1964

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THE MAKING OF INTERNATIONAL AIR FARES
AND THE PROSPECTS FOR THEIR CONTROL

By Lucile Sheppard Keyes†

I. INTRODUCTION

In April 1963, after the first comprehensive review of this country's international air transport policy since it took shape in the mid-1940's, the President of the United States gave his endorsement to a Statement which sets forth the basic principles and attitudes governing our present official policy in this field.1 With respect to rates and rate-making, this Statement reads as follows:

International air transport rates are now recommended by the carriers, acting through their organization, known as the International Air Transport Association (IATA), and approved by the governments concerned. This multilateral mechanism, though it has some drawbacks, seems to be the most practical one we can achieve, and it should be maintained. We cannot, however, abdicate our responsibility to protect the traveller and the shipper; we will continue to press for rates we consider reasonable. To provide for more effective governmental influence on rates, Congress should adopt legislation which would give to the Civil Aeronautics Board authority, subject to approval by the President, to control rates in international air transport to and from the United States.

Our efforts to secure reasonable rates can also be furthered by direct government-to-government discussions, initiated by the United States, concerning general rate levels; by continued United States support of practicable means which help to achieve reasonable rates, such as charter services; and by disapproving recommended IATA rates if they are clearly unreasonable.

Our acceptance of the IATA mechanism is predicated upon strict adherence by carriers to their IATA agreements. If the agreements are violated we will have to reconsider our relationship to IATA and our authority over violations.2

Thus, although this Statement itself contains a reaffirmation of our general opposition to restrictive institutions and arrangements in international air transportation,3 and in spite of the fact that concerted price-fixing by

† Ph.D., Radcliffe, 1948. Author: FEDERAL CONTROL OF ENTRY INTO AIR TRANSPORTATION (1948) and Articles In Legal and Economic Periodicals. Associate Editor, Journal of Air Law & Commerce.

1 Statement on International Air Transport Policy (April, 1963). The Interagency Steering Committee which submitted the Statement to the President was made up of the following members: N. E. Halaby, Federal Aviation Agency, Chairman; Kenneth R. Hansen, Bureau of the Budget, Executive Secretary; Alan S. Boyd, Civil Aeronautics Board; Hollis B. Chenery, Agency for International Development; Griffith Johnson, Department of State; C. Daniel Martin, Department of Commerce; and Frank K. Sloan, Department of Defense. 30 J. Air L. & Com. (1964).

2 Id., p. 79.

3 Id., p. 76: "The size of the United States aviation market tends to give our aviation policies much weight in the world air transport system. This influence must be placed on the side of expansion not restriction. Within the legal and regulatory framework in which the system operates, it must be as free from restrictions as possible, whether these be imposed by government or through intercarrier arrangements. Any policy of arbitrarily restricting capacity, dividing markets by carrier agreements, encouraging high rates or curtailing service for which a demand exists, would be harmful to our national interests. Such a policy would not be in accord with our basic attitudes toward private enterprise; it would stunt the growth of air commerce and thus our carriers; it would be contrary to our obligation to the public, to the passenger and shipper. Entrepreneurs of daring
airlines is not permitted in this country even under a regulatory authority with full powers over rates, the United States is now definitely committed to the support of agreed pricing by international air carriers, subject to "pressure," "influence," and "efforts" by government agencies to see that the agreed prices are not unreasonable. The motive for this commitment is not far to seek: as the Statement suggests, no superior alternative seemed possible of achievement.

There can be no doubt of the wisdom and realism of this position from a short run point of view. Given the attitudes of other governments whose interests are involved, it is unquestionable that no immediate real improvement in the present arrangements governing rates—or in those governing other important economic variables such as routes and capacity—can be expected, at least without the exercise of high-level diplomatic pressures to "persuade" other nations to go along, a strategy which is presumably unacceptable to our government and also probably not in the national interest broadly conceived. As the following study will show, the objectionable features of the past development of international air fares have resulted not from the existence of machinery for concerted pricing by carrier representatives, but from the underlying attitudes and policies of the governments concerned. Therefore, the abandonment of this machinery without change in governmental attitudes would result simply in procedural disruption rather than in substantive improvement.

On the other hand, the Statement suggests perhaps too optimistic a view of the effectiveness of the methods immediately available to the United States government in its "efforts to secure reasonable rates," and makes no attempt to formulate long-run policy guides for the more successful pursuit of this objective in future years. In fact, prospects for bringing about "more effective governmental influence on rates" by broadening the legal rate authority of the Civil Aeronautics Board do not appear promising, and it seems unlikely that use of the other methods recommended in the Statement will go far toward bringing about "reasonable rates," though the vigorous employment of any means of influence may be expected somewhat to strengthen this country's bargaining position. It is the bargaining method of rate-making, based on and necessitated by the underlying support of nations for the positions of their flag carriers, which has been the main obstacle to the satisfactory development of international rates in the past, and any significant change for the better can therefore come about only as a result of an evolution away from protectionism. Given such an evolution, the way would become open for the establishment of a more competitive regime in rate-making and in other aspects of international air transportation.

The following study will first review briefly some salient features of the development of international air fares since World War II, and of the role of governments in connection with this development. Second, the potential and vision launched our air transport industry. We believe that the system should continue to benefit from that irreplaceable stimulus to growth brought by competitive enterprise."

4 The Board has held to the position that discussions and agreements with respect to domestic air rates should be authorized "only upon a convincing showing that there is an immediate need for basic changes in fare or rate structures or levels and that such changes [can] be practically accomplished only through such discussions." Cherington, Airline Price Policy 108-109 (1958).

5 The origins and organization of the rate-making machinery are described in J. G. Gazdik, Rate-Making and the IATA Traffic Conferences, 16 J. Air L. & Com. 298 (1949).
usefulness of the rate authority recommended for the CAB, and of the other available methods of influencing rates, will be discussed. Finally, some suggestions will be offered concerning long-range policy objectives.

II. HIGHLIGHTS OF THE DEVELOPMENT OF AIR FARES UNDER IATA

It is in the great market for air travel between the United States and Europe that the effect of governmental policies acting directly on prices through the IATA machinery can best be observed. In the other two major markets served by United States carriers—international air travel in the Western Hemisphere and over the Pacific Ocean—the phenomenon of blocked rate initiatives, although not absent, has been of relatively minor importance. Because Western Hemisphere governments did not give the strong support to the IATA machinery which would have been necessary for successful price-fixing, rate agreements have been ineffective in this area throughout most of the post-War period. One crucial element in this governmental non-cooperation has been failure to quash competition by non-IATA carriers. Other governmental policies, such as discrimination against foreign-flag carriers in currency exchange, have also tended to undermine attempts to establish agreed rate structures. Probably in part because of the limited number of competitive carriers in transpacific service, fares have remained high and steady in that area in spite of substantial periods when agreements were technically not in force.⁶

⁶ As the Board noted in a recent CAB Order (No. E-19294), fare levels have been lower in this area than elsewhere, and in spite of "passenger load factors which do not appear unreasonably low for those operations," the Latin American Services of United States-flag carriers have been earning little or actually losing money, as is shown in the following table (CAB Order No. E-19294, p. 5):

<table>
<thead>
<tr>
<th></th>
<th>Pan</th>
<th>Panagra</th>
<th>Braniff</th>
<th>Pan</th>
<th>Panagra</th>
<th>Braniff</th>
</tr>
</thead>
<tbody>
<tr>
<td>1957</td>
<td>2.2%</td>
<td>7.9%</td>
<td>6.0%</td>
<td>64.8%</td>
<td>57.6%</td>
<td>12.8%</td>
</tr>
<tr>
<td>1958</td>
<td>-2.0</td>
<td>.3</td>
<td>-2.5</td>
<td>63.5</td>
<td>53.1</td>
<td>48.8</td>
</tr>
<tr>
<td>1959</td>
<td>-2.7</td>
<td>4.6</td>
<td>-1</td>
<td>67.5</td>
<td>60.5</td>
<td>51.2</td>
</tr>
<tr>
<td>1960</td>
<td>-2.3</td>
<td>1.9</td>
<td>-1.8</td>
<td>65.3</td>
<td>57.4</td>
<td>53.1</td>
</tr>
<tr>
<td>1961</td>
<td>1.6</td>
<td>2.6</td>
<td>-3.4</td>
<td>63.2</td>
<td>62.0</td>
<td>49.3</td>
</tr>
<tr>
<td>1962</td>
<td>.9</td>
<td>6.6</td>
<td>-6.4</td>
<td>63.8</td>
<td>66.2</td>
<td>48.2</td>
</tr>
</tbody>
</table>

* Net profit after taxes and special items but before interest as percent of net worth plus long term debt.

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Return on Investment⁷</th>
<th>Pan American</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>13.10%</td>
<td>5.77%</td>
</tr>
<tr>
<td>1960</td>
<td>4.46</td>
<td>10.39</td>
</tr>
<tr>
<td>1961</td>
<td>13.02</td>
<td>10.84</td>
</tr>
<tr>
<td>1962</td>
<td>15.0</td>
<td>15.4</td>
</tr>
<tr>
<td>1963</td>
<td>17.8</td>
<td>18.5</td>
</tr>
</tbody>
</table>

* Net profit after taxes and special items, but before interest expense, as percent of net worth plus long term debt.

³ Twelve months ended September 30, 1963.

⁷ Earnings of United States-flag carriers in the transpacific market have been satisfactory, to say the least. In CAB Order No. E-20133 (March 2, 1964), disapproving a proposed reduction of the round-trip discount on South Pacific fares from 10 to 5 per cent, the Board included the following summary of U.S. carriers' transpacific earnings (p. 2):

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Return on Investment⁷</th>
<th>Pan American</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>13.10%</td>
<td>5.77%</td>
</tr>
<tr>
<td>1960</td>
<td>4.46</td>
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</tr>
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<td>13.02</td>
<td>10.84</td>
</tr>
<tr>
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<td>15.0</td>
<td>15.4</td>
</tr>
<tr>
<td>1963</td>
<td>17.8</td>
<td>18.5</td>
</tr>
</tbody>
</table>

* Net profit after taxes and special items, but before interest expense, as percent of net worth plus long term debt.

³ Twelve months ended September 30, 1963.

In contrast, reported earnings for United States operations which include transatlantic service have
In the transatlantic market, there have been four important occasions on which the decisions of IATA Traffic Conferences have brought about upward modification of proposed fare reductions: (1) the institution of the first CAB-approved transatlantic fares after the United States carriers were authorized to join IATA in 1946; (2) the institution of tourist service; (3) the institution of economy fares; and (4) the first post-jet fare reduction, effective in 1964. There have been no other major fare reductions in this market since the inauguration of normal service after World War II.

At 325 dollars, the first agreed, Board-approved New York-London fare, while thirteen per cent lower than the previous level, was eighteen per cent higher than the fare which had been proposed earlier in 1946 by Pan American, and forty-four per cent higher than a proposal made by this carrier three years later. In these earlier days—and, indeed, up until only a few years ago—almost all international operations required a substantial governmental subsidy; and it is still true that the United States-flag carriers are eligible for cost-plus subsidy should they need it to make ends meet. Therefore, it has been possible to question the bona fides of these proposals for fare reductions on the ground that they were designed to impress the traveling public and (possibly) expand the carrier's business on a losing basis, but without risk to its own finances: first, because they were not expected to be accepted by other nations, and, second, because the United States government would have had to foot the bill in the unlikely event that the proposals were accepted.

For several reasons, however, it seems highly improbable that Pan American has deliberately proposed unprofitable fare cuts. Before 1951, it had offered to "absorb any losses" which might result from its fare reductions; in that year its proposals finally received the approval of the CAB, an agency noted for caution in matters of fare policy and solicitude for the financial welfare of its regulatees. A far more plausible explanation for Pan Am's leadership in price reductions is to be found in its management's belief in the long-run profitability of low fares and expanded markets, plus the lower cost level which this management has apparently been able to achieve as compared with the European carriers—something which may be inferred from the United States carrier's ability to operate profitably at moderate. In CAB Order No. E-19385 (March 18, 1963), p. 3, the Board included the following comparisons for recent periods:

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>Transpacific Return on Investment</th>
<th>Transatlantic Return on Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>9/30/62</td>
<td>13.89%</td>
<td>4.0%</td>
</tr>
<tr>
<td>12/31/62</td>
<td>15.0</td>
<td>1.7</td>
</tr>
</tbody>
</table>

Both tourist and economy service were introduced on the Pacific a full two years after they were available in the transatlantic market.

*Resolutions of the North Atlantic Traffic Conference Relating to Rates and General Conditions of Carriage, 6 CAB 843, 830 (1946).

*Aviation Week, Nov. 28, 1949, p. 10.

*In connection with a CAB announcement issued in the spring of 1951, which called for the initiation of low-fare, scheduled services in the transatlantic market the following year, Aviation Week, p. 44, April 2, 1951, p. 44, commented: "At last [the Board] admits that there is something to the transatlantic air coach service urged by Pan American World Airways since 1948." "After two years of opposition to Pan Am's transatlantic coach fare application," the magazine continued, "CAB now wants the regular airlines to tap the United States mass market for tourist travel abroad—not just keep the present high-priced market. But on the matter of subsidies (if needed) to start the service, CAB says little. But Pan Am, in its campaign for CAB permission, has, in the past, offered to absorb any losses."

*Aviation Week, May 21, 1951, p. 69.
the same fare levels at which many European airlines have recently been making large losses. Several factors may well have contributed to the relative expansion-mindedness of the United States carrier, for example: (1) its exposure to non-IATA competition in the Western Hemisphere international market and to non-scheduled carrier competition on the New York-San Juan route; (2) the more consumer-oriented attitude of United States public and political opinion toward air transport, in sharp contrast with that in European countries, where tight protectionist controls had been the rule virtually since the beginning of civil air transportation; and (3) the possible relative disadvantage of the United States carrier in such competitive areas as exotic foods and service, to which European carriers turned their attention, and which were certainly diluted in effect by the higher seating densities which accompanied lower-fare service. Though superiority in quantity and quality of equipment has often been cited as a reason for Pan Am's ability to profit from reduced fares, it seems evident that this superiority has itself been the result of an expansionist policy, rather than the other way around.

Tourist service was initiated on the North Atlantic in May 1952, almost three years after the original proposal of this service by Pan American. As compared with the plan which had been indorsed by the CAB in May 1951, the agreed fare level was higher by twenty per cent, and the minimum seating capacities were significantly lower.12

Economy fares and service were first offered on the North Atlantic in the spring of 1958, a year after the inauguration date originally suggested by Pan American. The agreed fare level was thirteen per cent lower than the tourist fare in effect at the time of the original proposal, whereas Pan American's proposal had envisaged a reduction of twenty-five per cent.13 Like the tourist fare plan, this proposal had the endorsement of the CAB. The commercial realism of the plan is further attested to by the facts (1) that the non-IATA Icelandic carrier had at this time been operating successfully for several years on the North Atlantic route at fares far below the IATA figures;14 and (2) that United States non-scheduled airlines had offered to provide transatlantic services without subsidy, at fares representing large reductions from IATA levels.15

The prolonged failure of the transatlantic fare structure to adjust to the much lower operating costs made possible by utilization of jet aircraft16 cannot be attributed solely to obstructionism in or out of the Traffic Conferences. As is well-known, the introduction of the jets was marked by the development of a very large degree of excess capacity in the trans-

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12 Aviation Week, Dec. 17, 1951, p. 83. The Board later commented (CAB Order No. E-9969, Feb. 2, 1956): "Although there has been a gradual raising in the amenities and resulting costs of tourist service, the most important factor in forcing the existing high level of tourist costs is the unrealistically low minimum seating density required in tourist planes. In most cases, these densities are substantially lower than used on domestic coach services and in some cases are as much as twenty-five per cent less than used by non-IATA operators in international service."


16 Operating expenses per available ton-mile for the Atlantic Division of Pan American were twenty-five per cent lower for the year ended Sept. 30, 1961, than in 1958 (the last largely pre-jet year).
atlantic market, by extremely low load-factors for the airlines serving this market, and by general financial reverses among these carriers. Under the circumstances, it is not surprising that bold proposals for fare reductions were not immediately forthcoming, and that rate initiatives instead took the form of secret under undercutting of the agreed fare levels\(^7\) and a special promotional discount available under closely circumscribed conditions.\(^8\)

Nevertheless, the fare reductions which have at long last been effected this year on the North Atlantic may be contrasted with the "thrift fares" publicly proposed by Pan American in the summer of 1963\(^9\) which were, like the earlier proposals discussed above, supported by the CAB.\(^10\) Under this proposal, year-round jet "thrift" service would have been provided at a fare almost forty per cent less than the effective one-way jet economy fare. The actual fare reductions which went into effect on April 1, 1964, are in fact not nearly so large as the size of the accompanying advertisements might seem to indicate. The so-called "twenty per cent cut in basic fares" could be more accurately described as an experiment in promotional off-peak pricing; for the peak tourist traffic, the reduction in jet economy fares is so small as to be negligible. Similarly, the large first-class fare cut applies to a very small percentage of the transatlantic traffic. The accompanying table summarizes the proposed and current New York-London fares.

\(^7\) On this point, see, for example, Aviation Week, March 12, 1962, p. 150.
\(^8\) See, for example, IATA Bulletin (January 1962).
\(^9\) A special discount fare, applicable to certain groups of twenty-five traveling together, was put into effect in the spring of 1962.
\(^10\) In June 1963 Pan American "announced plans to reduce transatlantic one-way fares to $160 and California-to-Hawaii fares to $100, subject to approval of the Civil Aeronautics Board. The new fares, an extension of the airline's present thrift class service between New York and Puerto Rico, would cut $103 from the basic economy fare across the Atlantic to London and $33 from the California-Hawaii fare level. Thrift class would be provided on a year-around, daily flight schedule, occupying the entire capacity of turbojet aircraft now being used for combination first class and economy service. Meals and other fringe benefits would be eliminated.

"If approved by CAB, the new service will be offered to Hawaii on November 1, while the transatlantic service would not be started until April 1964. Purpose of the delay on the European route is because it involves an international route, requiring the concurrence of the airlines and their governments on the fare structure." Aviation Week, July 1, 1963, p. 37.

### INTERNATIONAL AIR FARES

#### COMPARISON OF NEW YORK-LONDON 1964 AND PRIOR FARES

<table>
<thead>
<tr>
<th>Type of fare</th>
<th>Proposed fare (effective 4/1/64)</th>
<th>Present fare</th>
<th>Amount of reduction (* means &quot;increase&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>One-way Round-trip</td>
<td>One-way Round-trip</td>
<td>One-way Round-trip</td>
</tr>
<tr>
<td>First-class</td>
<td>$375 $712.30</td>
<td>$475 $902.50</td>
<td>$100 $190</td>
</tr>
<tr>
<td>Economy-class:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year-round</td>
<td>xx xx</td>
<td>263 499.70</td>
<td></td>
</tr>
<tr>
<td>Low-level</td>
<td>210 3991a</td>
<td>xx xx</td>
<td>53 100.70</td>
</tr>
<tr>
<td>Peak-period</td>
<td>255 484.50b</td>
<td>xx xx</td>
<td>8 15.20</td>
</tr>
<tr>
<td>Group (25 or more)</td>
<td>xx 325c</td>
<td>xx 310</td>
<td>15* 4.8*</td>
</tr>
<tr>
<td>14-21-day excursion</td>
<td>xx 300d</td>
<td>xx 350</td>
<td>50 14.3</td>
</tr>
<tr>
<td>U.S. military personnel</td>
<td>xx 300e</td>
<td>xx 349.80</td>
<td>49.80 14.3</td>
</tr>
</tbody>
</table>

**NOTES:** xx means "not available." * means "increase."

1. **Low-level economy fares** Commencing travel in Western Hemisphere: August 4 through May 21. Commencing travel in Europe: September 29 through July 16.
2. **Peak economy fares** Commencing travel in Western Hemisphere: May 22 through August 3. Commencing travel in Europe: July 17 through September 28.
3. **North Atlantic group fares** Eastbound, exclusive of weekends in Western Hemisphere: June 1 through June 21; July 13 through September 15. Westbound, exclusive of weekends in August and September: June 1 through August 20; September 7 through September 15. (All travel to be completed by September 30, 1964.)
4. **14-21-day excursion fares** Outbound travel originating in North America, exclusive of weekends: **February 15 through June 11; July 13 through August 6; August 31 through November 1. Outbound travel originating in Europe, exclusive of weekends: **February 15 through June 4; June 29 through August 20; September 14 through November 5.**
5. **Dependent upon periods of commencement of travel, one-half of peak round-trip fares may be combined with one-half of low economy-class round-trip fares.**
6. **Effective April 1, 1964.**

#### III. THE ROLE OF GOVERNMENT IN RATE-MAKING

The failure of Pan Am’s rate initiatives to win acceptance in the Traffic Conference has been due to opposition by representatives of European airlines. With respect to three of the instances described above, there is conclusive evidence that the positions of the European carriers were solidly backed up by their respective governments, just as the governmental or quasi-governmental status of these carriers would lead one to expect. In the remaining case, there is no reason to believe that any substantial difference of opinion existed between leading European carriers and governments. Thus it is not realistic to regard these rate decisions as the work of an ordinary business price ring, or to criticize the CAB for the ineffectiveness of its attempts to “regulate” the decisions of the Traffic Conferences. Moreover, one may infer that these rate decisions differed very little, if at all, from the decisions which would have been arrived at through direct negotiation among the governments concerned, if the Traffic Conference machinery had not existed.

As to the earliest fare agreements, it is well-known that the fare reductions previously proposed by Pan American met with determined opposition by European governments, and that the relatively high level of the

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**CAB Press Release (March 11, 1964).**

**Pan American’s proposed fare of $275, New York-London, was withdrawn and the previous fare of $375 reinstated, upon the insistence of the British Government, which threatened forcibly to curtail service to its airports by Pan Am unless the change were made. Ryan, Recent Developments in U. S. International Air Transport Policy, Air Affairs, September 1946, pp. 54-55.**
agreed fares was a necessary condition for their approval by these governments.

While it is certainly true that the Civil Aeronautics Board opposed the introduction of tourist service on the North Atlantic prior to 1952,\textsuperscript{24} and this not entirely because of “the strenuous opposition of foreign carriers,”\textsuperscript{25} there is no doubt that the higher level of fares (and lower density of seating) provided for in the finally adopted agreement were brought about by the need to accommodate the views of European carriers.\textsuperscript{26} Moreover, while the evidence does seem to indicate that a “compromise” agreement may have been directly arrived at by representatives of the CAB and the British Government,\textsuperscript{27} this “compromise” fare level, if it was such, was far closer to the original BOAC position than it was to the Pan Am proposal originally endorsed by the Board. Thus there appears to be nothing in the record to support the intimations of Pan Am representatives that BOAC and Air France spokesmen were in serious disagreement with their governments on the issue of fare reductions.\textsuperscript{28}

Both the institution of economy fares and the recent jet fare episode were marked by direct action of European (non-airline) government officials in support of their carriers’ positions, and by very largely unsuccessful attempts on the part of the Civil Aeronautics Board to modify fare decisions contrary to its own recommendations and to the proposals of the United States-flag carriers.

Just before the announcement of Pan Am’s plans for economy service, the Board had tried and failed to bring about lower fares and higher density seating for the transatlantic tourist market, its failure being a direct result of opposition by European governments. In February 1956, at a time when the attention of the Antitrust Subcommittee of the House Committee on the Judiciary (the Celler Committee) was directed toward IATA and its relations with the Board,\textsuperscript{29} and when the CAB furthermore still had before it the proposals of a non-scheduled carrier to operate internationally at very low fares,\textsuperscript{30} the Board formally announced its intention to disapprove an IATA agreement providing for a ten per cent increase in first-class fares on the North Atlantic, on the ground that the

\textsuperscript{24}See, for example, Aviation Week, April 2, 1951, p. 44, where what were described as “CAB sources” were said to hold the opinion that “the strenuous opposition of foreign carriers has been the main reason for past CAB opposition to air coach.”
\textsuperscript{25}Even in the spring of 1951, the same “CAB sources” whose opinion was cited supra, note 24, were still doubtful about the year-round profitability to tourist fares on the Atlantic. The negative attitude of the Board toward air coach in domestic markets in the earlier years is, moreover, well-known.
\textsuperscript{26}See, e.g., N.Y. Times, Sept. 21, 1951, p. 5, col. 3.
\textsuperscript{27}As late as September 1951, BOAC representatives had (at least publicly) insisted on a minimum New York-London fare of $275. \textit{Ibid.} In November of that year, after the British general election, BOAC announced that it favored a $266 one-way fare. Shortly after this, TWA, which had opposed a deep general fare cut, publicly asserted that the CAB had instructed the U.S. carriers to settle for a $477 round-trip fare. (With the 10% discount, the BOAC fare came to $479 round-trip.) Though Pan American then declared that $477 had been set by the Board as a bargaining ceiling, the Board’s formal letter of instruction to the carriers specifically endorsed $477 as a “round” on-season fare. Aviation Week, Oct. 1, 1951, p. 45, and Nov. 19, 1951, p. 17. Pan Am had proposed a fare of $225 one-way, $405 round-trip, Aviation Week, May 1, 1951. The fare finally instituted, at $270 one-way, $486 round-trip ($417 off-season), was even closer to the original British position.
\textsuperscript{28}Aviation Week, Oct. 1, 1951, p. 45.
\textsuperscript{29}A record of the Committee’s thorough and enlightening proceedings can be found in \textit{Hearings before the Antitrust Subcommittee of the House Committee on the Judiciary on Monopoly Problems in Regulated Industries}, 84th Cong., 2d Sess. (1957).
\textsuperscript{30}Aviation Week, Dec. 12, 1955, p. 133.
agreement should have also provided for a reduction in tourist fares and a higher seating density for this type of service. In its Order containing this announcement, the Board stated its belief that “tourist fares generally [were] higher than can be justified on the basis of a standard of service . . . designed to meet the needs of a mass transportation medium”; pointed out that the minimum seating density required in tourist planes was in general “substantially lower than used on domestic coach services and in some cases [was] as much as twenty-five per cent less than used by non-IATA operators in international service”; and put the carriers on notice that “the Board [considered] it urgent that at the next conference meeting, action be taken to modify the seating densities and other standards of tourist-class service so as to reduce substantially its costs and make available the lower fares required by the public interest.”

As a result of protests by foreign governments and IATA representatives, the Board very shortly afterwards reversed its previous stand and approved the IATA fare resolutions for the 1956 season. Later that spring, Pan American announced its plan for institution of a new low-fare service along the general lines favored by the Board. This proposal received the “emphatic support” of that agency, which in a formal statement called for “an inauguration date [for the new service] not later than April 1, 1957.” (The Pan Am proposal apparently did not itself result from the Board’s declarations; however, it may well be that the timing of the announcement was affected by the activities and attitudes of the CAB and the Celler Committee.)

This new Board statement was again met by firm opposition on the part of foreign governments, this time in a declaration arrived at at a meeting of the chief officials dealing with civil aviation from all fourteen of the European governments whose flag airlines were in transatlantic service. As has been noted, the economy fares were not actually instituted until April 1, 1958, and then at a level significantly higher than had been proposed. The agreements establishing these fares were accepted by the Board with severe criticism. Later that year, Board representatives journeyed to Europe for consultations with foreign government officials, for the announced purpose of bringing about “reconsideration of the North Atlantic fare structure prior to the 1957 on-season period.” In spite of these efforts, the agreements were not modified.

A strikingly similar course of events took place in 1963-64. After some four years of advocating a downward fare revision to reflect the lower jet aircraft operating costs, and in the knowledge that a high-level In-

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32 CAB Order No. E-10017 (Feb. 20, 1956).
33 Aviation Week, May 28, 1956, p. 38.
34 Statement of Board Position with Respect to the Major Issues to be Considered at the IATA Traffic Conference Meetings, Cannes, May 29, 1956.
35 According to the N.Y. Times, May 30, 1956, p. 1, col. 1, the French chief of civil aviation “warned that the European governments would not permit a rate war. If the airlines failed to reach the required unanimous agreement, he said, the governments would take action under terms of the bilateral treaties governing airline operations between various countries.”
37 For example, in approving the IATA fares resolutions in the spring of 1959, the Board said: “. . . the future development of international air transportation will depend, in the last analysis, upon adequate availability of service priced at the lowest level economically feasible. This is particularly true with respect to the North Atlantic with its large tourist travel potential. To the extent that jet services prove themselves to be more efficient than operations with piston aircraft, as they show every likelihood of doing, we shall expect that the cost advantage accruing
teragency Committee was casting an inquiring eye on current fare levels, the Board, in February 1963, announced its intention of disapproving IATA resolutions (adopted at Chandler, Arizona, in the fall of 1962) calling for (among other things) a reduction in the round-trip discount on the transatlantic jet economy fares from ten to five per cent. In spite of the apparently sound economic reasoning underlying the Board's stand, and in spite of the fact that its action was intended to be in the carriers' own financial interest rather than with a view to reducing profits, representatives not only of IATA and of European airlines but also of European governments promptly appealed to the Board to reverse its decision, at first to no avail, since this decision was made "final" in mid-March. The sequel has been described by the Board as follows:

Many European governments ... strongly supported the increase and European carriers filed the higher tariffs. The controversy remained unresolved and certain governments took steps to require United States carriers to charge the higher fares as a condition of entry into their countries. Additionally, strong representations were made to our Department of State. Under the circumstances, and in the absence of direct legislative authority, it was the Department's recommendation that the Board's outstanding instructions to the United States carriers to maintain pre-Chandler fares should be modified to the extent necessary not to subject the carriers to penalties for violations of the regulations and laws of the countries which they served. The Board so modified its instructions and the carriers filed tariffs reflecting the increases to a number of European countries prior to May 24, 1963.

On May 29, therefore, the Board approved the previously rejected fare plan as modified (in a minor degree) by a "compromise" reached to the carriers will be passed along to the passenger through reductions in fares, to the ultimate and mutual benefit of both the traveling public and the carriers." CAB Order No. E-13631 (March 19, 1959).

The members of this Committee are listed in footnote one, above.


Id., pp. 4-5: "Admittedly, earnings of the United States flag carriers operating on the North Atlantic are at present substandard. These substandard earnings, however, appear to stem basically from low load factors reflecting the precipitous increase in capacity resulting from conversion to virtually all jet service in a very short span of time. . . . The following table shows the growth in capacity and traffic and decline in load factor in the past four years in the North Atlantic market . . .

<table>
<thead>
<tr>
<th>Year</th>
<th>Seats Operated</th>
<th>Change</th>
<th>Revenue Passengers</th>
<th>Change</th>
<th>Passenger Load Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>1,822,621</td>
<td></td>
<td>1,204,377</td>
<td></td>
<td>66.1</td>
</tr>
<tr>
<td>1960</td>
<td>2,413,921</td>
<td>32.4</td>
<td>1,534,346</td>
<td>27.4</td>
<td>63.6</td>
</tr>
<tr>
<td>1961</td>
<td>3,286,294</td>
<td>36.1</td>
<td>1,654,306</td>
<td>7.8</td>
<td>50.3</td>
</tr>
<tr>
<td>1962</td>
<td>3,891,298</td>
<td>18.4</td>
<td>1,981,415</td>
<td>19.8</td>
<td>50.9</td>
</tr>
</tbody>
</table>

In such a situation, inadequate earnings are not the result of unreasonable fares but rather of the low load factor resulting from the imbalance between traffic growth and capacity. . . . Any increase in fares in a tourist market such as this which, by its nature, is highly sensitive to price serves only to postpone the time when traffic and capacity may come into a profitable relationship."

CAB Order No. E-19385 (March 18, 1963), which reads in part as follows (pp. 1-2):

"A statement urging the Board to approve the agreements in toto without conditions has been submitted by the Secretary of Traffic Conference I of IATA acting on behalf of 28 of the interested IATA carriers. An individual statement was received from British Overseas Airways Corporation (BOAC). Messages concurring in the IATA Statement on behalf of the carriers were received from Compagnie de Transports Aeriens Intercontinentaux (TAI) and Sudan Airways. In addition, representations in support of the agreement have been received from certain European countries."

through inter-carrier negotiation at Montreal five days before.\textsuperscript{42} In the same Order, the agency re-stated its views (1) "that the pre-Chandler level of fares [was] more than adequate to produce reasonable earnings" and (2) "that, under efficient operation, the economics of jet operations should provide the potential for a significant reduction in jet economy fares." "In this connection," the Board continued, "we are convinced that, all else equal, the carriers should be in a position to offer significantly lower fares for the period beyond April 1, 1964." There followed a series of conferences which resulted in the January 1964 fare plan which has been described above.

IV. THE POTENTIAL USEFULNESS OF CAB POWER TO FIX INTERNATIONAL RATES

With respect to rates in international air transportation, the legal authority of the Civil Aeronautics Board at present extends mainly to the removal of discrimination.\textsuperscript{43} The most important considerations which prompted first the Congress and then the Board itself to reject extension of regulation in this field appear to have been two: first, the analogy of ocean shipping, where full rate regulation had been regarded as unworkable and undesirable; and second, the position of the United States carriers, notably Pan American, who argued that flexibility in rate-making was essential to enable them to meet foreign competition and avoid retaliatory measures by foreign governments.\textsuperscript{44} For many years now, however, the Board has regularly petitioned the Congress for international rate powers equivalent to those exercised by it in the domestic field. Under the air transport agreement arrived at with representatives of the United Kingdom at Bermuda in 1946, the United States government undertook to use its best efforts to obtain such powers. More recently, as has been noted above, the President has endorsed a statement declaring that this authority should be granted to the CAB in order to "provide for more effective govern-

\textsuperscript{42} In its approving Order, the Board described the agreement as follows (p. 2): "The fare agreement here before the Board reads the Chandler-agreed North and Mid-Atlantic fares, with the total increases to be effective thereafter for an interim period through July 15, 1963, and proposes a compromise agreement to be effective thereafter for a period limited in duration to March 31, 1964. The compromise provides a reduction from the Chandler-agreed economy-class fares for application on the North Atlantic of $7.00 one-way and $13.30 round-trip. In relation to the fare structure which prevailed prior to April 1, 1963, the Montreal agreement reflects a minor reduction of the one-way economy fares coupled with an increase in round-trip fares. It is estimated that the net effect on the general level of transatlantic economy fares would be an increase of from 1.5 to 2.0 percent."

\textsuperscript{43} The provisions of the Civil Aeronautics Act with respect to international rates and fares have been summarized as follows: "Both domestic and foreign companies engaged in foreign air transportation must file with the Board tariffs containing all their rates, and they may not change these rates without giving lawful notice. They are also governed by the same provisions concerning rebates, free or reduced rate transportation, filing of divisions, and unjust discrimination or undue prejudice that are applicable to interstate carriers. But they are not subject to the duties of providing adequate service, establishing through service and rates, establishing fair and reasonable rates, or agreeing upon equitable divisions with other carriers. Neither may the Board require them to establish fair and reasonable rates, nor may it set rates which are to be charged for passengers and express, suspend rates which appear to be unreasonable, require the establishment of through service, or control rates established by them with other types of common carriers." Puffer, Air Transportation 389 (1941).

\textsuperscript{44} The Act directed the Board to report to the Congress on the advisability of extending full rate control over international operations. The duly submitted report relied mainly on the arguments cited here in the text in advising against the extension; the report also asserted that the Board's powers over discrimination, unfair methods of competition, certification, mail rates, etc. gave the agency a considerable degree of control over international rates. H.R. Doc. No. 478, 76th Cong., 2d Sess., 1939.
mental influence on rates,” and the apparent impotence of the United States government in the face of European refusal to accept lower fares on the North Atlantic routes in 1963 has added some urgency to this demand.

It seems obvious that an agency of the United States government, or of any single government, cannot be expected unilaterally to control international air fares as it can the prices charged for transportation within national boundaries. International rates directly involve the interests of more than one nation because carriers of more than one flag are generally competing on any important route and because passengers and shippers are similarly of more than one nationality. Such rates are subject to influence by more than one nation because international carriage cannot exist physically without the assent of at least two nations.

If, then, the rate authority of the CAB is ever to be used as a regulatory instrument, as distinguished from a bargaining weapon, this use will have to be made in the context of decisions and policies arrived at multilaterally, in cooperation with other concerned governments. Though it has been argued in the past that such cooperative supervision was then possible, and would become effective if only the Board were given full legislative authority over rates,” it seems quite clear, in the light of the facts brought out in the preceding section of this study, that the necessary intergovernmental agreement on principles has not existed. The possibility of international cooperation in this field therefore belongs in the category of long-range prospects, and will be considered in the concluding section.

Putting aside for the moment the question of effective regulation, and accepting the facts of international life as they are, we turn to consider the potential usefulness of the rate power as an addition to the arsenal of the United States in the bargaining process which now determines international rates. On its face, it might seem that any additional governmental power should have at least some potential nuisance value, in some conceivable bargaining context, and that nothing would be lost even if the power were never used. As will be seen, however, things are not so simple.

Extension of the authority of the Board over international rates has been most recently and most conspicuously advocated by United States government representatives in connection with the 1963 conflict over jet fares.” In his letter to the Board “suggesting” withdrawal from its

46 The outstanding example of this type of argument was offered by the Board to the Antitrust Subcommittee of the House Judiciary Committee early in 1956. Here Board representatives asserted that “Without effective rate power in the Board there is no effective control over IATA and it assumes the status of a monopolistic price-fixing cartel,” and also that “The real conflict often arises not between various governments supporting their respective carriers but between the carriers as a group offering policies which their governments as a group have agreed to be undesirable.” Thus the Board felt able to assure the legislators that its “exercise of the rate power . . . under the proposed legislation [would] provide effective governmental control over the international rate structure to and from the United States vitally needed to protect the interests of passengers and shippers.” Hearings before the Antitrust Subcommittee of the House Committee on the Judiciary on Monopoly Problems in Regulated Industries 2561-2565, supra note 29.

47 In its Report on a bill signed to extend full regulation to international rates, the Senate Commerce Committee asserted that the proposed legislation “would maintain the present mechanism for establishing international air transport rates through the International Air Transport Association, but would give the Board the statutory tools needed to perform its responsibility to protect the traveler and the shipper by obtaining rates which are just and reasonable.” S. Rep. No. 473, Part 2, 88th Cong., 1st Sess. (1963). However, testimony before the Committee by Government representatives emphasized the tactical value of the rate power rather than its use in the direct
original position, the Secretary of State strongly implied that the absence of this authority necessitated this country's retreat. However, the facts do not appear to support this implication. Under the Bermuda-type bilateral agreements which govern international air operations between this country and major European nations, including the United Kingdom, it is true that the right of the European government to suspend United States-flag services (pending arbitration) terminates if and when full rate authority is granted by law to the Civil Aeronautics Board. Hence, if the Board had possessed the rate power last spring, the Europeans would not have been able to threaten to suspend the services of United States airlines. On the other hand, by the same provision, the United States also possesses the right to suspend the services of other nations until the Board receives the rate power. The available alternative to retreat was, then, the use (or threatened use) of our suspension power to halt British and other services conducted at rates which were in our opinion too high.

Why was this course not adopted? Briefly, because neither the State Department nor the Board had, or at any rate would admit to having, regulation of rates. Hearings before the Senate Committee on Commerce on International Air Transportation Rates, 88th Cong., 1st Sess. (1963).

Agreement with the United Kingdom Relating to Air Services, Feb. 11, 1946, 60 Stat. 1499, T.I.A.S. No. 1507, Annex II at 1505-06. The pertinent provisions read:

(e) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the Contracting Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party from becoming effective, if, in the judgment of the aeronautical authorities of the Contracting Party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the Contracting Parties on receipt of the notification referred to in paragraph (c) above is dissatisfied with the new rate proposed by the air carrier or carriers of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiry of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will exercise its statutory powers to give effect to such agreement. If agreement has not been reached at the end of the thirty day period referred to in paragraph (e), above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (g) below.

(f) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the Contracting Parties is dissatisfied with any new rate proposed by the air carrier or carriers of either Contracting Party for services from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred to in paragraph (e) above, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers. It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of." (Paragraph (c) provides for 30 days' notice of any proposed rate change. Paragraph (g) provides for arbitration.)
authority to take this action, which was clearly within the prerogative of the United States government. Thus, either the necessary authority was possessed by one or both of these agencies but was not used, or the agency responsible for effective implementation of the rights of the United States under international agreements had been asleep at the switch for seventeen years. In either case, it would seem to be a relatively simple matter to clarify the location of authority and to remedy whatever procedural deficiencies may exist, so that the suspension power will be available for future use.

As matters stood last spring, the United States suspension power could have been a powerful weapon in the immediate bargaining situation. What would have happened if an exchange of suspension threats had reached the stage of action might have depended to some extent on the relative advantageousness of the alternative landing arrangements which could have been made by the carriers—e.g., the disadvantage (to a United States-flag carrier) of landing in, say, Ireland instead of England, as compared with the disadvantage (to a European carrier) of landing in a neighboring country instead of the United States. Even if this impasse had never materialized, these considerations of alternative arrangements would obviously have affected the relative value of the suspension power as a bargaining weapon to the various nations concerned. It is significant, however, that major European nations have more to lose, in a balance of payments sense, than the United States does from any diminution of transatlantic tourist traffic.

On the other hand, if the CAB had possessed full rate powers in the spring of 1963, our carriers’ services could not have been suspended and would thus have been free, pending the outcome of arbitration, to continue at the lower rates favored by the Board. Because of the large amount of excess capacity available at that time, the resulting competitive pressure would very likely have forced foreign airlines to lower their own rates to conform to those of the United States airlines. Thus the rate power would also have been an effective weapon. In the absence of excess capacity, the extent of any shift of traffic to the lower-rate carriers would have been minor, and the opportunity for indirectly forcing foreign carriers to conform to lower rates would have been small or non-existent. (A sizeable increase in capacity by United States carriers to take care of traffic shift need not be considered as a relevant possibility here, first, because such an increase would almost certainly fall afoul of the provisions of the Bermuda Agreement, and, second, because the time re-

50 During the Hearings before the Senate Committee on Commerce on International Air Transportation Rates supra note 47, Chairman Magnuson asked a State Department Legal Adviser, Abram Chayes, to explain why the United States had not exercised the right to suspend service which is clearly provided in the last sentence of paragraph (f) of the Bermuda Agreement. The Chairman read this sentence aloud, and the following colloquy ensued (p. 17):

"The Chairman: We couldn’t take any such steps?

"Mr. Chayes: No; it is our position we have the international right to take such steps.

"The Chairman: Why didn’t we take them?

"Mr. Chayes: Because we don’t have any domestic authority to do so. The Board says it doesn’t have the power.

"The Chairman: I am not talking about the Board. It is in the executive department.

"Mr. Chayes: Well, the State Department can’t call Idlewild and tell them not to let British carriers land."

51 In particular, the following often-overlooked commitment contained in the Final Act of the Bermuda Conference: “That, in the operation by the air carriers of either Government of the trunk services described in the Annex to the Agreement, the interest of the air carriers of
required for such an increase would probably rule it out during the time period relevant here—i.e., the period before the conclusion of arbitration.

Generally speaking, the relative effectiveness of the rate power versus the suspension power, as instruments of temporary control (pending arbitration) under the Bermuda-type bilaterals, varies according to the particular circumstances at hand. As to cases in which the Board might wish to enforce a ceiling, we may distinguish (1) those in which the Board is opposed by foreign but not by United States-flag airlines; (2) those in which the Board is opposed by United States-flag but not by foreign airlines; and (3) those in which the Board is opposed by both United States-flag and foreign airlines. Where there is a large amount of excess capacity, cases (1) and (3) are effectively dealt with by the use of the United States rate power (with the implied absence of the European suspension power) but can also be dealt with by the United States suspension power, which would probably bring about temporary compliance on the part of the European carriers. As to case (2), a large amount of excess capacity here would enable the Board to effectuate a ceiling against United States carriers merely by raising no objection to lower rates proposed by foreigners. Without a large amount of excess capacity, case (1) could be better dealt with by the suspension power, since the CAB cannot in any case, under the Bermuda-type bilateral, directly set the rates charged by foreign carriers; case (2) by the rate power; and case (3) could not be effectively dealt with by either power alone.

As to cases in which the Board might wish to enforce a floor, we may again distinguish the three types of carrier opposition enumerated above. (It is not necessary here to treat separately situations which are characterized by substantial overcapacity, since the indirect enforcement of a floor through competitive pressure is obviously out of the question.) The general conclusion here is the same as that reached with respect to the enforcement of a ceiling: case (1) would seem to call for the use of the suspension power; case (2) for the rate power; and case (3) defies treatment within the Bermuda-type bilateral. In spite of past history, it would be unrealistic to suppose that case (1) will never arise in practice; for example, it is certainly not beyond the bounds of possibility that subsidized competition by the carriers of nations to which we are linked by Bermuda-type bilaterals will at some point be best discouraged by the use, or the prospect of the use, of the suspension power to enforce a rate floor.

In general, then, legislation extending the Board's authority over international rates would increase its power to impose its will on United States-flag carriers at the cost of abandoning a relatively effective weapon of control over foreign-flag carriers. This conclusion applies, of course, only to situations governed by Bermuda-type bilaterals, and even here only in the "short short run." If these agreements could be renegotiated so that both rate and suspension powers could be simultaneously available, the United States government would possess a larger arsenal of weapons, but the same would be true of the other party to the agreement; the net effect of the change is thus difficult to predict. But whether the suspension power is brought to life, or the rate power substituted for it, or both powers made
simultaneously available through renegotiation and legislation, under the Bermuda-type bilaterals the final appeal is to arbitration. It seems highly improbable that the outcome of arbitration would tend to conform to accepted economic pricing principles. A "compromise" solution, avoiding "hardship" to any affected party, is much more likely.

Thus, in the end, it appears that no mere bargaining weapon can be expected in itself to bring about a radical shift from the type of compromise rate-making which exists at the present time. However, it must also be said that a real readiness on the part of the United States to use whatever bargaining weapons are available can almost surely be counted on to bring about ultimate rate decisions more satisfactory to this government than will come about through simple surrender, if only through impressing the arbitrators with the sincerity and weight of this country's position. For this reason, and in view of the high probability that the position of the United States government will tend more nearly to coincide, in the near future, with that of the United States-flag carriers rather than with that of foreign airlines, it may be very desirable to lose no time in activating the suspension power.

A similar general conclusion holds with respect to situations where a Bermuda-type bilateral is not in force. Here the rate and suspension powers could readily be made simultaneously available, and some strengthening of the United States position would undoubtedly result if they were provided. (As the law now stands, it seems unlikely that the Board can legally use its authority to suspend Foreign Air Carrier Permits for purposes of rate control.29) Again, relative bargaining positions depend in part on the severity and cost of the sanctions that can be employed by the parties, and the evaluation of these sanctions involves many complex questions (for example: when is it advisable for the United States to exclude a South American subsidized airline from its airports at the cost of having United States-flag carriers cut off from a large-scale traffic to and from, or by way of, the South American country concerned?). But these considerations are not the only ones which will affect the outcome of such a dispute. As long as the nations continue to identify the policies and interests of their flag carriers with their own national interest, an "equitable" compromise which entails no drastic consequences for either party will have to be sought; and the ultimate result will probably not differ greatly from that to be expected from arbitration. Here again, however, it must also be concluded that United States readiness to act is likely to bring about somewhat more desirable results than complete passivity.

To sum up: Given the persistence of the typical attitudes of national governments toward their flag carriers, the effect of widening the rate authority of the CAB will be a gain in bargaining power where Bermuda-type bilaterals do not apply. Where they do apply, to give the Board full rate powers would mean abandoning the suspension weapon, which can readily be made available and which would in all probability be more useful in strengthening the United States position in the near future. However, it may be doubted that the existence or even the exercise of either power would ultimately bring about international rates greatly different from what they would be without it.

The above conclusion as to the tactical superiority of the suspension

29 On this point, see "CAB Regulation of International Aviation," 75 Harv. L. Rev. 575, 584-585 (1962).
power under the Bermuda-type bilaterals rests on the assumption that the
United States government will, in the near future, be more nearly in
agreement with the United States-flag than with foreign-flag carriers in
matters of rates. If the reverse were true, the rate power would be the
preferable weapon, since it would enable the CAB directly to impose its
will on the United States-flag carriers. There is no doubt that it was just
this sort of use for the rate power which was envisaged when United States
representatives at Bermuda committed their government to try to obtain
extended powers for the Board.

In short, these powers were intended to be used to curb the rate-
cutting propensities of the United States-flag carrier and thus to aid in
the maintenance of the rate structure agreed in the IATA Traffic Con-
fferences. As has been noted above, shortly before the Bermuda meeting
the British government had felt it necessary to threaten curtailment of
Pan American's services to prevent that airline from operating into the
United Kingdom at sharply reduced fares. It was with this episode in view
that the Agreement was drawn to provide that unilateral suspension, as
an ultimate protective weapon, would be renounced only after the Board
had received authority to control that carrier's rates. This authority was
thus clearly regarded as a substitute for protective suspension and a means
of making effective the United States government's undertaking to sup-
port concerted rate-making, an undertaking which was an integral part
of the "bargain" made at Bermuda.\footnote{As compared with suspension of
United States services by a foreign government, rate control by the CAB
has the not inconsiderable advantage, from the point of view of the
supporters of IATA, of minimizing unfavorable reaction among the
United States press and public.}

V. OTHER MEANS OF SECURING REASONABLE RATES

Of the other means of securing reasonable rates suggested in the State-
ment of Policy, special consideration need be given only to the support
of charter services. The two remaining devices—disapproval of IATA
recommendations and inter-governmental discussions—have been dealt
with in the preceding section; their effectiveness has been negligible and
will doubtless continue to be small without a marked change in the atti-
itudes of other governments.

In a recent order\footnote{\textit{Transatlantic Charter Investigation,} CAB Orders No. E-20530 and E-20531 (Feb. 24, 1964).} certificating domestic and foreign charter service by
two supplemental carriers, and loosening to some extent the tight restric-
tions with which it has circumscribed the provision of such services in the
past, the CAB stated its belief "that the conduct of charter services by
a group of certificated specialists should be of substantial benefit in main-
taining and/or increasing low cost services in the transatlantic market," and continued:

The adoption of the IATA group fares was, in some measure at least, in-
stigated by the availability of the transatlantic charters by Part 295 carriers
[\textit{i.e.} carriers not certificated to carry passengers in scheduled service], and
their continuation is dependent upon the concerted action of the IATA car-
riers. The certification of transatlantic charter specialists should not only

\footnote{The Civil Aeronautics Board has emphasized the usefulness of the rate power as a means of enforcing compliance with IATA rate agreements. See, e.g., \textit{Hearings before the Antitrust Subcommittee on the Judiciary on Monopoly Problems in Regulated Industries supra} note 29 at 2565.}
provide a stimulus to the IATA carriers to develop a fare structure directed at developing a mass market; such certification will help to assure the continued provision of low cost air transportation in the seasonal transatlantic market, whatever course scheduled individually ticketed fares should take.\textsuperscript{55}

There can be no doubt that the charter services have been an important source of low-cost transportation in the transatlantic market in recent years. In 1962, according to the CAB, these services accounted for 11.4 per cent of transatlantic passengers,\textsuperscript{56} at reported fare levels approximately fifty-five dollars lower than IATA group fares.\textsuperscript{57} Moreover, the development of these services will be facilitated by the recent revision of Part 295 to permit split charters (i.e., the chartering of one-half of the capacity of a plane on a time, mileage or trip basis), to eliminate the 20,000 membership limit on organizations eligible to charter, and “to remove existing restrictions on travel agents assisting in the formation of charter groups, handling the sale of air transportation to members of the group, engaging in the administration of a charter flight, soliciting individuals for land tours and receiving a commission for a charter flight or land tour if the agent is a member of the chartering organization.”\textsuperscript{58}

For several reasons, however, the impact of this action on regular rates and services can be expected to be small. In the first place, the supplemental carriers apparently have been and presumably still will be at a competitive disadvantage compared with the better-known, largely European scheduled airlines which have also been engaged in transatlantic charter service for several years. In 1962, Part 295 carriers (including cargo carriers) accounted for only twenty-six per cent of transatlantic charter passengers, United States certificated passenger carriers for ten per cent, and European carriers for sixty-three per cent. Secondly, continuation of the Board’s restrictive regulation preventing travel agents from chartering aircraft for use in connection with all-expense tours organized and promoted by these agents will serve to hold down charter traffic by supplements.\textsuperscript{59} Perhaps of still greater importance, however, is the fact that for most of the traveling public, chartering is not a satisfactory substitute for regular service, with its superior convenience and flexibility. Finally, it can hardly be doubted that really serious inroads on regular airline traffic by independent charters would be met by such actions as were deemed necessary by governments to protect their flag carriers.

\section*{VI. Long-Run Policy Objectives}

It has been concluded that no very great improvement in rates or rate-making seems possible without a change in the basic attitudes of govern-

\textsuperscript{55} Ibid., Appendix A, p. 9.
\textsuperscript{56} Ibid., Appendix A, p. 5.
\textsuperscript{57} Ibid., Appendix A, p. 6.
\textsuperscript{58} Ibid., Appendix A, title page.
\textsuperscript{59} The importance attributed by the examiner to this restriction is indicated by the following quotation from the Board’s Opinion (Ibid., Appendix A, p. 31): “All-expense tour charters, the examiner concluded, would have much more drastic diversionary effects than would split charter authority, exposing to diversion the substantial volume of historical all-expense tour business carried by Pan American and TWA (13\% of its economy fare passengers in the case of Pan American, $12.5 million 1961 revenues for TWA). Since a large part of such traffic is promoted and sold by travel agents, agents offering all-expense group tours on flights they have committed themselves to charter will logically channel their group tour traffic to such charter flights in order to preserve their investment in organization and promotion.”
ments. Is there any reason to believe that such a change might take place in the foreseeable future? As far as is known to this writer, there is no overt evidence to this effect at present. Nevertheless, there are some important considerations which lead to the belief that such a change is not entirely out of the question.

First, it is evidently not only United States interests which may be injured when reductions in international rates and fares are delayed and diminished. For example, the real value of the United States tourist trade to major European nations is very great indeed; any significant curtailment of this traffic is a heavy price for them to pay for the maintenance of high-cost airline service under the national flag.

Second, most if not all major international air services have become capable of self-support under efficient operation. When the institutions which at present govern international air transportation were developed, immediately after the Second World War, the almost universal need for subsidy militated against the adoption of liberal competitive principles. Where each competitor had access to the public purse on a cost-plus basis, it was not to be expected that competition would work toward an acceptable economic equilibrium, and concerted price determination was a not illogical reflection of the need for competitive restraint. Because of technological progress, this reason for restraint is now disappearing, though it may reappear at any time if unwise governmental decisions as to routes, equipment, and the like force airlines to operate at a loss. United States flag international services have been free of direct subsidy since the late 1950s. Recent efforts by European carriers to reduce costs have in at least one instance (SAS) been notably successful, and further progress may be expected if the consortium known as Air Union becomes a means of consolidating all or some of the operations of its members. Where a satisfactory supply of commercial air transportation is available on a self-sufficient basis, it is no longer reasonable for any nation to justify the subsidization of its flag carrier on grounds of "the needs of commerce."

Third, the technology of warfare has changed to such an extent that it is also no longer possible to rationalize governmental maintenance of a flag carrier as a means of partial support for equipment needed for military use.

Fourth, it is perhaps worth suggesting that the prestige value of a national flag carrier is not what it used to be, because of general public familiarity with long-distance air transportation under many flags for a period of years.

If there is some reason to hope for the development of governmental attitudes which do not necessarily identify national interest with the interest of the carriers of each nation, then attention can be fruitfully given to the development of a less restrictive institutional framework for international air transportation. Though the rate-making machinery of IATA has been the vehicle rather than the cause of the obstruction of beneficial rate initiatives in the past, the machinery itself would obviously offer an opportunity for harmful collusion among the carriers even in the

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60 The four original prospective members of this consortium (Air France, Alitalia, Sabena, and Lufthansa) have recently been joined by KLM and Luxair (of Luxembourg). According to Aviation Week (March 16, 1964), the entry of these two carriers "has largely offset whatever progress had been made toward Air Union, for now the knotty question of profit sharing must be renegotiated."
absence of governmental protectionism. Without this protectionism, it should not be impossible to develop a regime similar to that prevailing in United States domestic air transport—i.e., traffic conferences which deal successfully with matters on which cooperation among carriers is economically desirable, under the supervision of a regulatory body (here, the CAB) but do not engage in concerted pricing. In the international field, supervision would of course have to be carried on through cooperation among various governments, and in this context full rate authority for the Board would probably be a necessary instrument. To be acceptable to the United States, and to accomplish maximum benefit for all concerned, any cooperative regulatory scheme would have to avoid supporting internal subsidization within carrier route systems, such as the utilization of excessive profits earned in the transatlantic tourist market to finance low-density politically-motivated routes elsewhere. The liberalization of controls over other aspects of international air transportation, such as landing rights and carrying capacity, would be a logical and necessary concomitant of reform in rate-making.

Such a program with respect to major international routes need not, of course, conflict with the desires of nations, new and old, to reserve, for political reasons, their domestic air transport markets to carriers of their own nationality. Similarly, no conflict would necessarily exist between this program and the reservation of regional air traffic for local carriers as broader communities and federations develop in the various continents of the world. Therefore, it seems not unreasonable to believe that a plan for liberalization need not ultimately founder on the rocks of old or new nationalisms.

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61 In a speech before the Wings Club in New York on January 22, 1964, CAB Chairman Boyd indicated the position of the United States as follows: "Nor are we willing or content to have the traveler across the North Atlantic pay to subsidize the national-interest routes of a country in some other area of the world. That feeling is just as strong for the U.S. carrier as it is for the foreign flag carrier. We have an international air transport policy in this country that was approved by the President. That policy states that national-interest routes should be paid for by the government. We believe this. We think this should be the case with our carriers and with everybody else's carriers."

62 A more pessimistic view, however, was expressed by CAB Chairman Boyd in the speech supra note 61: "In the international area, in terms of traffic rights and operations, I think that the United States flag carriers are in for a pretty rough time. The desire to restrict the competition is very strong. It's very strong among what are called the underdeveloped countries. It is very strong among the underdeveloped airlines. Any airline that is operating in competition with Pan American and TWA and not making as much as they are is an underdeveloped airline in its own view.

"We have situations also where a number of countries whose carriers are doing well want to do better. The way they feel they can do better is to put the squeeze on our carriers and then we... will be reasonable. In some cases this is going to work. It's unfortunate but this is what happens... our carriers have got the benefit of something that few others have, and that is excellent management. This means dollars and cents. It is not going to solve the problems with the governments and with the other carriers who are trying to get bigger by cutting us down. I don't think we should feel that there is any crisis involved. I think this is going to be a way of life for United States international aviation for the foreseeable future."