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AVIATION NEGOTIATIONS AND THE U.S. MODEL AGREEMENT

RICHARD W. BOGOSIAN*

OUR INTERNATIONAL air transport system rests on an extensive and sometimes delicate fabric of bilateral and multi-lateral agreements. In his paper presented to the Fourteenth Annual SMU Air Law Symposium a year ago¹ Dean Jeswald Salacuse described in some detail how this system was developed during the early years of the twentieth century and how the Chicago Convention of 1944² was a climax to this process. As Dean Salacuse observed, the Chicago Convention, which gave birth to the International Civil Aviation Organization (ICAO), and the US-UK Air Services Agreement of 1946,³ better known as the Bermuda agreement (and, since 1977, as Bermuda I), contained the principal conceptual elements that were the base of international aviation law in the period following World War II.

Since the late 1970s, however, the Bermuda agreement has been challenged by more liberal American policies embodied in the U.S. model agreement. It remains a question whether the U.S. model will replace the Bermuda agreement as the standard bilateral avia-

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The views expressed in this article do not necessarily express the policy of the Department of State.

¹ Salacuse, *The Little Prince and the Businessman: Conflicts and Tensions in Public International Air Law*, 45 J. AIR L. & COM. 807 (1980) [hereinafter cited as Salacuse].

² Convention on International Civil Aviation, signed at Chicago, December 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295 [hereinafter cited as Chicago Convention].

³ United States—United Kingdom Air Services Agreement, signed at Bermuda, February 11, 1946, 60 Stat. 1499, T.I.A.S. No. 1507 [hereinafter cited as Bermuda I].

tion agreement between nations. In order intelligently to consider this question, it is necessary to review the steps leading from the Bermuda agreement to the U.S. model and to look ahead to future trends.

BACKGROUND

Aviation negotiations must have been pleasant for American diplomats in the post-war period. United States political, economic and military power were paramount and many were delighted with the prospect of scheduled airline service connecting their countries with the United States. Few foreign airlines could provide strong competition to U.S. carriers, and in many places there was no local airline at all. In short, the United States was in an expansive posture, and there were few, if any, impediments to such expansion in the aviation area. Indeed, the United States was welcomed. In many countries, bilateral aviation agreements were designed by *both sides* to encourage service by U.S. airlines.

Even then, however, there was some concern over the prospect of U.S. airlines overwhelming the other country's national carrier, usually its only airline. The notion grew, and has become an ingrained element of international aviation mythology, that there was something so inherently strong, large and successful about U.S. airlines that without protection no other country's carriers could face the onslaught of unbridled competition from the Americans.

Dean Salacuse sketched these themes in his description of the positions of the United States and the United Kingdom as they negotiated the original Bermuda agreement.⁴ As he notes, the agreement was essentially a compromise.⁵ The interesting thing about that compromise was that it proved not only able to resolve American and British differences but equally sufficient in virtually all other American agreements. This was true not only in the immediate aftermath of World War II and the Chicago Convention but also two decades later when the United States negotiated its first bilateral agreements with many of the newly independent nations of the world. Throughout the world among all types of govern-

⁴ Salacuse, *supra* note 1, at 827-28.

⁵ *Id.*

ments, the basic Bermuda terms, or variations of them, became standard.

What was the secret of the Bermuda formulation? Briefly, it was broad language that appeared to offer considerable flexibility within a rather controlled environment. Salient provisions of this type of agreement are:

1. The right to designate an airline or airlines to operate over the agreed route(s);
2. Broad language covering airline operating rights;
3. Dual approval (by the governments) of airline prices;
4. Consideration of airline capacity restricted to *ex post facto* review; and
5. Rather precisely defined routes.⁶

The agreements usually state that capacity should be related closely to need, albeit in a flexible manner.⁷ There is also language to the effect that each party should have "a fair and equal opportunity" to compete.⁸ There was the assumption that fares would be simple in structure and that actual fares would be negotiated directly by the airlines, presumably multilaterally under the International Air Transport Association (IATA), a non-governmental body.⁹ Bermuda I type agreements generally have not dealt with charters or all-cargo service because there were few such operations when the agreements were first negotiated.

These agreements closely reflected the philosophies of the governments that negotiated them, not the least the United States government. Route descriptions which then, as now, varied with each agreement tended to be generous in terms of intermediate and beyond rights,¹⁰ if for no other reason than that the technological limitations of aircraft required such terms.

The agreements were general and represented compromises. In-

⁶ Bermuda I, *supra* note 3.

⁷ See, e.g. Bermuda I, *supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ In other words, the designated airlines of one party were allowed to carry traffic between points in the country of the other party and points in other countries. For example, the United States—Ecuador Agreement allows carriage of traffic by designated U.S. carriers between Panama and Quito, Ecuador (which would be an example of an intermediate right), and from Quito and Peru to Chile (which would be an example of a beyond right).

evitably, therefore, disputes arose. For example, capacity increases were theoretically subject only to *ex post facto* review. However, the idea that capacity should reflect demand, and the requirement for fair and equal opportunity were often invoked as governments challenged, *a priori*, proposed capacity increases. Most non-U.S. Bermuda I agreements are implemented by pools and previously defined capacity.¹¹ U.S. carriers are not allowed to enter pool arrangements under American anti-trust laws.

To this day the great majority of governments, which as a group are remarkably conservative toward aviation issues whatever their official ideology or political rhetoric on other matters, are comfortable with Bermuda I language and the concepts it embodies, although by now there are several variations of the basic concepts. Change was inevitable in a technically-advanced and competitive industry such as aviation. During the 1960s jets became commonplace and in the 1970s wide-body aircraft accommodating hundreds of passengers per flight became widely used on international routes. Computerized reservation systems improved ticketing. At the same time political and economic changes around the world contributed to the explosion of air travel. By the mid-seventies safe, comfortable and relatively inexpensive air travel was available to a vast market that included students, officials, workers and middle class tourists travelling to all regions, and not simply to wealthy people who crossed the Atlantic bound for European capitals. From the vantage point of aviation, the world had changed greatly since the days of Chicago and Bermuda.

At the same time changes of a different nature were also underway in the United States. By the late sixties and early seventies there were several airlines serving international routes, and additional companies wished to enter this attractive and prestigious part of the business. Even if U.S. carriers represent something less than the catastrophic challenge feared by foreigners, one could not deny that by the mid-seventies they were, as a group, large, mature and still aggressive. America's own regulatory approach to aviation was being questioned. Increasingly, consumer complaints

¹¹ See, e.g. United Kingdom Air Services Agreements with Denmark (I.C.A.O. No. 2873), Norway (I.C.A.O. No. 2874), and Sweden (I.C.A.O. No. 2875). Jan. 26, 1979.

and related issues required attention. Many commentators suggested that the competitive dynamism of that industry should be unleashed through deregulation.¹³

Thus, by the seventies, political, economic and technological changes had altered the overall environment in which aviation agreements were negotiated. More people wanted to travel to more places by air, and in terms of the technological capability of aircraft their wishes could be met. In the United States the airlines wanted greater opportunities to fly to destinations outside of the country. Deregulation was gaining favor as consumer interests received greater attention.

Despite these many trends, the Bermuda formulation was still the norm even for the United States well into the seventies. The British, however, still had difficulty with the relative freedom and flexibility allowed American carriers under the 1946 agreement. For example, U.S. carriers had significant fifth freedom rights¹⁴ under Bermuda I; they could fly to many destinations with United Kingdom origin traffic. The British, never really comfortable with American aviation liberalism, decided changes were necessary. To them the issue was imbalance of economic benefits. Thus, the United States bilateral agreement with the United Kingdom was renegotiated. It was a tough negotiation; the United Kingdom even denounced the existing agreement. To many this was unthinkable, since Britain was America's most important overseas market. The new US-UK Air Services Agreement of 1977¹⁴ (or Bermuda II) was the result of the negotiation.¹⁵ Ironically, Bermuda II generally

¹³ See, e.g. R. CAVES, *AIR TRANSPORT AND ITS REGULATION* (1962) (Harv. U. Press); G. DOUGLAS AND J. MILLER III, *ECONOMIC REGULATION OF DOMESTIC AIR TRANSPORT: THEORY AND POLICY* (1974) (Brookings Institute); G. EADS, *THE LOCAL SERVICE AIRLINE EXPERIMENT* (1972) (Brookings Institute); W. FRUHEN, JR., *THE FIGHT FOR COMPETITIVE ADVANTAGE* (1972) (Harv. U. Graduate Sch. Bus. Ad.); W. JORDAN, *AIRLINE REGULATION IN AMERICA: EFFECTS AND IMPERFECTIONS* (1970) (Johns Hopkins Press); Keeler, *Airline Regulations and Market Performance*, 3 BELL J. ECON. & MANAGEMENT SCI. 399-424 (1972).

¹³ For a discussion of the five "freedoms of the air," see Salacuse, *supra* note 1, at 822. The fifth freedom is the "freedom to pick up and discharge traffic at intermediate points between the home country and the foreign country." *Id.*

¹⁴ United States-United Kingdom Air Services Agreement, signed at Bermuda, July 23, 1977, T.I.A.S. No. 8641 [hereinafter cited as Bermuda II].

¹⁵ See generally Comment, *Bermuda II: The British Revolution of 1976*, 44 J. AIR L. & COM. 111 (1978); Zan de Tunk, *Some Observations on the Newly Born Bermuda II*, 2 AIR L. 190 (1977).

proved to be the kiss of death to the Bermuda I formulation for the United States government in the sense that, in the words of CAB Chairman Cohen, "Bermuda II included terms that were so contrary to our fundamental competitive principles that many of our airlines were astounded."¹⁶

In sharp contrast to the broad rights ostensibly available under a Bermuda I type agreement, Bermuda II attempts to nail down virtually every facet of airline operations. Most significantly, it offers protection to United Kingdom airlines against "excessive" competition by price or by capacity offering.¹⁷ For North Atlantic routes between the United States and the United Kingdom not only are designations at individual gateways restricted to create monopoly or duopoly markets, but capacity offerings and prices are subject to unilateral veto.¹⁸ For services to and via Hong Kong, designations are not restricted, but U.S. gateway cities and services on either side of Hong Kong (Japan and Thailand/Singapore) are restricted to fourteen flights per week with traffic rights.¹⁹

If anything, then, Bermuda II suggested that the United States was moving toward more restrictive agreements, just as all trends were pointing to the need for greater freedom and flexibility. Within three months after the signing of Bermuda II, the Aviation Subcommittees of both the House and Senate held hearings on the Agreements and the future direction of United States international air transport policy. There was a sense of urgency because negotiations with Japan then appeared imminent and there was great concern that precise guidelines were needed to avoid a second Bermuda II with the Japanese—a result that was clearly unacceptable to Congress.²⁰

At the Congressional hearings CAB Chairman Kahn suggested that the United States should trade liberalizations for liberations, rather than restrictions for restrictions, so that maximum benefits for travellers and shippers—foreign or American—could be ob-

¹⁶ Address by M. Cohen, "U.S. International Air Transportation Policy: Reflections and Objectives", International Aviation Club, Washington, D.C. (Jan. 16, 1981) [hereinafter cited as Cohen].

¹⁷ Bermuda II, *supra* note 14.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Cohen, *supra* note 16.

tained. Kahn stressed the primacy of the consumer.²¹ The policy proposed by Chairman Kahn evolved into the public interest guidelines for the Carter Administration.²² The International Air Transportation Competition Act of 1979²³ was a statement by Congress on international aviation policy that complemented and extended the Carter policy statement. Present United States policies, which were set in motion by the Ford Administration, have had bipartisan support in both the executive and legislative branches of government.

THE U.S. MODEL AGREEMENT

If there is one document that summarizes the basic terms of the United States government's international aviation policy, it is the model bilateral agreement, the text of which appears in Appendix 1. It, by definition, represents the United States view of an "ideal" agreement, and United States negotiators realize that it is rarely possible to achieve an "ideal" agreement. Before reviewing the record in obtaining liberal agreements that at least resemble the model, let us consider its principal features.

The U.S. model agreement provides nearly total pricing freedom for airlines. Airlines of either Party and even third-flag airlines may set their prices free of government control unless both governments agree intervention is warranted. Neither government may control capacity, frequency or such operational matters as change-of-gauge from a large aircraft to one or more smaller planes. Charter operations may be conducted under the rules of the airline's home country or the country of traffic origin. Route rights typically are generous.

The U.S. model preamble contains several statements stressing competition among airlines, minimal government interference, expansion of opportunities and concern for the consumer, as well as the usual remarks about safety and related matters. After Article

²¹ *Hearings on the United States International Aviation Negotiations, Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 95th Cong. 1st Sess. 94 (1977).

²² "United States Policy for the Conduct of International Air Transportation Negotiations", August 21, 1978.

²³ International Air Transportation Competition Act of 1979, Pub. L. No. 96-192, 94 Stat. 35.

1, which contains key definitions, and Article 2, which contains the basic grants of rights, Article 3 establishes the right of multiple designation. Instead of referring to "airline or airlines" as did Bermuda I, the model encompasses the "right to designate as many airlines as (the Party) wishes . . . and to withdraw or alter such designation." After several technical and safety articles, Article 8 grants substantial freedom of operations to airlines in the country of the other Party. For example, the airlines are allowed to perform their own ground handling or, at their option, to select from among competing agents for such services. In many countries the national carrier or a closely allied national company has a monopoly in this area, and a government can indirectly limit the commercial opportunities of foreign carriers through such monopoly enterprises. Article 8 also makes explicit the rights of airlines to sell transportation and remit profits without hindrance. Article 9, which is similar to language in most Bermuda agreements, provides mutual tax exemption. Article 10 is meant to assure equitable treatment and minimal interference, even indirectly, with commercial operations through the use of unfair user charges. These "doing business" provisions are effectively summed up and affirmed in the first two paragraphs of Article 11 which state simply that airlines of both Parties should be given fair and equal opportunity to compete and that unfair competitive practices and discriminations should be removed. However, Article 11 goes on to require complete operational freedom, subject to customs or other technical constraints by saying that: "Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service or the aircraft type or types operated by the designated airlines." Nor shall either Party impose first refusal requirements,²⁴ uplift ratios,²⁵ no-objection fees,²⁶ or any other requirement regarding capacity, frequency, or traffic which "would be inconsistent with the purposes of this Agreement."

²⁴ A "first refusal agreement" is a rule that requires that the national airline be given the first opportunity to have a particular business, before a foreign carrier is allowed to have it.

²⁵ An "uplift ratio" is used to define the traffic of one airline in terms of the traffic of another airline.

²⁶ "No-objection fees" refers to a fixed fee or commission that is paid to the national airline (or the party to the agreement) before a foreign carrier can conduct its operation. This arrangement is most often seen in charter situations.

The other central element of the model agreement is the pricing article, Article 12. Whereas most bilateral agreements allow unilateral disapproval, the United States model calls for "mutual disapproval" pricing. That is, prices set by the carriers shall be deemed to be approved by both parties unless both formally disapprove the fare. Prices are to be based upon commercial considerations in the marketplace. Intervention is limited to prevention of predatory or discriminatory prices or practices, protection of consumers from unduly high prices or prices that reflect the abuse of market position by a dominant carrier, and protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support. The pricing article also allows third country carriers to be price leaders.²⁷ For example, El Al or another third country carrier could be a price leader on the Amsterdam-New York route if a model-type agreement existed between the United States and the Netherlands. As an additional aspect of de-control, airlines of either Party can meet prices set by others.

As noted earlier the model agreement has an annex that allows charter services to function with minimal restrictions. A charter operator can use country of traffic origin or country of destination rules, whichever it prefers. Since United States charter rules are very liberal, this allows charter carriers, even those of the other Party, great freedom to operate charter flights under the agreement.

Thus, by allowing multiple designations, capacity freedom, dual disapproval pricing, charter operations under the rules of the home country or the country of traffic origin and by stating its objectives in the preamble, the United States model bilateral aviation agreement is aimed at allowing maximum freedom for airlines to market and operate internationally. Commercial considerations in the market-place will determine how airlines actually operate, which carriers choose to enter, remain in or leave a market, what pricing strategy they adopt and how well they compete with the other carriers. The market and airline managements, rather than governments, will be the principal arbiters of who comes and goes and how individual companies perform. Theoretically, the airlines will prosper once relieved of the heavy hand of government regula-

²⁷ A "price leader" is an airline that sets new prices independently of the two parties to the agreement.

tion and the consumer will benefit. The model is the international analogue to domestic deregulation.

The heady excitement that accompanied airline deregulation in the United States was evident among those who first formulated the policies that were reflected in the model agreement. They set out to share their enthusiasm with aviation partners around the world. Despite some initial successes, they were greeted with frosty incredulity by the international aviation establishment.²⁸ One official has succinctly summarized the international environment the United States crusaders discovered as they met with foreign colleagues at meetings or in negotiations:

Internationally, it doesn't work quite that simply. There is no broad international agreement as to the rules of the marketplace. There are the American rules, the antitrust laws, and then there are the rules of other countries or organizations. These other rules range from no rules at all to those such as Australia's maritime regulation of the outbound but not inbound trades, from rigidly controlled markets in the planned economy countries to the emergence of antitrust thinking in the European Community. Nobody, however, has rules like ours. Many other nations don't understand our rules very well. Those of us who have worked with the antitrust laws sympathize with this difficulty. Most of those foreigners who understand our rules don't like them. They believe in market structure, stability and harmony. That's a wonderful word by the way. Harmony . . . the placid market. The placid market is achieved by market division and pricing by agreement—ways of life abroad. Price competition threatens stability and the health of the enterprise. Without our experience in the large, unfettered domestic market with its multiple participants, our colleagues abroad shake their heads at our commitment to competition. They believe either that we are a little bit crazy or, more likely, that we are trying to open up international markets so that big American companies can exploit them. Whatever their view of our motives, there is no international agreement that competition is desirable, let alone a body of rules promoting it.

Moreover, we control only our end of the international market. We can deregulate ourselves but not our partners. We can, but it isn't very sensible. Unilateral deregulation exposes us naked to the elements. We can therefore deregulate internationally only by

²⁸ Conversation with Schaffer, member of the Civil Aeronautics Board September 4, 1980.

agreement, and only by agreement which articulates the rules of the marketplace.²⁹

Although many aviation leaders were critical, none was as articulate or as persistent in his criticism as Knut Hammarskjold, Director General of IATA. He stressed the public utilities aspect of airlines in his speeches, and reasoned that stability and dependability required some level of regulation. In a speech in New York given April 1980,³⁰ Hammarskjold warned of worsening economic factors (e.g., unit cost increases overtaking yield improvements, lower load factors) and predicted sharp cut-backs in service and financial problems for airlines. Earlier Hammarskjold emphasized international interdependence, gradualism, airline cooperation and competition as elements to be judiciously weighed and carefully mixed in meeting the new forces in international aviation.³¹ He criticized the United States for what was seen by many observers outside that country to be excessive unilateralism and lack of consideration for its aviation partners' views.

OUTLOOK: A NEW SYNTHESIS

As 1981 began United States aviation policy remained controversial, not only with foreigners, but with many Americans as well.³² By then, however, there was at least somebody of experience to evaluate, and it was possible to attempt objective analysis of the results of United States negotiating policy.

Clearly, there is not yet a complete change from Bermuda I type agreements to the new United States model. Nevertheless, a substantial number of liberal agreements were signed in the past

²⁹ Address by B. Boyd Hight, Deputy Assistant Secretary for Transportation and Telecommunications, Department of State, "Deregulation Abroad: A Game Without Rules", International Aviation Club, Washington, D.C. (November 18, 1980).

³⁰ Address by Knut Hammarskjold, Director General, International Air Transport Association, Lloyd's of London Press International Civil Aviation Conference, New York (April 29, 1980).

³¹ Address by Knut Hammarskjold, "Trends in International Aviation Since World War II and Governmental Policies with Respect to Routes, Fares, Charters, Capacity and Designation", Symposium on International Aviation Policy, Kingston, Jamaica (January 31, 1979).

³² *Is the U.S. Sabotaging Its International Airlines?* BUS. WEEK, Jan. 26, 1981, at 77.

three years. Agreements with Belgium,³³ Finland,³⁴ the Netherlands,³⁵ Germany,³⁶ Israel,³⁷ Jordan,³⁸ Singapore,³⁹ Thailand,⁴⁰ Costa Rica,⁴¹ the Netherlands Antilles,⁴² and Jamaica⁴³ are either similar to the model or are notably more liberal than the Bermuda I formulation. Several other governments have indicated a willingness to negotiate liberal agreements. Moreover, recent changes in United States agreements with the United Kingdom,⁴⁴ the Philippines,⁴⁵ Australia,⁴⁶ New Zealand,⁴⁷ and Brazil⁴⁸ introduce significant new

³³ Agreement on Air Transport Services, December 12-14, 1978, United States-Belgium, 30 U.S.T. 617, T.I.A.S. No. 9207.

³⁴ Agreement on Air Transport Services, May 12, 1980, United States-Finland, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification).

³⁵ Protocol Relating to Air Transport Services, March 31, 1978, United States-Netherlands, 29 U.S.T. 3088, T.I.A.S. No. 8998.

³⁶ Protocol Relating to Air Transport Services, November 1, 1978, United States-Federal Republic of Germany, _____ U.S.T. _____, T.I.A.S. No. 9591.

³⁷ Protocol Relating to Air Transport Services, August 16, 1978, United States-Israel, 29 U.S.T. 3144, T.I.A.S. No. 9002.

³⁸ Agreement on Air Transport Services, March 5-April, 1980, United States-Jordan, _____ U.S.T. _____, T.I.A.S. No. 9777.

³⁹ Agreement on Air Transport Services, September 14, 1979, United States-Singapore, _____ U.S.T. _____, T.I.A.S. No. 9654.

⁴⁰ Agreement on Air Transport Services, December 7, 1979, United States-Thailand, _____ U.S.T. _____, T.I.A.S. No. 9704.

⁴¹ Understanding on Air Transport Services, August 17, 1979, United States-Costa Rica, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification by Costa Rica).

⁴² Understanding on Air Transport Services, January 22, 1980, United States-Netherlands Antilles, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification by Netherlands Antilles).

⁴³ Protocol Relating to Air Transport Services, April 4, 1979, United States-Jamaica, _____ U.S.T. _____, T.I.A.S. No. 9613.

⁴⁴ Agreement on Air Transport Services, March 5, 1980, United States-United Kingdom, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification).

⁴⁵ Agreement on Air Transport Services, November 5, 1980, United States-Philippines, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification).

⁴⁶ Agreement on Air Transport Services, May 23, 1980, United States-Australia, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification).

⁴⁷ Agreement on Air Transport Services, April 25, 1980, United States-New Zealand, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification).

⁴⁸ Agreement on Air Transport Services, October 30, 1980, United States-

liberal features. For example, each agreement either has a liberal pricing article or in practice encourages some degree of innovative pricing.

To be sure, several important countries, especially in Europe and South America, remain apparently impervious to change. This list, however, includes some of the largest United States markets, and it is interesting to note that liberal agreements have been reached in each of the major areas of the world. Moreover, as experience is gained, it is apparent that several countries are more interested than they were a year or so ago in at least considering the liberalization of existing agreements.

Despite the criticism of many and the obvious fact that the liberal American model remains unorthodox, American policy has achieved some noteworthy successes. Indeed, one must first put to one side the more extreme statements made by ideologues on either side and consider what, in fact, is happening. In brief, the United States has embarked on a major effort to liberalize the international aviation legal framework as embodied by its many bilateral aviation agreements. Its objectives have been publicly stated often and are affirmed in recent legislation. Other governments have been reacting to the United States initiative; in this sense the United States continues to be the most dynamic and innovative locus of thinking with respect to aviation agreements. The legitimate concerns of its aviation partners—special marketing considerations, particularly in thin, undeveloped markets, and serious commercial problems, notably the rapid, steep rise in the price of fuel which has affected the economics of certain aircraft—are factors which cannot be, and in practice are not, ignored.

It is simplistic, therefore, to argue that the United States is forcing its model language on other countries. In recent negotiations, while striving for more liberal agreements ultimately, the United States has discussed limited market protection, phasing of changes in pricing and other ideas that will allow each side to adjust to change. For example, with Australia in 1978 and Brazil in 1980 the United States agreed to temporary, experimental liberal pricing arrangements. The new United States-Philippine agree-

Brazil, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification).

ment which was signed in 1980 is also a step forward for the American pro-competitive philosophy. The pricing provisions of the agreement give airlines considerable flexibility to explore the supply-demand function, while both governments retain power to curb overly-adventurous excursions from the norm. Designations of a total of six airlines are phased in; capacity, while limited for an interim period, is then unrestricted.⁴⁹ With countries such as Costa Rica⁵⁰ and the Netherlands Antilles,⁵¹ where the national carrier is relatively small and critically dependent on traditional traffic flows, the United States has agreed to temporary protection in key markets. The United States has explained that foreign tourist markets could develop better if United States airlines could have greater flexibility. The United States government has been generous in granting new routes to this country. As Chairman Cohen pointed out⁵² the debate has shifted, at least in Europe, to how to liberalize and not whether to liberalize. For example, the Commission of the European Economic Community is pressing for intra-European service experiments which resemble the current United States market, and such traditionalists as British Airways and Air France are beginning to tailor their offerings to precise market segments.

Looking to the future, three elements are likely to characterize the continuing pursuit of the United States' objectives. First, top priority will be attached to major United States markets. Secondly, the government will insure that the rights obtained in recent negotiations will actually be available. If, for example, a lucrative route is exchanged for the right of United States carriers to self-handle or remit earnings without hindrance, the United States will firmly insist on actually receiving the benefits obtained if the other party hopes to exercise or keep its new route right. Finally, however,

⁴⁹ Agreement on Air Transport Services, November 3, 1980, United States-Philippines, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification).

⁵⁰ Understanding on Air Transport Services, August 17, 1979, United States-Costa Rica, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification by Costa Rica).

⁵¹ Agreement on Air Transport Services, January 25, 1980, United States-Netherlands Antilles, _____ U.S.T. _____, T.I.A.S. No. _____ (an *ad referendum* agreement currently awaiting ratification by Netherlands Antilles).

⁵² Cohen, *supra* note 16.

there will be what one official described as "creative pragmatism" on the United States side.⁵³ Unique or special circumstances will not be ignored and the United States will be prepared, as noted above, to consider temporary or alternative variations that will provide the assurances the other side needs, while allowing the greater openness the United States government considers important.

The model agreement is not yet the international standard. A process of change, however, is definitely under way. It will continue. As more bilateral agreements are negotiated and the international community is able more objectively to analyze the strengths and weaknesses of liberal agreements, as they gain experience with the agreements and as they are better able to refine the terms of such agreements, it would not be surprising if a new synthesis emerges and a new formulation replaces Bermuda I as the international standard. Ultimately, it is not unreasonable to suppose that a freer system, more sensitive to consumer interests, while also adequate to meet the legitimate requirements of airlines and governments, will emerge. This will take time, and by then the sound and fury of the late seventies may be forgotten. The legal framework which emerges, however, will be more appropriate to the late twentieth century, and will sustain the continued dynamism of international aviation.

APPENDIX

AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF

The Government of the United States of America and the Government of _____;

Desiring to promote an international air transport system based

⁵³ Hight, *supra* note 29.

on competition among airlines in the marketplace with minimum governmental interference and regulation;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affected the operation of air transportation, and undermine public confidence in the safety of civil aviation;

Being Parties to the Convention of International Civil Aviation opened for signature at Chicago on December 7, 1944;

Desiring to conclude a new agreement covering all forms of air transportation to replace the Air Transport Agreement concluded between them and signed at _____ on _____.

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

(a) "Aeronautical authorities" means, in the case of the United States, the Civil Aeronautics Board or the Department of Transportation, whichever has jurisdiction, or their successor agencies, and in the case of _____,

_____, or its successor agency;

(b) "Agreement" means this Agreement, its Annexes, and any amendments thereto;

(c) "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;

(d) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:

- (i) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both parties, and
- (ii) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both parties;

(e) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;

(f) "Price" means:

- (i) any fare, rate or price to be charged by airlines, or their agents, and the conditions governing the availability of such fare, rate and price;
- (ii) the charges and conditions for services ancillary to carriage of traffic which are offered by airlines; and
- (iii) amounts charged by airlines to air transportation/intermediaries;

for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation.

(g) "International air transportation" means an air transportation which passes through the air space over the territory of more than one State;

(h) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and mail in air transportation;

(i) "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto;

(j) "User charge" means a charge made to airlines for the provision of airport, air navigation or aviation security property or facilities; and

(k) "Full economic costs" means the direct cost of providing service plus a reasonable charge for administrative overhead.

ARTICLE 2

Grant of Rights

(1) Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes;
- (c) the rights otherwise specified in this Agreement.

(2) Nothing in paragraph (1) of this article shall be deemed to grant the right for one Party's airlines to participate in air transportation between points in the territory of the other Party.

ARTICLE 3

Designation and Authorization

(1) Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify whether the airline is authorized to conduct the type of air transportation specified in Annex I or in Annex II or in both.

(2) On receipt of such a designation and of applications in the form and manner prescribed from the designated airline for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

- (a) substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both;
- (b) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
- (c) the Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety).

ARTICLE 4

Revocation of Authorization

(1) Each Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Party where:

- (a) substantial ownership and effective control of that airline are not vested in the other Party or the other Party's nationals;
- (b) that airline has failed to comply with the laws and regulations referred to in Article 5 of this Agreement; or
- (c) the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).

(2) Unless immediate action is essential to prevent further non-compliance with subparagraphs (1)(b) or (1)(c) of this Article, the rights established by this article shall be exercised only after consultation with the other Party.

ARTICLE 5

Application of Laws

(1) While entering, within or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

(2) While entering, within or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by or on behalf of such passengers, crew or cargo of the other Party's airlines.

ARTICLE 6

Safety

(1) Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued/or validated by the other Party and still in force,

provided that the requirements for such certificates or licenses at least equal the minimum standards which may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

(2) Each Party may request consultations concerning the safety and security standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety and security standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate action within a reasonable time.

ARTICLE 7

Aviation Security

Each Party:

(1) reaffirms its commitment to act consistently with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

(2) shall require that operators of aircraft of its registry act consistently with applicable aviation security provisions established by the International Civil Aviation Organization; and

(3) shall provide maximum aid to the other Party with a view to preventing unlawful seizure of aircraft, sabotage to aircraft, air-

ports, and air navigation facilities, and threats to aviation security; give sympathetic consideration to any request from the other Party for special security measures for its aircraft or passengers to meet a particular threat; and, when incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, assist the other Party by facilitating communications intended to terminate such incidents rapidly and safely.

ARTICLE 8

Commercial Opportunities

(1) The airlines of one Party may establish offices in the territory of the other Party for the promotion and sale of air transportation.

(2) The designated airlines of one Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, bring in and maintain in the territory of the other Party managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

(3) Each designated airline may perform its own ground handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services if self-handling were possible.

(4) Each airline of one Party may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates. Each airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

(5) Each airline of one Party may convert and remit to its country, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly

without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance.

ARTICLE 9

Customs Duties and Taxes

(1) On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during the flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges imposed by the national authorities, and not based on the cost of services provided, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be exempt, on the basis of reciprocity, from the taxes, duties, fees and charges referred to in paragraph (1) of this Article, with the exception of charges based on the cost of the service provided:

(a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of a designated airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

(b) ground equipment and spare parts including engines introduced into the territory of a Party for the servicing, maintenance or repair of aircraft of a designated airline of the other Party used in international air transportation; and

(c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of a designated airline of the other Party engaged in international air transportation, even when these supplies are to be used

on a part of the journey performed over the territory of the Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The exemptions provided for by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs (1) and (2) of this Article.

(5) Each Party shall use its best efforts to secure for the designated airlines of the other Party, on the basis of reciprocity, an exemption from taxes, duties, charges and fees imposed by State, regional and local authorities on the items specified in paragraphs (1) and (2) of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the actual cost of providing the service.

ARTICLE 10

User Charges

(1) User charges imposed by the competent charging authorities on the airlines of the other Party shall be just, reasonable, and non-discriminatory.

(2) User charges imposed on the airlines of the other Party may reflect, but shall not exceed, an equitable portion of the full economic cost to the competent charging authorities of providing the airport, air navigation, and aviation security facilities and services. Facilities and services for which charges are made shall be provided on an efficient and economic basis. Reasonable notice shall be given prior to changes in user charges. Each Party shall encourage consultations between the competent charging authorities in its territory and airlines using the services and facilities, and shall encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges.

ARTICLE 11

Fair Competition

(1) Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.

(2) Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competition practices adversely affecting the competitive position of the airlines of the other Party.

(3) Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

(4) Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.

(5) Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph (3) of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

ARTICLE 12

Pricing (Mutual Disapproval)

(1) Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

(a) prevention of predatory or discriminatory prices or practices;

(b) protection of consumers from prices that are unduly high or restrictive because of the abuse of a dominant position; and

(c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

(2) Each Party may require notification to or filing with its aeronautical authorities of prices proposed to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party or by airlines of third countries of prices charged by charterers to the public for traffic originating in the territory of the other Party.

(3) Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party or by an airline of a third country for international air transportation between the territories of the Parties, or (b) an airline of one Party or an airline of a third country for international air transportation between the territory of the other Party and any other country, including in both cases transportation on an interline or intra-line basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph (a) of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without mutual agreement, that price shall go into or continue in effect.

(4) Notwithstanding paragraph (3) of this Article, each Party shall allow (a) any airline of either Party or any airline of a third country to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territories of the Parties, and (b) any

airline of one Party to meet a lower or more competitive price proposed or charged by any other airline or charterer for international air transportation between the territory of the other Party and a third country. As used herein, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections, type of service or aircraft type, or such price through a combination of prices.

ARTICLE 13

Consultations

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed. Each Party shall prepare and present during such consultations relevant evidence in support of its position in order to facilitate informed, rational and economic decisions.

ARTICLE 14

Settlement of Disputes

(1) Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, except those which may arise under paragraph 3 of Article 12 (Pricing), may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall at the request of either Party be submitted to arbitration in accordance with the procedures set forth below.

(2) Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(a) within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(b) if either Party fails to name an arbitrator, or if the

third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 days. If the President is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

(4) Except as otherwise agreed, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

(5) The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision of the majority of the tribunal shall prevail.

(6) The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

(7) Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

(8) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph (2)(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 15

Termination

Either Party may, at any given time give notice in writing to the other Party of its decision to terminate this Agreement. Such

notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the end of this period.

ARTICLE 16

Multilateral Agreement

If a multilateral agreement, accepted by both Parties, concerning any matter covered by this Agreement enters into force, this Agreement shall be amended so as to conform with the provisions of the multilateral agreement.

ARTICLE 17

Registration with ICAO

This agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 18

Entry into Force

This Agreement shall enter into force on the date of signature.

ANNEX I
Scheduled Air Service

Section 1

Airlines of one Party whose designation identifies this Annex shall, in accordance with the terms of their designation, be entitled to perform international air transportation (1) between points on the following routes, and (2) between points on such routes and points in third countries through points in the territory of the Party which has designated the airline.

A. Routes for the airline or airlines designated
by the Government of the United States:

B. Routes for the airline or airlines designated
by the Government of _____:

Section 2

Each designated airline may, on any or all flights and at its option, operate flights in either or both directions and without directional or geographic limitation, serve points on the routes in any order, and omit stops at any point or points outside the territory of the Party which has designated that airline, without loss of any right to carry traffic otherwise permissible under this Agreement.

Section 3

On any international segment or segments of the routes described in Section 1 above, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the territory of the Party which has designated the airline and, in the inbound direction, the transportation to the territory of the Party which has designated the airline is a continuation of the transportation beyond such point.

ANNEX II

Charter Air Service

Section 1

Airlines of one Party whose designation identifies this Annex shall, in accordance with the terms of their designation, be entitled to perform international air transportation to, from and through any point or points in the territory of the other Party, either directly or with stopovers en route, for one-way or roundtrip carriage of the following traffic:

(a) any traffic to or from a point or points in the territory of the Party which has designated the airline;

(b) any traffic to or from a point or points beyond the territory of the Party which has designated the airline and carried between the territory of that Party and such beyond point or points (i) in transportation other than under this Annex; or (ii) in transportation under this Annex with the traffic making a stopover of at least two consecutive nights in the territory of that Party.

Section 2

With regard to traffic originating in the territory of either Party, each airline performing air transportation under this Annex shall comply with such laws, regulations and rules of the Party in whose territory the traffic originates, whether on a one-way or roundtrip basis, as that Party now or hereafter specifies shall be applicable to such transportation. When such regulations or rules of one Party apply more restrictive terms, conditions or limitations to one or more of its airlines, the designated airlines of the other Party shall be subject to the least restrictive of such terms, conditions or limitations. Moreover, if the aeronautical authorities of either Party promulgate regulations or rules which apply different conditions to different countries, each Party shall apply the least restrictive regulation or rule to the designated airlines of the other Party.

Section 3

Neither Party shall require a designated airline of the other Party, in respect of the carriage of traffic from the territory of that

other Party on a one-way or roundtrip basis, to submit more than a declaration of conformity with the laws, regulations and rules of that other Party referred to under Section 2 of this Annex or of a waiver of these regulations or rules granted by the aeronautical authorities of that other Party.

Current Literature

