

INTERNATIONAL CHARTER FLIGHT STRANDINGS: PROPOSAL FOR MULTINATIONAL REGULATION

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Expressing alarm over the massive nature of black market charter operations, Richard J. O'Melia, the Director of the Bureau of Enforcement of the Civil Aeronautics Board stated:

The cut-throat illegal competitive practices of a small but powerful clique of individuals constitutes an eminently unfair and serious diversion of passengers from those U.S. and foreign scheduled and supplemental airlines, and legitimate travel agents who are attempting to operate within the Board's charter regulations.¹

These competitive practices and the failure or inability of Government agencies to enforce flight regulations have resulted in many air passengers being stranded in foreign countries with a charter ticket in hand which no airline will honor for a return trip home. The charter organizer may have absconded with or otherwise dissipated the travellers' advance payments and disappeared without a trace, only to surface under another name in another place a few months later.²

The charter passenger usually is an innocent victim of an unscrupulous promoter but it is not uncommon for a passenger to execute a perjured affidavit of membership in a qualified organization or cut other corners to reduce the cost of travel.³ The unreasoned variations in air fares mollifies many a conscience, but regardless of sympathy or lack of it for the passenger it has never been possible to legislate or regulate protection against cu-

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1. C.A.B. Press Release No. 71-148, Sept. 17, 1971, at 2.

2. Letter from Richard J. O'Melia, Director, C.A.B. Bureau of Enforcement, to the authors, Oct. 15, 1971 on file in Calif. W. Int'l L.J. offices.

3. *Id.* at 3.

pidity and questionable scruples. Additional safeguards can be developed but history suggests that the problem is not likely to be eliminated through domestic channels. Among the reasons for this are the resistance of American carriers and charter organizers to regulations which would place them at an economic disadvantage with their foreign counterparts, and the fact that strandings are usually experienced overseas.

I. ORIGINS OF CHARTER REGULATIONS

Charter flights blossomed after World War II as a result of a large surplus of aircraft available at low prices, and the increasing demand for civilian air service to Europe.⁴ At that time the world's scheduled airlines were unable to expand rapidly enough making it feasible for non-scheduled airlines with little capital to begin operations.⁵ The initial purpose of "non-skeds" was to supplement the scheduled or certificated airlines. Charter flights were to be restricted to providing transportation for those passengers who could not travel by scheduled airlines due to the lack of space during peak seasons.

The "non-skeds", however, immediately entered into direct competition with the scheduled airlines, which prompted a Civil Aeronautics Board (C.A.B.) decision to discontinue activities by irregular or non-scheduled airlines in the foreign field.⁶ Scheduled American and foreign airlines were authorized to carry on both charter and individually ticketed and scheduled operations.⁷ Although the C.A.B. prohibited "non-skeds" from this field of operations,⁸ the "non-skeds" continued their flights. This resulted in a series of bitterly contested cases questioning the authority of the C.A.B. over certain irregular carriers.⁹

Events led the C.A.B. to the conclusion that there did exist a need for non-certificated carriers to engage in foreign air transpor-

4. See Goldklang, *Transatlantic Charter Policy—A Study in Airline Regulation*, 28 J. AIR L. & COM. 99 (1961-62).

5. Large Irregular Air Carrier Investigation, 22 C.A.B. 838, 891 (1955).

6. Transocean Air Lines, Enforcement Proceeding, 11 C.A.B. 350, 358 (1950).

7. Civil Aeronautics Act § 401, 52 Stat. 987, 49 U.S.C. § 481. This was for U.S. certificated carriers. Foreign carriers authorization given in *Foreign Off-Route Charter Service Investigation*, Order No. E-12945, Sept. 8, 1958, at 2.

8. Order No. E-1105, Jan. 6, 1948.

9. Investigation of Seaboard & Western Airlines, Inc., 11 C.A.B. 372, 378 (1950); Transocean Air Lines, Enforcement Proceeding, 11 C.A.B. 350 (1950).

tation. Hence, the C.A.B. granted a limited number of permits to "non-skeds" for transatlantic charter flights.¹⁰ In December, 1949, the C.A.B. published a detailed statement of its policies and justifying considerations with respect to charter flight activity.¹¹

The definition of "charter trips" immediately presented difficulties in the application and enforcement of C.A.B. rules.¹² Inconsistencies in policy announcements and their application to charter flights to Europe were apparent.¹³ The fraudulent practices of today were prevalent and troublesome even then, solicitation of passengers from the general public being the most obvious and frequent violation.¹⁴ The hue and cry resulting from the enforcement and administration of regulations gave rise to a claimed innovative set of C.A.B. Economic Regulations, part 207, which provided a guide for charter operations.¹⁵ However, even with fairly specific statutory and regulatory provisions the C.A.B. continued to be plagued with a plethora of regulatory inconsistencies and enforcement inadequacies. The C.A.B. attributed this primarily to the lack of manpower for field investigations and the inordinate period of time required to activate enforcement in the field.¹⁶

Inadequacies of the regulations and bureaucratic shortcomings would perhaps be a more realistic appraisal of the difficulties. These problems are still present although the Economic Regulations have been "filled-in" with complex and sometimes confusing rules developed as a series of corrective measures on a case by case basis, but sometimes inhibited because of the inability to directly enforce them in foreign countries. The need for an international organization to regulate international charter operations is apparent from the records the C.A.B. has maintained of its enforcement activities, and from its disappointing results in its efforts to prevent charter violations, particularly strandings. Although the C.A.B. has a fairly adequate system of "written" regulations, application in the field has left something to be desired and charter violations continue to be the major source of air indus-

10. C.A.B. Press Release No. 49-36, May 13, 1949.

11. C.A.B. Press Release No. 49-99, Dec. 6, 1949.

12. *Id.*

13. C.A.B. Press Release No. 50-28, May 20, 1950.

14. *Id.*

15. 14 C.F.R. § 207 (1951).

16. Letter from Richard J. O'Melia, Director, C.A.B. Bureau of Enforcement, to the authors, Oct. 26, 1972, on file in Calif. W. Int'l L.J. offices.

try violations plaguing the C.A.B.¹⁷

Investigations of strandings during the summer of 1971 indicated that many involved "passenger consolidators" who had collected for round-trip transportation but only contracted for one-way passage.¹⁸ The travelers who were consolidated into a charter flight were solicited from the general public.¹⁹ As soon as the C.A.B. was informed of the strandings it attempted to contact these illegal charter organizers by telegram but received no response. Later it was learned that these companies had disappeared. Prior to the strandings the C.A.B. had received no other public complaints involving these organizations.²⁰ This indicates the need for an international regulatory organization which can effectively execute preventive measures such as licensing of charter organizers and immediate investigation of information relating to the charter flight at the time the charter contract was being made.²¹ These investigative features would not be hindered by the fact that the charter was organized in England, Germany, or any of the other member States of the proposed international organization. At the present time it is practically impossible for the C.A.B. to conduct such investigations alone.²² It is doubted that any single domestic agency could be expected to develop the capabilities to discharge effectively the task.

II. INTERNATIONAL CHARTER ENFORCEMENT ORGANIZATION

The C.A.B. Economic Regulations,²³ modified to reflect the international character and responsibilities of an International Charter Enforcement Organization (I.C.E.O.) serve as a basis for developing substantive controls for worldwide application. The C.A.B.'s counterparts in a few other countries have developed

17. CIVIL AERONAUTICS BOARD, REPORTS TO CONGRESS 55 (1971); letter from Charles F. Butler, Director, C.A.B. Bureau of International Affairs, to the authors, Dec. 6, 1972 on file in Calif. W. Int'l L.J. offices.

The C.A.B. report listed a total of sixty-one east and west coast chartering organizations, travel agents and individuals who were involved in various 1970 proceedings. The report further indicated that charter violations accounted for thirty-seven percent of the air transport violations in C.A.B. enforcement actions for 1971.

18. Letter from Richard J. O'Melia, *supra* note 2.

19. *Id.*

20. *Id.* at 3.

21. See discussion p. 344 *infra*.

22. Letter from Richard J. O'Melia, Director, C.A.B. Bureau of Enforcement, to the authors, October 26, 1972 on file in Calif. W. Int'l L.J. offices.

23. 14 C.F.R. §§ 207, 208, 212 and 214 (1972).

regulations from which borrowings could also be made, but the Economic Regulations appear to be the most complete although greatly in need of extensive revisions to eliminate inconsistencies and to give brevity. A complimentary function of administration and field enforcement might be modeled after the National Air Carrier Association's (N.A.C.A.)²⁴ self-enforcement program²⁵ assuming conformity with United States anti-trust policies.

Although the regulatory and control function of the proposed organization would be directed primarily at the supplemental airlines,²⁶ there are three classes of air carriers which provide transatlantic services to and from the United States. They include (1) foreign air carriers performing services consistent with the Economic Regulations of the C.A.B.,²⁷ (2) United States route carriers which provide scheduled services pursuant to their certificates of public convenience and necessity,²⁸ and (3) United States supplemental carriers.²⁹

The international charter market has increased substantially during recent years. Current statistics list 2,587,800 international

24. N.A.C.A. is the trade and service organization of the U.S. supplemental air carriers. There are nine airlines in the N.A.C.A. and all possess certificates of public convenience and necessity as authorized by Congress and issued by the C.A.B. N.A.C.A., Report on the Supplemental Airline Industry 1 (1971), reproduced in *Hearings on S. 2423 Before the Subcomm. on Aviation of the Senate Comm. on Commerce*, 92nd Cong., 1st Sess., ser. 92-40, at 243 (1971) [hereinafter cited as *Hearings*].

25. C.A.B. Order No. 70-12-145, Dec. 28, 1970, approved the N.A.C.A. self enforcement program which is entitled "Uniform Standards and Practices for Charter Flight Eligibility."

26. Supplemental air carriers are those airlines which specialize in charter flights. The supplemental airlines and scheduled airlines adhere to identical C.A.B. and F.A.A. standards governing safety, aircraft maintenance, air crew and ground staff training, and financial responsibility. The real difference is in the services provided. *Hearings* at 256.

27. 14 C.F.R. §§ 212, 214 (1972). Section 212 provides for charter trips by foreign air carriers. Section 214 sets forth the terms, conditions and limitations of foreign air carrier permits authorizing charter transportation only.

28. 14 C.F.R. § 207 (1972). Section 207 governs the charter service by United States route carriers. There exists a limitation on the number of charter flights which may be performed. Certificates of public convenience and necessity are issued by the C.A.B. These certificates are issued to an airline authorizing the carrier to engage in air transportation and, in the case of a scheduled airline, requiring it to provide such service to specified points on a regularly scheduled basis. See also J. LANDRY, PRESERVING SCHEDULED AIR SERVICE 18 (1970).

29. 14 C.F.R. § 208 (1972). Section 208 delineates the terms, conditions and limitations of certificates to engage in supplemental air transportation. Section 208.10-.15 covers questions of liability and terms of insurance coverage.

charter seats operated in all markets by all carriers, an increase of 15.9 percent from 1969.³⁰ International charter seats increased 67.1 percent between 1968 and 1969.³¹ Of the passenger charter seats provided in 1970, 77.1 percent were in the transatlantic market, 4.0 percent in the transpacific, and 18.9 percent in the Latin American and Caribbean market.³²

United States route carriers in 1970 were responsible for 22.5 percent of the charter seats in all markets; United States supplementals, 45.0 percent; the foreign route carriers, 15.1 percent; and the foreign charter carriers, 17.4 percent.³³ The ten leading markets in 1970 accounted for 79.4 percent of the total, they are as follows: United Kingdom—21.6, Germany—20.9, Bermuda/Bahamas—9.3, Italy—5.4, Netherlands—5.3, Spain—4.3, France—4.1, Mexico—4.0, Switzerland—2.7, and Ireland—1.8.³⁴

In the transatlantic market, 72.5 percent of the roundtrip seats in 1970 originated in the United States.³⁵ In the Latin American and Caribbean market, 98.0 percent originated in the United States.³⁶ In the case of the transpacific market, 70.4 percent originated in the United States.³⁷ These figures help frame the nature of the organization we are proposing, since the flights which originate in the United States ultimately involve contact with other nations. The contact which each nation incurs is roughly predictable based upon statistical research. The predominance within international charter markets of certain areas and more specifically certain countries provides us with a base from which to structure the I.C.E.O. and its membership.

A. *I.C.E.O.: By Multinational or Bilateral Agreements*

The United States is a party to sixty-nine bilateral air transport agreements granting reciprocal air rights.³⁸ The bulk of United States commercial air relations is covered by these agree-

30. BUREAU OF INT'L AFFAIRS, C.A.B., U.S. INTERNATIONAL AIR CHARTER PASSENGER MOVEMENTS, 1968-1970 (M. Pett ed. 1971) at 3.

31. *Id.*

32. *Id.*

33. *Id.* at 4.

34. *Id.* at 5.

35. *Id.* at 9.

36. *Id.*

37. *Id.*

38. CIVIL AERONAUTICS BOARD, *supra* note 17, at 40.

ments, including the resolution of problems which may arise.³⁹ Bilateral relations are the responsibilities of the four operating divisions of the C.A.B.'s Bureau of International Affairs, each of which is concerned with a world geographic area.⁴⁰ These bilateral agreements concern scheduled air services only, not charter flights.⁴¹

Utilization of the existing system of agreements would lend solidarity to a newly created organization. Amendment of existing agreements with the ten leading charter market nations is entirely feasible; they have been frequently amended in the past with little difficulty.⁴² They could be expanded to include supplemental carriers but more importantly they would integrate the proposed I.C.E.O. organization into the existing system to the benefit of all parties, particularly with respect to the expeditious functioning of a charter stranding prevention program.⁴³

If for some reason, amendment of existing bilateral air transport agreements should be found impractical or undesirable, a viable alternative would be development of parallel bilateral agreements regulating the charter markets. Such agreements should contain substantive and administrative provisions for the proposed I.C.E.O. An inadequate agreement entitled "Memorandum of Understanding" has been recently promulgated between the United States and Belgium.⁴⁴ It lacks the binding authority of a bilateral or multilateral agreement, but it is a step in the right

39. *Id.*

40. The four geographic areas are Western Hemisphere, Northern Europe, Mediterranean and Africa, Pacific and Far East. *Id.* at 41.

41. Letter from Charles F. Butler, *supra* note 17.

42. *See, e.g.*, Air Transport Agreement with France, Dec. 29, 1945, 61 Stat. 3445, T.I.A.S. 1679, and subsequent amendments, T.I.A.S. numbers 2106, 2257, 2258, 4336, 5135, 5280 and 6727.

43. The bilateral agreements which would need to be amended, in order of importance with respect to their impact upon charter markets, are as follows:

1. United Kingdom, 60 Stat. 1499; T.I.A.S. 1507; 3 U.N.T.S. 253.

2. Germany, 7 U.S.T. 527; T.I.A.S. 3536; 275 U.N.T.S. 3.

3. Bermuda/Bahamas, 60 Stat. 1499; T.I.A.S. 1507; 3 U.N.T.S. 253.

4. Italy, 21 U.S.T. 2096; T.I.A.S. 6957.

5. Netherlands, 12 U.S.T. 837; T.I.A.S. 4748; 410 U.N.T.S. 193.

6. Spain, 58 Stat. 1473; E.A.S. 432; 89 U.N.T.S. 345.

7. France, 61 Stat. 3445; T.I.A.S. 1679; 7 Bevans 1109; 139 U.N.T.S. 114.

8. Mexico, 12 U.S.T. 60; T.I.A.S. 4675; 402 U.N.T.S. 177.

9. Switzerland, 60 Stat. 1935; T.I.A.S. 1576; 51 U.N.T.S. 233.

10. Ireland, 60 Stat. 1499; T.I.A.S. 1507; 3 U.N.T.S. 253.

44. United States-Belgian Understanding on Civil Aviation Charter Services, Dept. of State Press Release No. 264 (Oct. 17, 1972).

direction. Regrettably, Belgium is not a heavily trafficked charter market.

A third possibility is the creation of a multilateral treaty. While this method might not allow the flexibility of specialized controls for individual bilateral problems, it would have the advantage of uniformity and could provide the framework of a single multinational I.C.E.O. rather than a collection of small organizations. Stability and uniform application of charter market procedures is necessary since no domestic approach can cope with the international competitive character of the market. Elimination of strandings and high standards of safety for air operations demands that there be international cooperation in preventive and remedial functions. Whichever approach is pursued, the existing administrative entities of every heavy charter traffic state could participate in the administration and enforcement activities of the I.C.E.O.

B. I.C.E.O. Regulations

The predominant charter format today is the "affinity," or pro rata charter.⁴⁵ While the pro rata arrangement may ultimately be supplanted by the currently experimental non-affinity

45. In 1970 affinity charters accounted for 77.4 percent of the total in the transatlantic market. Bureau of Int'l Affairs, C.A.B., *supra* note 30, at 10. These charters are available to organizations (such as social, fraternal, religious, or ethnic) that were not created for the purpose of travel. Costs are prorated equally among all the passengers, who must be bona fide members of the group for at least six months before the flight departs. *Hearings* at 256.

Other types of passenger charters delineated in *Hearings* at 256, are as follows: *Inclusive Tour Charters*—The I.T.C. tour is a fixed-price packaged vacation offered to the general public by a tour operator who charters the aircraft, arranges for hotel accommodations, meals, tours, etc. Individuals purchase the tour from travel agents. C.A.B. regulations provide that the entire cost of the air and land portion of the tour must not be less than 110 percent of the lowest scheduled airline fare. The tour must last at least seven days and include a minimum of three overnight stops at least fifty miles apart. *Study Group Charters*—These are charter flights available to members of the general public who are bona fide participants in a formal course of academic study abroad. The study course is required to be at least four weeks in duration and requires 15 hours per week of classroom attendance. These programs are offered at a packaged price either by U.S. educational institutions or travel/study organizations which conduct them at foreign educational institutions. *Single Entity Charters*—The charter organizer pays the total cost of the flight and offers it without charge to the passengers of his choice. These have become increasingly popular with corporations which provide sales-incentive vacations to winners of sales competitions.

charter,⁴⁶ the regulatory problems will be similar with the exception of determining "bona fide" membership of charter organizations. The C.A.B. Economic Regulations pertaining to pro rata charters, then, are generally suitable for codification and international application, providing a highly appropriate model for an I.C.E.O. regulatory scheme.⁴⁷ They have been developed over the course of lengthy domestic charter experience, and offer a comprehensive regulatory scheme when supplemented by certain parts of the N.A.C.A. self-enforcement program, to fill in the practical field application gaps occasionally left by the C.A.B.⁴⁸

1. *Air Carriers and Pro Rata Charters.*—The most precise enforcement procedures relating to the carriers are found in the N.A.C.A.'s self enforcement program which is the model for the administrative and field enforcement function of I.C.E.O.⁴⁹ Section 208.201 of the C.A.B.'s regulations specifying that the air carrier provide the prospective charter organizer with a copy of the regulations pertaining to pre-flight notification and charter contracts should be adopted by the I.C.E.O. This means that the organizer would have notice of the regulations with which he

46. See 14 C.F.R. § 372a (1972); see also *Hearings* at 256. *Non-Affinity Charter*—This type of charter has been approved by the C.A.B. for an experimental period lasting through Dec. 31, 1975. The C.A.B. has not decided whether to suspend the affinity charter regulations or keep them in force with non-affinity charters. The effect of these charters is to no longer require passengers to belong to a particular group and any group of forty or more persons may charter all or part of an airplane. This type of charter will open up the field so that many more people may take advantage of low cost air travel. The only effect this will have upon an I.C.E.O. is to modify the written regulations proposed. There will be an even more urgent need for international enforcement procedures to eliminate the abuse of this "wide-open situation." Another point which must be emphasized is that this is merely an experimental phase which conceivably could lead back to a modified affinity charter service.

47. See, e.g., Economic Regulations of the C.A.B. as they relate to pro rata charters for supplemental carriers: Part 208, subpart c (1971), particularly sections 208.200-.217.

Although the C.A.B. Economic Regulations as they apply to pro rata charters (affinity) are the model for the I.C.E.O. regulations in this article, this does not restrict the I.C.E.O. regulatory function solely to the pro rata charter but rather the proposed I.C.E.O. would encompass all types of charters including the new non-affinity charter. See note 45 and 46 *supra*. The I.C.E.O. regulations pertaining to other than pro rata charters could be established according to C.A.B. or other States' charter regulations in the same manner that the C.A.B. regulations applicable to pro rata charters have been utilized in the proposed model discussed in this article.

48. See discussion p. 346 *infra*.

49. *Id.*

must comply in order to conduct pro rata charters. Most of the supplemental carriers realize that it is in their best interests to follow this regulation since these carriers specialize in charters.⁵⁰ Since the carrier has a vested interest it seems most plausible that the heart of a stranding lies in the relationship of the "strandee" with the individual who contacted the air carrier (travel agent or chartering organization).

2. *Travel Agents.*—Although the "strandee" may have contact with the travel agent, or charter organizer, the regulations of the C.A.B. do not specifically refer to the obligations of the travel agent or the charter organizer.⁵¹ However, the pertinent C.A.B. section is valuable for purposes of the I.C.E.O. since it focuses upon the right of the agent to receive commissions for his services: he may not be compensated by both the air carrier and the charter organizer for the same services.

Because the travel agent is frequently a central figure in the arrangement of charter flights, he makes an excellent focal point for regulation of the entire transaction. The travel agent is often the only party having knowledge of all the pertinent facts, hence, his disclosure has great potential enforcement value. The C.A.B. Regulations require the travel agent to execute and furnish to air carriers a statement of supporting information to be executed by the carrier and the travel agent or the chartering organization.⁵² This statement consists of the name of the carrier, the flight dates, points to be included in the flight and the type of aircraft used, its seating capacity, the charter price, the name and address of the charter organizer and the services provided by him. The carrier must retain these statements for two years available for inspection by the C.A.B.⁵³ The enforcement procedures of the N.A.C.A. program which should be integrated into the I.C.E.O. will eliminate the difficulties which plagued the C.A.B. in its attempt to obtain immediate verification of these statements of supporting information.

3. *Chartering Organizations.*—The C.A.B.'s regulations on this subject are very complete and will provide a great resource to which the I.C.E.O. can look for guidance in the conduct of investigations and enforcement procedures. The regulations pro-

50. *Hearings* at 245.

51. 14 C.F.R. § 208.203 (1972).

52. *Id.* at § 208.204.

53. *Id.*

vide that passengers of charter flights can only be solicited from among "bona fide" members of an organization, club or other group and must not be solicited from the general public.⁵⁴ "Bona fide" members means those participants of chartering organizations who (1) have not joined solely to participate in the charter as a result of a solicitation of the general public; and (2) have been members for a minimum of six months prior to the flight date.⁵⁵ "Solicitation of the general public" is solicitation of persons not members of a bona fide organization.⁵⁶ Such solicitation includes advertisement of services in mass media although advertisement in such media as newsletters or periodicals of membership organizations, college radio stations and college newspapers are not included in the definition of mass media.⁵⁷ Travelers so solicited are among those most often stranded. Non-college affiliated charter organizers are allowed to advertise in school sponsored publications.

4. *Air Fares.*—Under existing C.A.B. regulations, the traveler's air fare is pro rated among the charter passengers.⁵⁸ Chartering organizations making announcements to prospective charter participants must state that the price is a pro rata share of the total cost and is subject to increase or decrease depending on the number of travelers.⁵⁹ The charter organizer who arranges the flight and quotes prices to the chartering organization is not allowed to make a profit for his services; he can only be compensated for reasonable administrative costs.⁶⁰

Those organizers who operate fraudulently inflate the costs of the charter flight price quoted to them by the carriers, deriving an illegal excessive profit. The price is manipulated to appear as though only reasonable administrative costs have been included, when in fact, the organizer realizes a hidden profit. Licensing of charter organizers should be the pivotal point in the I.C.E.O.'s enforcement procedures aimed at preventing these abuses. Through the licensing system a summary investigation of the information provided by the charter organizer could be cross-referenced and confirmed against information given by the air carrier at the time the organizer contracts and makes his representations.

54. *Id.* at § 208.210(b).

55. *Id.*

56. *Id.* at § 208.210(a).

57. *Id.*

58. *Id.* at § 208.213.

59. *Id.* at § 208.214.

60. *Id.* at § 208.213(b).

5. *Protection of Investment.*—The stranding incidents involving the “Youth Argosy” participants motivated the C.A.B. to provide protection for air fares.⁶¹ A specific regulation for deposit protection is applicable to each class of carrier.⁶² At least the regulation pertaining to supplemental carriers should be adopted by the I.C.E.O. An escrow of cash, or a bond to be executed by the charter organizer, travel agent, air carrier and a bank should be mandatory in order to give security for customer’s deposits in prepayment of air transportation.⁶³ Just as the escrow agreement should not be effective until the C.A.B. approves it, the same arrangement should not be effective unless the I.C.E.O. approves it.⁶⁴ A C.A.B. regulated carrier may elect to file a performance bond guaranteeing to the United States Government the performance of air transportation.⁶⁵ Under the I.C.E.O. this should not be an “election,” but should be mandatory, each party to the transportation chain being required to provide a performance bond.

The I.C.E.O. should provide for careful scrutiny of the financial aspects of charter flights through such methods as licensing of charter organizers, provision of mandatory contract forms and, more importantly, the specific identification of financially responsible individuals or organizations who would be legally liable in case of a stranding. In addition to financially responsible guarantors there should be provision for the immediate transferability of the funds, which would serve as a guarantee of transportation to those individuals who are stranded. In this way the geographical displacement, delay, and the imposition of “wardship”

61. Youth Argosy was an indirect carrier (indirect carrier meaning any citizen of the U.S. who engages indirectly in air transportation to Europe. 14 C.F.R. § 208.3(4)) which stated that funds were not available to pay the carrier for the return trip. In Luxembourg, the dilemma created was such that appeals were published in newspapers asking people to take members of the group into their homes because they could not afford hotel accommodations. C.A.B. Press Release No. 50-28, May 20, 1950.

62. 14 C.F.R. §§ 208.40(a)(b)(c), 208.41 and 208.42 (1972).

63. *Id.* at § 208.40(a).

64. *Id.* at § 208.40(c). Claims against the escrow or trust may not be made only with respect to non-performance of air transportation. The term “bank” includes a bank, savings and loan association or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Company.

65. *Id.* at § 208.41. The amount of such bond should not be less than the amount of cash that would be required to be placed in escrow or in trust pursuant to section 208.40. Section 208.42 provides for no priority in payment of claims. The claims will be processed and paid on a pro rata basis.

upon the country where the traveler is stranded would be minimized. The transferability of funds should not be a complex financial transaction but rather a simple matter of positive identification of the stranded individuals and immediate recognition of their predicament. Should the preventive function of the I.C.E.O. fail, an effective remedy for stranding would be available with a minimum of time spent languishing in unfamiliar airports. An inexpensive ticket is a bargain if the purchaser gets the seat he paid for, but a \$150.00 piece of paper is an expensive souvenir of a dreary airport lounge.

6. *Delays and Substitute Air Transportation.*—The I.C.E.O. should adopt the substance of the C.A.B. regulations concerning delays and substitute air transportation. It provides an alternative remedy to the traveler prior to the technical applicability of the term “stranded,” a situation which occurs only after the passage of a designated period of time beyond the scheduled departure hour. The C.A.B. regulations are concerned with two aspects of possible substitute air transportation: (1) that provided by foreign air transportation,⁶⁶ and (2) that of interstate and overseas air transportation.⁶⁷ The C.A.B. allows a longer delay before substitute transportation must be provided in foreign air transportation than when a delay occurs in interstate or overseas air travel.⁶⁸ The I.C.E.O. should devise a method for determination of the circumstances of the delay, and then apply whichever time period would be most equitable for the parties involved. Air carriers have a duty to exercise reasonable prudence in anticipating any delay of more than forty-eight hours in foreign transportation and six hours for interstate or overseas air transportation. They must be prepared to cover the expenses of substitute air transportation.⁶⁹

Unless the prospective traveler inquires about delays while

66. *Id.* at § 208.32a.

67. *Id.* at § 208.33.

68. On all foreign charter flights, unless the air carrier causes an airplane to finally emplane each passenger and commence the take-off procedure at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation. *Id.* at § 208.32a(a). On all interstate and overseas flights, if delays of more than six hours beyond the departure time stated in the charter contract or four hours beyond the time of departure stated on the individual ticket, the carrier must provide alternative air transportation at no additional cost to the passenger. *Id.* at § 208.33(a).

69. *Id.* at § 208.32a(a)(2).

he is negotiating with the charter operator, and unless provisions such as the proposed I.C.E.O.'s timely transferability of funding exists, the traveler's only substitute air transportation is that which results from the purchase of a commercial airline ticket. In order to help extricate the traveler from this predicament, the I.C.E.O. should make it mandatory that information pamphlets containing the basic regulations be provided to each prospective traveler. The cost could be shared by the air carriers, travel agents, and chartering organizations and might prevent the uninitiated traveler from becoming a victim of his own avarice and naiveté.

C. *I.C.E.O. Administration and Enforcement*

The model for this function of the I.C.E.O. is the N.A.C.A.'s Self-Enforcement Program.⁷⁰ The basic member would be a governmental agency of each State with submembership by the various airlines providing charter service within each State. The purpose for which standards and practices should be promulgated by the I.C.E.O. is the same as that of the N.A.C.A.'s self-enforcement program—improvement of present enforcement practices and uniform guidance of members and submembers who are concerned with or responsible for the sale of charter flight space.⁷¹ The purpose of the I.C.E.O. is not to interfere with presently existing regulations in the various States, but rather to standardize charter regulations and their enforcement on an international level.

Under the proposed I.C.E.O. agreement, each carrier submember would be required to designate an Assistant Director of Charter Eligibility, who would be directly responsible to the Director of Charter Eligibility.⁷² The Director would be some individual in the aeronautics agency of each respective government. The names of the Assistant Directors and Directors will be reported to the I.C.E.O.'s Bureau of Compliance.⁷³

70. NATIONAL AIR CARRIER ASSOCIATION, NACA MANUAL at Appendix A (1971) (hereinafter cited as NACA MANUAL). The C.A.B. approved on Dec. 28, 1970 an agreement among members of the N.A.C.A. providing for uniform standards and practices for charter flight eligibility; the result of the agreement being the NACA manual. C.A.B. Order No. 70-12-145, Docket 22243, C.A.B. Agreements 21548 and 21548-A1 (1970).

To supplement the discussion in this section, see APPENDIX *infra*.

71. NACA MANUAL at 1-1.

72. *Id.* at 2-1.

73. *Id.*

Each State's Director will develop a specific procedure for screening charters, including a compliance checklist, incorporating at a minimum those items contained in the proposed I.C.E.O.'s model compliance checklist, an integral part of the I.C.E.O. Agreement.⁷⁴ Copies of the written procedures and compliance checklists are to be forwarded to the proposed I.C.E.O.'s Bureau of Compliance where they would be constantly kept up to date.⁷⁵ The Assistant Directors provide each prospective charter group or individual with a copy of the proposed I.C.E.O.'s Compliance Document,⁷⁶ which outlines the principal elements concerning charterworthiness of groups and organizations.⁷⁷

74. *Id.* at Appendix A-Model Compliance Checklist:

1. Charter-worthiness of Organization
 - a. Articles of Incorporation
 - b. By-laws
 - c. Previous charter experience
 - d. Opinion of counsel
 - e. Advisory opinion from C.A.B. (from I.C.E.O.'s Bureau of Compliance)
 - f. Charter documentation executed
 - g. If found charter-worthy, state reasons
 - h. If found uncharter-worthy, state reasons
2. Travel agent
 - a. Agency agreement executed
 - b. Professional status
 - c. Previous charter experience
 - d. Relationship to charter organizer
 - e. Services performed for charter organizer
 - f. Compensation received from charter organizer
 - g. If found acceptable, state reasons
 - h. If found unacceptable, state reasons
3. Solicitation
 - a. Review and approve all solicitation material
 - b. Check for date of material and carrier name
 - c. Check information relating to costs
 - d. Compare projected administrative costs with representation in charter organizer's statement of supporting information.
4. Bona fide members
 - a. Check list of passengers against charter organizer's membership list
 - b. Check changes in list of passengers against charter organizers membership list
 - c. Waiver action on proposed participants who have not been members at time of announcement of charter organization for at least six months prior to flight time. Where pertinent, review recruitment of membership program as it relates to charters.
 - d. Check on one-way passengers
 1. one roundtrip
 2. more than one roundtrip
5. Review charter organizer's records where appropriate
 - a. Excessive charges
 - b. Notification to charter organizer of refunds due
 - c. Notification to association of any unresolved compliance problems

75. *Id.* at 2-1.

76. *See id.* Appendix A.

77. *Id.* Appendix C.

A fundamental element of the proposed I.C.E.O. Agreement, essential to the effectiveness of the enforcement program as well as the preventive feature, is the reporting of uncharterworthy organizations which are seeking an air carrier to accommodate them. It would be the primary responsibility of the Assistant Director to notify the Director of such organizations so that the Director could warn other internal carriers or, if the group is international in scope, so that he could warn other States' Directors via the Bureau of Compliance.⁷⁸ An additional function of the Assistant Directors is that they file with the Directors quarterly reports of all the would-be chartering organizations which were rejected. The Directors would in turn report these to the Bureau of Compliance semi-annually.⁷⁹ The Directors of Charter Eligibility should establish an internal procedure to insure timely receipt of information from all sales offices so that preventive action could be taken by advising all other Directors and Assistant Directors (both domestically and internationally) of potential requests for transportation by uncharterworthy groups.⁸⁰

A mere query concerning a potential group charter which was clearly uncharterworthy should not in itself constitute a situation which should be reported.⁸¹ To prevent the system from being overburdened with administrative tasks, two simple guidelines would be useful: (1) Any group which has signed a charter application and is subsequently found to be ineligible must be reported; (2) of the groups and individuals which have not signed a charter application, only those which appear to be seriously seeking charter transportation should be reported if they are uncharterworthy.⁸² This decision is discretionary at two levels; first the Assistant Director makes his determination whether or not to report the applicant, then the Director renders his decision. If the Director's decision is positive then he should report this charter group to the Bureau of Compliance if the group is an affiliate of an international charter organization; otherwise he should report it to the other internal Assistant Directors.⁸³ The Assistant Director should attempt to ascertain whether the inquiring indi-

78. *Id.* at 2-2; and *see* APPENDIX *infra*.

79. *Id.* at 2-2.

80. *Id.*

81. *Id.* at 2-3.

82. *Id.*

83. *See* note c at APPENDIX *infra*.

vidual or group has a firm intention of chartering an aircraft if a carrier can be found which is not too careful in its examination of the "bona fides" of the group or organization.⁸⁴

The I.C.E.O. Agreement should provide that the above-mentioned reports will be submitted by Telex. This means that once a determination had been reached as to uncharterworthiness by the Director, a minimum time lag would occur in reporting to internal Assistant Directors or other Directors via the Bureau of Compliance.⁸⁵ In any case the Director should make his communication within twenty-four hours from the time he received the report from his Assistant Directors.⁸⁶ If the group is an affiliate of an international charter organization, then the Bureau of Compliance should have twenty-four hours from the time it receives the report to relay the communication to the other Directors.

If the reporting Assistant Director subsequently determines that the prospective charter organizer is or has become charter-worthy and the carrier intends to enter into a charter contract, he should notify the Director immediately, accompanying the notice with a statement of the basis for his decision. The Assistant Director should also forward to the Director, by the fastest possible means, copies of the following documents pertaining to the chartering organization: (1) charter application, (2) articles of incorporation, (3) by-laws, (4) opinion of carrier counsel, (5) all solicitation material, (6) a copy of the passenger manifest and (7) a copy of a statement of pertinent supporting information.⁸⁷

If the Director believes there is a basis for a complaint concerning the charterworthiness of a group or organization or the bona fides of individual passengers prior to flight, he would institute immediate action, consisting of a notification to the Assistant Director involved and his carrier with a request for specific information concerning the allegation.⁸⁸ The Assistant Director should be prepared to submit all the items enumerated above. Each Assistant Director whose carrier is charged with an alleged violation should be required to forward the requested information by air mail within forty-eight hours of receipt of the notification from the Director.⁸⁹

84. NACA MANUAL at 2-3.

85. *Id.*

86. *Id.* at 3-1.

87. *Id.* at 3-1, 3-2.

88. *Id.* at 3-2.

89. *Id.* at 3-2, 3-3.

The Director should be responsible for conducting unannounced examinations to determine compliance with I.C.E.O. procedures. These examinations should encompass: (a) a review of all documentation pertaining to a particular charter flight including the charter application, articles of incorporation, by-laws, membership lists, solicitation material, statement of supporting information, and any other pertinent documentation; and (b) a review of the passenger documentation at the airport, as well as consultation with randomly selected passengers concerning their relationship to the chartering organization.⁹⁰ After completion of a compliance review, the Director should report his findings to both the Assistant Director involved and the Bureau of Compliance. The I.C.E.O. Agreement should make mandatory a reasonable ratio of random investigations to flights so that strandings can be kept at a minimum, and these investigations should be increased during peak charter travel seasons.

The primary functions of the proposed Bureau of Compliance are those of an efficient conduit for reports involving affiliates of an international charter organization, an effective record keeping system for all reports, and, most significantly, a source of frequent informational bulletins. The bulletins would consist of the most recent and most frequent violations of I.C.E.O. charter regulations and new developments in charter regulations including interpretive rulings by the various States' agencies which are active in charter violations.⁹¹

The I.C.E.O. should have conferences for Directors at least three times per year. These conferences would promote progressive development of charter regulation and better procedures for enforcement. The Directors in turn should conduct conferences for the Assistant Directors on a much more frequent basis. These conferences should not only relate the occurrences at the major conferences but also should review the most recent fraudulent activity within their own State and determine how the I.C.E.O. standards and procedures could be more effectively applied. The Assistant Director's meetings should be organized once every two months and once a month during peak seasons.

III. CONCLUSION

The C.A.B.'s Economic Regulations, while not very satis-

90. *Id.* at 3-3.

91. *Id.* at 3-4.

factory as presently administered by a national agency, constitute the most comprehensive written law relative to charter industry operations.⁹² These Regulations are reasonably well suited for revisions and adoption by an international organization such as has been proposed.⁹³ The most spectacular and difficult to handle consequence of mismanagement of charter rules is obviously the strandings of charter flight passengers and emphasis should be placed on the prevention of strandings.

An N.A.C.A.-type self-enforcement program would appear desirable to compliment the I.C.E.O. regulations in administration and field enforcement,⁹⁴ although the great number of charter carriers and their smaller individual financial resources may present some difficulties of coordination. The N.A.C.A. procedure has the advantage of simplicity and absence of excessive bureaucratic delay. Mandatory time limitations expedited by quick processing should be an effective method of preventing the illegal charter flight at its inception or, if it does occur in spite of the precautions, of providing quick and effective ameliorative aid to stranded passengers and penalties to the parties at fault. The use of telex or other instantaneous communications systems with essentially automatic responses would clearly be superior to the present "bureaucratic shuffles" of national agencies and sometimes lengthy negotiations with their counterparts in foreign countries.

An international regulatory system with its own direct communications lines would eliminate much of the present circuitous communications which frequently must go via foreign offices, consulates or embassies at one or both ends of the line, thus placing an international problem in an international framework where it can be handled efficiently.⁹⁵ In a national setting emphasis is frequently placed on economic protection of the national industry rather than on resolving the problem of maintaining an orderly and efficient charter flight industry. The international organization could and should be a very simple structure⁹⁶ when compared with independent national organizations, which operate under fairly strict protocol rules when communicating internationally. Coupled with the direct communications proposed for the

92. See p. 336 *supra*.

93. See p. 336 *supra*.

94. See p. 346 *supra*.

95. See note c at APPENDIX *infra*.

96. See APPENDIX *infra*.

I.C.E.O. would be the quick transferability of funds needed if and when a breakdown of controls would result in a stranding of charter passengers.⁹⁷

The I.C.E.O. should be able to conduct investigations of national charter groups or airlines without rousing national sensitivities over violations of sovereignty, or concern over anti-trust laws in a way not possible for a national organization such as C.A.B. No national organization has or can have the competence and jurisdiction to prevent international charter violations. The economic competition for charter business does not permit one nation to establish and enforce corrective relations unless all nations observe generally the same rules.

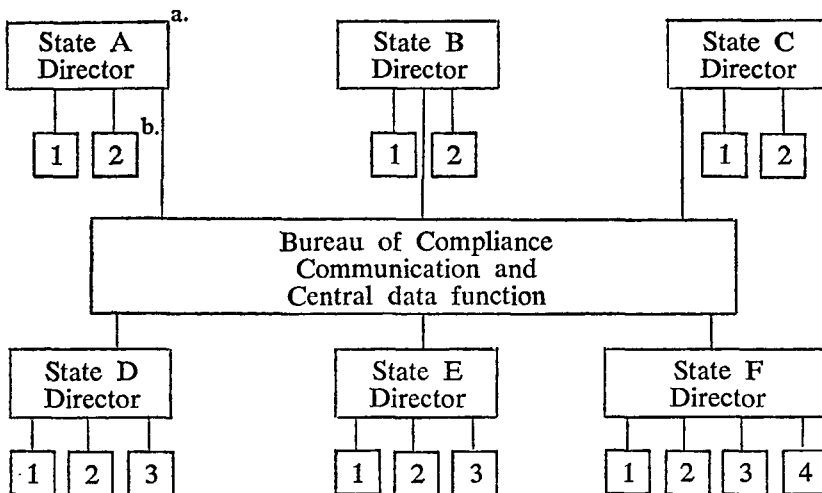
The concept of an I.C.E.O. does not contemplate an organization with thirty or forty State representatives pounding the conference table for equal rights on the world market under the guise of organizational effectiveness.⁹⁸ Initially the I.C.E.O. might be composed of only seven to ten nations accounting for a very large proportion of air charter travel in the world. It is believed that States would gain substantially through such an arrangement since the charter enforcement situation, while being nearly uncontrollable, is not so far out of hand that it cannot be arrested.⁹⁹

97. See p. 345 *supra*.

98. G.A.T.T. is perhaps the outstanding example of such an organization although the International Telecommunications Union may be considered equally infamous for its administrative and regulatory malfeasance. Regarding G.A.T.T. see *Hearings on Foreign Trade and Tariff Proposals Before the House Committee on Ways and Means*, 90th Cong., 2nd Sess., at 118-21, 609-42 (1968); R. VERNON, *SOVEREIGNTY AT BAY: THE MULTINATIONAL SPREAD OF U.S. ENTERPRISES* 281-84 (1971). Regarding the I.T.U. see D. SMITH, *INTERNATIONAL TELECOMMUNICATIONS CONTROL* 31 *passim* (1969); van Panhuys & van Embe Boas, *Legal Aspects of Pirate Broadcasting*, 60 AM. J. INT'L L. 306 (1966).

99. Several conservation treaties and organizations relating to the fishing industry represent situations where nations only now are commencing to do too little too late to solve crucial problem areas, i.e. endangered species. See D. JOHNSTON, *INTERNATIONAL LAW OF FISHERIES* 396-411 (1965); M. McDUGAL & W. BURKE, *THE PUBLIC ORDER OF THE OCEANS* 948-1007 (1962); Leonard, *Recent Negotiations Toward the International Regulation of Whaling*, 35 AM. J. INT'L L. 91 *passim* (1941).

APPENDIX:

I.C.E.O.
ADMINISTRATIVE ORGANIZATION
AND COMMUNICATION SYSTEM

- a. The number of States represented in the I.C.E.O. would depend on their relative importance in the international charter market.
- b. Numbered boxes indicate Assistant Directors, the number in each State represents the number of charter passenger airlines.
- c. (1) If Assistant Director 1 of State B determines that an applicant affiliate of an *international* charter organization is uncharterworthy and the Director of State B concurs, then the Director must communicate their decision to the Bureau of Compliance. The Bureau then informs the Directors of States A, C, D, E and F. The Directors, then, convey the information to their respective Assistant Directors.
- (2) If Assistant Director 1 of State F determines that an applicant of a strictly *domestic* charter organization is uncharterworthy and the Director concurs, then the Director must communicate their decision to Assistant Directors 2, 3 and 4. In addition, the Director must report the decision regarding the applicant and the organization to the Bureau of Compliance for permanent filing.