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# Aviation

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## AVIATION

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### UNITED STATES-CANADA AGREEMENT

On May 8, 1974, the United States and Canada signed three agreements which significantly expand their air transport relations in the areas of airline routes, charter flights, and preclearance of passengers traveling by air between the two countries.

The agreement on airline routes takes the form of the addition of new routes and the expansion of some existing routes in the U.S.-Canada Air Transport Agreement of 1966. Services over some of the routes are deferred for varying periods up to five years in order to assure that the expansion in transborder air services is orderly. Under the expanded agreement, there will be the opportunity for U.S. and Canadian airlines to offer direct air services between a total of thirty-eight cities in the continental United States, Alaska, and Hawaii and seventeen cities in Canada. Of these cities, twenty-nine in the United States and 11 in Canada will receive either first or expanded direct airline services between the two countries when new routes are operated.

The Agreement on Air Transport Preclearance provides for improved facilities and support for U.S. Customs and Immigration offices presently clearing U.S.-bound passengers at four Canadian departure points (Montreal, Toronto, Winnipeg, and Vancouver). The agreement also provides for introducing preclearance at seven other Canadian airports (Halifax, Quebec, London, Ottawa, Calgary, Edmonton, and Vic-

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toria) and thirteen U.S. airports (Boston, Chicago, Cleveland, Dallas/Fort Worth, Denver, Honolulu, Houston, Los Angeles, Miami, New York, Newark, San Francisco, and Tampa) at such time as traffic justifies it and adequate facilities are available.

The Nonscheduled Air Service Agreement will, for the first time, permit airlines of both countries to operate charter flights under a bilaterally-agreed regime, rather than under the unilaterally controlled conditions which have so far prevailed. Generally, airlines of either country will be required to operate three charters originating in their own country for every four which originate in the other country (a so-called uplift ratio). However, because certain U.S.-Canada charter markets consist almost entirely of Canadians traveling to the United States, exceptions to the uplift ratio are provided in certain instances, particularly for charter flights by U.S. airlines between Canada and Hawaii, California, Nevada, Arizona, Florida, Puerto Rico, and the U.S. Virgin Islands. Instead, the volume of such charter traffic by U.S. airlines will not exceed certain agreed percentages of the total volume of charter traffic moving in the markets indicated. These percentages will eventually reach 25% of the Hawaii and Florida markets and 40% of all the indicated markets combined. In view of certain problems over accepting current Canadian rules on inclusive tour charters, the full implementation of rights in certain areas is held in abeyance under reservations attached by both Governments to the agreement.

It should be noted that the nonscheduled agreement includes a United States' reservation which has the effect of precluding the operation of one-step ITC's (inclusive tour charters) destined to the continental United States for the duration of the reservation. In this connection, the Board stated that, pending any withdrawal of the U.S. reservation, it is in the public interest to require that all ITC's to the continental United States operated by the Canadian charter carriers provide overnight hotel accommodations at a minimum of two places at least fifty miles apart. Finally, the Board stated that it intended to be guided by the Agreement and section 1102 of the Federal Aviation Act in considering requests for prior approval of such charters in the absence of compelling circumstances justifying a different result.

A supplemental exchange of notes includes a mutual commitment to implement the Agreement to the extent possible even before licenses and permits are revised and reissued by the respective Governments. In response to this commitment, the Board granted appropriate waivers of its

charter regulations to certain Canadian and U.S. air carriers insofar as such regulations would otherwise prevent the carriers from operating the services as provided for in the nonscheduled agreement.

At this writing, the only other U.S. nonscheduled agreements were a Memorandum of Understanding with Belgium, signed on October 17, 1972, and a Nonscheduled Air Service Agreement with Yugoslavia, signed on September 27, 1973.

### SEIZURE OF AIRCRAFT

The Civil Aeronautics Board on July 24, authorized the summary seizure of a Philippine Air Lines DC-10 aircraft upon its arrival at San Francisco via Honolulu and the aircraft was in fact seized and impounded by a U.S. Marshal. The purpose of the seizure was to insure the collection of any civil penalty imposed or compromised with respect to such operations. The Board had previously disapproved the carrier's proposed schedules providing for the substitution of DC-10 for DC-8 aircraft in response to the Philippines' long standing restrictive civil air policies and had expressly ordered that the DC-10 operations not be inaugurated. The Board's order stated that in such circumstances the carrier had no authority pursuant to its foreign air carrier permit (as conditioned by Part 213 of the Board's Economic Regulations) to operate the wide-bodied aircraft into or out of the United States. The Board also stated that neither the sovereignty of the United States air transportation system nor the integrity of the Board's regulatory processes could tolerate such open disregard of an order issued by the Board and submitted to the President. On July 28, the carrier deposited a \$200,000 bond and the aircraft was released.

Subsequently, Diplomatic Notes were exchanged between the Governments of the United States and the Philippines providing for an interim agreement concerning capacity in the U.S.-Philippines market pending further negotiations. In response to these developments, the Board on August 9 authorized Philippine Air Lines to operate up to three weekly scheduled flights with DC-10 aircraft between Manila and San Francisco via Honolulu until further order of the Board.

### FARES

On July 30, 1974, the Civil Aeronautics Board approved an International Air Transport Association (IATA) agreement providing fuel-

related fare increases of 5% in North Atlantic and four percent in Mid-Atlantic services. The Board stated that the increases were fully warranted by actual fuel cost increases already experienced by the carriers involved and that the fares, which became effective on August 1, would help compensate for further price escalations. Although the Board last December and March approved increases of 6% and 7% in transatlantic fares respectively, and considering the increases which this agreement provides, the U.S. airlines involved (Pan American World Airways, Trans World Airlines and National Airlines) on a composite basis, will be more than \$43 million short of fully recovering actual fuel cost increases up to the date of the Board's approval. It was recognized that the current decline in North Atlantic traffic may be due, at least in part, to fare increases approved earlier and that the increases approved in this instance may accentuate that trend. The Board pointed out, however, that air fares are only part of the total cost of an average trip to Europe, and that other factors such as inflation on both sides of the Atlantic, as well as currency fluctuations, had also played a part in the decrease of transatlantic traffic during the summer. The Board also noted that the additional fare increase would result in a minimal increase in the carriers' rates of return, but pointed out that while National was experiencing excellent earnings in its transatlantic service, Pan American and TWA were realizing returns that were clearly inadequate and would remain so even at the higher fares. Therefore, the Board concluded that prompt recoupment was not only warranted but necessary to the maintenance of scheduled service.

## TRAVEL GROUP CHARTER RULES

The Civil Aeronautics Board has adopted without modification the tentative findings it made last March in its proposal to liberalize Travel Group Charter (TGC) rules in an attempt to enhance their marketability while preserving the legally required distinction between charter service and individually ticketed service. The revised regulations became effective August 12.

In its notice of proposed rule making, the Board proposed to amend the TGC rules to (1) reduce the deadline for filing the original participants list from ninety to sixty days in advance of the flight date; (2) allow a TGC to be filed so long as at least 90% of the contracted seats were sold to original participants; (3) eliminate the standby list for eligible assignees of TGC participants and, instead, permit original participants

to assign their TGC contractual rights and obligations to members of the general public; and (4) reduce the maximum number of permissible assignments from 20% to 15% of the number of listed original participants.

Although there was some opposition to the Board's proposal to allow a TGC to be filed when at least 90% of the seats were sold to participants (instead of 100% as formerly required), the Board was not persuaded to withdraw this liberalizing feature.

The Board also made final its proposal that if less than 100% of the contracted seats were sold by the time the TGC is filed, then no additional seats may thereafter be sold, although seats contracted for may continue to be assignable by individual participants at any time prior to flight departure. The Board, in explaining why it permitted this limited right of assignment to extend to members of the general public, rather than only to persons named on a filed standby list, stated that TGC participants must be allowed some opportunity to be relieved from total forfeiture of their charter payments by the availability of a limited right of assignment. Since standby lists have not effectively served that purpose, limited assignments to the general public should be tried. In this connection, the Board rejected the argument that such a limited right of assignment would stimulate speculators to participate in TGCs since the rules do not permit assignments to be made for profit. In adhering to its proposal to reduce the number of permissible assignments from 20% to 15% of the listed original participants, the Board stated that the slight restriction in the number of permissible assignments was designed to provide some offset against the relaxation of the requirements on eligibility for assignments.

## U. S. FLAG CARRIERS' FINANCIAL PROBLEMS

On June 25, the House Transportation and Aeronautics Subcommittee held public hearings concerning several bills that would provide financial assistance to U.S. international air carriers. At that time, the Subcommittee heard testimony from the Chairman of the Civil Aeronautics Board and the Secretary of Transportation each of whom presented differing views concerning the ultimate solutions to the problems that continue to plague the U.S. flag carriers. Generally, the Board favors a program of direct Federal subsidy for a limited period of time, while DOT op-

poses financial assistance and favors an alternate program of affirmative economic actions. Both positions were presented to the Subcommittee in prepared testimony.

DOT's so-called "Federal Action Plan" proposes to place the U.S. flag international carriers in an economically viable position through a series of affirmative actions. More specifically, the "Action Plan" would involve: (1) a series of steps to deal with rates which are too low, too complicated, or not properly enforced; (2) a continuing effort to identify routes to be abandoned or combined with another carrier; (3) reduction of capacity on international routes that is far in excess of country-to-country demand; (4) initiation of a "fly U.S. flag" program to encourage U.S. residents to travel on U.S. carriers; and (5) the reduction of foreign discrimination against U.S. carriers through such practices as the imposition of excessive navigation and landing fees. The Secretary stated further than in seeking solutions to the current problems, the United States must be guided by long-term objectives that will assure U.S. air passengers and shippers adequate, reliable, and low-cost service to foreign countries; establish fares and tariffs reasonably related to the cost of providing the service; permit U.S. air carriers to compete fairly in international markets on viable economic terms; and assure respect for U.S. bilateral and multilateral air agreements. While voicing opposition to proposed legislation authorizing Federal subsidies for the U.S. flag international carriers, the Secretary stated that if the plan was successful, it should avoid the need for additional legislation or short-term subsidy.

While agreeing with the Secretary that Federal financial assistance should be a matter of last resort, the Board's Chairman disagreed on the issue of whether alternative measures would be sufficient to maintain the U.S. international air transport system in reasonably good health for the short term. In this connection, the Chairman stated that in view of sufficiently high risks to the system, legislation providing for Federal financial assistance ought to be adopted. The Chairman outlined the Board's reasons for its position.

The Chairman pointed out that the world's airlines, especially U.S. international carriers, have of late incurred serious financial losses and noted that while the profits of U.S. trunkline carriers' profits from domestic operations increased by almost \$100 million (comparing the first quarter of this year with the first quarter of 1973), the profits from international operations decreased by almost \$40 million (a \$64 million

loss in the second quarter). The Chairman presented three major reasons for the current problem: (1) a significant decline in international traffic, which the Chairman stressed as being a real decline and not simply a drop-off in growth rates; (2) a trend toward the shifting of passengers to charter and other forms of group travel; and (3) a sudden and drastic upsurge in fuel prices to the extent that international fuel prices paid by U.S. carriers increased from about 13 cents per gallon in July of 1973 to about 33 cents last April (an increase of about 150%). As was stated by the Chairman, these developments have substantially weakened the financial positions of Pan American and TWA, the two U.S. scheduled carriers that rely most heavily on their international business. It was noted that when the fuel crisis emerged, Pan American was about to return to profitability after five consecutive years of losses, totaling \$180 million. As an indication of the magnitude of the losses that have been sustained in recent months, the Chairman stated that for the first four months of 1974, Pan American's net loss after taxes was about \$31 million with TWA's net loss being even worse at \$51 million. In attempting to mitigate these losses, the carriers have sought, and the Board has granted, rate and fare increases in the form of fuel surcharges; attempted to rationalize their route systems through route swaps and suspensions; entered into a number of capacity limitation agreements; and grounded aircraft and reduced their work forces. In this connection, it was stated that although the Board had taken positive action to achieve long-term solutions to the carriers' problems, no combination of possible corrective actions can prevent Pan American and TWA from suffering serious financial losses in 1974. Furthermore, the Chairman testified that it was the Board's judgment that corrective actions may not be sufficient to obviate the risk of serious financial harm befalling one or more U.S. carriers next year.

It was recognized by the Chairman that Congress has given the Board the responsibility for fostering sound economic conditions in air transportation, and, that in light of that responsibility, the Board had concluded that, at the present, there was no available remedy short of Federal financing to lessen the risks to the health of the U.S. international air transportation system. Finally, the Chairman stated that while the bills that were pending before the Subcommittee presented certain problems and difficulties, the Board should be given authority to provide financial assistance to U.S. international carriers for a limited period during which time the carriers would be required to bring their operations into line with the economic realities of today.



## AIRPORT X-RAY UNITS

On June 21, 1974, the Federal Aviation Administration (FAA) issued a proposed regulation that would govern the installation and safe operation of X-ray devices for screening carry-on luggage at airports. In addition to providing for the training of operators of this equipment and protection of them on the job, the proposal would assure that all X-ray units used by the airlines in their security programs comply fully with performance standards for that equipment recently issued by the Food and Drug Administration of the Department of Health, Education and Welfare. The airlines began introducing X-ray units in the spring of 1973 to meet FAA requirements that they search all baggage and other items that passengers intend to carry on the airplane. The equipment is used only for the inspection of carry-on items. It is not used to screen or search passengers.

FAA said it believes the FDA performance standards for airport X-ray units provide adequate radiation protection both for operators of this equipment and the traveling public. For example, the agency noted that the radiation leakage standards for the X-ray units are the same as those for television sets, and that the X-ray units utilize very low radiation dosages which are only about one-tenth that given off by a wrist watch with a radium dial and one-ten-thousandth that of a dental X-ray.

There are approximately two-hundred X-ray units in operation at some sixty-three airports around the country. All of these systems meet the FDA safety standards and will continue in operation pending final action on the FAA proposal. Although use of this equipment was challenged in the courts by a consumer group resulting in an order from the U.S. District Court for the District of Columbia prohibiting their use, the presiding judge subsequently agreed to stay his order after receiving assurances that the FAA would initiate rule making action that would afford the public an opportunity to comment on the use of such equipment at airports.

Among other things, the proposal would require the airlines to post signs notifying passengers concerning the use of X-ray equipment to screen carry-on baggage and advising them to remove all X-ray and scientific film from their baggage prior to inspection. FAA said tests conducted by the Eastman Kodak Company have shown that normal radiation dosages of less than one milliroentgen used for each X-ray will not damage standard film but could affect scientific film. However, if

the X-ray system being used exposed carry-on luggage to more than one milliroentgen during the inspection, this fact also would have to be posted and passengers advised to remove all film from their baggage.

Finally, the proposed regulation would prohibit the use of any X-ray equipment for which the FDA had issued a defect or modification order because of potential injury, including genetic injury to operators or passengers.

## AEROSAT AGREEMENT

Since mid-1971, the ATC and communications satellite project known as AEROSAT has been under intensive discussion and negotiation. The system is intended to provide the information upon which to base a follow-on operational system expected to be required in the mid-1980's. Thus, on May 9, 1974, the Administrator of the Federal Aviation Administration (FAA) signed a Memorandum of Understanding for a joint international program to test, evaluate, and demonstrate the use of aeronautical satellites to provide communications and air traffic services over the North Atlantic. Other participants are Canada and the ten countries of the European Space Research Organization (ESRO): Belgium, Denmark, France, West Germany, Great Britain, Italy, The Netherlands, Spain, Sweden, and Switzerland. Formal signing by ESRO and Canada was completed on August 2. The satellite will be jointly owned by ESRO, Canada, and a U.S. private sector co-owner to be named subsequent to the signing of the agreement by all parties. FAA's use of the satellite will be on a lease basis from the U.S. co-owner. Two satellites in synchronous orbit over the Atlantic are planned with the first launch scheduled in late 1977 or early 1978.

## HAZARDOUS MATERIALS

An FAA staff study has concluded that failure of shippers to comply with regulations governing the packing, marking, labeling, and documenting of hazardous materials is the major problem associated with the carriage of hazardous materials in aviation as well as other transportation modes.

The evaluation is the result of an investigation conducted by staff members of FAA's Flight Standards Service last March and April, in five FAA regions. The investigations, which included interviews with FAA

Regional and Air Carrier District Office (ACDO) personnel, focused on three areas: the adequacy of each Region's surveillance and enforcement programs; the ACDO standard operating practices and the extent of their employee training in the handling and documentation of hazardous materials shipments; and inspection of actual shipments of hazardous materials at air carrier and freight forwarder facilities.

Stressing the intermodal nature of the problem, the FAA report notes that 90% of the shipments found to be in noncompliance with FAA regulations during the evaluation period also failed to meet the shipping regulations governing the surface modes of transportation that brought these materials to the air carrier or freight forwarder loading docks.

Concurrent with the evaluation, the FAA has been moving to strengthen its hazardous materials surveillance program. Specific actions include:

- \* Eighteen hazardous materials coordinators have been assigned to FAA regional offices and the number of those in the field involved in hazardous materials activities on a part-time basis has been increased to 103. The eighteen positions were not filled at the time of the evaluation in March-April.
- \* A comprehensive handbook providing policy guidance for hazardous materials inspectors was published on August 6. The study team found that the lack of handy, written guidance material was one of the most significant problems affecting the FAA hazardous materials program.
- \* A survey has been conducted by a separate FAA group to determine the number of flights carrying hazardous cargo, particularly air carriers. This data is expected to help FAA identify the most frequently used shipping points where it can concentrate its inspection efforts.

In addition to outlining the actions taken by FAA as a result of the special field investigations, the report lists the steps taken by the agency within the past eighteen months in general response to the increasing volume of hazardous materials being shipped by air. These include:

- \* A hazardous materials training course has been established for FAA Inspectors. Some 203 Inspectors have completed the course.
- \* A separate course for airlines, air taxis, freight forwarders and shippers has been established. Some seventy-three persons have completed this four-day course which is being conducted by the Trans-

portation Safety Institute at the FAA Aeronautical Center in Oklahoma City.

\* A Notice of Proposed Rule Making (No. 74-18), published on April 15, 1974, would provide that no person may carry any dangerous article in an aircraft unless the outside container has been inspected to determine that, from all outward aspects, it complies with packaging, marking and labeling requirements of FAA. The Notice also proposes that packages containing radioactive materials and appropriate parts of the aircraft be scanned with a radiation monitoring instrument.

\* The number of hazardous materials inspections conducted by FAA in 1973 totaled 9073, compared to a total of 571 for the previous two years, 1971-1972. The number of inspections during 1974 is expected to substantially exceed the 1973 level.

#### SENATE SUBCOMMITTEE REPORT

On Sunday, March 3, 1974, shortly after takeoff from Paris, France, a McDonnell Douglas DC-10 aircraft operated by THY Airlines of Turkey crashed killing all 346 persons on board. Prompted by striking similarities between the Paris disaster and a June 1972 incident involving a DC-10 aircraft in the United States, the Subcommittee on Aviation conducted an investigation into the events surrounding the Paris crash. Before the Subcommittee began its investigation, both U.S. and French accident investigators had reached the preliminary or tentative conclusion that the Paris disaster was caused by the separation of the aft bulk cargo door from the aircraft while the aircraft was climbing to its assigned cruising altitude and that the sequence of events subsequent to the separation rendered the flight controls incapable of controlling the aircraft.

The Subcommittee's hearing and investigation was not designed as a formal inquiry subject to due process requirements nor was there any intention to establish any probable cause or legal, financial or moral liability or responsibility for the accident. The Subcommittee's concern was to ascertain whether the U.S. Government agencies involved in civil air safety, namely the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB) had properly exercised their respective responsibilities in regard to the DC-10 problem which came to light in 1972. Therefore, the inquiry was limited to an assessment of the effectiveness of governmental policy and regulatory activities aimed

at providing the traveling public the safest air transport system possible. As indicated below, according to the Subcommittee the investigation revealed certain deficiencies in governmental action.

The Subcommittee's report found that the FAA, in dealing with the problem of the cargo door on the DC-10 following the June 1972 incident, failed to take the proper regulatory action in seeking to ensure that a repeat of the near catastrophic door failure did not occur. The report concluded that when a serious or potentially catastrophic problem develops in a transport category aircraft, the public interest and safety requires strong regulatory action on the part of the FAA and that issuance of Airworthiness Directives rather than Service Bulletins is the only proper way to proceed. (The Airworthiness Directive has the force and effect of law while compliance with Service Bulletins is voluntary on the part of the operator and may be ignored if the operator chooses.) The Committee also expressed concern with respect to the FAA's failure to adequately follow up what action it did take after the 1972 incident and Douglas Aircraft's failure to take remedial action on the cargo door situation as warranted by the circumstances. It was stated, however, that the committee believed that the Administrator was acting honestly and in good faith in dealing with the DC-10 problem and truly believed that the serious danger posed by the problem could be alleviated through the Service Bulletin process. Nevertheless, the report stated that testimony from the Committee's hearings indicated that there was less than total compliance with the Service Bulletins dealing with the cargo door and that in at least one instance a U.S. registered aircraft was not modified pursuant to the applicable Service Bulletin until after the Paris accident. The report recognized that proper door closure eliminated the possibility that the door would inadvertently come open in flight and that proper and secure closure was possible without the modifications provided for in the FAA's Service Bulletin.

The report also found fault with the NTSB for failure to adequately follow up its recommendations on the DC-10 door problem and for its closing of the file on its DC-10 safety recommendation (to install venting between the cargo and passenger compartments) even though the FAA had not taken action initiating the proposed recommendation.

Finally, the Committee stated its belief that the regulatory process designed to protect the public from unsafe conditions which could lead to air transportation disasters was circumvented in the DC-10 cargo door situation and indicated that it expected better performance in the future. It should be noted that subsequent to the Committee's hearings, the FAA

Administrator, in a statement to the Committee, indicated that he had directed the use of Airworthiness Directives in all future situations where a design change is needed to correct an unsafe condition.

## ANTIHIJACKING ACT OF 1974

On August 5, 1974, the Antihijacking Act of 1974 was signed into law. The new legislation amended the Federal Aviation Act of 1958 so as to implement the Convention for the Suppression of Unlawful Seizure of Aircraft; to provide a more effective program to prevent aircraft piracy; and for other purposes. The following are some of the more significant provisions of the new legislation.

### TITLE I

#### *Special Aircraft Jurisdiction of the United States*

The definition of the term "special aircraft jurisdiction of the United States" contained in existing law has been expanded in two major respects. First, the definition is extended to include the following two categories of aircraft not covered by existing law:

- (1) Any aircraft outside the United States having "an offense" (as defined in the Hague Convention) committed aboard, if the aircraft lands in the United States with the alleged offender still aboard; and
- (2) Other aircraft leased without crew to a lessee who has his principal place of business in the United States or, if he has no such place of business, he has his permanent residence in the United States.

Second, the definition in existing law is changed with respect to when an aircraft is "in flight." Existing law provides that an aircraft is in flight "from the moment power is applied for the purpose of takeoff until the moment when the landing run ends." The new definition provides that an aircraft is in flight "from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard". These amendments implement provisions contained in Art. 3 and 4 of the Hague Convention.

### *Aircraft Piracy*

The new provisions provide that a person aboard an aircraft in flight *outside* the special aircraft jurisdiction of the United States commits "an offense" (as defined in the Hague Convention) when he unlawfully seizes or exercises control of the aircraft by force or threat of force, or by any other form of intimidation, or attempts to perform any such act or is an accomplice of a person who performs or attempts to perform any such act. The new provisions apply only if the place of take off or landing of the aircraft on which the offense is committed is situated outside the State of registration of the aircraft, thus excluding coverage of what might be called "domestic" aircraft hijacking. Also incorporated in the new provisions is the definition of the term "in flight" as it is used in the Hague Convention and discussed above under the definition of special aircraft jurisdiction of the United States. Existing law is also amended to provide that violations of the new provisions shall be investigated by the Federal Bureau of Investigation.

### *Hijacking Attempts*

The legislation added a new paragraph (3) to section 902 (i) of existing law, dealing with the "attempt" to commit aircraft piracy, which provides that such an "attempt" is within the special aircraft jurisdiction of the United States even though the aircraft is not in flight at the time of the attempt, if it would have been within such special aircraft jurisdiction of the United States had the offense of aircraft piracy been completed. This amendment extends the jurisdictional limits for attempted aircraft hijackings to encompass attempted aircraft hijackings which do not occur in flight, and is intended to proscribe attempted aircraft hijackings even when the hijacker is rendered incapable of completing the hijacking in flight because he has sustained an injury or for some other reason.

### *Death Penalty*

The new amendments provide that the penalty for the offense of "aircraft piracy" committed *outside* the special aircraft jurisdiction of the United States shall be imprisonment for not less than twenty years, except that, if the death of another person results from the commission or attempted commission of the offense, the penalty could be death or imprisonment for life. Also amended was the penalty provision contained in existing law so as to make the penalty for "aircraft piracy" committed *within* the

special aircraft jurisdiction of the United States identical with the penalty which may be imposed for such offense committed *outside* the special aircraft jurisdiction of the United States. In either case, the imposition of the death penalty would be subject to specific procedural requirements which are contained in a new section 903(c).

### *Suspension of Air Services*

The provisions relating to suspension of air services are contained in a new section 1114. Subsection (a) provides that whenever the President determines that a foreign nation is acting in a manner inconsistent with the Hague Convention or, if he determines that a foreign nation permits the use of its territory as a base of operations or training or as a sanctuary for, or in any way arms, aids, or abets, any terrorist organization which knowingly uses the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may —

- (1) suspend the right of any air carrier or foreign air carrier to engage in foreign air transportation, and suspend the right of any person to operate aircraft in foreign air commerce, to and from the offending nation; and
- (2) suspend the right of any foreign air carrier to engage in foreign air transportation, and the right of any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which continues to maintain air services between itself and the offending nation.

The President may exercise his authority under this sub-section without notice or hearing and for as long as he deems necessary to assure the security of aircraft against unlawful seizure. This subsection further provides that, notwithstanding section 1102 of existing law, the President's suspension authority shall be deemed to be a condition —

- (1) to any certificate of public convenience and necessity issued by the Civil Aeronautics Board and to any permit issued by the Board to any foreign air carrier or foreign aircraft; and
- (2) to any operating certificate or specification issued by the Secretary of Transportation to any air carrier or foreign air carrier.

Subsection (b) of the new section 1114 makes it unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or for any person to operate any aircraft in foreign air commerce, in violation of any suspension of rights imposed by the President.



*Security Standards in Foreign Air Transportation*

The provisions relating to security standards are contained in a new section 1115. The new section provides for the maintenance of minimum security measures in foreign air transportation by requiring the Secretary of Transportation to notify a foreign nation whenever, after consultation with the aeronautical authorities of that nation, he finds that such nation does not effectively maintain and administer security measures relating to foreign air transportation equal to or above the minimum standards established pursuant to the Convention on International Civil Aviation. The Secretary is also required to notify such nation of the steps considered necessary to bring its security measures up to the minimum standards. In the event that nation fails to take such steps, the Secretary of Transportation may, with the approval of the Secretary of State, withhold, revoke, or impose conditions on the operating authority of the airlines of that nation. In addition this section requires the Secretary of State to notify each nation which has a bilateral air transport agreement with the United States, and each nation with airlines which hold foreign air carrier permits under existing law of the provisions of this section.

*Civil Penalties*

The new legislation amends section 901 (a) of existing law, relating to civil penalties, to provide that any person who violates the provisions of the new section 1114 relating to suspension of air services shall be subject to a civil penalty of not to exceed \$1,000 per day.

*Enforcement by Attorney General*

Section 1007 (a) of existing law, relating to judicial enforcement, is also amended to authorize the Attorney General to apply to the district courts of the United States for the enforcement of the new section 1114.

## TITLE II

Title II of the Act (which may be cited as the Air Transportation Security Act of 1974) amended Titles III and XI of the Federal Aviation Act of 1958 (the Act), by adding several new sections and amending existing provisions of the Act.

*Screening of Passengers*

The new section 315 of the Act provides that the Administrator of the Federal Aviation Administration shall prescribe or continue in effect

reasonable regulations requiring that all passengers and all property to be carried in the aircraft cabin in air transportation or in intrastate air transportation be screened by weapon-detecting procedures or facilities employed or operated by employees or agents of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation.

#### *Air Transportation Security*

The new section 316 of the Act provides that the Administrator shall prescribe such reasonable rules and regulations requiring such practices, methods, and procedures, or governing the design, materials, and construction of aircraft, as he may deem necessary to protect persons and property aboard aircraft operating in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

#### *Carrying Weapons or Explosives Aboard Aircraft*

Section 902 of the Act was amended to provide that whoever, while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight, or any person who has on or about his person, or who has placed, attempted to place, or attempted to have placed aboard such aircraft any bomb, or similar explosive or incendiary device, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

#### *Authority to Refuse Transportation*

Section 1111 of the Act was amended to provide that the Administrator shall, by regulation, require any air carrier, intrastate air carrier, or foreign air carrier to refuse to transport —

(1) any person who does not consent to a search of his person, to determine whether he is unlawfully carrying a dangerous weapon, explosive, or other destructive substance, or

(2) any property of any person who does not consent to a search or inspection of such property to determine whether it unlawfully contains a dangerous weapon, explosive, or other destructive substance.

Subject to reasonable rules and regulations prescribed by the Administrator, any such carrier may also refuse transportation of a passenger or

property when, in the opinion of the carrier, such transportation would or might be inimical to the safety of flight.

### *Liability for Certain Property*

Title XI of the Act was amended by adding the new section 1116 providing that the Civil Aeronautics Board shall issue such regulations or orders as may be necessary to require that any air carrier receiving for transportation as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

### *Definitions*

Section 101 of the Act was amended by adding the following new definitions:

- (1) Intrastate air carrier means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage solely in intrastate air transportation.
- (2) Intrastate air transportation means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons wholly within the same State of the United States.

While there appears to be no legislative history on the issue, presumably the foregoing definitions are to apply only to the security provisions of the Act and are not intended to be in any way applicable to the economic regulatory provisions of the Act.

## RECENT U.S. CASE LAW

### *D'Arcy v. Delta Air Lines, 13 Avi. Cas. 17,113 (1974)*

In this case the court had before it a motion to dismiss a wrongful death action filed in the state of New York arising from an air flight that originated in Vermont and was scheduled to land in Massachusetts. Although the decedent was a citizen and resident of Connecticut at the time

of his death, he had for many years worked in New York and paid New York state and city income taxes. Furthermore, the contract of carriage was made by the decedent with the defendant air carrier in New York and the ultimate destination on the decedent's ticket was New York City. The defendant air carrier contended that New York had no significant contacts with the case and that the interests of justice would be best served by a trial either in Connecticut or Massachusetts. The court recognized that what was critical to both sides of the issue was that if the case were tried in either Massachusetts or Connecticut, the Massachusetts Wrongful Death Statute would be applied and would operate to limit the amount of the plaintiffs' recovery, whereas if the action were tried in New York, the Massachusetts Wrongful Death Statute would not be applied. In holding that the motion to dismiss the wrongful death action should be granted, the court stated that *forum non conveniens* relief should be granted when it plainly appears that New York is not a convenient forum.

*Mason v. Belieu*, 13 Avi. Cas. 17, 114 (1974)

In this case the United States District Court for the District of Columbia had before it rather bizarre factual circumstances requiring a determination pursuant to the antidiscrimination provision of the Federal Aviation Act of 1958, section 404 (b), 49 U.S.C. 1374. The plaintiff had been deported from the Panama Canal Zone and forcibly placed aboard a commercial aircraft bound for Miami, Florida, where, upon arrival, the plaintiff promptly made arrangements to take the next available return flight and notified his family accordingly. In the interim, the defendant air carrier had been notified of the plaintiffs' deportation and the circumstances surrounding his presence in the United States by the carrier that had brought the plaintiff to Miami from the Tocumen Airport in Panama. Thereafter, when the plaintiff presented himself at the defendant air carrier's gate for embarkation on his return flight to Panama, he was politely but firmly denied passage by the carrier's Assistant Airport Service Manager. The plaintiff seeks damages for the mental distress and severe inconvenience caused by the defendant air carrier's failure to transport the plaintiff and the distress to plaintiff's wife caused by a delayed arrival and the resulting detention of plaintiff by Panamanian authorities.

The court stated that there was no doubt that the plaintiff had a valid contract for passage to Tocumen Airport and that the defendant's employee's action in preventing the plaintiff from boarding the flight, absent justification, violated that contract and plaintiff's right to travel on an air

carrier without suffering "unjust discrimination or any undue or unreasonable prejudice or disadvantage." Although the deportation order had been brought to the attention of the defendant's employee, it could not be used to justify a refusal to transport the defendant because there was no indication that the employee relied upon it for that purpose. Although the defendant air carrier argued that its employee's actions were reasonably calculated to protect the safety of the departing plane and its passengers from a possible hijacking, the court concluded that, in light of the employee's knowledge of the circumstances, the plaintiff's odd behavior and late arrival at the gate in no way reasonably suggested an intention to hijack the aircraft. The court also noted that the defendant's employee neither questioned the plaintiff about his intentions nor had him specially searched for weapons.

Concluding that the plaintiff had established unjust discrimination on the part of the defendant air carrier, the court stated that the plaintiff was entitled to actual damages for the violation of his right to passage aboard a common carrier including compensation for plain and blatant instances of humiliation and outrage, and awarded the plaintiff \$1,000. With respect to the damages claimed by the plaintiff's wife, the court stated that her injuries were genuine but slight and awarded the sum of \$200 for the emotional distress that was caused by the defendant's failure to give a valid explanation for plaintiff's failure to arrive as scheduled. The court rejected other claims for consequential damages and stated that punitive damages would be inappropriate in the absence of proof that the defendant's employee acted wantonly, or oppressively, or with malice. The sum of \$150 was awarded for court costs.

*Air Line Pilots Association v. Civil Aeronautics Board, Case Nos. 73-1214 et al (D.C. Ar., filed 1974).*

In this case the United States Court of Appeals for the District of Columbia had before it various groups of airline employees challenging the Board's approval of the airlines' Mutual Aid Pact, as amended.

The Pact was created in 1958 by six airlines representing a joint effort to soften the impact of strikes against individual companies. Originally the Pact provided only for "windfall payments" whereby a strike-bound company received payments from other Pact members equal to their increase in revenues resulting from the strike minus their added operating expenses in servicing the diverted business. The Pact was then amended to provide for "supplemental payments" which enabled a carrier member

to receive 25% of its normal air transport operating expenses for operations shut down by a strike. However, a 1969 amendment to the Pact raised that figure to 50% for the first fourteen days of the strike and then decreasing by stages to 35% after a strike period of four weeks or longer with additional payments over windfall to meet this allotment contributed by each member in the proportion which its air transport operating revenues bore to the total revenue for all members. While individual carrier liability for supplemental payments was limited at first to one-half of 1% of the carrier's intake for the prior year, that limitation was increased in 1969 to 1% by agreement of the Pact members.

The employee groups argued that the Pact, as approved, violated the national labor policy, the Railway Labor Act, and the antitrust laws. It was also contended that there was no substantial evidence to support the Board's finding that the Pact was not adverse to the public interest. While the primary thrust of the unions' attack concerned the Board's approval of the increase in supplemental payments rates and the higher ceiling on individual carrier liability, the employee groups also contested the Board's consent to a 1971 amendment to the Pact authorizing the participation of the local service carriers. In affirming the Board's orders approving the amendments to the Pact, the court made several notable observations.

At the outset the court recognized that United States labor policy has at its very foundation the principle that parties should be free to marshal the economic resources at their disposal in the resolution of a labor dispute, consistent with the specific rights and prohibitions established by the labor statutes. The court stated that while the Federal Aviation Act established certain procedures that must be followed in the direct bargaining phase of a dispute, once those procedures were exhausted without reaching an agreement, there is no prohibition against parties resorting to economic self-help measures in an attempt to weather the economic realities of a strike until a favorable settlement can be negotiated. In this connection, the court noted that the permissibility of the Pact under the Railway Labor Act was adequately supported by U.S. case law as well as section 20 of the Clayton Act and section 4 of the Norris-La Guardia Act which sanction the payment of benefits to parties engaged in a labor dispute. Finding that the Board's approval of the Pact was fully consistent with the national labor policy and the Railway Labor Act, the court cited the Board's specific conclusion that the Pact had not inhibited good faith bargaining and had not become an employer device for the control of the formation of bargaining units. It was also concluded that the Board's findings were ade-

quately supported by the record and that the result reached was reasonable. In disposing of the antitrust arguments of the employee groups, the court pointed out that the initial forum in which to raise such objections was the agency that is charged with the primary determination of the public interest and since there was no indication that such objections were raised in that forum, the court was precluded from considering the anti-trust attack absent any reasonable grounds for failure to pursue that attack before the agency. The Board's orders approving the Pact were affirmed.