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FEDERAL REVIEW

INTERNATIONAL AIR AGREEMENTS*

I. INTRODUCTION

On June 14, 1955, the Senate Interstate and Foreign Commerce Committee met to consider the sharply divergent views attendant upon the then prospective air transport agreement between the United States and the newly constituted German Republic.

As Senator Magnuson, committee chairman, explained in his preliminary statement of purpose:

The hearing has been called to inquire into the matter of policy in regard to the issuance of the foreign air carrier permit to a new German airline and the negotiation of a bilateral air transport service agreement.

It has come to the committee's attention that the State Department and the Civil Aeronautics Board have been negotiating with representatives of the German Republic during the past week with respect to terms and conditions of the proposed air transport agreement and that on last Thursday or Friday an agreement was reached which we were informed may not be in the best interests of American aviation or the United States; specifically, this committee wishes to consider whether the proposed agreement and the manner in which it has been negotiated was carrying out the policies of Congress as set forth in the Civil Aeronautics Act, which act is intended to further the promotion and development of American air transportation systems both at home and abroad.

The committee held public hearings and sat in executive session, at the request of the parties representing opposite views as to the equities of the agreement. Witnesses from both Government and private air carriers were heard. Thereafter, because of the unexpected execution of the agreement and the controversy that had developed, the chairman appointed a special subcommittee, consisting of Senators Smathers (chairman), Bible, and Bricker to "inquire into all facts and circumstances surrounding the negotiation and entering into of international air route agreements with particular reference to the recently signed agreement between the United States and the West German Republic involving the operations in this country of the Lufthansa Airlines." Further public hearings were held.

This series of hearings extended over a 6-week period. Witnesses were heard from the Department of State, the Civil Aeronautics Board, the United States-flag airlines operating across the North Atlantic, the United States-flag airlines operating across the North Atlantic, and the United States-flag airlines operating to South America, the airlines operating within the United States, and the industry's trade group, the Air Transport Association of America. We directed that our staff study and analyze the hearings. Based upon such analyses, the committee submits this first interim report.

Although the committee intended initially, as indicated by the chairman's preparatory remarks, to confine its inquiry to the instant German agreement, the subcommittee could not so restrict itself and still do justice to the basic issue around which revolves the question of the place of the United States in world air transportation. Indeed, it would be fruitless to consider

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*Report submitted by the Interstate and Foreign Commerce Committee on April 30, 1956. Senator George A. Smathers of Florida served as Chairman of a Subcommittee on International Air Agreements. The other members were Senator Alan Bible, Nevada, and Senator John W. Bricker, Ohio. Report No. 1875, 84th Congress, 2nd Session.
or evaluate this agreement in an intellectual vacuum. The hearings produced evidence, and data were submitted transcending the problem raised by the United States-German negotiations. The committee found the circumstances surrounding the immediate problem symptomatic, at the least, and the ills allegedly resultant from the agreement as worthy of legislative diagnosis. For, indeed, the Board, as a legislative creation, has a responsibility under the Act to both Congress and the public as well as the airlines it regulates.

It was deemed necessary to review the background against which these air-transport agreements, executive at least in definition, are negotiated and to examine—possibly even reexamine—the roles, the responsibilities, and the purposes of the agencies of our Government entrusted, on the one hand, with the conduct of our international affairs and, on the other, with the economic well-being of United States international and domestic air transport. This appeared particularly significant in view of the difference in view of respective responsibilities enunciated by the Civil Aeronautics Board and the State Department as to the primary functions and responsibilities of each of them.

But, before dissecting the rationale of our Government's aims in concluding these bilateral understandings, we should, at the outset, note the circumstances surrounding the execution of the agreement which triggered these investigations.

II. THE CIRCUMSTANCES ATTENDANT UPON THE CONSUMMATION OF THE UNITED STATES-GERMAN AIR TRANSPORT AGREEMENT

We were told by the Department of State that "in 1951 it became apparent that the occupation restriction on German civil aviation would be removed and that Germany ultimately would regain her prewar position as a major participant in international civil aviation." In the light of this, the Department felt it was necessary to persuade the prospective German Republic that our philosophy of international air transport was sound.

"These principles," advised the State Department, included "the basic American philosophy of regulated competition in the public interest." And this doctrine, developed at Bermuda in 1946, was inimical to our consideration of un-American concepts such as cartelism, division of markets, apportionment of traffic, and any similar arbitrary restrictionism.

After the Bonn Conventions were signed in 1952, the Civil Aeronautics Board and the Department of State agreed that it was desirable to conclude a bilateral air transport agreement with Germany at an early date—

in order to (a) obtain Germany's adherence to liberal Bermuda principles (to be discussed later) before German aviation officials were exposed to the restrictionist views of certain other governments, and (b) protect existing traffic rights of United States operators through Germany.

It is important to realize that the basic agreement contains the controlling principles to be adhered to, and the purpose of the route annex is to translate such principles into equitable route exchanges. No one differed on the high-mindedness of this purpose. But an agreement itself is an empty one if the principles are later bargained away in an inequitable exchange of routes.

The informal discussions, on principle only, as we understand it, were held in Bonn during November and December of 1954. The formal negotiations were deferred, pending a pertinent CAB route award, until 1955. Finally, in April, the CAB decided its London/Frankfurt-Rome Service case and the negotiations were scheduled to be held in Washington in June,
coincident with the inaugurating of service to New York, on an interim authority, by the German airline, Lufthansa.

The negotiations for exchanging routes and reaching final agreement on the other terms was planned for a few days only. These discussions began in Washington on Monday, June 6, 1955. The execution of the agreement, with accompanying route annex, was scheduled for Friday of the same week, June 10.

The initial German request for routes was received in May of 1955. It appears that the Board notified the carriers of the Germans' route requests first by letter dated May 17. This request was amended later—at the first meeting with the Germans on June 6. But, when the route agreement was ultimately signed (parenthetically, while this committee was still considering equities of the exchange), it included a route which had not been previously suggested by the German negotiators in their two written requests.

From the testimony, it is clear that the original request of the Germans did not specify a route to any point in South America; that the only mention in the previously submitted lists of routes, in this latter regard, was a request for a route to Bogota, Colombia, made on June 6. When the agreement was finally signed, however, there was substituted, at the insistence of our Government's negotiators, a wide-open authorization for the German airline to operate from New York to any and all points in the Caribbean and, indeed, beyond, to any and all points in South America.

It appears from the evidence that United States-flag carriers had no opportunity to comment on these awards. The carriers were notified of the original route request by a letter from the Board dated May 17, inviting them to a meeting which was held on May 24. Then, the carriers commented on the routes listed by the Germans but did not focus on a route to South America because none had been requested. Indeed, carriers interested only in routes from the United States to the Caribbean and South America were not even asked by the Air Transport Association to be present at this meeting with the Board and the Department of State. There was no reason for their presence. No routes to those areas were being considered.

When the Germans submitted their request for a route to Colombia, the carriers were informed by their industry representatives “observing” the negotiations. The carriers never learned of the offer of the final route to South America until it was offered to and promptly accepted by the Germans on Thursday, June 9, prior to the scheduled signing on Friday, June 10. The carriers requested an opportunity to meet with the Board to comment on the revised route on Thursday morning and again on Friday morning. Both requests were denied. On this, there is agreement by all parties.

So at this point our domestic airlines were faced with the granting of routes by our Government that the Germans had not asked for, and with the refusal of the United States negotiating team to even discuss the new routes with them. Certainly if this kind of thing occurred in a courtroom the airlines would have had every right to claim surprise and protect themselves by severe cross-examination. But they were refused even the courtesy of an interview. Indeed, the position they found themselves in might better be described by the legal term of entrapment.

Pursuant to a rather pointed suggestion we made at our hearings during the week beginning June 13, the Civil Aeronautics Board and the Department of State did hear the comments of the carriers on June 22. On that same date, the chairman of the committee, in a letter to the Chairman of the Civil Aeronautics Board, expressed his pleasure with this prospective
meeting and among other things stated, "As previously requested, the committee would appreciate a further report after the views of the air carriers have been considered."

The Civil Aeronautics Board and the Department of State, however, hampered further real consideration of this problem by this committee or anyone else by signing the agreement with the Germans on July 7 and informing this committee on that same date, through a letter from the Chairman of the Board, that the Board and the Department of State had—

reached the joint decision that it is in the long-run interest of United States aviation, both with respect to Germany and other foreign countries, that the agreement should be signed without further delay.

The Department and the Board indicated that each of them had given full consideration to the views of the American airlines who had objected to the signing of the agreement and that they had fully complied, in their view, with the committee's request to reexamine the proposed air agreement and found no new aspects that had not been before considered. This peremptory action of the Department of State and the Board obviously altered the character and program of the committee's contribution and activity with respect to the German agreement. The Government's attitude leads to the query: Was not the day in court granted our own flag carriers empty justice? And the answer to this is clearly indicated in the affirmative by the comments made by United States carriers to the subcommittee since this occurrence; by the obvious inadequacy of the Government's preparation of economic data for the route negotiations; by the inaccuracy of the efforts of the Board's staff to accumulate statistical materials—made available to our own airlines only at the close of the Board's executive session with them.

At that time, the chairman of this committee said that the statement that full consideration had been given the views of operators of the American airlines was contrary to the testimony of their representatives. The affected airlines had complained that the United States paid too high a price for the traffic rights obtained in return from Germany. They insisted that our Government had not properly valued the United States market and the rights Germany derived from serving that market. The airlines contended also that our Government had misinterpreted the Bermuda principles and had failed to give the airlines an adequate opportunity to present their views on the routes given to the Germans. Each of these complaints appeared so serious that the chairman appointed a subcommittee to conduct further hearings. Each of the charges by the carriers was reviewed. Before commenting on those specifically, however, there are two general observations we would like to make.

The committee after this extensive hearing and investigation is not recommending that the agreement with Germany be denounced at this time. This is not because from economic and political considerations it should not be, but because once the United States has entered an international agreement it should make every effort to abide by its letter and spirit. However, our Government should insist fully upon performance of the basic principles of the agreement and make full use of the agreed rights to consultation for either interpretation or amendment to the agreement under article 12 or even termination under article 16 if abuses should develop. Furthermore, the committee is of the view that our Government should take lessons from this agreement and the steps which led to it as a guide in the negotiation and amendment of existing agreements.
The committee wishes to make one other general observation with respect to the air transport negotiations conducted by this Government. We wish it to be perfectly clear that nothing said in this report in any way implies that the United States should engage in unfair pressure tactics in international negotiations. Our representatives should give full recognition to the legitimate rights and the aspirations of foreign countries to develop their own trade and commerce. Any agreement should be negotiated for its long-range benefits as well as its immediate objectives. To achieve those, the provisions of the agreement must be fair to both sides. While an agreement must be fair to foreign states, it should also, however, be fair to the interests of this country.

An agreement can no more be a happy one for the long term if our interests are prejudiced than it can if foreign interests are dealt with unfairly. In order to obtain fair treatment for American interests, it is the responsibility of our Government representatives to clearly recognize those interests and rights and bring them to the attention of the other negotiating party. No foreign state can be expected to give American interests any greater recognition or any better protection than our Government requests. Only by a full and frank discussion of the economic values and benefits that are being traded can the United States expect to make the foreign country aware of those rights or give to us the recognition required. The comments on these negotiations are directed more to establishing procedure that will assure that our Government agencies appreciate the vital importance of the rights being negotiated and trade carefully to permit foreign states to achieve their objectives without impairing or damaging the vital air transport rights of our country.

What, then, are the principles which should govern the conduct of our international air relations throughout the free world? They must be assessed if we are to appreciate the problems raised by this particular agreement.

III. THE PRINCIPLES AFFECTING THE NEGOTIATION AND APPLICATION OF BILATERAL AIR TRANSPORT AGREEMENTS

A. The nature of international air transport rights

The legal basis for operating international airlines is totally different from that in the maritime field. It is universally recognized that each sovereign nation controls its airspace and can admit, or refuse to admit, aircraft of other nations as it sees fit. On the other hand, the doctrine of "freedom of the seas" was expanded, years ago, to include freedom of the ports. By and large, steamships can do business in the harbors throughout the world without commercial limitation or regulation by the local governments. Commercial aircraft cannot do this.

There appears to be general agreement, in government, and in the United States air carrier industry, that the existing legal basis for the conduct of international air transport service is in the best interests of the United States and should be continued. It has been the accepted basis for United States civil aviation policy since World War II, and there appears to be no responsible opinion proposing to change it.

B. Efforts to develop multilateral agreement

To prepare for the development which was foreseen after World War II, major effort was launched by the nations interested in aviation to open the skies by international agreement. The United States called an Aviation Conference to be held in Chicago in November of 1944. Over 50 nations
attended that Conference. More than 5 weeks were spent in attempting to deal with the problems that were then posed. The Conference met with success in dealing with two of them.

The first was the exchange of rights to fly through the national airspace, to land for fuel and other technical and nontraffic purposes. This was done by multilateral agreement called the International Air Services Transit Agreement which was signed by more than 40 countries and is in effect between every major country with vast land areas to pass over except Russia, China, and Brazil.

The second achievement of the Chicago Conference was the adoption of the International Civil Aviation Convention creating ICAO, which has been outstandingly successful in dealing with technical problems of international air transportation.

On the exchange of commercial rights the Convention failed to reach effective agreement. In order to operate commercially between sovereign states the airlines need not only the right to fly into and land for fuel, but they need also the right to discharge passengers and cargo and take on other traffic for the return or onward flight. The exchange of such commercial rights was left for other agreements, which have continued to be negotiated on a bilateral basis.

C. The Bermuda Agreement

The bilateral which paved the way for the development of international air transport operations after the war was entered into with the United Kingdom at Bermuda in 1946. Practically all the bilaterals entered into by the United States since that date follow the pattern adopted there. This pattern established a number of important steps in the negotiation of an agreement.

First, routes have to be exchanged. In drawing up this exchange, the carriage of the traffic, not only between the United States and foreign country, but also between that foreign country and third countries by the foreign country, must be negotiated. This latter third-country traffic is sometimes called “Fifth Freedom Traffic,” the fill-up traffic essential to economical operation of aircraft.

Second, general standards for governing the amount of capacity to be operated must be agreed upon.

Third, a procedure must be established to deal with the problem of rates to be charged for the service.

A number of additional subjects must be dealt with—important, but not now germane to the issues before the subcommittee.

The capacity issue deserves special discussion. Because of its importance and the controversy which surrounded it during the hearings, it is believed necessary to understand the origin and the meaning of the Bermuda capacity provisions which have been placed in most of the existing bilaterals of the United States.

Basically, these provisions lay down the principles governing the amount of service which may be operated over the routes exchanged. They were drawn after the war as a compromise between the conflicting economic philosophies of air transport regulation.

One of the conflicting philosophies was represented by the United States. We contended that numerous countries should exchange commercial rights by a multilateral agreement pursuant to which operators could fly freely into the countries of their choice, with as many flights as they chose, and pick up traffic in each country which was going to any other country. As Mr. Stuart G. Tipton, president of the Air Transport Association of America,
testified, "This was an extremely liberal position for that time—one that caused concern even in the United States."

The contrary philosophy, advocated by the United Kingdom, as well as others, was that the number of flights was to be controlled. This referred not only to the flights between the country of origin and the foreign country but particularly to the number of flights going from one foreign country to a second foreign country. A prevailing concern among foreign states was that the United States would flood the market with air service. The United States in the last years of the war was manufacturing the only aircraft readily adaptable for commercial transport. Some countries were apprehensive that these aircraft, in the hands of United States operators, would start such a volume of service, not only between the United States and foreign countries, but between foreign cities such as London and Paris, as to retard the normal development of foreign airlines. These fears prompted the advocacy, in Europe, of several devices for limiting flights and capacity. One method was to limit the number of flights by agreements, as was a standard practice in the European area before World War II. Even in the agreements the United States had entered into with the United Kingdom and France, the schedules had been limited to 2 and 4 a week respectively.

Another device for controlling the number of flights, advocated by some countries at the Chicago Conference, was to establish an international agency to assign frequencies.

A third device advocated was to adopt a mathematical formula to govern increase in frequencies. Thus, no carrier would be allowed to increase its carrying capacity until it was operating at 60 percent, or some other fixed percentage, of the capacity then being operated.

To reach agreement between such divergent views, compromise was necessary. This compromise was not reached at the Chicago Conference, but at the Bermuda Conference the United States recognized the fears of the British with respect to possible shuttle services that would jeopardize local operators. On its part the United Kingdom yielded on its insistence to limit frequencies by mathematical formulas. There was, therefore, developed and accepted by the United States and the United Kingdom the concept that the "services provided * * * shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the countries of ultimate destination of the traffic."

Thus, the backbone, so to speak, of United States air carrier traffic had to be traffic between the United States and countries of ultimate destination of the traffic. Similarly, the backbone of the United Kingdom traffic had to be traffic between the United Kingdom and countries of ultimate destination of the traffic. This was an effective brake upon the operation of services primarily for the carriage of third-country traffic. For the United States, for example, this would mean London-Paris or London-Mexico City traffic. Again as an example, for the United Kingdom this would mean New York-Mexico City or Paris-New York traffic.

After this test of primary objective was met there then existed the right to pick up third-country traffic subject to three general rules of a qualitative nature. These rules and the concepts which we have just discussed were put together in a capacity article which reads as follows:

The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

It is the understanding of both contracting parties that services provided by a designated airline under the present agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is
a national and the countries of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be applied in accordance with the general principles of orderly development to which both contracting parties subscribe and shall be subject to the general principle that capacity should be related—
(a) to traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
(b) to the requirements of through airline operation; and
(c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

While this provision does not have the precision of a mathematical formula, it is generally recognized as a sound statement of principles to guide the day-to-day determination of capacity offered in international air transportation.

This quality of the provision was recognized by both government spokesmen and airline witnesses. Thus, Assistant Secretary Waugh said:

* * * when in February 1946, the negotiators of the United States and the United Kingdom met in Bermuda to attempt to conclude an air transport agreement it was apparent that the agreement to be concluded would have to contain compromises which both countries could accept and apply in their air transport operations * * * The British had, in the first instance, desired to regulate the volume of service in order to protect the services of United Kingdom airlines from overwhelming competition by the already strong United States airlines. The United States on the other hand desired to establish freedom of operation in order that the natural development of potential air traffic and the natural effects of competition might provide the public with the best possible air service and at the same time provide for the healthy expansion and development of the airlines providing this service. The result was a compromise reached with regard to the capacity provisions. * * * The long trunk services of the United States could not economically survive if they were to carry only traffic originating in the United States or destined thereto. * * * it was recognized that the trunk services should not force the local or regional services out of business.

Similarly, Mr. Stuart G. Tipton, then general counsel and now president of the Air Transport Association of America, who is intimately familiar with the history of the air transport negotiations, testified:

When the Conference between the United Kingdom and the United States began in 1946, the two Governments were about as far apart as they could get on this particularly difficult subject. * * * A compromise was finally arrived at. The United Kingdom was required to forego the rigid mathematical formulas it had previously adhered to. Instead, capacity was to be governed by stated general principles which recognized the interests of both contending parties. All of the services provided under the agreement were to "bear a close relationship to the requirements of the public for such service." * * * Carriage of third-country traffic was further sanctioned by the adoption of the principles that in judging capacity the needs of the through airline operator were to be recognized.

Thus, the draftsmen of this provision sought to prohibit the extremes of airline conduct which both parties agreed to regard as objectionable. * * *

D. Participation by United States-flag carriers in international negotiations

The complexity of route considerations, among others, involved in the negotiation of a bilateral air transport agreement underscore the importance, it seems to us, of continuing United States carrier participation at every stage of United States negotiations with foreign governments. Generally speaking, a foreign government is speaking for only one nationally
owned carrier. Our Government represents competitive considerations. Other governments keep their carriers advised from the outset, even to the extent of intelligence as to the routes to be offered. No less should be expected of United States negotiators. United States-flag carriers and/or their industry representatives must be provided the opportunity to be heard, before negotiations begin and at their every stage, before their rights are bargained away.

From the airlines' point of view a duplication of routes by a foreign airline can be as serious to commercial interests as duplication by a domestic airline. In the latter case, the Civil Aeronautics Act of 1938 gives them extensive and adequate opportunities to object. Thus, before an American-flag carrier is authorized to operate a route previously awarded to another American-flag operator, an application must be filed under section 401 of the Civil Aeronautics Act. Hearings are held; tentative reports must be filed; and oral argument is permitted before the Board. All of these precautions are taken to protect the interests of an existing American operator when his route may be duplicated by another American operator.

When a foreign airline is given, in effect, permission to duplicate the existing route of an American airline, similar rights are invaded but the opportunity to object and to oppose is more limited. In fact, in the German case it was denied. The need for safeguards is therefore imperative and since other negotiations are now in progress, the need is pressing.

A problem considered by this committee was how best to provide the carriers with an opportunity to protect their interests in these international route awards.

The carriers testified that section 402 of the Civil Aeronautics Act, although intended to provide this opportunity, is not adequate.

Mr. Tipton testified:

Section 402 of the Civil Aeronautics Act may have been intended as one method of protecting those interests but it has proved impractical for that purpose. Section 402 provides that a foreign air carrier must receive a permit from our government before it may start its operations to the United States. A public hearing is provided for in that section. United States carriers can, and sometimes do, appear at those hearings to protest the granting of a permit to a foreign carrier, but that is really not effective because, in order to comply with the carrier's request, the Board would have to deviate from the terms of a bilateral agreement. Nor is it possible for a carrier to protect its interests after the negotiations are concluded and the agreement is made public. No matter how strong its case, it has an uphill battle to reverse or revise an agreement already entered into.

In addition, under the 1948 Supreme Court decision, in the Waterman Case (333 U. S. 103), since section 801 of the Civil Aeronautics Act places the final approval of all such actions in the President, the CAB's force is exhausted when it serves to make "a recommendation to the President."

"** Presidential control is not limited to a negative but it is a positive and detailed control over the Board's decisions, unparalleled in the history of American administrative bodies."

Not only is the Board's function in these matters advisory, but since this advisory function relates to foreign affairs, the President has another legally constituted advisor, the Department of State. And since this Department conducts the bilateral negotiations, it presumably will recommend that the President make the route award consistent with the bilateral agreement. It is clear, therefore, that, practically speaking, the time at which considerations of the interests of American-flag carriers must receive effective consideration is before and during the negotiation of the appropriate bilateral agreement.
The issue presented, therefore, is whether at the preparation and negotiation stage an additional procedure should be instituted. Both the carriers and the CAB have referred to a practice now being followed in most cases which seeks to solve the problem although not specifically provided in the statute. The procedure referred to is that of consulting with the carriers and their representatives before and during the negotiations. Thus, the Board said:

The United States carriers would normally be apprised of such proposals (route request for foreign airlines) and subsequent changes therein, whether by government representatives or by their own representatives acting as observer at the conferences.

While the carriers recognize that this procedure had been adopted in dealing with past negotiations, their industry representative went on to say:

Our trouble has been that the procedure for consultation with the carriers has not been sufficiently well established to insure that complete and extensive consultation with respect to all cases. It is our hope that this committee can be of assistance in establishing a procedure which will always be followed.

The committee, after giving careful consideration to the existing procedure, endorses the need for effective consultations with the carrier at all stages of these negotiations and recommends strongly that they be employed as an established procedure to provide protection for carrier interests. We would hope that more than lip service consultation can be provided without writing it in the statute. Whether definitive legislation prescribing this, as well as other possible procedures, may be necessary will require further and perhaps continuing study.

Certainly, if future negotiations are conducted as was the German agreement, then this committee would almost of necessity be forced to the conclusion that the representatives of the United States involved in these matters had not been attentive to our hearings, to say the least.

The additional reasons why our Government should consult with the carriers before concluding air transport agreements and the spirit in which the negotiations should be conducted were well stated by one of the witnesses to appear before us:

The job which our Government faces in its situation is an important one from the standpoint of the total national interest, not just that of the carriers. That job should be done in the best possible way. Every available tool should be used to make certain that the negotiation is successful. One of the most useful tools to be used in achieving this result is the combined knowledge and experience of the air transport industry. That knowledge and experience is available to the Government, and use should be made of it. The general attitude which should lie behind the Government's interest in consulting with the carriers is not that of giving the carriers a hearing, but it should be based upon a desire to make certain at every step of the way that no mistakes are being made. It is particularly important that our Government take advantage of the availability of this expert assistance in view of the fact that the foreign delegations with whom they will be dealing are usually the direct owners of the carriers of that foreign nation.

IV. THE BERMUDA PRINCIPLES: THE CHALLENGE THEY PROVIDE TO IMPROVE THE POSITION OF UNITED STATES-FLAG CARRIERS IN THE WORLD AIR MARKET

The airlines contend that the grant of routes to foreign countries generally and in the German negotiations in particular were and are excessive and unnecessary because our negotiators had not adequately analyzed and
presented the great values enjoyed by foreign carriers when they operate to the United States. Because the American market has been undervalued, our Government has been led to grant more concessions than were necessary.

The opportunities for improving the United States-flag position, in some respects by recognizing the value of our own market, falls into two categories.

The first category deals with the granting of routes as between the United States and a foreign government. This may appear either as part of the initial negotiation or as separate negotiations in later years for amendment of the routes originally granted.

The second category has to do with the interpretation and application of the agreements—that is, the use of the agreements to achieve proper regulation within the agreed "rules of the game."

A. The negotiation for routes

It is evident that these two categories are related to each other. For example, a nation can be very restrictive in its grant of routes, but then be generous in its interpretation of the capacity provisions. Thus, the United Kingdom has tended to be liberal in its view of capacity requirements, but even it has been very careful in the grant of routes. With the exception of an infrequent service by Air India, the only airlines offering service between London and Paris are those of British and French nationalities. No American airline can do this. Likewise, except for British and American carriers, the only carrier serving London en route between Europe and the United States is El-Al Israel, which operates on a limited frequency.

Conversely, a nation could be somewhat generous in the grant of routes but rigorous in the application of capacity limitations.

It appears from the testimony that the United States has been too generous on both counts. We have fallen between the two schools and have come perilously close to departing from the principle of regulated competition on which our civil aviation policy has theoretically been founded. At the same time, our airlines have been forced to bow to the stringent views of other governments.

The prospective impact of foreign-flag airlines operations requires that the United States implement more forcefully a policy of control under the terms of the agreements.

This statement refers to the net balance in the aviation interests of the United States. Other countries have given effect to capacity provisions and, consequently, brought about a reduction of United States services. On the other hand, the committee has not been cited a single case where the United States has used the agreed capacity regulations in a bilateral to control or regulate the nature of the competition offered by a foreign airline.

The arguments for a liberal policy on the part of the United States over the past decade are familiar and have had much merit. First, the United States has properly sought to encourage the development of strong and efficient airlines in other friendly countries as part of its program for economic reconstruction after World War II. Second, the United States has necessarily entered into reciprocal route exchanges in order to establish worldwide air transport services under the United States flag commensurate with our responsibilities in the commercial, political, and security spheres. These objectives have been attained and a number of strong airlines have been established in friendly foreign countries—some of them with considerable financial assistance from our Government.
Of the 10 largest international airlines in the world today (based on 1954 IATA revenue ton-kilometers), only 2 are United States-flag, while 2 are British, 5 are other European, and 1 is Australian. Of these 8 foreign-flag competitors, 5 are wholly owned and the balance are partially owned by their governments. The two British Government companies are responsible for practically all of the regularly scheduled international services of the United Kingdom. The French Government company is responsible for almost all of the French international service. The Dutch, Scandinavian, Belgian, and Australian companies conduct all of the international services of those countries, respectively. The Canadian Government company conducts the majority of Canada's international service.

The United States should continue to foster and maintain a strong competitive United States-flag civil air transport position, and at moderate subsidy. The ability of the airlines to minimize their subsidy requirements will be aided immeasurably by a United States policy of exercising considerable caution during negotiations of routes and route amendments with other governments, and by the United States insisting the other parties adhere to the terms of the air transport agreement.

B. The need for more effective control of capacity

It is essential that the United States have a guiding principle to be followed in the negotiation of air route agreements with other governments. That principle is to be found, as above indicated, in the agreement between the United States and the United Kingdom entered into at Bermuda in February 1946. As previously noted, this agreement is the prototype for the many others since negotiated by our Government.

Briefly, the guiding principle as we see it is that routes should be granted and capacity regulated in relation to the flow of traffic between countries party to an agreement and the other countries on a given route, recognizing that primary sources of traffic are not always the same. There are two types of primary traffic to be considered. One is the traffic moving between the country of the airline's nationality and third countries intermediate to or beyond the other country.

The opportunity to carry traffic between the other country and third countries is a secondary and restricted privilege. It is granted in order to serve the public convenience and to augment the economic support for long routes. It is restricted in order to prevent origin and destination traffic from being captured by the airlines of other nations which have no proper claim to it, within the legal basis universally accepted.

As an illustration, with respect to traffic between New York and Paris, the airlines of the United States and France logically should have a predominant claim. Likewise, as to traffic between New York and Switzerland, for example, the airlines of the United States and Switzerland have the primary claim. With respect to traffic between France and Switzerland, the airlines of those two countries occupy the primary position.

Under the principles now in force, the United States-flag line is given a secondary right to carry traffic between France and Switzerland. This is sound, but only as long as the carriage of traffic by the United States-flag line between France and Switzerland is subordinate to the primary purpose of serving traffic which has its origin or destination in the United States.

This pattern exists throughout the world under the agreements to which the United States is a party. It is supposed to apply not just to the United States-flag lines but to the foreign-flag competitors. The practical question is whether it has been applied in fact.
C. The United States has not controlled capacity effectively

From all of its inquiries into the subject, it is the opinion of the committee that this principle has not adequately been followed when the United States has granted routes to foreign countries. The United States is encountering competition which does not conform to the basic principles. In notable cases, routes have been granted where the available traffic statistics show all too clearly that the primary purpose of the route sector would be carriage of third-country “fifth freedom” traffic, contrary to the principles contained in the underlying agreement.

As to capacity regulation, we have already noted inability to cite to us a single case where the United States has asked a foreign government to alter the nature of its airline’s operation in order to put origin and destination traffic in the primary category. To put this another way, there is considerable evidence that certain important foreign-flag competitors are carrying traffic to, from, and beyond the United States, to which, under the principles agreed to in the relevant air transport agreements, they are not entitled. It does not appear, moreover that our Government has ever sought to accumulate the statistics necessary to support this contention in consultation with the other government concerned. We believe that such statistics can and should be required, that they will demonstrate the condition which we have described, and that they would furnish a basis for fair and equitable regulation.

D. The German agreement is a striking example of questionable negotiation for routes and prospective difficulties of capacity control

In this agreement, Germany was given rights “beyond New York” in addition to starting with rights “beyond Germany.” The airlines generally contended that Germany, like other European countries, received advantages in its “beyond Germany” to the United States rights which exceeded the advantages of the “beyond” rights of United States carriers, and then in addition secured valuable rights beyond the United States. They argued that this created a highly inequitable unbalance in favor of Germany.

The Civil Aeronautics Board and the Department of State responded to these airline contentions with two lines of argument. First, they argued that the airlines overvalued the third-country or fifth-freedom rights granted to Germany and they submitted their own estimate of the value of the routes exchanged with the Germans. The following table submitted to the committee by the Civil Aeronautics Board, after the negotiation and never prior to that to the United States carriers, indicates the values which the Government assigned to the United States and to Germany from the exchanges made in the agreement:

<table>
<thead>
<tr>
<th>Summary of State-CAB estimated values to the United States and Germany of the exchange of third-country fifth-freedom rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>United States:</strong></td>
</tr>
<tr>
<td>Germany—points intermediate between the United States and Germany</td>
</tr>
<tr>
<td>Germany—points beyond Germany:</td>
</tr>
<tr>
<td>Pan American Airways System</td>
</tr>
<tr>
<td>Trans-World Airlines</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
<tr>
<td><strong>Germany:</strong></td>
</tr>
<tr>
<td>United States—points intermediate between United States and Germany</td>
</tr>
<tr>
<td>United States—points beyond United States, excluding New York—Habana</td>
</tr>
<tr>
<td>New York—Habana</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>
The facts as presented by the Government itself clearly support the position of the carriers. The Government data shows the value of third-country or fifth-freedom rights to United States carriers to be $1,021,000. Third-country or fifth-freedom rights for Germany between the United States and points intermediate between the United States and Germany was by itself valued at $1,186,000, or over 14 percent above the $1,021,000 third-country or fifth-freedom traffic secured and estimated to be secured by the United States. When the value of third-country or fifth-freedom traffic for Germany for certain points beyond the United States is included, the advantage to Germany—that is according to the Government's own figures, submitted to this committee, and shown on the chart—is increased to within a range of 56 to 77 percent above that of the United States.

This already tabulated overwhelming disparity in favor of Germany is only part of the story. The Civil Aeronautics Board estimates reflect no value for the traffic going to points in South America other than those on the west coast, although the Germans were granted rights to serve the whole of South America. Similarly, Habana is the only point in the Caribbean reckoned with between New York and the Caribbean, although rights were granted from beyond New York to any point in the Caribbean.

Even more important, however, the Civil Aeronautics Board chart assigns no value to the traffic which Lufthansa would be entitled under the agreement to carry between the United States and points beyond Germany. The value of such traffic carried by United States airlines alone was something on the order of $20 million in 1954. Additionally, a large amount of traffic between the United States and points beyond Germany was carried by foreign airlines. Obviously, the Germans will secure an amount of such traffic which will have a very high value, perhaps several million dollars per year. As this report will show, in the next section, other European carriers secure from this and other third-country traffic amounts ranging from 2.5 to 9 million dollars a year.

All in all, the figures submitted by the Government itself clearly indicate to us that the Germans got much the better of the bargain. They were given, in addition to the appropriate and reciprocal equal opportunity to compete for the economically rich United States-Germany market, a right to operate in the market between the United States and countries intermediate to and beyond Germany, and to operate in the market between the United States and the Caribbean and South America. The value of the third-country rights could not at any point be reciprocated by Germany. It was their second and cumulative bonanza which tipped the scales so overwhelmingly in their favor.

The failure of the Government to measure the full value of the routes granted to Germany, and the refusal to use this value to bargain in defense of the United States interests is, it seems to us, one of the highly unforgivable aspects of the negotiations with Germany. Putting aside the possibility of corrective action, it can certainly be said that this type of approach in the bargaining process is one which simply cannot and must not be repeated.

Moreover, it does not justify the failure to prepare and use adequate data to say, after the negotiations are over, that the carriers' estimates in dollars "exaggerate greatly the value ascribed to fifth-freedom markets granted to Germany." Even if the carriers' data were exaggerated this does not absolve the Civil Aeronautics Board from developing and considering what it might claim to be "unexaggerated" valuations of the grants to Germany. As a matter of fact, it appeared to us that the industry supplied more complete and accurate statistical data than did the Government.

The Board, however, apparently placed no value on the German ability
to carry traffic between the United States and points beyond Germany. To the committee, this is a serious shortcoming, particularly in light of the fact that the great value of such rights was demonstrated by the carriers during the hearings. Furthermore, this committee itself, in its letter of June 22, expressed its view that these rights were of great value and must be considered.

This omission on the part of the Board constituted not only a disregard of the views of this committee, but also a failure to give attention to an economic fact well recognized throughout the world. For example, Sir George Cribbett, Deputy Secretary of the Air Ministry of the United Kingdom, speaking on February 22, 1955, before the Italian Society for the International Organization of the Center of the Development of Air Transportation, in an address entitled “European Air Transportation; its Problems and Perspectives,” termed this type of traffic “economically of greater importance” than the type to which the Civil Aeronautics Board limited its consideration. Furthermore, the Board's failure to consider such traffic in its appraisal was in the face of an official United States Government policy that such traffic is third-country or “fifth freedom” traffic under the Bermuda capacity provisions which were incorporated in the United States-Germany Air Transport Agreement. It is our feeling that no United States agency should engage in commercial bargaining of such far-reaching importance with so little appreciation or regard for the United States interests being bargained away, with such inadequate preparation of data, and with so little, and then faulty, communication and discussion with the United States carriers it is intended to represent in the public interest of our country.

The second line of argument used by the CAB to defend the grant of routes to Germany brought into the controversy the interpretation and application of the Bermuda principles. The CAB contended that the United States carriers would not be seriously affected by the grants to Germany because the capacity provisions in the agreement, being the Bermuda principles, would prevent the German airline from operating enough capacity between the United States and points in South America to damage American carriers. The Board emphasized that it was these same capacity provisions which the United States used to quiet the fears of foreign governments who were concerned that United States long-haul operators would impair the operation of local and regional carriers. If our carriers, said the Board, lack confidence in the ability of these provisions to accomplish that, then we must renegotiate our agreements and insert new provisions.

In support of the Board's view that the Bermuda principles would restrain the number of schedules operated by the Germans between New York and South America, Mr. Joseph FitzGerald, Director, Bureau of Air Operations, Civil Aeronautics Board, testified that, at the present time, on the basis of United States statistics, the Germans could operate a maximum of one flight a week. The grant of rights to the Germans to operate from Germany to South America, he contended, is to permit the serving of traffic going from Germany to South America. The Germans, under the Bermuda principles, will be authorized to fly only such schedules as are required to serve that traffic; and, since the more direct route between Germany and South America—across the South Atlantic—will carry most of the traffic from Germany to South America, very little would flow through New York. Necessarily, the schedules on that route would be so limited as to impose no serious threat to the United States carriers operating in that area.

It was this interpretation of Bermuda and application of Bermuda which stirred sharp objections from the carriers. Their objections were the following: First, there is no basis in the Bermuda language to conclude that
the Germans would be limited to any precise number of schedules. Second, since a more direct route existed across the Atlantic, it becomes difficult to apply the Bermuda principles when the route is so indirect. Thus, a route from New York to London to Frankfurt to Vienna is justified by the number of persons carried from New York to London to Frankfurt to Vienna, since that is the most direct route between those two terminal points. The flow of traffic between New York and London to Frankfurt and Vienna is sufficient of itself to justify the operation. Therefore, the passengers taken on at London and Frankfurt will be merely fill-up traffic to sustain a basically sound route. On such a route, the provisions of the Bermuda capacity article will serve as an effective guide for the amount of service offered. On the South American route granted the Germans, it is more difficult to police against these established yardsticks.

It seems to us that the German/Caribbean/South American route cannot be justified as one which "shall retain as its primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic." Such a route would have no justification under Bermuda conceptions. The main traffic flow between the termini of such a route would go over the South Atlantic. Therefore, the traffic between the termini moving through New York would not justify a through operation. Once such a route were operated at any level of service, it perforce would have to rely almost exclusively on the United States-South American traffic market, and the language of the capacity provision could not operate effectively. A serious disadvantage of such a route would be that the policing of the capacity provisions would require the United States to constantly check the number of passengers taken on by Lufthansa at New York for South America, establishing a constant source of irritation between two governments where friendly relations should prevail. In addition, it would ultimately reduce the level of frequencies to so low a number as to produce complaints of unfairness. Diplomatically, this would be difficult; practically, it has never been done before.

Our Government appears to have concluded that, once a route has been granted which is economically sustainable by the traffic moving between its termini because that it is most direct routing between those points, then the carriers should be left considerable freedom to operate the amount of capacity over that route to provide adequate service to the public. This is substantially the interpretation given by the CAB spokesman in his further testimony. Thus, Mr. FitzGerald testified:

I think, sir, we have to go back to one of the things we are trying to do with Bermuda. It is basically an American concept, which we have sought to sell the world. This concept is that once having negotiated the routes, once having set up a rational route structure, then the determination of capacity over that route structure shall be left to the carriers.

The carriers contend that, under this interpretation, there is no basis for believing that Lufthansa would be held to one schedule a week. In fact, under the interpretation just given, Lufthansa would retain its discretion to put on as many schedules as it felt were required. In that way, it could participate to a large extent in the rich flow of traffic between New York and South America, to which the Germans have no claim and on which our United States-flag carriers rely to support their operations.

The important consideration is to develop, from the outset, a rational route structure. In the absence of one, any operation is at once an abuse and the Bermuda formula just isn't applicable for determining just how violent an abuse must be before corrective action should be taken. The carriers made an additional significant charge. They pointed out that history
indicated there was little basis for relying on our Government to enforce the Bermuda principles. Thus, one spokesman testified that:

* * * never since the signing of the original Bermuda agreement in 1946 has the United States moved in a single instance to protect the United States from diversions of the character which we are now talking about. In fact, there has been no successful effort to secure from foreign air carriers statistics which would show the true origin and destination of traffic on their (foreign airlines) routes to and from the United States. As a matter of fact, I urged both to the appropriate representatives of the CAB and the Department of State in the latter part of April of this year that this be done. * * * I checked this morning and found that no such request has been made. * * * They permit the use of these principles to curtail United States services but they have never moved against a foreign country.

The carriers went on to make clear that they originally supported and continued to support the Bermuda principles. As Mr. Tipton testified, the airlines support the Bermuda-type agreements—

* * * not because they regard them as perfect documents, but because they provide a practical adjustment of the varied interests of all the governments and carriers whose interests must be taken into account in negotiating such agreements.

The controversy around the Bermuda principles is so important to the existing agreements containing those principles and to the agreements remaining to be negotiated that the committee, later in this report, will suggest some general principles which it believes should guide our Government in the interpretation and application of the Bermuda principles.

V. THE VALUE OF THE UNITED STATES MARKET AS AN EFFECTIVE BARGAINING TOOL

By access to New York and Los Angeles, one foreign airline, the Scandinavian Airline System, has access to more people in those cities alone, totaling 18,747,500, than the population of the 3 Scandinavian countries—Norway, Sweden, and Denmark—which totals only 14,920,000.

In the German agreement that country was given rights to serve five United States cities—Boston, New York, Philadelphia, Chicago, and either San Francisco or Los Angeles. In exchange, United States carriers were authorized to serve five German cities—Frankfurt, Dusseldorf-Cologne-Bonn area (served through a single airport), Hamburg, Stuttgart, and Munich. The metropolitan area of New York alone has a population of 13 million—almost 3 times the combined population, 4,641,844, of all the German cities which United States air carriers would be authorized to serve. The combined population of the metropolitan areas of the 5 United States cities which the German carrier is authorized to serve is approximately 29 million—a ratio of about 6 to 1 in relation to the 5 German cities, discounting the infinitely greater travel potential interest in the United States cities in question.

Of the United States population, more travel internationally by air than do the people in any other country. In fiscal year 1956 there were 1,503,107 of our citizens who traveled abroad (not including Canada and Mexico) by air. The importance of this market can be measured by the share it is of the total international air transport market. In 1954 there were a total of 8 billion revenue passenger-miles flown in international air transportation and of that number 4 billion, or one-half of the world total, were between points in the United States and foreign points.

The United States market is so great that foreign airlines need not rely on their own citizens as travelers; more than half of the passengers
carried by the foreign-flag lines into or out of the United States in 1954 were United States citizens.

The airlines derived several conclusions from these facts. First, they contended that an equitable exchange does not require an exchange of an American city for each foreign city granted to a United States airline. They contend that a proper evaluation of the right to serve a leading United States city and the United States market generally (access to which is provided by service to 1 of the 5 leading cities) gives the foreign carrier far more than the United States gains from access to any number of cities in most foreign countries. Thus, rights to New York give a foreign carrier access to the largest single market in world air transportation. In 1954 this market generated 9,244,157 domestic and international passengers.

No other city in the world matches the present and potential air transport volume of New York. The largest traffic centers outside of the United States are London, Paris, and Rome, which in 1954 generated 2,242,598, 1,638,469, and 913,074 international and domestic air passengers respectively.

Comparable markets in the United States are Miami, the 6th ranking United States city with 2,536,599 international and domestic passengers in 1954; Atlanta, 8th ranking with 1,707,936; and Kansas City, 15th ranking with 923,080 passengers. No airline would consider trading New York for 1 of these 3 cities. Yet such is the disparity of economic benefits between United States and foreign cities that granting Chicago, Los Angeles, or Washington to a foreign airline to obtain rights at a foreign city would be the equivalent of trading one of our smaller cities for New York.

The Civil Aeronautics Board, on the other hand, argued that such valuation was not persuasive with foreign governments because the value of the United States market cannot be measured in a vacuum; it is valuable only as Americans travel to foreign countries. The Board said in effect that the foreign cities are an inseparable ingredient of the very value we claim; unless an American has some place to go, there is no market to serve. Since foreigners control the foreign city, they have equal claim to the value of the United States market.

This argument overlooks, we believe, the value of the analysis in bargaining for second and third cities in the foreign country. Once the foreign airline operates to one United States city, such as New York, a flow is established. It is that flow out from New York alone which is so great a value that the foreign state should offer United States carriers access to a second city in its homeland to attempt, even in limited measure, to match the American grant.

We are disappointed that, at least in the presentation thus far made and from the fact that many of the route exchanges gave an additional United States city for rights to each foreign city granted to the United States, there was no indication that the CAB prepared such evaluations, or used them as bargaining weights in seeking United States air transport rights.

The airlines contended further that there was inadequate valuation of the "beyond rights" obtained by a European carrier, in both directions, when it is given access to the United States market. This, too, is part of the highly prized United States market. European carriers by virtue of their geographic location gain the opportunity to carry American travelers not only to their home country in Europe but to and from many countries both intermediate to and beyond their home country.

The exchange made between the United States and Germany illustrates the problem. The United States carriers were given rights to operate "beyond" Germany to points in the Near and Far East. The question in issue in this negotiation, as in several others, was whether the grant of
“beyond” rights to the German carrier to serve South America was necessary or equitable. To evaluate the arguments, pro and con, of this controversy it is necessary first to review certain aspects of international air transport routes and the geographic and economic position of the United States in relation to other countries.

The primary justification for the operation of an airline between Germany and the United States is to serve the Germans who wish to come to the United States and the Americans who wish to go to Germany. This is the traffic to which both our own and the German carriers can lay some prior claim. Fortunately for the German carrier, however, by extending its operations—and it needs no approval from the United States to do so—beyond Germany to Scandinavia, Switzerland, Italy, Greece, Turkey, Pakistan, India, and Siam, and elsewhere, it can also offer, and will if it follows the merchandising practices and enterprise of other European carriers, to the American public a service to the latter places. In spite of the fact that the traffic between the United States and Austria is traffic to which Austrian and American operators should have the first claim, the geography of Europe permits the German airline to offer substantially as good service as either of the operators of the two countries primarily concerned. The net result is that the already great value to the German airline of serving the New York area is enhanced enormously by its ability to carry United States travelers to countries beyond Germany.

This benefit of operating to the United States consists of access to two flows of traffic. It consists of the traffic between the United States and points intermediate to Germany and also the traffic between the United States and points beyond Germany. Nor is it limited to German airlines. This valuable privilege of carrying traffic to other than their home country applies to all of the major European airlines.

The airlines contend that this result to foreign carriers is an economic gain derived from operating to the United States which should be used in the negotiations as any other bargaining value to protect or advance United States air transport interests.

Due to lack of complete traffic data, inasmuch as foreign carriers do not report the true origin and destination of traffic carried on their services in and out of the United States, there is no exact means of measuring “beyond rights” granted to the United States carriers. Conversely, it is not completely feasible to evaluate rights obtained by a foreign carrier for participation in traffic moving between the United States and points beyond the homeland of the carrier. These rights are commonly referred to as “fifth freedom privileges.” There is no doubt the revenue derived from a passenger traveling between the United States and India is greater than that obtained from a passenger traveling between Holland and India. However, there was agreement among the carriers that these “fifth freedom privileges” represent a very important right and one that the United States should continue to obtain for its airlines.

Based on the United States carriers’ reports to the CAB for the months of March and September 1954, the following estimates were introduced at the hearings to demonstrate the value to foreign-flag airlines of carrying traffic to other than their home countries (normally referred to as third-country traffic) is enormously greater than the rights which American-flag carriers obtain when they receive permission to land in a city of one of those European countries. The number of travelers from a country such as Holland, Denmark, or Israel to points farther east is far smaller than the number in the United States to these points. Thus, the number of travelers between Germany and India in 1954 was 826 but the number between the United States and India was 9,680. Furthermore, the greater value to the
A foreign carrier from serving the United States is indicated by the value of the revenue to the airline. When the American-flag airline picks up a passenger in Paris going to Rome, the revenue earned is far smaller than when the Italian airline picks up a passenger in New York destined to Paris, or the French line a New York-Rome passenger. The fare the American-flag carrier will earn from the transportation from Paris to Rome equals $53.20, whereas the fare the Italian carrier will earn per passenger equals $310. In order for the American carrier to earn as much from the Paris-Rome market as the Italian earns from the New York-Paris market, he must carry more than five times the number of passengers as does the Italian airline. Due to the geographic location of the United States, this country does not have parallel or compensatory opportunities.

This disparity between the United States and German airline operators by virtue of their respective geographic location was illustrated as follows: By being able to operate between Germany and India, the United States carriers may compete for only 826 German tourists to India; but the German carrier’s access to the United States permits it to compete for 9,680 United States-India travelers. Putting this in dollars, the German carrier is given a right to compete in the United States-India market of some $13,500,000, whereas the United States carrier receives only a right to compete in the Germany-India market valued at $694,000. On this basis, one is worth about 19 times the other. In a similar vein, Germany-Beirut traffic carried by United States airlines earned $78,600 a year; but United States-Beirut traffic carried by the United States carriers alone earned $1,300,000 a year, while the amount of traffic carried only by United States carriers between the United States and selected third countries—which would be third-country traffic for Germany, and for which the German airline could compete—was nearly $82 million a year. This $82 million carriage, of course, represented only a part of the market between such points available to the Germans. It can be seen how important geography was to the creation of this marked disparity.

The above gives some further indication of the potential traffic values available to the German airline under the new agreement, but estimates were also submitted of the advantages already being enjoyed by European airlines which are operating between the United States and points intermediate to and beyond their homeland. These estimates show those airlines gain $33 million from this third-country traffic to and from the United States contrasted with $12,916,000 earned by the United States carriers from traffic carried between those foreign countries and third countries.

**Comparison of estimated third-country passenger traffic carried by selected foreign-flag and United States-flag carriers over the North Atlantic, year 1953**

<table>
<thead>
<tr>
<th>Carrier</th>
<th>Secured by foreign carriers</th>
<th>Secured by United States carriers from homeland of foreign carrier</th>
</tr>
</thead>
<tbody>
<tr>
<td>KLM</td>
<td>$9,273,000</td>
<td>$53,000</td>
</tr>
<tr>
<td>SAS</td>
<td>7,839,000</td>
<td>105,000</td>
</tr>
<tr>
<td>Sabena</td>
<td>5,150,000</td>
<td>100,000</td>
</tr>
<tr>
<td>BOAC</td>
<td>3,408,000</td>
<td>2,892,000</td>
</tr>
<tr>
<td>Air France</td>
<td>4,326,000</td>
<td>3,911,000</td>
</tr>
<tr>
<td>Swissair</td>
<td>2,526,000</td>
<td>753,000</td>
</tr>
</tbody>
</table>

1 Includes New York-Mexico City 1954 figures.
A further indication of the value placed by a foreign airline on the air travel market between the United States and third countries is the advertising they support in such countries. The attached examples of ads placed in United States newspapers by foreign carriers illustrate the efforts they make to carry this fifth freedom traffic. (See appendix.)

It is illustrated further by the extracts from pamphlets used by KLM (the Dutch airline) to persuade residents of Houston and Los Angeles of their geographic proximity—not to Amsterdam, but to all the European metropolitan areas KLM serves.

It seems clear to us from the testimony presented that our generosity has curtailed United States participation in major markets of international travel. In the transatlantic travel market, for example, which represents more than 55 percent of all international travel to and from the United States (excluding transborder travel), United States-flag carriers hauled only 51 percent of this traffic in 1954 as compared with 83 percent in 1946. The fact that more than 70 percent of all travelers to and from the United States are United States residents emphasizes the significance of this situation. Furthermore, this deals with the past, and does not reflect the impact of partially implemented or unimplemented route grants, such as those to Germany.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. General observations

There is no desire on our part to see the United States unfairly or artificially restrict the growth of our foreign-flag competitors, large or small, providing they are engaged in traffic recognized as primary under the worldwide system of agreements into which the United States has freely and generously entered. They are to be respected and allowed to share in a prosperous international airline industry. Under the system of regulated competition recognized for over a decade in these many agreements, they can prosper in relation to the volume of traffic between their country and ours. Indeed, many of them are extremely formidable competitors, not only because of their inherent ability but because of their low wage rates and the support accorded them by their respective governments.

However, no foreign-flag airline competitor to the United States-flag carriers should be allowed to prosper at the expense of the United States by engaging traffic to which it does not have a primary entitlement. The United States has a legal and moral right to regulate competition of this variety, and such action cannot be considered as contrary to the general principle of liberality in international trade to which the United States properly adheres. The United States, as the leader of the free world, has a duty both to itself and to others to maintain a strong international air transport system, and at reasonable cost to the taxpayers. Under the American system, this should be accomplished by private enterprise companies which pay salaries and wages commensurate with the American standard of living.

It would be no contribution to the welfare of the free world, and certainly not to the welfare of the people of the United States, if America's international air transport system were to follow the deplorable downward path of the United States-flag maritime industry. A sound basis for avoiding such a catastrophe has existed since 1938 in the Civil Aeronautics Act, and since 1946 in the so-called Bermuda-type bilateral air transport agreements. It is only necessary to apply these two resources in accordance with their basic principles and in the light of the economic realities which will confront us over the next decade. Nothing fundamental needs to be changed,
but the policy direction, and the day-to-day decisions of those responsible for handling these matters in our Government, need to be sharply reoriented. If they are not, United States-flag carriers' now declining participation in the world air market will continue. We have tended to bargain away too frivolously the value of the United States market; this poor bargaining has resulted in the loss of American dollars to American-flag carriers. This criticism is not chauvinistic; it is based upon just plain good business sense.

**B. Specific recommendations**

1. The committee has not found any occasion to criticize the Bermuda principles. The United States is committed to the Bermuda principles; the airlines endorse them; and no feasible substitute has been suggested either in the committee or subcommittee hearings.

2. Having committed itself to the Bermuda principles, the United States should see to it that they are enforced with respect to the operations of foreign carriers, consonant with the discussions in the body of the report.

3. The United States should not make route grants which cannot economically be operated without violating Bermuda capacity principles.

4. The record before the committee pointed up the inadequacy of preparation for the German negotiations, and the great necessity for careful, thorough preparation and use of economic data in the future.

5. Under the Civil Aeronautics Act, the CAB is the agency of Government vested with the responsibility to develop an air transportation system properly adapted to the present and future need of the foreign commerce of the United States. This requires the Board to assert fully its responsibility as the principal aviation adviser to the executive branch of the Government on international air agreements.

6. Many of the inadequacies of the German agreement, we believe, result from the failure of the Government to confer with and to allow sufficient participation by representatives of the airline industry. It is important that our Government avail itself of the expert assistance within the air transport industry. The committee recommends the following principles for Government consultation with United States air carriers in connection with air transport negotiations:

   (a) Interested carriers should be advised by the Government prior to any discussions with respect to negotiations for air transport agreements.

   (b) Full and complete opportunity for discussion between interested carriers, on the one hand, and the Government, on the other, should precede any formal negotiations respecting air transport agreements.

   (c) Prior to any discussions with foreign countries respecting air transport agreements, representatives of all interested carriers should consult fully with United States Government representatives.

   (d) Prior to the formal negotiations on air transport agreements, a representative of interested carriers should be made a duly accredited member of any delegation appointed to negotiate such agreements. As a duly credited official representative of the delegation, a carrier representative should be included not only in all negotiating sessions but also in all United States delegation meetings, and be given a fair and reasonable opportunity to consult with his principals before any ultimate decision is made.

   (e) Also, throughout the negotiations, the interested carrier representative should be consulted. We cannot emphasize too strongly our view of the necessity of our Government's securing the benefit of the comment of such representatives at every stage of the negotiation.