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RATE-MAKING AND THE IATA TRAFFIC CONFERENCES

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I. THE BERMUDA CONFERENCE, 1946—BACKGROUND

As a consequence of the failure of the British and American representatives to come to a complete economic agreement during the Chicago Conference, late in 1944, an inter-governmental conference of the two powers met in Bermuda in January, 1946, and concluded the Agreement relating to Air Services between the United Kingdom and the United States of America, signed on February 11th, 1946.

The principles expressed in the Resolution of the Final Act of the Bermuda Conference are well known and it is not within the scope of this article to explore them further than is necessary to show their effect on rates. It was agreed “that the two Governments desire to foster and encourage the widest possible distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles” (Emphasis supplied throughout) and “that there shall be a fair and equal opportunity for the carriers of the two nations to operate on any route between their respective territories.”

These principles were developed further in Annex II of the Bermuda Agreement which declares that rates shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other air carriers.

The Bermuda Agreement was a compromise between the British and American views but, since this is the first time in any air transport agreement that an undertaking regarding rates appears, it represents great progress in the development of international rate making.

Annex II of the Bermuda Agreement can be considered as a set of rules to safeguard the principles expressed in the Final Act of the Bermuda Conference, and as a guaranty of reasonable rate control over international air carriers, the stipulation that “all rates to be charged

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* The opinions expressed in this article are those of the writer and do not necessarily represent the official point of view of the International Air Transport Association (IATA).

1 "(h) The rates to be agreed in accordance with the above paragraphs shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by other air carriers.” Agreement between the Government of the United Kingdom and the Government of the United States of America, relating to Air Services between their respective territories, Bermuda, 11 February, 1946 (Bermuda Agreement), Annex II, ¶(h).
shall be subject to the approval of the Contracting Parties within their respective Constitutional powers and obligations" 2 expressly reserves the right to each contracting party to disapprove any rate proposed by the other's carriers. Thus the control over any operation between the respective territories is finally exercised by the contracting states.

APPLICATION OF THE RATE PROVISIONS

It is provided in Annex II, Para. (a), of the Bermuda Agreement that the respective regulations concern only rates to be charged between points in the territory of the United States and points in the territory of the United Kingdom. Thus, it appears that the contracting parties restricted themselves to some extent and, purposely or not, failed to apply the rate provision between points outside their respective territories. If the structure of rate regulations in the Annex is to be looked at from this rather narrow point of view, the question arises as to what law and regulation are effective in respect of rates of flights which:

(a) originate in points in a third country,
(b) terminate in points of a third country,
(c) originate in country A, fly through one or both of the contracting parties' territories and terminate in country B.

Difficulties are bound to arise and, when one of the contracting parties disputes a through rate, there appears to be no procedure in the Agreement for remedial action. Thus, there has recently arisen a situation in which an American carrier filed a competitive rate from London to Sydney via New York which was protested by British and Australian operators providing service between the same two points, but via the Middle East. While there was much comment, there appears to be little opportunity for redress under the terms of either the Bermuda Agreement or the United States-Australian Agreement. Admittedly the route originates in London, under the terms of the Bermuda Agreement, and terminates in Sydney under the United States agreement with Australia, but neither agreement covers the through rate for the whole route. In the same way, British and Australian companies could, if they wished, offer a competitive fare to Americans from the East Coast of the United States to Sydney, via London. Under the present regime, the situation is such that no single Traffic Conference of the International Air Transport Association can dispose of it; agreement on a through rate of this kind must be reached through composite meetings of all three IATA Traffic Conferences.

2 "(a) Rates to be charged by the air carriers of either Contracting Party between points in the territory of the United States and points in the territory of the United Kingdom referred to in this Annex shall be subject to the approval of the Contracting Parties within their respective constitutional powers and obligations. In the event of disagreement, the matter in dispute shall be handled as provided below," Bermuda Agreement, Annex II, ¶(a).
In Annex II, Para. (b) of the Bermuda Agreement, it is declared that:

1. the CAB of the United States had announced its intention to approve the IATA rate conference machinery for one year, and
2. any rate agreements concluded through this machinery during that period would be subject to Board approval if they involved American-flag operators.

Approval of the IATA conference machinery by the United States came as a result of lengthy consideration. Under general American law, a carrier participating in an agreement to fix rates, frequencies or capacities would be subject to possible prosecution under the antitrust statutes. Nevertheless, the conference method of rate-making received favorable recognition in the Shipping Act of 1916, which contains provisions indicating that Congress foresaw use of this device and making such agreements subject to the approval of what is now the Maritime Commission. It has also been accepted by Shippers, Regulatory Commissions and Carriers in Rail Transport.

Similarly, while no specific procedure for reaching rate agreement is mentioned in the Civil Aeronautics Act of 1938, Sec. 412 requires that agreements between air carriers be filed with the Board and Sec. 412 (b) makes them subject to CAB approval. If the Board does not find an agreement entered into by a U.S. airline against the public interest.

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3 "(b) The Civil Aeronautics Board of the United States having announced its intention to approve the rate conference machinery of the International Air Transport Association (hereinafter called IATA), as submitted, for a period of one year beginning in February, 1946, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval by the Board." Bermuda Agreement, Annex II, ff.

4 "Every common carrier by water, or other person subject to this chapter, shall file immediately with the commission a true copy . . . of every agreement, with another such carrier or other person subject to this chapter . . . fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges, or advantages; . . . or in any manner providing for an exclusive preferential, or cooperative working arrangement. The term 'agreement' in this section includes understandings, conferences, and other arrangements." 39 Stat. 733 (1916), 46 U.S.C.A. §814 (1944).

5 "The Authority shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Authority may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it." (As amended by Act of May 16, 1942, 56 Stat. 301.)
approval follows and carrier is relieved from operation of antitrust laws by Sec. 414 of the Act of 1938.

CAB Control of International Rates

That Act empowered the Board to determine fair and reasonable rates of pay for flying the mail, fix different rates for different air carriers and different classes of service, and to remove discriminatory, preferential or prejudicial rates. It must be noted, however, that the CAB has no direct control over rates of U.S. carriers operating internationally, although it has requested amendment of the Act to secure such power.

It is provided in Sec. 1002 (d) that the Board may prescribe only a just and reasonable maximum and/or minimum rate, fare or charge for

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6 An important pronouncement of Congressional policy in such matters is incorporated in Section 414 of the Civil Aeronautics Act:

"Any person affected by any order made under Sections 408, 409 or 412 of this Act shall be, and is hereby, relieved from the operations of the 'antitrust laws,' as designated in Section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order."

7 Civil Aeronautics Act of 1938, §401.

8 "(b) In fixing and determining fair and reasonable rates of compensation under this section, the Authority, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers and different classes of service. In determining the rate in each case, the Authority shall take into consideration, among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail; together with all other revenue of the air carrier, to enable such air carrier under honest, economical and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense." §406(b).

9 "(f) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Authority shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or fare, or charge or the value of the service thereunder, is or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Authority may alter the same to the extent necessary to correct such discrimination, preference or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial classification, rule, regulation or practice." §1002(F).

10 It is quite obvious that the control of rates in foreign air transportation was excluded from the scope of power of the CAB and that is further evidenced in Section 404(c):

"The Authority is empowered and directed to investigate and report to the Congress within one year from the effective date of this section, to what extent, if any, the Federal Government should further regulate the rates, fares, and charges of air carriers engaged in foreign air transportation, and the classifications, rules, regulations, and practices affecting such rates, fares, or charges.

11 See 1948 Annual Report of CAB, 13, and 1947 Report 12 as well as 1946 Report 12 for some examples. See H.R. 2911 and §12(a) of S. 237 introduced by Representative Kennedy and Senator Johnson respectively, in the 81st Congress, 1st Sess., to implement the request.
overseas air transportation by American operators. The only substantial power that the Board possesses over the rates of the United States international carriers is when the United States air carriers enter into rate agreements with each other or with foreign air carriers. Under such circumstances, “the Board may approve or disapprove the rates embodied in such agreements.” Thus, because rates became the subject of the agreements, the Board indirectly acquired more power over United States international carriers than had been conferred directly by the Act. It should be emphasized, however, that this control over international rate agreements is still not as great as that possessed over domestic transportation where the power to fix rates is specifically granted.

The Civil Aeronautics Act has been interpreted in different ways. The official point of view on competition is expressed in the following opinion of the Board:

“The competition contemplated by the Civil Aeronautics Act is not the unlimited and uncontrolled competition which permits destructive rates having no relation to the cost of operation but having the power to provoke subsidy wars among nations. The Civil Aeronautics Act as construed by this Board regulated competition which seeks to avoid the stifling influence of monopoly on the one hand and the economic anarchism of unrestrained competition on the other.”

The conception incorporated in the above-quoted opinion is inherent in the Board’s opinion approving the Traffic Conference machinery of IATA:

“We cannot accept without proof the proposition that the present resolution, which establishes the only presently available machinery whereby the United States Government through this Board can share and have a voice in the regulation of the rates of our international air carriers, is inconsistent with that policy of controlled competition which the Civil Aeronautics Act contemplates. How are we disposed to declare without proof that the full benefits of competition, including the gearing of rates in international air transportation to the costs of the most efficient operator, will be realized under the procedure of consultation and agreement between the international air carriers? We refrain, therefore, from prejudging on this ground a proposal that is both assailed and supported by only theoretical considerations.”

This position was reaffirmed by the Board in 1947 and in 1948, when the Board again found that participation by American flag carriers in the IATA Traffic Conferences would not be against the public interest or in violation of the Civil Aeronautics Act, thereby continuing its temporary approval which commenced in February, 1946, and termi-

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nated in February, 1947, to February, 1948\textsuperscript{14} and later to February 28, 1950.\textsuperscript{15}

The requirement incorporated in Paragraph (b), Annex II of the Bermuda Agreement that agreements concluded through IATA Traffic Conference machinery need to be approved by the CAB is of great importance. Its purpose is to extend the power of the CAB over the international operations of United States carriers.

There is a further effect of the Board’s reservation to approve or disapprove the agreements reached by the American carriers through the IATA Conference machinery. It reserves the right to the U.S. Government to exercise a final control over the participation of its carriers in an international body, without which this latter could validly bind the U.S. carrier, and consequently affect indirectly the U.S. public without any check or balance. It seems that this proviso aims at conferring upon the CAB a control similar to that possessed by other foreign governments’ aeronautical agencies.

The international importance of the question lies in the belief that the government, by having control over the rates of its own carriers, will prevent uneconomic rate-cutting and thus avoid international conflicts.

There is no approval of IATA Conference machinery expressed by British authorities because there is no need for such approval, the United Kingdom not having legislation similar to Section 412 (b) of the Civil Aeronautics Act; nor has the United Kingdom antitrust laws, necessitating a previous approval of the machinery which provides means for rate agreements. However, as previously mentioned, in Paragraph (a), Annex II, of the Bermuda Agreement, it is provided that rates are subject to government approval.

British carriers can participate in conferences without breach of any domestic law. This consideration throws some light on why British authorities found participation in the IATA Traffic Conferences one solution to the problem of unlimited competition; they held the view that the different national carriers, in participating in this machinery would exercise the best control over those efforts which were aimed at the elimination of uneconomic rate-cutting.

To sum up, the United States Delegation entered into the Bermuda conversations at a disadvantage. The Government of the United Kingdom had full authority to regulate the rates of its own flag carriers leaving the United Kingdom for other countries and the rates of the carriers of other flags entering the United Kingdom. But the United States Government had direct authority over the rates of foreign carriers coming into the United States. Except by indirect methods, it could not influence the rates which American international carriers charged.

\textsuperscript{14} Agreement CAB No. 493 (Ser. E-269, Jan. 31, 1947).
\textsuperscript{15} Agreement CAB No. 493 as revised by Agreement CAB No. 1175 (Ser. E-1227, Feb. 20, 1948).
Thus, when the two governments stated in the Bermuda Agreement that they had the right to approve or disapprove the rates charged by the carriers, this expression actually affected only the United States.

The peculiar character of American legislation had put the Civil Aeronautics Board deliberately in a position where the only way it could have any real check on the rates charged by its own airlines was through its power to approve agreements between carriers, who were, as a result, exempted from the operation of the antitrust laws. It might be of some interest to note that in connection with the power conferred upon the Board in Section 404 (c) of the Act, the Board in 1939 recommended against control of rates in foreign air transportation. It now favors control.\textsuperscript{16}

Without this power, and without the Traffic Conference as machinery, the Board would have less direct authority over the rate policies of an American flag carrier than any one of a large number of foreign governments.

\textbf{Substitution for IATA Traffic Conference}

The Bermuda Agreement foresaw certain circumstances,\textsuperscript{17} where, if no IATA Conference machinery were available, a rate agreement was not approved within a reasonable time by either contracting party, or, finally, if either contracting party withdrew or failed to renew its approval of that part of the Conference machinery relevant to the provision, it would be necessary for the contracting parties to use a substitute procedure described in Paras. \textsuperscript{(e)} and \textsuperscript{(f)} of Annex II of the Agree-

\textsuperscript{16} See note 11, supra.

\textsuperscript{17} "(d) The Contracting Parties hereby agree that where—

(1) during the period of the Board's approval of the IATA rate conference machinery, either any specific rate agreement is not approved within a reasonable time by either Contracting Party, or a conference of IATA is unable to agree on a rate, or

(2) at any time no IATA machinery is applicable, or

(3) either Contracting Party at any time withdraws or fails to renew its approval of that part of the IATA rate conference machinery relevant to this provision,

the procedure described in paragraphs (e), (f) and (g) hereof shall apply.

"(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 (c) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its
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ment. For the purpose of this substitute procedure two periods are distinguished, one before and the other after the Board has been given the power, by law, to regulate international rates.

The first divergence between the two periods is, that while in the second period it is agreed that each of the contracting parties, if in the judgment of their Aeronautical Authorities a rate proposed by one of its carriers is unfair or uneconomic, shall exercise its authority in such manner as to prevent such rate from becoming effective.

The distinction between these two periods becomes significant if one of the contracting parties is dissatisfied with the way in which the other has exercised its control. In this case, if upon receipt of notification (thirty days before the proposed date of introduction) one of the contracting parties did not agree to the new rate proposed by the air carrier of the other contracting party, it could so inform the other in a given period (before the expiry of the first fifteen of the thirty days referred to above). Both contracting parties thereupon would try to reach an appropriate rate agreement at a government level and if such an agreement were reached, in the second period both would use their statutory powers to make such agreement effective. In the first period, however, the contracting parties only agree that they “will use their best efforts to cause such agreed rate to be put into effect by its air carrier or carriers.” Thus, because one of the contracting parties has no statutory power over international rates, no reference is made to such power.

The distinction between the two periods is still more important if no agreement is reached by the government authorities at the end of the thirty day period.

In the second period, the disputed rate may go into effect and the only party who can prevent its operation is the government authority of the country of the air carrier concerned—the other government authority has no veto right over the temporary introduction of a disputed rate pending the settlement of the dispute. The position is completely reversed in the first period where the objecting party may prevent the inauguration of the service in question.

“(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 (c) 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.” Bermuda Agreement, Annex II, (d), (e) and (f).
Thus, in the second case, the party who raised the objection is obliged to permit the provisional operation of the contested rate, whereas in the first case, he may bar the operation of the disputed service.

This distinction already appears not to be negligible but the emphasis in the last paragraph of Annex II\(^{18}\) on the promise of the Executive Branch of the Government of the United States “to use its best efforts to secure legislation empowering the aeronautical authorities of the United States” to fix rates relating to international transport comparable to that manner in which the Board at present is empowered to act with respect to domestic transportation is the best proof that effective government control of international civil aviation was desired, not only by the United States authorities, but as well by the United Kingdom authorities. Both the U.S. and British Governments were anxious to have the CAB acquire effective control over the international operations of American flag carriers.

**SETTLEMENT OF DISPUTES**

In case the parties fail to reach agreement\(^{19}\) through direct consultation upon the request of either, both agree to submit the question for an advisory report to PICAO, or its successor, ICAO, and to use their best efforts under the powers available to them to put into effect the opinion expressed. “Advisory report” seems a rather cautious expression of the final result of an international settlement but as no precedent has been created its interpretation cannot be given with any certainty.

This stand of the parties regarding disagreements is of great importance. It reflects the serious differences in concept which existed between some of the European countries and the United States in the Chicago Conference of 1944. The United States, at that stage, was not prepared to accept the economic rule of an international tribunal. In the Bermuda Agreement, however, it appears that some concession was made toward acceptance of authority of an international agency. The articles regulating disputes in the later bilateral agreements show whether or not the United States’ point of view has advanced further and how the British concept developed.

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\(^{18}\)“(j) The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering 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.” Bermuda Agreement, Annex II, ¶(j).

\(^{19}\)“(g) When in any case under paragraphs (e) and (f) above the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the air carrier or carriers of the other Contracting Party, upon the request of either, both Contracting Parties shall submit the question to the Provisional International Civil Aviation Organization, or to its successor for an advisory report, and each party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.” Bermuda Agreement, Annex II, ¶(g).
The problems involved are as follows:

1. the nature of the tribunal,
2. the authority and type of decision of the tribunal, and
3. temporary remedies and sanctions.

A detailed analysis of various methods of handling disputes is hardly necessary here. As a practical matter, it is apparent that the machinery now used to reach rate agreements has successfully fulfilled the expectations of the nations which have expressly or implicitly approved it. Those disputes which have occurred have been localized. The process of hammering out an agreement to raise or lower a rate has been confined to the Conferences, where the individual interests of the carriers and, indirectly, of their governments, can be safeguarded without recourse to open economic warfare.

The successful operation of the Conferences has been recognized, not only by the bilateral agreements negotiated since Bermuda, but also by the text of the Draft Multilateral Agreement. Since the states who would be parties to this agreement have already acknowledged and adopted its principles in their bilaterals, adoption of the multilateral by them should not be difficult.

The differences between the various concepts of settlement of rate disputes has had no practical importance to date, but it might have serious effects upon the goodwill of states, particularly in the case of an advisory report which could not be put into effect because of a lack of "available domestic powers." The solution proposed in the Draft Multilateral Agreement, however, seems sound and, if generally accepted, offers a restatement in international transportation of the principle that every state is equally bound by its contracts and that the undertakings of the states are equally enforceable against all contracting parties.

II. IATA TRAFFIC CONFERENCES

The bilateral agreements repeatedly recognize the existence and authority, the machinery and recommendations of the Traffic Conferences of IATA. These Conferences have frequently been the subject of discussion, argument and criticism, but no substitute has yet been offered that would be acceptable to all governments concerned.

Before the Bermuda Conference, three suggestions to end the unregulated rate situation were discussed. These were:

1. to subject rates to the approval of an international aeronautical agency, on a governmental level;
2. to fix every international rate by means of a bilateral agreement (without creating an international agency);
3. the procedure adopted by the bilateral agreements for settling disputes is duly summarized in "Bilateral Agreements—Chicago Type," ICAO Doc. AT.526 23/10/47, and elaborated by Ludwik Rabcewicz-Zubkowski, "Le règlement des différends internationaux relatifs à la navigation aérienne civile." Revue Française de Droit Aérien No. 4.
(3) to fix rates by agreement among the carriers operating in a
given region.

The first suggestion was not new; it had been considered previously
at Chicago where the American representatives objected on the grounds
that there were, at that time, no set principles to serve as a guide for
such an international agency, and that the decisions of the agency
would be ineffective because they would not have the backing of law.

While there was no likelihood at Chicago that such an agency would
be established, there was some discussion of how it might operate. It
was suggested that it could fix rates on the principle of the "costs of the
most efficient operator," but the general reaction seemed to be that it
would be improbable that such a governmental agency could determine
who the most efficient operator was and what its costs might be.

There were, it was pointed out, quite wide differences in standards
of living between countries. Some airlines were government enter-
prises, either in ownership or control, and might not be required to pay
taxes or to seek their capital in the open market. Airlines might also
be assisted by hidden subsidies and benefits, such as free use of airports,
radio aids and navigation facilities; government-financed training or
equipment purchase; and other cost reducing factors. In the domestic
field, these factors might be open to investigation by a national govern-
ment but before an international tribunal attempting to determine a
rate, they might well be closely guarded secrets whose withholding
could unduly influence the international rate structure.

In short, the powers which an international rate-making agency
would need in order to operate satisfactorily constituted a yielding of
national sovereignty to an extent which few nations were willing to
countenance.

In considering the suggestion that rates be determined at a govern-
ment level without the establishment of an "International Civil Aero-
nautics Board," it must be realized that rate-making on an international
level, even between two countries only, is a complicated matter. It is a
highly specialized function, which must be exercised by well-trained
specialists, and must take into consideration a great many conflicting
points of view, both national and international.

The conflict of these interests could be only solved through the
negotiation of further bilateral agreements with countries indirectly
interested in the rates on a given route. It is doubtful, however,
whether such a system could operate with the elasticity required in the
formulation of rate agreements. By the time a series of bilateral agree-
ments could be drawn up and agreed upon, the situation underlying
them might be completely changed, thus requiring new rate agree-
ments and a reopening of the entire procedure.

The third suggestion, to leave rates to agreement among carriers,
had practical advantages. The consideration that the operators are
those who have the greatest experience in the rate-making field and have the personnel required for the efficient handling of rate questions, led to the conclusion that the practical solution of the unsatisfactory open rate situation was to let the carriers make their own agreements through the already established IATA rate conference machinery. This position was adopted in Bermuda and has been reaffirmed since by the majority of the countries engaged in international air transport operations.

In turning to the work of the Traffic Conferences, it should be kept in mind that the principles established in the Bermuda Agreement are those which govern the Conferences.

In order to appreciate fully the progress and machinery of the Conferences, two general points should be kept in mind: first, the Traffic Conferences have only been working for a few years and their procedures, rules and approach to problems are under constant development. The aim to achieve better transportation at lower rates is coupled with the endeavor to establish more efficient procedures and to achieve these aims in the shortest possible time.

Second, it must be recognized that reasonable uniformity is an important aid to more economical operation. The Traffic Conferences have adopted this principle and their resolutions are to a great extent influenced by it. The question of how far uniformity is reasonable is rather arguable and only future experiences will prove whether the limits adopted by the Conferences will be practical and what modifications, if any, may be necessary.

**Areas, Regulations, Authority of the Conferences**

The machinery of the IATA Rate Conferences is set down in the "Provisions for the Regulation and Conduct of the Traffic Conferences."

The world is divided into three Traffic Conference areas, which may be described as follows:

Traffic Conference No. 1. Encompassing all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and islands of the Caribbean Sea; the Hawaiian Islands (including Midway and Palmyra).

Traffic Conference No. 2. Covering all of Europe (including that part of the Union of Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; that part of Asia lying west of and including Iran.

Traffic Conference No. 3. Including all of Asia and the islands adjacent thereto except that portion included in Traffic Conference No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; the islands of the Pacific Ocean except those included in Traffic Conference No. 1.
In addition to rates, the Traffic Conferences are authorized to consider and resolve all traffic matters involving passengers and cargo in their respective areas. Every active member of IATA operating in the territory of each Traffic Conference enjoys the right of a voting membership in that Conference.21

The authority of the Conferences is derived from the IATA General Meeting and, according to their Provisions, the aims, objectives and purposes of the Conferences are those of IATA: to promote safe, regular and economic air transport, to provide means for collaboration among the air transport enterprises; to foster air commerce and to study the problems connected therewith; to cooperate with the International Civil Aviation Organization and other international organizations.

A great part of the preliminary work of the Conferences is carried out by their permanent Sub-Committees, of whom two should be mentioned here: The Costs Sub-Committee and the Fares, Rates and Charges Sub-Committee.

The duties of the Sub-Committees are usually prescribed at the time of their creation. Their recommendations are considered and acted upon by the Traffic Conferences.

**MEETINGS, VOTING**

In connection with the formalities of the meetings of the Traffic Conferences, at least thirty days' notice must be given before the date fixed for the meeting, an Agenda must accompany this Notice of Call, and all members have the right to request that matters be placed on the Agenda.

The Traffic Conferences reach their final agreements through voting, which is carried out by the accredited representatives of each member. Regarding rates, action may be only taken upon the unanimous affirmative vote of the members represented at any meeting. The failure of any member present at a meeting to vote is expressly deemed to be an affirmative vote.

This unanimous agreement appears to be a basic protection for all members concerned and represents a serious guarantee to the governments whose airlines are members of Conferences. Individual Conference members may take independent action, and other carriers cannot bind a dissenting member by their eventual agreements. Perfect

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21 1. Each Traffic Conference may consist of two classes of members, voting and non-voting. Each active Member of IATA which operates scheduled commercial international air transport services between two or more points within the area of any Traffic Conference shall be a voting member of that Traffic Conference.

2. Each active Member of IATA which has scheduled commercial international air transport operations between a single point within the area of one Traffic Conference and one or more points in another Traffic Conference area shall be qualified for voting membership in both of such Traffic Conferences and must become a voting member of one of them.

3. Any Member of IATA may become a non-voting member of a Traffic Conference in which it cannot qualify as a voting member upon its request to the Secretary of such Traffic Conferences.
protection against actions contrary to its interest is afforded the individual carrier because:

(i) no matter can be acted upon unless it has been notified to all members thirty days in advance of the meeting;

(ii) every member has the right to be represented at all Conference meetings;

(iii) any individual Conference member can veto a resolution with which it disagrees.

There are detailed provisions incorporated in the regulations of the Conferences for action by mail, for procedures to be followed at single and joint Conference meetings, for presiding officers, and for voting and non-voting membership. The amendment of these provisions has been left to the Executive Committee of IATA, which has from time to time approved changes to adapt Conferences to the needs of practical experience.

**DISPUTES**

It is difficult to determine what remedies are available to the carriers in the courts of various countries for a breach of agreement reached at the Conferences. Certain countries would undoubtedly uphold rate agreements, while others might not necessarily do so. It is, therefore, evident that carriers have been compelled to attempt a system of self-regulation to safeguard their agreements.

Every member of a Conference may stop Conference action by exercising its right to veto the agreement concerned, but if no such veto is expressed each Conference member expects the others to comply with the agreement. It is evident that a breach of a Conference agreement is not an act of free competition, but an entry into unfair competitive practice, against which other parties to the agreement must be reasonably protected. The machinery of the Conferences would be largely ineffective if no protective regulations were incorporated. The discovery and penalizing of breaches of Conference resolutions has a rather lengthy history in shipping and rail transportation, but only the system adopted by the IATA Conferences will be considered here.

According to the present Provisions, any member or members of a Conference who believes that another member has violated a Conference agreement can demand the appointment of an investigatory commission. This commission, acting under the authority of the IATA Executive Committee, can settle its own procedure. Conference members are required, upon the request of the commission, to furnish it with any relevant information. The commission is then authorized to reach a decision based upon the issues and evidence placed before it and to impose upon any carrier found guilty of a breach of obligation certain penalties prescribed by the Annual General Meeting of IATA.
The carriers involved on either side of such a case have the right to appeal a commission decision within sixty days to the IATA Executive Committee. This group is given the final word in approving, disapproving, reducing or modifying the decision and penalty of the commission. When a case has been finally determined, a full report of the matter is to be circularized to all the members of the Conference concerned.

Although there has been little need for this procedure since its incorporation in the Provisions, its existence as a possible deterrent to breaches of Conference resolutions has a practical value.

**Principles and their Affect on Rate Agreements**

There are at least two basic principles on which a rate structure could be built:

1. charging the highest rates that the traffic can bear;
2. fixing rates in relation to reasonable cost and profit figures.

The first of these principles has been largely rejected in international air transport practice. While the emergent need for transportation and communications in the years immediately following the war made it possible for the airlines to increase their rates without losing custom, they did not avail themselves of it. Instead, with the encouragement of states and of international organizations, the carriers have concentrated upon improvements in efficiency and reductions in rates to make air transport services available to the broadest possible market.

The effort to bring rates into relationship with costs has been a process of continuous development. When the old North Atlantic Traffic Conference held its first meeting in February, 1946, it was found that no appropriate cost figures were available for rate-making purposes. It was then necessary to develop a standard form for collecting cost data, but the successful drafting of such a form was not in itself enough to assure their availability. In some cases, some of this data was considered as confidential from either a national or commercial point of view, and special procedures for its confidential disclosure and transmittal had to be developed. In others, the accounting procedures of the airlines themselves had to be expanded or changed to gather the information required.

It was recognized that routes were broadly divided into those which lay entirely inside the boundaries of a single Conference area and those which ran between points in two or more Conference areas — in brief, into intra-Conference and inter-Conference categories.

Since the majority of world routes break down into regional operations, with varying operating characteristics in each region, it was seen that intra-Conference routes must be further sub-divided.
IATA RATE-MAKING

It was decided that the costs of east-west inter-Conference routes would be based on the costs of the round-the-world trunk routes, even though these routes might not, in some cases, follow the exact trunk pattern. Further, since it was evident that carriers who operate only along one sector of the trunk routes were entitled to some voice in the determination of trunk rates, these main routes were divided into three sectors:

(i) North American to European gateways;
(ii) European gateways to Calcutta; and
(iii) Calcutta to the West Coast of North America.

To make cost reports consistent in all three Conference areas, differentiation had to be made between basic factors\(^2\) and secondary considerations in airline operating costs, and it was recognized that there were still other considerations, which, while not entirely predictable, have an important influence on international air transport cost figures. These include such matters as grounding of equipment, delay in deliveries of new equipment, difficulties in obtaining spare parts, currency fluctuations, changes in wages and commodity prices, alterations in organizational structure, variations in anticipated available payload and other factors which had to be considered in cost calculations.

The Civil Aeronautics Board and the Ministry of Civil Aviation appear to be conscious guardians of the principle incorporated in the Bermuda Agreement that rates should be reasonable. The Civil Aeronautics Board’s Order extending its approval of the IATA Conferences to February 28, 1950, gave detailed consideration to the rate-making process and to the character of the economic data relied upon by the Conference in reaching individual rate resolutions.

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\(^{22}\) (a) The major operating factors are: the average number of aircraft, total flight hours (less non-revenue hours), net revenue flight hours, average speed, revenue kilometres (great circle kilometres, course flown), average saleable capacity for full period, saleable metric ton kilometres, flight equipment depreciation. The overall load factor for this purpose is the quotient obtained by dividing revenue ton kilometres flown by saleable ton kilometres.

(b) The elements of cost are: (1) Flying operations (crew salaries, expenses and insurance, fuel and oil, insurance, aircraft and public liability insurance, flight equipment rental); (2) Aircraft maintenance (direct labour, including labour expended in aircraft engine maintenance and repair, materials and outside repairs; overhead, including supervisory personnel and all other indirect expenses in operation and maintenance); (3) Depreciation of flight equipment; (4) Station and ground operation (landing charges, salaries, wages and expenses, other airport and station costs); (5) Passenger service (cabin attendants’ salaries, expenses, passenger liability insurance, meals and accommodation); (6) Selling and publicity (agency commission, advertising and publicity); (7) Administrative and general office charges, salaries, expenses, fees; (8) Capital charges, including interest on debt, income taxes, amortization of development expenses and provision for profit.
The Council of ICAO, in accordance with the provisions of the Chicago Convention approved Statistical Reporting Forms, specified as Table T.2 (Traffic Summary) and Table F.2 (Operating Summary), and the Civil Aeronautics Board requested that the rate resolutions reached at IATA Traffic Conferences be supported by the minimum information provided by these forms.

It is the opinion of the Board that "neither the members of IATA nor the reviewing agencies or their respective Governments can adequately appraise the economic soundness of rate resolutions except upon consideration of such minimum data." It might be suggested that one of the reasons which prompted the Civil Aeronautics Board's request to the carriers lies in the fact that many of the signatory countries to the Chicago Convention and members of ICAO had failed to provide the information on a governmental level.

** PRIMARY QUESTIONS BEFORE THE CONFERENCES **

While the whole work of the IATA Traffic Conferences cannot be fully examined in the course of this study, it will be appropriate to touch upon the main headings with which they deal.

The most important issues before the Conferences are those of basic rates and specified fares. Rates for scheduled operations are agreed upon by resolution and are recognized as minimum, but not maximum rates.

These agreements are further complicated by the international character of the Traffic Conferences. Provisions relating to currency questions — in themselves too complicated for exploration here — must be introduced. "Conversion rates" must be established to make possible the translation of rates from the currency agreed upon in the first instance (in Conference No. 1, the United States dollar, and in Conference No. 2, the pound sterling) to the local currencies of the individual carriers. Since international carriers do business in more than one country, there must be provision for further recalculation of rates into other currencies, so that exchange rates must also be agreed upon by resolution. It has been necessary also to introduce some restrictions based upon current complications of international exchange: for example, non-residents of a country in which a ticket is sold must pay their fares either:

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28 Art. 67 of the Chicago Convention contains the following important undertaking:

"Each contracting State undertakes that its international airlines shall, in accordance with requirements laid down by the Council, file with the Council traffic reports, cost statistics and financial statements showing among other things all receipts and the sources thereof."

According to Art. 54 of the Chicago Convention, one of the mandatory functions of the Council is:

"(i) Request, collect, examine and publish information relating to the advancement of air navigation and the operation of international air services, including information about the costs of operation and particulars of subsidies paid to airlines from public funds."
(a) in Portuguese escudos, Swiss francs or United States dollars;

(b) in the currency of the country of residence of the passenger (if not prohibited by law in the country of sale); or

(c) in the currency of the country of sale (with the exception of passengers residing in certain countries who must prove that the currency has been obtained at the official rate).

The only exceptions to the rates agreed in the "Specific Fares and Rates" resolutions are in connection with the round-trips, circle trips, open-jaw trips, excursion fares, free and reduced rate transportation for agents and tour conductors, privileges of stop-over, all of which are discounts, and sleeper surcharges, which call for increase in fare.

In addition to providing for specific rates and fares between certain points, it was foreseen that the carriers would have to establish other rates and fares. So that these unspecified rates would not, either alone or in combination with others, undercut the specific rates, certain precautions were taken. It was provided that unspecified rates would be constructed in conformity with existing Conference resolutions, that their validity would expire with the specific rate resolutions, and that the carrier wishing to establish such an unspecified rate must notify the Secretary of the Traffic Conference concerned in advance of such action.

The Conferences also agreed upon regulations for the construction of inter-Conference rates and for the adjustment of through rates to meet combinations of intermediate rates.

Inter-Conference rate construction is, under present resolutions, governed by the following two principles:

(a) establishing rates between specified gateways and adding to them the agreed Conference fares to and from such gateways; and

(b) establishment of through fares on the basis of a distance curve by agreement among the carriers concerned.

The carrier establishing inter-Conference rates may choose between these two principles.

Where there is a discrepancy between the through rate between two points and the combination of rates established for service via intermediate points, the Conference regulations provide that the through rate may be adjusted downward to the sum of the intermediate rates. Should such a reduction be necessary, however, thirty days' notice must be given to other Conference members before its introduction.
All of the arrangements so far mentioned apply to the scheduled operations of the carriers. In charter operations, they are left free to do as they please, with the exception of a safeguard against eventual rate-cutting through such charter operations. It has been agreed by the Conferences that all charter agreements must contain the stipulation that the party to whom the space is sold will not resell it to the general public for less than the IATA rate; that members will not undercut Conference rates by operating charter services; and finally, that charter prices charged by members will be calculated on a complete plane-load basis. Governments or government-sponsored organizations are, however, exempted from these regulations in the event the charter concerns the transportation of immigrants and displaced persons. Even in this case, however, the charter price must be calculated on a complete plane-load basis.

In the construction of cargo rates, a distinction has been made between low density cargo, which has bulk, but little value, and cargo of particularly high value, which must be given special treatment. Quantity discounts, common to all other forms of transport, were introduced and agreed upon, as were commodity rates for high value cargo.

These are by no means a complete catalogue of the various kinds of rate resolutions, nor have those mentioned been fully explored. They will, however, give some idea of the complexity of the problems and procedures necessarily treated by the Conferences.

**DATE OF EFFECTIVENESS OF RATE AGREEMENTS**

In reviewing the bilateral agreements, it was pointed out that the respective governments reserved the right to exercise a control over the rates the carriers sought to introduce. The mechanics of the Conferences have been seriously affected by this requirement, especially in the light of the Conference rule that no carrier is bound by a resolution if its government disapproves it, or if it is against its national policy.

The purpose of the Conference method is to achieve resolutions which can be subscribed to by all the participating carriers and which are effective and binding on all the members. This aim might be seriously endangered by the facts:

(a) that there is no definite time limit set or agreed by the governments for the expression of their approval or disapproval; and

(b) that, since it is quite natural that no carrier is willing to make an agreement effective unless reasonably certain that the others will be able to get their government's approval to do the same, a rate cannot be announced as
effective before all governments concerned have approved the resolution.

This serious question of the effective date of Conference resolutions is further complicated by the different concepts of European and United States carriers concerning public policy.

United States carriers took the position that their government agency cannot be limited in its action and that every agreement reached by the Conferences could be adopted only "subject to government approval." On the contrary, the European carriers felt that such an expression would render Conference work ineffective, as governments may not express their opinion regarding an agreement in any reasonable time, and they continued the practice of prescribing a date of effectiveness of their resolutions prior to which any government might express its approval or disapproval.

At Rio de Janeiro, where the first composite meeting of the three Traffic Conferences was held in 1947, the opposing viewpoints were brought into sharper focus. It was contended that practical operating experience demonstrated that it was a most undesirable arrangement to make agreements come into effect at an indefinite date in the future. The only practical and realistic approach to the problem, it was argued, was to arrange that agreements affecting the business of air transportation would come into effect at a definite date, as close to the time of agreement as possible.

The record of government action in passing upon IATA resolutions appeared not to have been satisfactory. Sometimes delay was occasioned by one government and sometimes by another, but, in each case, operators suffered the cumulative effect of such delay.

A compromise was finally reached in Rio de Janeiro, which provided that:

(1) Pure rate resolutions were to continue to be "subject to Government approval."
(2) Mixed resolutions related to rates were to come into effect on a specified date, allowing governments a reasonable period of time in which to approve or disapprove the resolutions before they became effective.
(3) Non-rate resolutions were to come into effect immediately.

This arrangement appeared only to be a partial solution and in 1948 at the Bermuda meeting of the Conferences, the question was considered again. It was agreed there to deviate from the three-fold distinction between different subjects and to adopt a uniform procedure for determining the dates of effectiveness of all kinds of agreements.

Generally, the resolutions with respect to effective date provide that the carriers are responsible for obtaining their governments' approval
of agreements within a forty-five day period immediately following December 31, 1948 (filing period); that, if during the filing period the respective government neither expressed itself nor requested an extension of the filing period, the machinery would start moving and the announcement and effectiveness dates would be specified by the secretaries of the Traffic Conferences. The announcement date was set at fifteen days following the date of this notification by the Conference secretary and it was agreed that no member would publicly announce the arrangements made by the agreement before that time. The effective date of the agreement is set at forty-five days after the date of notification. There is also provision for the length of time the respective agreements are to remain effective.

There are, however, differences in the way these effectiveness resolutions anticipate the disapproval of a resolution by governments. The various treatments of this question are:

(a) certain agreements, including the one regulating the effectiveness of resolutions, were made void if disapproved by any government authority;

(b) certain agreements, although declared to be void if wholly or partly disapproved by a government (thus giving rise to the same open-rate situation which would exist if there were no resolution at all), leave Conference members individually free to put the provision of the agreement into effect, subject to the laws of the countries in which they operate;

(c) one resolution is not voided by the disapproval of a government and can be implemented by all carriers whose governments have not disapproved, provided that it is not applied in a country which has disapproved it;

(d) the agreement covering specific Fares and Rates received special treatment: if any of the fares, or rates or charges set forth (in the resolution) "is disapproved by government authority, the fares, rates or charges disapproved shall be ineffective and an open situation shall exist with respect to such fares, rates or charges."

A period of validity is set for every agreement. Some resolutions may be effective for only a few months, while others can be valid for longer terms, depending upon their nature and circumstances.

The Civil Aeronautics Board in Agreement CAB No. 493, made it a condition that no resolution relating to rates for periods extending beyond the period of approval of that agreement would be approved by the Board. It has been also said by the Civil Aeronautics Board that "the right of independent action of any carrier once it has observed the Conference procedures must be "scrupulously preserved."
RELAND BETWEEN IATA AND THE TRAFFIC CONFERENCES

The foregoing illustrates some of the problems before the Traffic Conferences. There remains only to consider the relation between IATA, the association, and the IATA Traffic Conferences as autonomous bodies.

The ties between IATA and the Conferences are these:

1. The authority of the Conferences is derived from the General Meeting of IATA.

2. Membership in the Traffic Conference is contemporaneous only with membership in IATA.

3. The provisions for the regulation and conduct of the Conferences are established by the Executive Committee of IATA and amendments to these provisions are left to the Executive Committee.

4. In the case of alleged breaches of agreements by members of the Conferences, the Director General of IATA has the power to refer the matter to a commission, and to appoint the commission from a panel established by the authority of the IATA Executive Committee. The decision and action taken by the Commission will be reported to the Director General. Appeal against the decision of the Commission will be made to the IATA Executive Committee.

5. The budgets of the Traffic Conferences must have the approval of the IATA Executive Committee, and the Traffic Conferences have no power to alter the budget after it has been so approved without obtaining the endorsement of the proposed alteration by the Executive Committee.

6. The Secretaries and staff of the Traffic Conferences are employees of IATA, independent of any of the members of IATA.

In considering the relationship between the Association and the Conferences, it must be borne in mind that most of the problems of international air traffic are worldwide in scope, if only for the reason that the route structure of international air traffic is now worldwide. If this system is to function efficiently, fares must be quoted in universally understood terms, provision must be made for the settlement of interline transactions no matter where they are made, and the policy under which carriers accept passengers or cargo must be coordinated throughout the flight. In all of these matters, not only the individual Conferences but many departments of the airlines which did not participate directly in the Conference work are heavily involved. To deal with these problems as they affect them, the Conferences need not only composite meetings, but the harmonized assistance and consultation of legal and financial experts of the airlines.
While IATA, the association, has many functions independent of the Conferences, it presents a practicable and efficient machinery for such coordination. The authority of the Conferences is thus derived from a body—the General Meeting of IATA—in which all members of all Conferences are represented. The Executive Committee of IATA, to whom amending powers over the constitution of Conferences are granted, is confirmed in office, and subject to the policies laid down by the General Meeting.

The limitation upon the power to amend the basic laws of social organisms is a well established principle of constitutional law. Its purpose is to make sure that the primary rules of the organization cannot be altered to suit purely political and transitory ends, and the provision that the Executive Committee of IATA must approve alterations to regulations of the Conferences constitutes this sort of safeguard.

The provision that membership in the Conferences is contemporary with membership in IATA is an expression of this duality: it is hardly conceivable that an airline would wish to participate in a Conference administered by a body in whose policies it did not have a voice.

It should be borne in mind at the same time that membership in IATA and in the Conferences is not exclusive. The doors of both are open to all carriers, subject only to the requirement that they must be air transport enterprises operating a scheduled air service under proper authority in the transport of passengers, mail or cargo for public hire between the territories of two or more states and that they must have that authority from a state eligible for membership in the International Civil Aviation Organization. In brief, it is the state which determines the eligibility of an airline to membership in IATA and the Conferences.

The procedures established for the settlement of alleged breaches are an attempt to take arbitral matters at least one step out of the cockpit of Conference routine. The commission which is provided to look into such allegations is named by the Director General of IATA, not necessarily as an official of the Association, but as an impartial person having no relation to the parties. The authority of the Executive Committee to act as final tribunal creates only such relationship as the authority of any other arbitral tribunal would and extends no control over the Conferences to this Committee.

The provisions for centralized preparation of the budget and the personnel of the Conferences are precautions to assure the absolute impartiality of the Conference administration, who call the meetings, prepare the agenda and write the minutes.

The autonomy of the Conferences vis a vis IATA is positively assured by certain measures which give them the full control of their meetings and their agenda:
(i) one-third of the voting members of a Conference have the right to request the Secretary to call a meeting;

(ii) no matters can be placed upon the agenda of a Conference unless they have been notified to all members thirty days in advance of the meeting, and business which is not so notified in advance can be acted upon only by unanimous consent of all Conference members.

Finally, whatever administrative functions in connection with the Conferences may be assigned to the Executive Committee, the Director General of IATA, or the Conference Secretaries, they have neither direct control over the meetings, nor the right to vote upon resolutions.

CONCLUSION

From a consideration of the Conferences, of their rules, procedures and activities, these salient features stand forth:

(i) they provide the utmost precautions against possible trust activities by the carriers because each carrier has full right to participate and express his views and to cast one vote; because any carrier may veto any agreement which is against its interest (and thereby prevent other carriers from entering into it); and because carriers may be bound only by actions taken in meeting and in the form of a resolution, no outside compacts or agreements in minutes being binding;

(ii) they assure effective compliance with national laws, regulations and controls. Every government may disapprove a rate detrimental to the interests of its own citizens, thereby voiding wholly or in part the Conference resolutions concerned, and no carrier may be bound by an agreement which would require it to contravene the laws of its own state;

(iii) they offer definite guarantees against discrimination, in that qualification for membership is not left to carriers already members of the Conferences, but to governments;

(iv) they are committed to the principle laid down in the Bermuda Agreement and reiterated in the subsequent Anglo-American declaration, and incorporated in the bilateral agreements — to endeavor to give the public cheaper transport rates by bringing their charges into relationship with costs.

This discussion of the rules and procedures of the Traffic Conferences of the airlines has concentrated on the operation of their rate-making machinery because of the express references to them in the many bilateral agreements.

Because of the many issues involved in these agreements, it is difficult to draw hard and fast conclusions regarding them. Nevertheless it
is submitted that, insofar as rates are concerned, the bilateral air transport agreements have established a uniform framework for making reasonable rates, have set up within it a system of more or less universally recognized Traffic Conference machinery by which carriers can agree upon rates, have given governments the right to control carriers' rate agreements in the public interest, and have, in most cases, provided for arbitration of disputes.

Undoubtedly, there will always be divergencies and difficulties in the rate-making field. The present system, however, provides a means whereby these can be reconciled and resolved within the operators' Conferences and without the constant danger of resort to expensive and destructive rate wars.

It is interesting to note that, while the present structure was created almost incidentally by the Bermuda Agreement in 1946, it has been so reinforced by subsequent bilateral agreements that it represents today a worldwide network in which great confidence has been placed by all parties concerned. The present machinery can be improved, and undoubtedly will be as time goes on. Yet, as it stands, it offers a guarantee that the carrier will not be forced into uneconomic operation and that the public will not be exploited.