Ramon de Murias

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1. INTRODUCTION

The economic regulation of international air transport may be said to have two aspects: the regulation of national companies engaged in international air carriage and the regulation of foreign companies engaged in international air carriage. The regulation of the technical aspects of international air transport is dealt with herein only incidentally.

The extent to which the economic activities of international airlines should be regulated is a topic that is at present widely disputed throughout the world. Historically, international air transport has been closely regulated everywhere, with few exceptions. Before discussing the history and the validity of particular forms of regulation (or deregulation), it appears desirable to review the elements that are dealt with in the economic regulation of international air transport. These are treated in this introduction under the following perhaps arbitrary headings: (1) What Is Regulated, (2) The Right to Regulate, (3) The Modes of Regulation, (4) The Motives for Regulation, (5) The Instruments of Regulations, and (6) Tangential Matters.

What Is Regulated

Routes, including the matter of entry, are the most fundamental elements of regulation. Each country must first decide whether to allow foreign aircraft to operate in its air space, and between what points it will allow operations.

Capacity is also subject to regulation. Capacity is generally reckoned as the frequency of operation of the flights (or, the number of times a flight is operated over a given period, for example twice a week), times the number of seats installed or the cargo carrying capability of the aircraft used. Sometimes only the frequency is regulated and in rare cases only the carrying capability of the aircraft is regulated, but in most cases, if one element is regulated, both are.

Fares and rates are subject to regulation. Fares are generally considered

to be the amounts charged for the carriage of passengers and rates are generally considered to be the amounts charged for the carriage of cargo and mail. Collectively, they are sometimes referred to as "tariffs," and sometimes as "rates." There are also ancillary charges which are subject to regulation, such as excess baggage charges; valuation and insurance charges for baggage and cargo; delivery charges, C.O.D. charges and the like.

Traffic is subject to regulation. This concerns how much and what type of passengers or cargo an airline is to be allowed to carry. For example it may be allowed to carry cargo and mail, and be forbidden to carry passengers, or vice versa. Restrictions may be placed upon the number of passengers that may be carried, or upon the class of passengers that may be carried. The airline may be forbidden to carry passengers who do not have their origin or destination in its home country ("Fifth Freedom") or its carriage of such passengers may be limited. Similar restrictions may be placed upon the carriage of cargo. Mail is also subject to restrictions, but they tend to take a somewhat different direction, because the carriage of mail is commonly regulated by the postal authorities, rather than by the aeronautical authorities. Typically, permission to carry cargo or passengers is automatically accompanied by permission to carry mail. Beyond the initial permission to carry it, the carriage of mail is governed by the provisions of the Universal Postal Union Convention and the Provisions Concerning Airmail.[1]

Scheduled Service vs. Non-scheduled. In considering "what is regulated," it is desirable also to focus on the type of service that is regulated. In the earliest days of air transport, scheduled services were the only services that it was possible to offer on a scale that justified serious commercial promotion by the carrier or economic regulation by governments.[2] Therefore scheduled services were regulated from the beginning whereas other services which were generally offered at high rates on small capacity aircraft were considered too sporadic and insignificant to require extensive regulation. This attitude appears to have persisted until 1944 when the Chicago Convention was negotiated.[3]

Since 1944, there has appeared a class of charter flights which, although they are not offered as part of a traditional regularly scheduled service, differ radically from the type of non-scheduled flights that were considered too insignificant to call for regulation. Nevertheless, because of the historical background and its reflection in the Chicago Convention, scheduled and non-scheduled services have been dealt with separately in the economic regulation of air transport and scheduled service has continued to be the dominant mode, although charter flights have become increasingly important and the subject of regulation in recent years. In the main, when reference is made herein to the economic regulation of air transport,

scheduled service is meant. When the subject is charters or non-scheduled service, it will be specifically identified.

The Right to Regulate

The law with respect to the right of states to regulate the economic activities of foreign aircraft operating in their air space is clear. States are sovereign in the air space above their territory and they may exclude or regulate the activities of foreign aircraft operating there. In the absence of some limiting agreement this right may be exercised unilaterally.

It should be noted that the reference here is to sovereignty over the "air space" above the territory of a state. The claim is not that sovereignty extends into "outer space." A problem remains with respect to where air space leaves off, and outer space begins, but this is a scientific (and political) question which does not need to be resolved for present-day aircraft, which require the air to navigate. The problems of rockets and satellites are real, but they are outside the scope of this work.[4]

In 1911, just eight years after the flight of the Wright Brothers at Kitty Hawk, Harold Hazeltine, LL.D., an American lawyer who was at the time a reader in English law at Cambridge University, published a paper in which he summarized as follows the then state of the law with respect to the right of nations to regulate the entry of foreign aircraft into their air space:

> There are two great groups of theories as to the rights of states in the air-space above their territories and territorial waters. There are first the freedom of the air theories. Of these there are two: The theory that the air is completely free, and the theory that the air is partly free. Some of those who maintain that the air is partly free give the state certain rights, without restricting the exercise of those rights as far as the height of the air-space is concerned; while others restrict the exercise of rights by the state to a limited zone in the air-space, the upper regions of the air being completely free. The second group of theories may be designated the sovereignty-of-the-air theories; theories which accord the state rights of legal and political supremacy—rights of sovereignty—in the air space. The first of these theories concedes to the state full sovereign rights, without any restriction, up to an indefinite height above the state's territory and territorial waters. But some of the sovereignty views do not go this far, for they concede to the state only a limited sovereignty; either a sovereignty which extends only up to a certain limited height (and this view may be compared to the zone theories of adherents of freedom), or else a sovereignty which although unlimited in height is yet restricted by the reservation of a servitude of innocent passage—that is a right of innocent passage for all balloons and other air vehicles.[5]

Hazeltine concluded that the proper view was that states are sovereign in their own air space, and he pointed out that every time a state had been called upon to act concerning this subject, it had acted consistently with this view.[6]

Hazeltine's description of the assorted views is definitive and his analysis has stood the test of time. Although there have been many theoretical arguments for a "freedom of the air" analogous to the "freedom of the seas," there has never been a time when the prevailing practice favored "freedom of the air."[7]

Prior to the first World War, as Hazeltine says, there were theoretical arguments advanced in favor of a "freedom of the skies" analogous to the freedom of the seas, the best known proponent of such theories being Paul Fauchille of France.[8] As the destructive capability of airborne vehicles became more apparent with the arrival of heavier-than-air aircraft, it was considered necessary to modify this theory to give the subjacent state the right of self-preservation, and finally, in 1911 the Institute of International Law allowed the subjacent state to forbid foreign aircraft to pass through its airspace.[9]

Bin Cheng, Wagner, Matte, and Johnson review the debates on this subject at length.[10] The debates included numerous and ingenious qualifications of the doctrine of "freedom of the skies," such as that it was limited by a territorial belt, like the territorial sea, or that it was limited to the right of innocent passage by aircraft of foreign states. Nevertheless, since the earliest days, where sovereignty over the airspace has been an issue states have acted as though they had it, and in view of the damage that can be done by hostile aircraft, it is hard to see how they could have acted otherwise.[11] This attitude was confirmed for good at the close of the first World War in the Paris Convention on the Regulation of Aereal Navigation of 1919[12] which included as Article 1 the provision that

> Every power has complete and exclusive sovereignty over the airspace above its territory.[13]

The United States participated in the drafting of this treaty, and was one of the original signatories. The United States did not, however, ratify the convention because it formed part of the group of treaties arising out of the Paris Peace Conference after the first World War, which the United States refused to ratify.[14] Nevertheless, the United States has consistently taken the position that it has sovereignty over the airspace above its territory.[15] In 1926, with the passage of the Air Commerce Act,[16] the United States officially declared that

> The Government of the United States has, to the exclusion of all foreign nations, complete sovereignty of the air space over the lands and waters of the United States, including the Canal Zone.[17]

The Pan American Convention on Commercial Aviation signed in Havana in 1928, to which the United States was a party, followed the Paris Convention in declaring that each nation had complete sovereignty over the air space above its territory.

The Paris Convention of 1919, and the Havana Convention have both been superseded by the Chicago Convention (negotiated and signed in 1944 effective in the U.S., 1947). The Chicago Convention continues to provide for national sovereignty over national airspace in the following terms:

> Article 1, *Sovereignty*. The contracting states recognize that every state has complete and exclusive sovereignty over the air space above its territory.[18]

The concept of state sovereignty over the air space is now so firmly established that Cooper, Bin Cheng, Matte and Wagner all indicate that the quoted provision of the Chicago Convention is merely declaratory of the existing customary law.[19]

Although it is now settled law that states have exclusive sovereignty over the air space above their territory, it is useful to be aware of the history behind the development of this concept, because it is still possible to argue that ideally state sovereignty over the air space should be limited.[20]

Modes of Regulation

Having seen that routes, capacity, traffic, and fares and rates form the principal subject matter for the economic regulation of commercial air transport, we can now turn to a review of the ways in which this regulation is accomplished.

The regulation of *routes* is relatively straightforward. Either directly, or by means of intergovernmental agreements, the government of a state tells each foreign airline what points it may serve en route to, within and beyond its territory. The description of routes can be either more or less restrictive. At the most restrictive end of the spectrum would be a route description that names specifically each point that may be served for the entire length of the permitted flights. (Obviously, in such case, the fewer points named, the more restrictive the route description would be.)

At the least restrictive extreme would be a provision that any airline could serve any point in the country on flights to or from any point abroad. This formulation appears never to have been adopted, even as a concession to the airlines of a single country. About the most liberal route description in current use applies to the airlines of a single country and reads more or less as follows: "from points in the home country to named points in the granting country and beyond." The requirement that the flights originate in

the home country of the airline, or at least that they go through the home country, is very nearly universal. This requirement is evidently a result of the concept that each aircraft (and each airline) has a "flag," and that each country sponsors its own airlines. This concept goes back to the provision of the Paris Convention of 1919 that registration of aircraft should endow them with national character.[21] Airlines have traditionally been considered an essential part of a nation's "air power."

Since each airline is regarded as having a nationality, and each country has traditionally been jealous of granting access to its market except as part of a trade whereby it obtains foreign market access for its own airlines, it is not surprising that nearly all international route descriptions require the airline to originate and terminate its services in its home country.[22]

Given the nationalistic bias in the regulation of air transport from the very beginning, it is probably inevitable that virtually all schemes for the regulation of air transport have started out from the premise that the primary legitimate function of an airline is to carry the traffic to and from the state whose nationality it possesses. This is the underlying premise of the requirement just mentioned that airline routes have their origin in the country whose nationality the airline possesses. Similarly, most schemes for regulating capacity are based primarily upon the requirements for the carriage of traffic to and from the homeland of the carrier.

Because of their relevance to routes, capacity and traffic, it will be helpful to describe at this point the so-called "Freedoms of the Air." The concept had its origin in the International Air Transport Agreement, which was signed at Chicago in 1944, but never became effective. In that agreement, the "five freedoms" are listed as follows:

> Each contracting state grants to the other contracting states the following freedoms of the air in respect of scheduled international services:
>
> 1. The privilege to fly across its territory without landing [the "first freedom"].
> 2. The privilege to land for non traffic purposes [the "second freedom"].
> 3. The privilege to put down passengers, mail and cargo taken on in the territory of the state whose nationality the aircraft possesses [the "third freedom"].
> 4. The privilege to take on passengers, mail and cargo destined for the territory of the state whose nationality the aircraft possesses [the "fourth freedom"].
> 5. The privilege to take on passengers, mail and cargo destined for the territory of any other contracting state and the privilege to put down passengers, mail and cargo coming from any such territory [the "fifth freedom"].[23]

So far as this writer is aware, no current air transport agreements, other than the International Air Transport Agreement, whether they be

bilateral or multilateral, express themselves in terms of these "five freedoms." The agreements between nations by means of which airline routes are granted typically describe the routes in terms of points that may be served or in terms of such general expressions as "via intermediate points," or "and beyond," rather than in terms of "freedoms" that may be exercised. Nevertheless, the "five freedoms" and their definitions continue to have great currency in discussions about commercial air transport rights, to describe the type of traffic concerned.

In the jargon of air transport regulation there has arisen also the concept of "sixth freedom" traffic, which refers to traffic carried between two states, neither of which is the state whose nationality the aircraft possesses, via a point in the territory of the state whose nationality the aircraft possesses.[24]

So-called "sixth freedom" is sometimes considered a special case of fifth freedom traffic, and it is at other times analyzed as a combination of third and fourth freedom traffic, where the passenger is carried from the country of origin to the home country of the carrier as a fourth freedom passenger and is then carried from the home country to the country of destination as a third freedom passenger.

The concepts underlying these classifications have particular relevance for the Bermuda Agreement.

Bin Cheng also mentions a "seventh freedom," which he says relates to traffic carried on a service which does not touch the homeland of the carrier and an "eighth freedom" which he applies to traffic carried between two points in a single country (generally referred to as "cabotage").[25] Neither of these two latter "freedoms" has much currency in the special vocabulary of air transport regulation.

The regulation of *capacity* can be carried out through direct limitations on the number of flights that a particular airline will be allowed to perform. Such limitation usually applies to flights performed on a given sector over a particular period of time, usually one week (for instance, "three flights per week between A and B"). This can be accompanied by a further limitation on the carrying capacity of the aircraft employed. This latter limitation can be accomplished through a requirement that a particular aircraft configuration must be used, or it can be accomplished by a limitation on the number of seats and amount of cargo lift that may be offered, without any requirement that a particular aircraft configuration must be used. (In regulatory jargon the latter device is often referred to as "roping off" capacity.) Sometimes regulatory requirements insist that a particular type of aircraft be employed with a particular seating configuration.

The regulation of *traffic* follows the same general pattern as the regulation of routes and capacity and can produce the same general results. It is not the same thing, however. The limitation of traffic rights can take the

form of a prohibition on the carriage of traffic between a given pair of points, in which case it is similar to the regulation of route rights, but it differs in that if only local traffic rights are withheld, the airline may nevertheless operate between the points concerned, carrying traffic other than that between the two points to which the limitation applies. This can be a valuable commercial right, and is referred to in regulatory jargon as a "blind sector right." (The commercial value of such a right consists in the ability to combine on a single flight service between the two points in question and other points on the carrier's route. For example, it would have been a valuable right for a United States airline to be able to operate a single flight from Dallas/Fort Worth to both Paris and Frankfurt, even though U.S. airlines did not at the time have the authority from the French to carry traffic between Paris and Frankfurt. The right would enable the U.S. airline to serve both Paris and Frankfurt with a single trans-Atlantic flight from Dallas/Fort Worth, in circumstances where the capacity of one aircraft was sufficient for the traffic between Dallas/Fort Worth and those two cities.)

The limitation of traffic rights can also take the form of a restriction on the amount of traffic that may be carried, in which case it resembles a limitation of capacity. Such traffic limitations may take the form of restriction of the number of passengers that may be carried on a particular service (such as a daily flight from A to B), or they may take the form of restriction of the number of passengers that may be carried over a given period. Traffic restrictions differ from capacity limitations in both cases, however, because, being *traffic* restrictions, they limit only the traffic to and from the country imposing them, leaving the balance of the capacity of the aircraft free for the carriage of traffic other than that to which the particular restriction applies. It is also worth noting that a restriction on the number of passengers that may be carried on individual flights is far more onerous than a similar restriction on the number of passengers that may be carried over a given period. (For example, a restriction to 100 passengers per flight on a daily service would be more onerous than a restriction to 700 passengers per week on the same service, because with the weekly restriction the carrier could make up for days when it carried less than 100 passengers by carring more than 100 passengers on other days, whereas with the per-flight restriction, the carrier could never carry more than 100 passengers per day, and thus could never make up for days when it carried fewer than 100.)

The regulation of *fare and rates* poses a special problem, because it is almost impossible to regulate them unilaterally with any degree of effectiveness, and it is extremely difficult to regulate them effectively even on a bilateral basis. In fact, fares and rates can be regulated with relatively complete effectiveness only by agreement or acquiescence of the governments

over a very wide area. There are two basic problems; the first is that for a country to regulate unilaterally what it charged for travel in-bound to its territory, requires it to regulate the sale of transportation which is made in another country. This is very difficult to police. The affected country cannot intervene directly in the sale; all it can do is to refuse to allow the service to operate while it charges the offending fares. Moreover, the attempt to regulate charges for transportation that is sold in another country is likely to cause that country to feel that its sovereignty has been infringed.

A further, and more fundamental problem affects both unilateral and bilateral attempts to regulate fares and rates. This is that fares and rates throughout the world are interrelated because of the worldwide network of connecting services. This means that a passenger between any pair of points usually has many routings available to him, so that he can shop around for the routing that gives him the best price. Where the routing selected is via a point in a third country, the two countries between which the passenger is travelling are often unable to control the price. For example, suppose the following fares A–B = \$150; A–C = \$50; C–B = \$50. A passenger seeking a cheap routing between A and B will purchase tickets and travel A–C and C–B and will pay a fare of \$100 (\$50 + \$50), thus defeating the A–B fare of \$150. If it is appreciably cheaper to travel via the circuitous routing, that is the way the traffic will go, and the cheaper fare will be the effective fare for the journey despite the efforts of the two governments directly concerned to control it. Because of this interrelation of airline fares, and the need to produce an integrated tariff structure, it has been generally recognized that if airline fares are to be established uniformly by agreement, the agreement must include all major traffic points in all major routings and hence must be multinational in scope.[26]

To be successful, agreement on airline tariffs probably must take the form of pure haggling among airline personnel. Once matters of prestige or principle become involved (which they are likely to do in governmental discussions), agreement becomes extremely difficult. In addition, establishment of worldwide tariff structures requires an intimate knowledge of traffic flows and commercial conditions that could only be obtained first hand by airline personnel. In recognition of these considerations, as well as for other reasons, it was agreed at the time of the Bermuda Agreement in 1946 to allow the airlines to act as surrogates for the governments in reaching agreements on fares and rates through the International Air Transport Association (IATA). The fare regulating portion of IATA consists of a conference system similar to steamship rate conferences where the airlines agree to fares and rates on a global basis and then submit the resultant agreed fares and rates to governments for approval. Without the approval of all governments concerned, the fares and rates do not become effective.

In recent years, the United States has objected to the IATA system on doctrinaire grounds and almost forced an "open rate" situation, where no IATA-agreed fares and rates were in effect on the routes to and from the United States. In this situation, pricing is established individually by each carrier, subject to whatever limitations may be imposed unilaterally or pursuant to intergovernmental agreement by the governments of the countries affected by the pricing. In the absence of agreement, each government can prevent the service from operating at prices of which it disapproves. (This follows from the sovereignty exercised by each state over the air space above its territory.)

Governmental agreements have taken the following main forms:

1. The fares shall be subject to the approval of both governments concerned. Sometimes this is accomplished by a provision that the fares shall be agreed by the carriers of the two nations concerned, either bilaterally or through IATA, usually accompanied by a further provision that in the absence of carrier agreement, the governments will agree on or consult concerning the fares between their respective territories.
2. The fares shall be subject to the approval only of the country where the transportation to which they apply originates.
3. The fares proposed by a carrier shall become effective unless both governments concerned agree that they shall not become effective.
4. The fares proposed by a carrier shall become effective irrespective of government approvals or disapprovals.

The commercial and competitive importance of fare and rate regulation is obvious.

In recent years, there has been considerable controversy concerning whether there should be government supervision of fares and rates, either directly or through the medium of IATA. The United States has taken the view that airline pricing should be set exclusively by market forces, with governmental intervention limited to cases where market forces are inhibited from acting. Most of the rest of the world has taken the view that governments should continue to regulate airline pricing, preferably through IATA, although some of the Europeans are approaching the U.S. view.

Motives for Regulation

From the very earliest days, the operation of international air services has been closely regulated. The original thought was to regulate the operation of aircraft as a means of avoiding threats to national security.[27] Early on, however, the element of protecting the national airline from competition by foreign airlines became a central element in the regulation of

international aviation.[28] Sometimes this solicitude for the national airline has taken the form of obtaining adequate traffic rights to enable the national airline to compete. This has been a primary thrust of United States air policy. Often, however, it has taken the form of a frank intention to suppress the competition.

One reason given for restricting foreign airlines for the benefit of the national airline is to protect the country's sovereign interest in the national resource which air traffic constitutes. In a number of countries in South America, there is a deep-rooted feeling that oil and mineral resources in particular form part of the "national patrimony" and must be reserved for exploitation by nationals of the country. It has been argued that the airline traffic generated in the country is such a national resource and forms part of the "national patrimony" which the government has the obligation to protect. This appears to be less of a real reason in itself than an attempt to invoke the emotional climate surrounding the exploitation of natural resources in the extractive industries to induce the government to impose restrictions on foreign airlines for the benefit of the national airline.

In fairness, however, it must be noted that although protection of the national airlines seems to have been an important objective in the regulation of foreign airlines throughout the world, there is a perfectly respectable and widely held body of opinion that all forms of transportation for hire require close government supervision.[29]

Thus, in virtually all countries where there is a developed air transport industry, entry by national airlines is tightly controlled and the activities of the airlines are closely supervised by government regulators. This is as true of domestic transportation, where there is no question of protection against foreign competition, as it is of international transportation. The United States is unique with its recent program of "deregulating" its air transport industry and until recently it followed the worldwide pattern of governmental regulation for national airlines engaged in both domestic and international air transportation.

The rationale behind this type of regulation is in part that behind the regulation of other public utilities: the operator is using a form of monopoly granted by the sovereign and in return must accept regulation by the sovereign to see that he does not abuse it; and it is in part a consideration applicable especially to transportation enterprises: that in the absence of regulation they would engage in cut-throat competition to a point where either all the competitors would collapse or one would emerge in a position to engage in an abusive monopoly.[30] Remaining through these theoretical considerations, however, is the fact that the practical effect of most of the regulations imposed on international airlines has been to protect the national airlines from competition (in some cases to protect them from unfair competition).

One would think that ensuring safe and cheap transportation for the public would most often be assigned as the major reason for the economic regulation of international air transport. Curiously, however, the only instance where it appears to have been cited as the primary reason for governmental action in this field has been in the recent attempt by the United States to convert the rest of the world to "deregulation," where a regime of little or no regulations of international air transport would be established.

It is probably true, however, that policies directed toward protecting the national carrier have as an objective preserving the access of the national public to air transport under terms acceptable to the government as well as promoting the prosperity of the national airline.[31]

Still another reason for the economic regulation of international air transport is to achieve national goals in some other sector of the economy which would be affected by air transport. For example, in an informal conversation among American and German airline and government representatives in Bonn in 1979, in which the writer participated, the United States group observed that the fares for intra-European air travel were higher than one would believe could be justified on the basis of costs. The German representatives replied that if the air fares were reduced this would result in a diversion of traffic from the railroads to the air. Such a diversion would necessitate a reduction in rail service, as had already happened in the United States, which in turn would result in unemployment among rail workers. Since high employment was one of the primary goals of the German government, it made no sense to them to reduce air fares where the result would be unemployment in the railroads. Similarly, the point has been made that Brazil suffers from a shortage of capital which would be aggravated by a need to obtain added aircraft to carry increased traffic that might result from unregulated rate competition.[32]

Environmental considerations are another motive for the economic regulation of international air transport. Excessive capacity can result in unacceptable noise and pollution levels and this could be a reason for objection to promotional fares that might lead to increased capacity.[33]

A consideration of the motives for regulating air transport must also encompass the motives of governments in wishing to foster their own national airlines. From the earliest days, military considerations seem to have weighed heavily in the governments' interest in national airlines. Oliver Lissitzyn writing in 1942 says, "In any event, however, the world may be organized, or disorganized, after the war (World War II), commercial air transport will remain the auxiliary of military air power just as the Merchant Marine remains the indispensable auxiliary of the Navy."[34] Lissitzyn lists and describes the following aspects of air transport and national interest: Economic (How air transport helps exporters)[35]; Air Mail Speeds

Up Business Correspondence; Business Men Fly; The Airplane as a Freight Carrier; Air Lines Help to Develop Isolated Areas; Air Express Traffic; Psychological and Administrative Considerations (Air Transport and National Propaganda); Cultural Influences and Air Transport; Air Lines an Asset in Diplomatic Competition; Air Transport and Imperial Unity; Military (Matériel); Planes Carry Troops and Supplies; Personnel; Air Line Pilots at Peak Training; Air Routes and Ground Organization; Wartime Communication; and Wartime Administration of Transport Systems. Whether or not Lissitzyn's list is still valid in all respects as a description of world conditions, it certainly is a useful explanation of why governments originally became interested in fostering their own airlines and it gives a good indication of why that interest continues, although in recent years the military value of commercial air transport has been discounted.[36]

A national airline operating abroad is often regarded as a contributor to the national prestige, particularly in "developing" countries.[37]

The operation of a national airine can serve to enhance the national balance of payments, or at least give a government the illusion that it will do so.[38] A national airline can serve as a means for the state to project its power abroad, and this is a subject that is bound to be of interest to the state. A national airline is an important link in maintaining the cohesiveness of an overseas empire.

A national airline can help promote tourism to the country. It can also be useful in developing a national aircraft manufacturing industry.

A further reason for governmental support of national airlines in certain countries is that commissions on aircraft and other major items of equipment form a coveted source of income for certain high military officers and other government functionaries. This doesn't exist in every country, or at all times in particular countries, but it has been a reason in certain countries for support of an international government airline.

National airlines are also sometimes fostered as a means of providing extended careers for air force officers. In countries with relatively small air forces, it is often customary to retire the officers at an early age in order to open up promotions for those below. If they can be assigned as airline pilots, the retired officers can continue to be paid more or less as though they were on active duty.

The Instruments of Regulation

Having established that each state may exercise its sovereignty to exclude or to regulate the entry of foreign aircraft into its territory, the question remains to what extent and by what means does a state allow commercial operations by foreign aircraft, and how are they regulated?