

U.S. INTERNATIONAL AVIATION POLICY

**NAWAL K.
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U.S. International Aviation Policy

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Foreword

In tracing the history of the international air transportation system, it is evident that its achievements and its success can be attributed primarily to the goodwill and cooperation of the nations involved. In 1944, when representatives from more than fifty nations met in Chicago to develop the postwar aviation rules, there was a divergence of opinion with respect to the key elements of commercial air operations. The head-on confrontation, resulting from the diametrically opposed views on market participation and pricing, was eventually resolved through a compromise reached in 1946 in Bermuda. Similarly, the second Bermuda Conference proved that nations with widely divergent views can adapt their political and economic philosophies to protect, optimize, and enhance their national interests, without insisting on the superiority of one principle over another.

The United States has urged other nations to follow its open-skies and free-market policies since the Chicago Conference in 1944, but in the last two years the U.S. stand has hardened and its tactics have changed. Dr. Taneja seeks to establish that current U.S. international aviation policy is misguided and ill-formed and will prove to be counterproductive. He analyzes U.S. domestic and international aviation policy by examining its impact on fares, traffic, service, carrier profitability, exports, and the fulfillment of a broad set of national goals and objectives. His analysis makes a persuasive case that, although the current procompetitive and pro-consumer policies may be ideal and noble, these policies are unrealistic and may not be in the best interest of the nation as a whole. For example, keeping fares low (which appears to be the basis of current policy) is a valid objective. However, "low" is a relative term, and as a sole objective it is deficient. If the competing airlines of other nations operated with the same rules as we do, the situation might be different, but this is not the case. Different rules, different interpretations of bilateral agreements, different forms of financial support, and different policy objectives are all present and very real. Each nation deals with its national carrier in terms of preconceived national interests. The U.S. perception currently seems to be limited to providing our carriers with the opportunity to fly successfully or crash financially. In thinking over Dr. Taneja's excellent analysis in this book, I have concluded that a cost/benefit analysis would show far more benefit to U.S. aviation policy through working in the margins of pre-existing policy, rather than dismantling and rebuilding that structure. Historically, the regulatory framework has given due consideration to the views of our bilateral partners in the advancement of their own goals. According to Dr. Taneja, not only does the new policy disregard the principles of sovereignty and international comity, but it does not automatically guarantee the

expected benefits to the consumers and the airlines. Given the controversy concerning current U.S. international aviation policy, Dr. Taneja's book will be of interest to the aviation community because it provides a balanced assessment of the pros and cons of the proposed procompetitive open-skies policy.

Alan S. Boyd
President and Chief Executive Officer,
National Railroad Passenger Corporation
First U.S. Secretary of Transportation
(1967-1968)
Chairman of the U.S. Civil Aeronautics
Board (1961-1964)

Preface

For more than thirty years, the international air transport industry has been growing in a relatively stable regulatory environment, established by the Chicago Conference of 1944 and the Bermuda Agreement of 1946. During these years the international aviation community has accepted the desirability of economic regulation to effectively meet the needs of governments, consumers, and airlines. However, in recent years the United States government has begun to question the need of regulation to assure the objective of a viable, worldwide air transport system; in fact, inspired by the philosophy of free-market economics, it has become convinced that regulation has not been in the best interest of the public. Based on the alleged demonstrated success of deregulation of the domestic industry, the United States is attempting to incorporate its free-market economic philosophy into its bilateral agreements. Although most of the international community questions not only the logic and the fundamental premise of this policy but also the likelihood of realistically achieving an ideal competitive environment, a few nations have eagerly seized the opportunity to obtain long-term, valuable economic benefits by embracing U.S. policy.

The purpose of this book is to examine current U.S. international aviation policy and to ascertain its potential impact, both short-term and long-term, on consumers, airlines, and the nation. The first chapter reviews the history of U.S. international policy. The second chapter analyzes the rationality of the domestic procompetitive, proconsumer, market-oriented philosophy and the legitimacy of its claim to success. The third chapter discusses the economic and political foundations of the new U.S. international aviation policy, the feasibility of transferring a domestic philosophy to international aviation, and the negotiation strategies used to implement the new policies. The fourth chapter examines the evolution and need of the IATA multilateral forum to resolve divergent and often conflicting objectives of governments and airlines in order to achieve negotiated solutions. The fifth chapter provides the preliminary operating and financial results of the carriers operating on the North Atlantic and makes a realistic assessment of benefits to consumers and airlines resulting from the limited implementation of the new policy. The final chapter highlights the need to reassess the ideology of international aviation deregulation. While the concept is interesting, challenging, and theoretically appealing, when one recognizes the practical realities of the international marketplace, the divergent economic and political philosophies of various nations, and the varying objectives of international airline managements, the pursuit of an ideal international air transportation system becomes questionable and the results speculative.

This book should be of interest to students of air transportation and aviation policy analysts within the industry and the government. Because the book discusses the pros and cons of deregulation within the domestic and international environments, it will provide the reader with a better understanding of the consequences of current U.S. international aviation policy and will offer a preferable direction to the policymakers and the airline managements for establishing a workable environment that will meet the challenges of the coming decades.

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Contents

	List of Figures	vii
	List of Tables	ix
	Foreword <i>Alan S. Boyd</i>	xiii
	Preface	xv
	Acknowledgments	xvii
Chapter 1	Historical Policy Review	1
	National Sovereignty Principle	1
	Pan American and the Chosen-Instrument Doctrine	2
	The Chicago Conference: Multilateralism	8
	Bermuda One: Bilateralism	11
	Postwar Scheduled Route Exchange Agreements	14
	Presidential Statements	16
	Bermuda Two: Some Protectionism, Some Liberalism	21
	Summary	25
Chapter 2	Domestic Deregulation: The Jury Is Still Out	29
	The Deregulation Movement	29
	Changes in Price	33
	Changes in Service	39
	Changes in Traffic	46
	A Perspective on Financial Performance	47
	Infrastructure Concerns	52
	Summary	53
Chapter 3	Current Procompetitive International Policy	55
	Policy Goals	55
	Feasibility of Transferring Domestic Policy	56
	The U.S. Maritime Industry Experience	62

	Implementation Strategy	64
	The Proposed International Air Transportation Competition Act of 1979	70
	Summary	74
Chapter 4	The IATA Rate-Making Process	77
	The Evolution of the IATA Rate-Making Machinery	77
	General Criticisms of IATA	80
	The CAB Show-Cause Order	94
	Alternatives to the IATA Multilateral Forum	100
	Summary	104
Chapter 5	Analysis of North Atlantic Operations	107
	Analysis of Passenger Traffic	107
	Passenger Traffic, Revenue, and Yield	114
	Profitability Analysis	125
	Summary	136
Chapter 6	A Need to Reexamine Current Policy	141
	Recognition of the Multiplicity of Objectives	141
	Need for Enlightened Regulation	147
	Bibliography	151
	Index	159
	About the Author	165

List of Figures

2-1	Ratio of RPM Growth to GNP Growth	48
2-2	Corporate Return on Investment (%)	51
4-1	Comparison of North Atlantic Fares and the Consumer Price Index	81
4-2	Typical Round Trip Economy Fares: Long Markets (September 1976)	84
4-3	Typical Round Trip Excursion Fares (September 1976)	85
4-4	New York-London Scheduled Air Fares: 1967-1977	88
5-1	Development of Total North Atlantic Passenger Traffic (in thousands)	109
5-2	Relationship between Fare and Total Trip Cost: Europe-U.S. Market	115
5-3	U.K. Travelers Overseas (All Modes)	116
5-4	IATA North Atlantic Scheduled Passenger Traffic by Fare Grouping and by Year: 1972-1978	121
5-5	IATA North Atlantic Scheduled Passenger Operations: Economic Profit (or Loss) as a Percent of Passenger Revenue (1968-1978)	130
5-6	IATA North Atlantic Scheduled Passenger Operations: Development of Load Factors (1968-1978)	136
5-7	Monthly Distribution of Passenger Traffic of IATA North Atlantic Scheduled Operations	137
5-8	Economics of Aircraft Size and Technology	138
6-1	Deliveries of U.S. Commercial Jets, Spares, and Modification Work	143
6-2	World Market Importance: Aircraft Production Costs	145
6-3	Launching Cost: New Large Commercial Transport Aircraft (One Model—Airframe Only—Constant Dollars)	146

List of Tables

2-1	Coach Yield: Domestic Trunk Carriers (48-State)	34
2-2	Revenue and Traffic Data: Domestic Trunk Carriers (48-State)—July 1979	35
2-3	General Airfreight Rate Increases for Selected Carriers: 1975-1979	38
2-4	Summary of Flight Frequencies by Market Type: April 1, 1979 vs. April 1, 1978	40
2-5	Selected Cities Where Departures Increased but Seats Decreased	42
2-6	Cities with 100 Percent Decrease in Weekly Aircraft Departures	44
2-7	Increase in Hub Activity Since Deregulation	45
2-8	Airfreight and Express Revenue Ton Miles Logged in Domestic All-Cargo and Combination Cargo Service	46
2-9	Traffic Analysis of Scheduled Trunks	47
2-10	Financial Performance of System Trunks	49
3-1	International Aviation System: U.S. National Interest Objectives	57
3-2	U.S.-Europe Air Passengers: Distribution by U.S. Gateway	60
3-3	1978 U.S.-Europe True O/D Traffic—Major Markets	61
4-1	Contributions to Differences in Costs among Route Groups: 1977	82
4-2	Estimated Passenger Costs per Passenger-Kilometer by Cost Item: 1977	83
4-3	Low Fares Ranked by City Pair Distance	86
4-4	Percent Passenger Distribution by Fare Type: IATA North Atlantic Scheduled Services	89
5-1	Development of Total North Atlantic Passenger Traffic: 1968-1978	108

5-2	U.S. Citizen and Noncitizen Traffic Growth (%): United States-Total Europe (Arrivals and Departures)	111
5-3	U.S. Citizen and Noncitizen Traffic Growth (%)—By Country: United States-Europe (Arrivals and Departures)	112
5-4	Average Annual Increase in Traveler's Cost of Living (%): 1970-1977	113
5-5	Average Annual Increase in Travel Costs (%): 1970-1977	114
5-6	Annual Increase in Travel Costs for Mexico (%)	117
5-7	Total Expense of Average Foreign Traveler in Mexico	117
5-8	Distribution of Hotel Rooms by Rate: Selected Cities in Mexico, United States and Europe (Double Room Rates, Spring 1978)	118
5-9	Passenger Travel between the U.S. and Selected Other Countries (Arrivals and Departures)	119
5-10	IATA North Atlantic Scheduled Passenger Traffic and Revenue Growth by Fare Type	120
5-11	IATA North Atlantic Scheduled Passenger Yield by Fare Type and by Year: 1972-1978	122
5-12	Analysis of First Class/Concorde and Normal Economy Fares for IATA Scheduled Passenger Traffic on the North Atlantic	123
5-13	Analysis of Promotional Fares for IATA Scheduled Passenger Traffic on the North Atlantic	124
5-14	IATA North Atlantic Scheduled Passenger Operations: Passenger Revenue Analysis (1968-1978)	126
5-15	IATA North Atlantic Scheduled Passenger Operations: Analysis of Passenger Operating Expenses (1968-1978)	127
5-16	IATA North Atlantic Scheduled Passenger Operations: Profitability Analysis (1968-1978)	128
5-17	Variation of Revenue/Cost Ratios among Airlines: 1977	132

List of Tables

xi

5-18	Financial Performance of Total Atlantic U.S. Trunk Carriers	134
5-19	Profit Margin (%) of Individual Atlantic U.S. Trunk Carriers	135
5-20	Impact of Alternative Seating Densities and Load Factors: 1000 Mile Trip Cost (Total Cost About \$11,000)	139

1

Historical Policy Review

National Sovereignty Principle

The “freedom of the seas” doctrine was first raised in 1604 by Hugo Grotius, who had been hired by the Dutch East India Company to establish the right of Dutch merchants to sail through oceans claimed to be owned by Portugal. Subsequently this freedom was embraced by the British, who used it to develop trade all over the world. The freedom of the seas doctrine allowed nations with strong commercial shipping fleets to reach, and often monopolize, the rich markets of the world.

In 1902, at a meeting of the Institute of International Law in Brussels, a French lawyer by the name of Fauchille suggested a code of international air law based on the freedom of the air.¹ However, aside from problems concerning balloon flights, the discussion was merely academic. But seven years later, when Louis Bleriot, a French pilot, crossed the English Channel and landed in England, the question of freedom of the air became real.² As a result, in 1910 the French again proposed the freedom of the air doctrine in a diplomatic conference. Britain opposed the concept because of military considerations, and the meeting did not result in any agreement on the subject.

The British favored instead the concept of sovereignty of the air space above a nation’s territory.³ The importance of the British (and German) views did not become clear until World War I when aviation demonstrated its military potential. Therefore, while a number of legal scholars advocated freedom of the air, governments in general could not accept this doctrine.⁴ Following World War I, twenty-six countries ratified the International Convention for the Regulation of Aerial Navigation at Paris on October 13, 1919, thereby establishing sovereignty of the air. The United States did not ratify the Paris Convention because it was associated with the Versailles Treaty and the League of Nations, which were not accepted by the U.S. Senate.⁵

Recognizing that international cooperation with Latin American countries could be promoted by a special regime beyond the benefits gained by association with the Paris Convention-related states, the U.S. government initiated the Pan American Convention on Commercial Aviation, which was signed in Havana in February, 1928, by twenty-two countries.⁶ The Havana Convention did “for the Western Hemisphere what the Paris Con-

vention was doing for Europe."⁷ However, the Paris Convention prescribed uniform minimum standards to be accepted by all contracting states, while the Havana Convention left the standards to be established by the member states.

Although both conventions established in broad terms the principle of international aviation law, neither made any progress towards the facilitation of international commercial air transportation services. Some of the delegates at the Paris Conference had recognized this deficiency and as a result leaders representing six airlines met in the Hague in 1919 to form the International Air Traffic Association (IATA) to coordinate the operations of international air transportation in such matters as documentation, conditions of travel, carrier liability, and timetables. The establishment of this cooperation was essential since air transportation was international in nature within Europe.

Pan American and the Chosen-Instrument Doctrine

The international air transport market in the Western Hemisphere was shared by Pan American and a few European airlines. Pan American's diplomatic relations with the South American countries were made easier because of the existence of the Havana Convention. However, the philosophy behind the development of Pan American and the European carriers differed somewhat. Despite the acquisition of prestige and power, the major force behind the initial development of Pan American was one of a profitable private business enterprise. The development of the European carriers, on the other hand, was based primarily on the need to bind the empires, such as the British Imperial Airways' route across Europe and the Middle East to India. Consequently, the European nations were much more willing to develop their international carriers at public expense. In 1929, for example, each kilometer of air transport was subsidized by twenty francs (French) by Britain for its lines in Europe; fourteen francs by Germany for its lines; seventeen francs by France for its lines; twelve francs by Italy for its lines and eleven francs by the United States for its lines.⁸

Initially, Pan American began its operations on the basis of commercial economic viability. Juan Trippe, the founder of Pan American, was interested in service to South America because it was an area in need of air transportation and because the U.S. share of South American trade was very small relative to the European share.⁹ However, the U.S. government, having realized the commercial and defense benefits of Pan American's proposed South American operations, was willing to pay substantial subsidies to develop and expand its system. During the mid-twenties SCADTA, a Colombian airline owned mostly by a private German group, was plan-

ning to expand its operations into the Caribbean area and eventually to the United States. The U.S. government, however, opposed any expansion of a German-sponsored airline in the neighborhood of the Panama Canal.¹⁰

As a result of the United States' interest in Pan American operations, the carrier received highly favorable treatment from the government. For example, unlike the domestic carriers, Pan American's mail contracts were not cancelled in 1934. The federal government provided over \$47 million to Pan American during the period July 1, 1929 to June 30, 1940, compared to \$60 million to all other domestic carriers.¹¹ The State Department provided significant help resolving problems encountered with foreign governments. The Post Office, through the control of air mail contracts, protected Pan American from competition from the domestic carriers.¹² The Postmaster General defended the chosen-instrument concept on the grounds that it was the only effective method of competing with government-owned foreign airlines.¹³ In return for government support, the United States received from Pan American valuable aid to the defense of the Panama Canal, emergency service during hurricanes, earthquakes, and epidemics, and useful information about Axis activity in South America.¹⁴ Pan American used a substantial part of the profit made on the South American operations to develop the Pacific routes. The airline's presence there aided in the development of the strategically located islands of Midway, Wake, and Guam, in particular, and the outer ring of the Pacific, in general. Moreover, while defense considerations were important, one should not overlook the commercial benefit for the United States of increased trade with Latin America and the Orient.

The negotiation of the landing rights was left to the individual carrier and foreign governments. Juan Trippe had taken advantage of this situation by negotiating exclusive traffic rights from the foreign nations. The United States did not oppose Pan American's initiatives to negotiate traffic rights on its own since it relieved the government of an obligation to grant reciprocal rights. However, with these exclusive rights, Pan American was in an ideal position to win high-priced mail contracts from the U.S. government. A number of authorities were concerned with such exclusive arrangements but Pan American's operations, as stated earlier, did provide a significant impetus to the promotion and development of the U.S.-South American trade, not to mention defense considerations. In addition, Pan American's high bids for mail contracts were justified on the basis of large investments required by the airline before scheduled operations could be started. For example, many South American countries did not have airports, light beacons, or radio service; therefore, these facilities had to be developed by Pan American at its own expense. In the United States, on the other hand, such facilities were provided by the government.¹⁵

The exclusiveness of the routes was established by Juan Trippe by tying