network of intra-Caribbean services but also penetrating cities like Miami, New York, Baltimore, Houston, Toronto, London (Heathrow), Frankfurt, Zurich, Stockholm, with aspirations on Milan, Brussels and Amsterdam. The need for fifth freedom rights in such a scenario is self-evident. The plan was to build up a “bank” of route rights through negotiation of bilaterals with select countries all over the world so that the national carrier could, if unable to operate a route on its own, enter into marketing arrangements with other carriers to operate these routes. An example is the Air Services Agreement between Trinidad and Tobago and Poland. Not only was Trinidad and Tobago motivated by possible political and foreign policy advantages of an early presence in Warsaw during the democratization period, but also by the possibility of BWIA entering into code-sharing arrangements with LOT Polish Airlines over cities to which it operated in the USA.

Whether BWIA’s expansion was too rapid or whether by reason of the emergence of low cost all-inclusive competitors out of Europe and North America or a combination of both, the carrier found that certain of its routes were unprofitable and the operations of the carrier as a whole were loss-making, when viewed from the perspective of “the bottom line” of its accounts. Influential voices were raised against the continued operation of the carrier as a State-owned entity and, as stated elsewhere in this paper, the Government indicated its intention in 1992-93 to privatize the airline by inviting both local and foreign investors to take over its operations, the expectation being that foreign investment would be dominant and that substantial ownership and effective control would be shared in an arrangement of convenience.

With a view to making the airline attractive to investors, services were scaled back. Routes, including intra-Caribbean routes were abandoned and the carrier slipped into foreign management, although, by retaining some 51% of the shares, Government appeared to be in substantial ownership. Some of the Government shares were held on trust for employees.

It is the view of this writer that in order to be a serious international airline there is a minimum international presence necessary to justify any claim to such status. When it operated to all the cities mentioned earlier, BWIA met that minimum requirement. When, to become “lean and mean” it retreated from cities like Stockholm, Zurich, Frankfurt, Caracas etc., it no longer qualified to be regarded as a serious international player.

With the curtailment of both intra-Caribbean and international services by BWIA a vacuum was created in respect of both intra-Caribbean and international traffic. To fill that void, a number of Caribbean countries dependent on tourism, were forced to grant subsidies to foreign carriers to operate into their markets; Grenada, St. Lucia, and even the House of Assembly of Tobago being among such states and territories. The practice has not ended.

Apart from BWIA in Trinidad and Tobago another major player in Caribbean aviation was Air Jamaica, another loss-making carrier, which, like BWIA had been fully Government-owned, then privated only to be acquired fully once again by the Government of Jamaica.

As a result of recent pressure from the International Monetary Fund the Government of Jamaica has had to divest itself of the ownership of Air Jamaica. To cut to the quick, BWIA, which had in the meantime once again become wholly Government-owned under the name Caribbean Airlines, and which had effected further cuts in its services, including the important London (Heathrow) – Caribbean route, by agreement between the Governments of Trinidad and Tobago and Jamaica, was made to acquire Air Jamaica under an arrangement the details of which are not altogether clear. Ownership and control of Air Jamaica has passed to Caribbean Airlines, both carriers being allowed to operate in a way that suggests that they each retain their separate identity. The fact is that substantial ownership and effective control of Air Jamaica reside in Caribbean Airlines, the Government of Jamaica being allowed a 16% shareholding in the consolidated entity. Under the arrangement both carriers have been allowed to operate under their own “brand” with Air Jamaica designated by the Government of Jamaica under its ASA’s with foreign states and Trinidad and Tobago doing the same with Caribbean Airlines. Both Canada and the United States have facilitated this arrangement.

It has always been the dream of Caribbean Governments to form one regional airline. The fact that there are in CARICOM some fifteen sovereign states, each with its own economic interest to serve, has not assisted the process of integration of air services. That notwithstanding, commenting on a recent meeting of regional Ministers of Transport, the Jamaican Minister of Transport was quoted as saying:-

“**We are also scheduled for a meeting in October where we can begin, as Ministers of Transport, to discuss the development of an integrated air travel for the Caribbean and to make it more economically viable, more speedily attainable and that we will develop better inter-connectivity.” (Trinidad and Tobago Newsday, Tuesday October 1, 2011, p 21)**

As Ambassador Dumas points out in an article titled “Cause for CALibration “ in the Trinidad Express, Wednesday 16 February 2011, such noises have been heard in the Caribbean even before the first of the English-speaking countries became independent in 1962. Ambassador Dumas does not appear optimistic!

Trinidad and Tobago has negotiated bilateral agreements with about twenty-five countries throughout the world. At one time the intention of the aviation negotiators was to negotiate a “bank” of bilaterals which would be held in reserve, this strategy being, at the time, consistent with BWIA’s expansionist mode.

With a shrinking BWIA that policy became somewhat irrelevant and the present approach appears to be to negotiate primarily with those countries whose carriers operate routes which could complement routes operated by the local carrier in code-sharing or other commercial arrangements. The carrier itself has been slow to take advantage of such possibilities and in the few cases where it has entered into code-sharing arrangements the net gains to it seem to have been minimal with the result that great care (if not fear) rules its decision to enter into such arrangements at present. Code-sharing between Caribbean Airlines and British Airways on the Port of Spain - London route is an example of an attempt at code sharing which was perceived as disadvantageous to the local carrier and was discontinued, one suspects, at the initiative of British Airways.

There are three main concerns of Trinidad and Tobago in its bilateral negotiation: (a) to ensure that in the definition of “territory” its status as an archipelagic state is recognized (b) the agreement of some of its major partners that its carrier would be permitted to operate services akin to cabotage within their territory (such terms were negotiated with the US and Canada recently) and (c) the recognition of the concept of “community of interest” under which neighboring Caribbean states of CARICOM would be permitted to apply the fact of their common interest as a basis for designating the Trinidad and Tobago Carrier as their national carrier where they themselves do not have or substantially control an airline of their own. With the on-going debate on global warming and sustainability the intention of Trinidad and Tobago negotiators is to strongly lobby for inclusion in the preamble to all future bilateral (or multilateral) air services agreements to which Trinidad and Tobago is a party, a reference to the obligation of respect for the environment and environmental sustainability.

Trinidad and Tobago remains flexible in its approach to the traditional clauses in bilateral, such as route structures, capacity, frequency, gauges, freedoms, dispute settlement, consultations etc., with an emphasis on safety and security and adherence to minimum ICAO standards.

Trinidad and Tobago has been a member of the International Civil Aviation Organisation (ICAO) since attaining independence in 1962 and has served on the Council of the Organisation on many occasions. In the last two elections to the Council Trinidad and Tobago was a candidate representing the group of Caribbean developing countries which form CARICOM.

The bid for a seat was on both occasions unsuccessful because it was not sanctioned by the Latin American Civil Aviation Conference, which is the regional Body which determines the allocation of seats within the Latin American region. CARICOM sees itself as having distinct differences in size, culture, traditions and history from those of the larger, Spanish-speaking countries of Latin America and consider it equitable and fair that their sub-region should be guaranteed at least one seat, to be rotated among CARICOM States, on an assured and permanent basis. The situation is complicated by the fact that some Member States of CARICOM have joined LACAC while the majority have not. The CARICOM member states which are members of LACAC are Belize, Jamaica and Haiti. This split in memberships makes dialogue between LACAC and CARICOM difficult, and efforts by Trinidad and Tobago to enter into discussions with LACAC on the issue of representation on the Council of ICAO have been rebutted by leading members of LACAC. The strategy of LACAC appears to be designed to ensure that all CARICOM states join LACAC if some satisfactory solution to the problem is to be arrived at. As far as this writer is aware discussions on this matter at the CARICOM level have not been held since the last ICAO Council elections in September 2010, so there can be said to be no CARICOM position on the issue at the moment.

At the regional and subregional level Trinidad and Tobago has recently agreed with Barbados to amend certain provisions of their bilateral as it relates to route right in order to accommodate a low-fare start-up carrier Red Jet which is registered in Barbados and which has announced its aspirations to mount jet services throughout the Caribbean. As a result of the entry of Red Jet into the Caribbean market there has been a noticeable reduction in fares by the established carriers Caribbean Airlines and Leeward Island Air Transport (LIAT) on certain routes.

In conclusion, Trinidad and Tobago’s aviation interests are closely intertwined with the economic interests of small Caribbean States mostly dependent on tourism and therefore in competition with each other for tourist traffic, especially from Europe and North America. Pragmatism in air service negotiation now characterizes the approach of Trinidad and Tobago resulting in a mix of liberal, conservative, open skies and blue skies arrangements which may appear to lack consistency but which, on closer examination, is suited to the geography of Caribbean Aviation: small states, close to each other, dependent largely on similar economic and trading arrangements characterized by difficult-to-achieve aspirations of integration in a global environment, not always friendly and sometime unfair.