I. INTRODUCTION

Most nations, including Canada and the United States, are signatories to the *Convention on International Civil Aviation* (signed in Chicago in 1944 and commonly referred to as the Chicago Convention) and its various supplementary, multilateral documents. From this base has emerged a network of bilateral aviation agreements, beginning with the signing in 1946 of the U.S.-U.K. Air Services Agreement. These are commercial agreements in which clear recognition is given to the primacy of interests of any two states in regard to decisions about air traffic between their territories. Third country participation is not excluded necessarily but is clearly subordinate to the prime role and right of decision of the two states initially involved. These commercial agreements cover all aspects of the aviation relationship between two countries, including routes, fares, frequencies, capacity and ground services.

The first Canada-U.S. commercial air agreement was signed in 1949 and provided for an exchange of routes between cities near the border and for equitable access to the transborder traffic by the carriers of the two countries. In 1966, a new agreement was signed which expanded scheduled air services between the two countries, and an Exchange of Notes to this agreement provided for all cargo air services by airlines of both countries. At the same time, the two countries also agreed, through another Exchange of Notes, to give favourable consideration, "as appropriate", to applications to the respective regulatory authorities to operate new services of a "regional and local nature". The Notes envisaged approval of such services without prior negotiations. At that time, there were two basic principles underpinning the negotiating strategies of both sides: equality of opportunities for carriers of both countries and equality of economic benefits.

In 1974, the 1966 agreement was amended by an Exchange of Notes, which further expanded scheduled services between the two countries. The agreement specifies point-to-point routes available to Canadian and U.S. carriers subject to the approval of both governments which designate the carriers. Concurrently, a non-scheduled air services agreement covering charter services was negotiated, as well as a third agreement which provided for the establishment of preclearance facilities at certain airports in both countries. Under this arrangement, transborder passengers in Canada can be cleared by U.S. immigration and customs officials before departure. To date, southbound preclearance facilities have been established at Montreal, Toronto, Winnipeg, Edmonton, Calgary, and Vancouver. No northbound facilities have been set up at U.S. airports.

It should be noted that these three agreements were negotiated as a package, each being considered as a *sine qua non* of the other two. This was particularly the case with the Preclearance Agreement and was demonstrated by the fact that the U.S. thought it necessary to record, in writing, its understanding that abrogation of the Preclearance Agreement would be "reasonable cause" for terminating the Air Transport Agreement as well.