PSF: Subject File: Aviation, 1943 - April 1944

PSP
Aviation

April 7, 1943

~~STRICTLY CONFIDENTIAL~~.

MEMORANDUM IN CONNECTION WITH THE CARIBBEAN PROCEEDINGS

(Docket No. 778 et al of the C.A.B.)

In aviation circles--particularly within the Government--Docket No. 778 has attracted widespread attention. The final approval by the President of whatever recommendations are finally made in the premises by the C.A.B. will undoubtedly provoke an unusual volume of controversy because of the nature of the problem.

Briefly, the history of Docket 778 is as follows: On December 30, 1942, the C.A.B. adopted a tentative Opinion and Order which granted temporary Foreign Air Carrier permits to British West Indies Airways (owned by Lowell Yerex, a British subject), TACA, S.A. (also owned by Yerex), Royal Dutch Airlines (KLM), and two Cuban companies known as Expreso Aereo Inter-Americano, S.A. and Compania Nacional Cubana de Aviacion, S.A. At the same time, the Board denied the application of Eastern Airlines, Inc. and National Airlines, Inc. for temporary certificates of convenience and necessity. In going through the formality of obtaining the reactions of the interested agencies of this Government, the C.A.B. encountered objections on the part of our armed forces. In so far as the Department of State was concerned, it became apparent that two diametrically opposed viewpoints existed; the first favored the granting of "temporary" permits and the second strongly opposed such grants. (That difference of opinion still exists within the Department of State.)

About five or six weeks ago, the C.A.B. appears to have withdrawn the "tentative Opinion" above-mentioned and in its place substituted a new Opinion (attached hereto and marked Exhibit B) which completely reversed its earlier position with the exception of granting a "temporary" Foreign Carrier permit to one of the Cuban companies. You will observe from the language of the attached "Exhibit B" that the C.A.B. was duly impressed by the opposition of the Army and Navy and, in no small measure, by the arguments which were advanced by the technical aviation staff of the Department of State. However, it is understood that when Assistant Secretary Berle became aware of the reversal of position contained

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⊗ subject to approval by the President.

in the second tentative Opinion (Exhibit B), he appeared before the Board in a closed session and supported the granting of the Foreign Carrier permits envisaged in the Board's first Opinion. It is believed that, on the basis of Mr. Berle's views, the Board has recently reached a third decision which, at the moment, is now said to be on the President's desk for final approval.

In connection with the above, it is felt that, since the British and Dutch air carriers are presently operating under an extremely liberal Charter arrangement which permits them to enter and exit from the United States, there is no need for changing their status until full consideration can be given to the question in terms of the overall aspects of the international aviation problem. This is particularly true in view of the fact that neither the British nor any other Government is willing at this time to grant anything but highly restricted "for the duration" privileges to United States air carriers. Further, the record clearly establishes the fact that the unnecessary issuance of Foreign Carrier permits would place Pan American Airways practically at the mercy of the foreign carriers in question since it is apparent that the C.A.B. has no authority to control the mail and passenger rates which the foreign air transportation units would charge. Theoretically, the subsidized United States air carrier would be exposed not only to unrestricted competition but to 'cut-throat' rate slashing and political machinations which the foreign carriers would be free to exercise. Fortunately, the British-owned air carrier TACA did not wait to demonstrate its real intentions until it was granted a Foreign Air Carrier permit. The record shows that some eight or ten weeks ago TACA filed a tender with the Government of Panama to carry first-class mail (throughout Central America) at a price approximately 90 percent lower than that of Pan American Airways. In that connection it should be recalled that the Pan American Airways rate was fixed by the Post Office and the C.A.B. after exhaustive hearings. It is difficult to understand how such a development--which clearly indicates the trend--can be ignored. In other words, the moment the foreign air carrier Lowell Yerex (TACA) believed that he had the support of certain elements of the Department of State in connection with the granting of the Foreign Air Carrier permits in question, he demonstrated his 'appreciation' of this Government's generosity by

offering

offering to do a job for 85 cents per pound that Pan American Airways was charging $8.00 per pound ⊗ to perform.

Another angle that should not be overlooked involves the basic economic question of the advantages which the low cost foreign operations can enjoy even in normal competition (on a reciprocal basis) against our air carriers. Certainly, the desire of our Government to demonstrate its generous attitude does not call for the abandonment of the protection of its own subsidized carriers. In addition, it is felt that serious thought should be given to the difficulty which might be encountered if the Congress were to ask for an explanation of such a situation.

In conclusion, it should be recalled that this undertaking on the part of the C.A.B. (Docket No. 778 et al) arose over a year ago when there was a drastic shortage of flying equipment in the Caribbean area. At that time, the utilization of foreign aircraft was undeniably important. No such shortage exists today. However, even if such a shortage did exist, it should not be overlooked that the foreign carriers in question are presently operating under charter permits. These charter arrangements permit the foreign carriers to perform certain specifically established and defined contract undertakings but do not permit the foreign carriers to enter into unrestricted competition with the regularly established operations of Pan American Airways. It is noteworthy that both British and Dutch air carriers have charter contracts which will obligate them for the balance of the year 1943. In other words, the alleged relief of the equipment shortage in the Caribbean area cannot possibly be gained by the granting of Foreign Air Carrier permits, and, therefore, it is apparent that whatever action the C.A.B. might take at this time to "liberalize" the situation would have the effect of exposing this Government and Pan American Airways to a completely unnecessary and dangerous competitive situation. This view is shared by other experienced air transport operators in the United States, by Army and Navy and by the technical aviation officers of the Department of State. In addition, there is ample reason to believe that Chairman Pogue and the majority of his technical and legal advisers personally are of the same opinion.

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⊗ THIS CHARGE WAS ESTABLISHED BY THE POST OFFICE AND C.A.B.; IT INCLUDES MANY COMPLICATED FACTORS OF OPERATING COST, ETC.

The above facts stand out in bold relief. They cannot be denied in the light of actual experience or practice. As weird as it may seem, the inspiration to grant Foreign Carriers a fully competitive position against Pan American Airways was initiated, not by the foreign carriers, but as the result of a letter (July 18, 1942) which was addressed by Mr. Berle to Chairman Pogue of the C.A.B. That letter was strongly opposed by the technical people of the Department. Under the circumstances, therefore, it would appear to be in keeping with the viewpoints of the armed forces, the preponderant opinion of the United States aviation industry, and of still greater importance, in keeping with this Government's desire to protect its long range aviation interests if the position taken by the C.A.B. several weeks ago (see attached Exhibit B) were to be reaffirmed and made the basis for denying any rights to Foreign Air Carriers beyond those presently enjoyed by such carriers under the existing charter method.

Ex. "B"

With the exception of Expreso, the aircraft proposed to be used by the foreign air carrier applicants in providing service under the permits they seek are currently used in rendering charter services between Miami and points outside the United States, and the proposed services represent substitutions of common carrier operations for the present contract services. The charter services are providing for certain urgent needs for transportation. It is natural that these applicants should wish to enter the United States as regularly authorized carriers, in addition to performing the local services for which they are already obligated to the communities upon which their operations are based. Even a temporary permit would serve as an entering wedge for the establishment of a claim on a highly valued privilege.

If there were any convincing showing that the operation of this small number of additional aircraft in common-carrier service between Miami and various points in Central America and the Caribbean, as a substitute for the charter services in which the aircraft are now employed, would contribute in any degree to the success of the war effort, we would, of course, raise no question about the granting of the necessary permits for their establishment upon a temporary basis. There is no convincing showing to that effect, and we take note of the fact that the post-war status of international air transportation and the international agreements and relationships in accordance with which it will exist are now the subject of very active study, and that early progress toward clarifying the situation in these respects may reasonably be anticipated. In the absence of any indication that the success of the war effort would be furthered by the granting of permits for common-carrier operations to these applicants at the present time, it seems to us inadvisable to pre-judge the conclusions of the studies and the possible international

Ex. "B"

discussions on the subject of the future organization of international air transportation, even to the extent of issuing temporary permits. The approval, even on a temporary basis, of an international service for which there is no apparent present need in connection with the conduct of the war, even though such a permit be narrowly limited in duration, would carry the implications of a precedent which it seems to us inadvisable to create at the present time.

Expreso's proposal presents a distinctly different picture from that of the other applicants. This carrier owns six aircraft which are not presently used in transport operations and with which it proposes immediately to inaugurate a daily round trip cargo service between Miami and Havana, which would be increased after three months to a twice daily service. The operations proposed by Expreso would, unlike those of the other applicants, result in air transport services which would in their entirety be a contribution to the aggregate air transport operations between this country and Cuba. The record indicates that this service is needed, and that it would be a contribution to the success of the war effort.

Under the circumstances, we cannot make the statutory finding required by the Act that public convenience and necessity require the services proposed by the American flag carriers, or that the public interest requires the services proposed by the foreign flag carriers other than Expreso. We find that the public interest requires the foreign air transportation proposed by Expreso, and that Expreso is fit, willing, and able to provide such transportation in conformity with the provisions of the Civil Aeronautics Act. Accordingly, a temporary foreign air carrier permit will be issued to Expreso authorizing it to engage in foreign air transportation of property only between Miami, Florida, and Havana, Cuba, said permit to be effective for a period of six

months after the date of approval by the President and for such additional 6-month periods as the Board may authorize, not to extend beyond a date 6 months after the termination of the war. The other applications will be denied.

An appropriate order will be entered.

PSF: Aviation folder 3-43

DEPARTMENT OF STATE
WASHINGTON

October 2, 1943.

(Personal)

MEMORANDUM FOR THE PRESIDENT

Attached is a Memorandum on International Civil Aviation submitted by the Interdepartmental Committee on International Aviation to Secretary Hull. I am sending it informally to you. A summary of the tentative recommendations is found on the first two pages.

The tentative conclusions are being further viewed in the light of comments received from the Department of Justice and from various other agencies. This does not close the subject, but if it were necessary to go to a conference on the subject, we are fairly well-heeled. We have not crystallized the report; Secretary Hull wishes to have it further discussed with the various Senate Committees having jurisdiction before it is "frozen". Undoubtedly some parts of it will then require

modification

modification or omission. The report is in general in line with your press conference of yesterday.

Adolf A. Berle, Jr.
Acting Secretary

Enclosures:

To Secretary Hull, with
enclosed memorandum
dated August 31, 1943.

Enclosure to Memorandum for the President from
Assistant Secretary of State Berle:

Letter to the Secretary of State, with enclosed
Memorandum on International Civil Aviation,
dated August 31, 1943.

My dear Mr. Secretary:

The Interdepartmental Committee on International Aviation, established as indicated by your circular letter dated April 2, 1943, presents herewith a memorandum on international civil aviation. It is the hope of the Committee that this memorandum will serve as the statement of recommendations requested by the President in his letter of March 29, 1943.

It seems probable that this Government will shortly be invited to enter into conversations with other Governments on the subject of international civil aviation, and will not be able advantageously to postpone such conversations for long. Whatever policies are determined upon, therefore, the Committee strongly recommends that the negotiators who will represent the United States be appointed at an early date, in order that they may have time properly to prepare themselves.

It is also recommended that additional staff preparations be undertaken without delay for such conversations and conferences as may eventuate. Aside from arrangements customarily made by the Division of International Conferences of the Department of State, there is need for a small secretariat to be formed to prepare comprehensive reference material in memorandum form and to assemble a library of documents for use by all participating nations, if this Government is to be the host to a conference and in any event to prepare confidential material largely of a technical nature, specifically for the use of the United States negotiators. Staff for the proposed secretariat might be provided cooperatively by the departments and agencies which have participated in the work of the present Committee.

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The Honorable

The Secretary of State

In submitting these recommendations, the Committee wishes to express its appreciation of the importance of the assignment it was given and of this opportunity to be of service.

Respectfully,

/s/ Adolf A. Berle, Jr.
Adolf A. Berle, Jr.

/s/ Wayne C. Taylor
Wayne C. Taylor

/s/ Robert A. Lovett
Robert A. Lovett

/s/ Artemus L. Gates
Artemus L. Gates

/s/ L. Welch Pogue
L. Welch Pogue

Enclosure:
Memorandum dated
August 31, 1943.

[redacted] August 31, 1943

MEMORANDUM ON INTERNATIONAL CIVIL AVIATION

As Revised and Adopted August 26, 1943, by the
Interdepartmental Committee on International Aviation

I. Major Recommendations

1. No change is recommended in existing statutory policies with respect to competition among United States air carriers in international air transport. Government ownership of such carriers is not recommended.

2. Adequate rights of commercial air entry and transit are urgently needed and probably can be obtained from certain of the major friendly powers only by negotiating for such rights. Upon the conclusion of hostilities, arrangements in appropriate cooperation with the other United Nations should also be made for commercial air transport operations on a non-reciprocal basis between the United States and the major enemy countries. In the case of many other countries, negotiations for commercial air entry should be undertaken when most opportune, either by air carriers desirous of obtaining such rights or intergovernmentally as may seem most advantageous. Negotiations by United States air carriers should be controlled and supervised by this Government.

3. Subject to the prior development of satisfactory arrangements for commercial air entry in cases of special importance, rights of transit and technical stop for United States registered aircraft in commercial air transport should be obtained from as many nations as possible, preferably by negotiating a multilateral agreement to the effect that aircraft in commercial air transport shall be permitted to fly over the territory of any nation, except over reasonable prohibited areas, and to land at appropriate airports for refueling and repairs, without the right to discharge or take on traffic.

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E.O. 12356, Sec. 3.3(b) and 5(D)
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4. Special

4. Special arrangements, perhaps constituting in effect a trusteeship representing all the United Nations, should be made for the financing and administration of certain airports of special international importance, particularly those at isolated localities which serve as staging points on long international routes. Such arrangements might take the form of an international organization to be known as the United Nations Airport Authority. Airports already constructed at our expense in such areas as Iceland and Greenland should be turned over to an international organization whenever appropriate arrangements can be made.

5. In the case of other airports constructed abroad at our expense, and which will be of value for international air commerce, questions as to postwar rights should be settled primarily by the negotiation of bilateral agreements, in which we should claim all of the rights ordinarily available at airports open to public use. Certain related privileges with respect to communications, weather service, and other matters should be obtained to the maximum extent feasible. General rights of transit, technical stop, and commercial air entry should be sought.

6. A decision must be reached as to whether to hold a United Nations Aviation Conference before concluding bilateral arrangements for air rights with the major powers. In view of the wide differences of opinion as to policy which have been expressed in this and other countries, there is an obvious need for an international conference which would be mainly educational and preparatory in character. Such a conference would also seem justified in order to form the interim commission suggested in the following paragraph.

7. A new international organization for civil aviation, appropriately related to any general security and political organization, should be created to replace the prewar International Commission on Aerial Navigation. As a first step towards a new organization, an interim United Nations commission might be formed at an early date. Regulatory powers to be vested in an eventual permanent

organization

organization should be the subject of further study and international discussion under the auspices of an interim commission.

II. General Discussion

Legal, economic, and political aspects of international aviation are highly complex. Moreover, the power to decide what shall be done is not vested in this Government alone, nor in any one branch of it.

Public interest has centered on the apparent conflict of interest between Pan American Airways and the 16 airline companies which signed a declaration on July 15, 1943, advocating competition among United States companies on international air routes. This conflict, by no means unimportant in itself, gives focus to many of the most important issues which must be considered.

The attitude of Pan American Airways is not in doubt. The company believes that it is well qualified to handle all of the international air commerce of the United States. It contends that the introduction of other United States airline companies, except as stockholders in a joint venture, would weaken our position in dealing with other governments, would lead to cutthroat competition for a limited amount of business, and would necessitate the payment of large subsidies, without obtaining satisfactory results.

The companies which take the opposite view, all seasoned organizations with extensive experience, believe that international aviation will be an industry great enough to afford room for many competing enterprises. They hold that the maximum development of the industry requires an active program of traffic-building, which they are best able to carry on throughout the United States, where a very large part of the traffic will originate. In their opinion, the policy of regulated competition has been triumphantly successful in the domestic air transportation of the United States, and they feel that the policy should be extended internationally.

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It should be noted that the provisions of the Civil Aeronautics Act clearly establish the policy of competition, and that in this respect it does not distinguish between domestic and international operations. (See Appendix)

Responsibility for carrying out this policy is vested primarily in the Civil Aeronautics Board, which under the law recommends to the President, after public hearings, the approval or disapproval of certificates authorizing additional international air transportation. The Departments of State, War, and Navy, and other interested agencies, will have opportunity to express views on each case when it is under consideration. Under the circumstances, there would seem to be no reason at this time to recommend any change in the existing statutory policy.

Somewhat related to the issue of competition versus monopoly is the question of whether there should be some degree of government ownership. Before the war, international aviation, particularly in Europe, was carried on to a large extent by concerns which were owned and managed by their respective governments. Under American conditions, government ownership would seem especially unfortunate for an industry as young and dynamic as aviation. It is not recommended.

For some international routes, it may be proposed that air transport operations be internationalized by turning them over to corporations jointly owned by the governments concerned. Schemes of this type may be attractive to certain governments for a variety of reasons. It may therefore be necessary to give them serious consideration. In general, however, this Government should enter into any such arrangement only in

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the most exceptional cases and with the greatest reluctance. The operating results seem likely at best to be only mediocre, and it should be possible to deal with the problem of security in some other manner acceptable to all the countries concerned.

Aside from the possibility of international public ownership in exceptional instances, the policy of this Government with respect to government versus private ownership would seem to be a purely domestic question. Likewise, the problem of monopoly versus competition among national companies is largely a domestic question, although any decision with respect to it will be of profound interest to other governments, and will affect their consideration of related problems. So far as possible, this Government should exclude the problem of national competition from international discussions, and should seek air rights which may be made available to one or more United States companies at the option of this Government.

In many cases, governments will adopt a bargaining attitude. Our bargaining position is good, but it is steadily deteriorating as war-time fears subside and our war-time investments and commitments near completion. This is a factor of general importance, affecting most fields of international economic policy; of particular importance to aviation is the fact that at present we have the transport airplanes, the existing organizations, and the accumulated experience, while others have control of many strategic routes and centers of air commerce. We are beginning to lose our lead in transport airplanes, organization, and experience without securing any countervailing increase in the

availability

availability of air rights.

Future economic opportunity for the young heroes of our air forces will depend to a substantial extent on our ability to expand the air commerce of peace. Yet the end of hostilities will find us still subject to all prewar restrictions unless we act soon and with great energy. It would be impossible to bring about any rapid expansion of employment in international air transport unless those restrictions can be relaxed.

Action

Action to Secure Commercial Air Outlets

When peace returns, we shall be able to send our ships to every friendly port in search of markets and of trade. Under present rules of international law, our privileges of international air commerce are much more limited.

Our situation in this hemisphere is relatively good; we hold air entry rights for each of the 20 American Republics to the south except Uruguay, although in most cases those rights are limited to the use of the carrier or carriers which obtained them. We also hold certain rights, very limited in character, across the Atlantic and the Pacific.

But in 42 countries we have no rights of entry at all for peace-time air commerce; at the airports of those countries we cannot disembark or accept passengers, cargo, or mails. Among those countries are most of the nations of Europe, Africa, and the Middle East, as well as Russia, China, India, and Australia.

In the United Kingdom, our peace-time landing rights are limited to two per week, although for war purposes, landings of transport airplanes have frequently exceeded 300 per week. In France, our landing rights are four per week. In Portugal and the Azores, our landing rights are unlimited as to number, but are restricted to a single United States company, and are also restricted to services via Lisbon. Except for a concession granted in Italy, which has not been used because of the war, we have no other landing rights on the continent of Europe. For the stepping stones to Europe other than the Azores,

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we have landing rights in Newfoundland equivalent only to those in the United Kingdom and we have a franchise in Iceland for one company. We have no long-term rights in Greenland or Labrador, although we have constructed immense airport facilities in each.

Our major strategy must be directed toward securing rights for the major centers of world air commerce, as well as the rights necessary to traverse the routes leading to those centers. In this connection, first attention may be given to the United Kingdom and other members of the British Commonwealth of Nations.

Collectively these nations originate a large part of the commerce of the world and control a very large proportion of the strategic points on world airways. Moreover, the British are in a position to exert substantial diplomatic influence over many countries in addition to the members of the Commonwealth. Without British cooperation, we could be denied access to many of the most important centers and would find it difficult to construct any around-the-world air service under the American flag. Conversely, the British have their reasons, both general and particular, for desiring the cooperation of this country.

For the present, it has been agreed between the British and ourselves that until a general understanding is reached, neither of us will negotiate agreements exclusive of or discriminatory against the other. If, however, it should appear that no general understanding will be reached, this self-limiting commitment would probably come to an end, and the British would doubtless be able, assuming that they would choose to do so, to negotiate agreements shutting us out of most of the countries from West Africa to Singapore.

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Our existing agreement with the United Kingdom is highly inadequate because of its restrictive character. Our agreement with Canada has passed its terminal date, has been extended merely on a duration-of-the-war basis, and in any event would not be fully satisfactory for the future. For most other British Commonwealth members, we have no agreement in force, and desirable arrangements with any one of them would probably be somewhat contingent upon arrangements with the others.

A comprehensive new air commerce agreement with all members of the British Commonwealth of Nations is thus a major objective. Such an agreement should be made for each of the Dominions, India, Newfoundland, and Labrador, as well as for the United Kingdom and Crown Colonies taken together, and should provide for an exchange of rights of entry for air commerce and of transit rights, as well as for a settlement of all related questions.

The problem of the Soviet Union is no less important than that of the British. The cooperation of the Russians is needed for the creation of any new international organization to deal with civil aviation and for the adoption of liberalized rules of innocent passage and technical stop for commercial air transport. Cooperation may not be forthcoming unless the Soviet Union becomes interested in substantial international air transport operations, but there are indications that this is possible. The United States has a major interest in securing satisfactory air outlets and transit rights from the Soviet Union and should be prepared in exchange to accord satisfactory rights in United States territory.

China

China presents another problem. The United States should seek commercial air outlets in China, together with transit rights over the routes leading out of China to the southeast, to India, and to central Asia. Whether China will desire air rights in this country in exchange is uncertain, but it would seem appropriate to extend to China a type of agreement no less favorable than that made available to Russia and the British Commonwealth members.

France, the Netherlands, and Portugal should also be accorded positions of major importance in any discussion of air rights. Each of the three stands on the western borders of Europe, contains major centers of trade, and controls colonial points which are of importance in the organization of world air routes. Accordingly, when it is feasible to do so, it would be desirable to negotiate comprehensive agreements in each case. It is also understood that there are urgent reasons justifying a request for commercial air entry into Spain.

The Axis countries present a special problem. Before the war, Berlin was a major center of air commerce, while Rome and Tokio were not unimportant. Arrangements should be made with respect to the Axis countries which will provide adequate rights of air entry after the cessation of hostilities on a non-reciprocal basis for the United States and other members of the United Nations, and the Axis countries should not be permitted to engage in international air transport for a considerable period after the war.

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The countries so far enumerated include most of the cases in which new arrangements for commercial air entry are urgently needed, except in the Western Hemisphere, where Brazil, Mexico, and other countries may soon come forward with various requests. Beyond these cases of first priority lies the problem of commercial air entry into the more than 30 other countries of Europe, Africa, and Asia for which we have no air rights of any sort. The potential traffic between the United States and most of these countries is limited, and there will accordingly be a question in each case as to whether there is need for bilateral arrangements which would permit duplicating operations on routes of limited economic potentiality.

To handle such situations, it has been suggested that the airline companies might be allowed to negotiate directly for entry rights on a basis as favorable as possible, with service to be provided only to the extent justified by the traffic. This procedure would have the advantage that this Government would not necessarily be committed to any action in exchange. Moreover, many of the countries concerned might prefer to deal directly with the carriers, since they can retain greater freedom of action if there is no intergovernmental agreement.

Private negotiations for air rights may at times be disadvantageous from the point of view of the public interest. If two or more companies seek similar rights from the same foreign government at the same time, that government is in a position to play one concern against the other and to obtain an exorbitant price for any concession which is made.

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This disadvantage is avoided if only a single concern is in the field, but even in that case abuses may arise.

In view of our traditional commerce and navigation policies, the Good Neighbor Policy, and the principles recently affirmed in the Atlantic Charter, this country probably cannot afford to limit the principle of reciprocity to the major powers in its dealings on international aviation. A realistic approach might dictate general acceptance of the principle as such, while also recognizing that time must elapse before it can be put fully into practice. Meanwhile, we should consider on their merits the proposals of other countries with respect to an exchange of air rights, and should accept such proposals whenever possible.

After the situation has clarified with respect to our air commerce relationships with the major powers, it may be desirable to encourage company negotiations for air rights in countries where this Government is not disposed to act on its own initiative. In that event, the activities of the companies should be supervised to the extent necessary to protect the national interest. It is believed that such supervision can be established under the provisions of existing law.

Rights of Transit and Technical Stop
for Commercial Air Transport

The Paris Convention of 1919, to which we did not adhere, and a number of subsequent bilateral and multilateral agreements to which we have adhered have established for private aircraft the right of innocent passage over national territory, together with the right to stop at airports open to public use for refueling and other technical purposes. Corresponding rights have not been provided on any general basis for aircraft in commercial air transport.

The United States cannot operate a world-wide system of air routes without flying over many countries where commercial air stops are not at present feasible or desirable. Airports are also needed as staging points in a number of areas where there is little or no traffic to be had. Regardless of the problem of commercial air entry, we also need privileges of transit and technical stop throughout the world.

These privileges might be obtained in one of three ways. (1) We could seek to obtain them without offering to exchange similar rights in United States territory, offering instead some other quid pro quo. In most cases, this is not likely to be a satisfactory procedure. (2) We could seek to negotiate a series of bilateral agreements with country after country, somewhat similar to the treaties of friendship and navigation, in which we would exchange rights of transit and technical stop. (3) We could seek through a multilateral agreement to change existing international law on the subject, securing general recognition of a rule to the effect that aircraft in commercial air

transport

transport shall be permitted to fly over the territory of any nation, except over reasonable prohibited areas, and to land at appropriate airports for refueling and repairs, without the right to discharge or take on traffic. This would be analogous to the procedure by which the principle of the freedom of the seas was established a century ago.

The benefits of a multilateral agreement could be denied any country which refused to participate. In drafting such an agreement, it would be appropriate to provide that any nation may exclude from its air space the aircraft of any nation which fails to comply with the rule of freedom of transit and technical stop for its own territory.

Any exchange of transit rights, whether bilateral or multilateral, may seem to raise a question of security because of the rights thus given others to fly over United States territory. It will be necessary to reserve the right to establish reasonable prohibited areas, but with this reservation it does not appear that risks which are inevitable will be appreciably enhanced by granting transit rights for transport aircraft. Opportunities for subversion in connection with such aircraft would seem much less consequential than in connection with the private aircraft of foreign registry which already receive in times of peace the privilege of innocent passage.

In the past, transit rights for Hawaii and the Panama Canal Zone have been closely guarded. The Canal Zone is no problem for the future, since, if necessary, it can all be made a prohibited area with obvious justification and with relatively little international inconvenience.

Transit

Transit rights for Hawaii, however, are major bargaining considerations in any prospective general agreement with the British Commonwealth members. It will undoubtedly be necessary to give rights for Hawaii in order to obtain satisfactory commercial outlets and transit rights from the British. Other nations will be much less interested in Hawaii, but any attempt to hold it out in its entirety from any general arrangement for freedom of transit would set an undesirable precedent. The consequences in other parts of the world would probably be disadvantageous to us. Pearl Harbor and similar installations would presumably be treated as prohibited areas, and this could be done without interfering with commercial air transport.

A multilateral agreement for freedom of transit and technical stop seems preferable to a series of bilateral agreements if it can be achieved. By putting the principle of freedom of transit and technical stop on a broad, liberal basis, many countries will feel constrained to accept the principle as part of a world-wide movement, especially if the major powers are in agreement and can act in concert. In the case of a series of bilateral agreements, countries which have no immediate interest in securing transit rights for their own nationals are likely to hold out for other concessions, and progress in securing such agreements is likely to be slow.

Without neglecting general approaches to the problem of transit and technical stop, special attention should be given to a number of important individual problems, particularly those involved in crossing

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the Atlantic Ocean. There is an urgent present need for a land airport in the Azores; such an airport should be made available as soon as possible for general use by all airlines traversing the North Atlantic, and without any requirement that services using such an airport be routed via Lisbon. Some airlines may normally use the northern route, but routes via the Azores should be available for use when weather conditions make them preferable.

At present, Pan American Airways has landing rights in the Azores which are exclusive against any other United States company; efforts to secure a relaxation of this exclusivity, as well as to secure the construction of a land airport, have so far been unavailing. The problem of financing such an airport is part of the difficulty. Nevertheless, it would seem that success could be achieved before the war is over if the matter is given sufficient attention, perhaps through concerted action on the part of all the powers interested in air transportation in the North Atlantic area.

Airports and Facilities Constructed Abroad

Airports and other air navigation facilities have been constructed in many other countries at the expense of the United States. Senators Mead and Brewster of the Truman Committee are currently engaged in a world-wide tour of such airports and will report this fall on their investigations.

For these airports and facilities, agreements which have been made with the countries concerned generally provide only for military use during the war and for six months thereafter. In some cases, agreements were made early in the program on the assumption that fixed installations and all rights would revert at the conclusion of the war to the respective sovereign governments. These agreements were regarded in some quarters as too generous on our part.

It is not likely that countries with postwar aviation ambitions will freely give us unilateral commercial rights merely because we have been permitted to build airports on their soil in time of war. On the other hand, the obvious material benefits resulting from our expenditures may enable us to make reasonable requests with special force. In some cases, it may be desirable to request that airports built at our expense be turned over to an appropriate international agency for administration and continued availability for international use. In most cases, postwar operation under the respective national jurisdictions will probably be the only possible arrangement. In such cases, negotiations will deal mainly with the question of whether the airports are to remain available for our use, and if so, on what terms.

It

It happens that nearly half of the airports in question are located in British Commonwealth territory, with more of them in Canada than in any other single political unit. The need for an early agreement with the British Commonwealth countries on commercial air transport has already been noted in this memorandum. In negotiating such an agreement, our airport expenditures should be taken into account. If we can reach a satisfactory understanding on commercial entry and transit, the airport problem will largely settle itself.

The next largest group of airports is located in French territory. Until there is a Government of France, a permanent settlement with respect to these airports is presumably out of the question. Such a settlement should be readily feasible when the time comes to negotiate a new reciprocal air commerce agreement with France. Until then, military occupation by our forces will doubtless continue at certain French airports of considerable importance.

The other airports of some possible postwar significance are located in the territory of more than 20 nations, of which Brazil is the most important. United States companies already possess rights of commercial air entry into many of those countries, and there is no reason to suppose that we shall have any special difficulty in securing commercial entry into the others when negotiations can be undertaken by this Government or by the airline companies with its approval.

We should, however, seek certain postwar rights specifically on the basis of our airport construction expenditures. In particular, for airports of value for international air commerce, we should claim all of

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the rights ordinarily available at airports open to public use, including the right of national and most favored nation treatment with respect to the use of and access to such airports and facilities. It would also be desirable to seek the following rights, which are somewhat more extensive than these usually available at airports open to public use:

(a) The right to construct necessary additional facilities and to maintain facilities or have them maintained upon payment of reasonable charges, with freedom from any rent, taxes, fees, and other types of charge in excess of those levied for national and most favored nation use of such facilities.

(b) The right to carry goods in air transit and to bring in or otherwise obtain supplies required for operation and maintenance of aircraft or capital improvements at such facilities without payment of customs, inspection, or similar national or local charges.

(c) The right to share or maintain meteorological services and to obtain meteorological information.

(d) The right to share or maintain radio communication service.

It is recognized that the postwar value of the specific rights just enumerated is entirely dependant upon whether we have rights of commercial entry into the countries concerned, or at least have rights of innocent passage and transit with freedom to land for refueling and other technical purposes.

It would seem that the countries in which we have built airports should be willing to grant such transit rights without enacting any undue quid pro quo, especially if negotiations are pushed through with some energy while the mutual obligations of the war and of lend-lease arrangements are of current importance. In completing agreements relating to airports, we should, therefore, seek rights of transit and technical stop in every case.

We

We should also request general rights of commercial air entry, but the extent to which the request is pressed must be determined on a country-by-country basis. If the rights can be had for the asking, or if we are ready to exchange similar rights for United States territory, obviously there is no problem. But if a request for commercial rights provokes in return a request for rights of entry into this country which would be embarrassing, it may be necessary to drop the subject in reaching an airport settlement.

Airports

Airports of Special International Importance

Airports for use as staging points in the operation of aircraft on intercontinental routes present special problems of international importance. Basic factors of geography and terrain sometimes make it necessary to locate such airports in political units which would otherwise have little or no interest in international air transport.

The problem is complicated by the military importance of such airports. In many of these cases, it would be uneconomic and even physically difficult to provide duplicate airport installations for military and civil use, even if the political units concerned were prepared to maintain installations for purely military use, or to permit others to do so. Because of these relationships, the problem of international financing and control of airports for international use as staging points is as much related to the future organization and control of military air forces as it is to the future development of international civil aviation.

There are several ways by which airports may be provided in isolated areas for peace-time commercial use. Before the war, such airports were usually built by the airline company which pioneered the route, and the cost was frequently borne by the government which subsidized or owned the airline. After the pioneering period was over, the problem inevitably arose as to the terms on which other airlines were to be allowed to use such airports. It seems evident that in situations where an airport should be provided as a public facility, private ownership will be unsatisfactory, although joint ownership by several airline companies would be more satisfactory than by one alone.

Public

Public provision for airports will doubtless in the future be regarded as a normal responsibility of the government having jurisdiction. Every country will be compelled to take some action to meet its domestic requirements for airports. Airports for international use as staging points, however, will not be publicly provided by the governments of the smaller countries unless such airports show promise of profitability and the financial risk is not great. Provision for airports of critical importance on such a basis is not likely to be satisfactory to the airlines or to their home governments.

The only other alternative would seem to be some sort of international mechanism. This might take the form of an international publicly owned agency having corporate powers.

The establishment of such an agency acquires urgency mainly because of the problems arising from the airports, which have already been built abroad at our expense. Many of these will be used after the war both for domestic and international purposes, and should be administered by the government having national jurisdiction. Others, primarily of temporary military value, will fall into disuse. But a considerable number, needed primarily for the operation of intercontinental routes, are not likely to be maintained and administered on a satisfactory basis if they are allowed to revert to the control of the local government having jurisdiction. The airports built in Iceland and Greenland are examples of this type.

To meet this and certain related problems, the creation of a United Nations Airport Authority was proposed in a preliminary report of the

Subcommittee

Subcommittee of the Interdepartmental Committee on International Aviation. The proposal has since been studied by the Joint Chiefs of Staff, the Subcommittee on Security of the Political Committee, and the Division of Political Studies of the Department of State. The Joint Chiefs of Staff report that such an Authority is not needed at this time for the effective conduct of the war, but that it is recognized that some such agency may be desirable under postwar conditions. The Subcommittee on Security is opposed to general freedom of transit and appears to believe that an Authority would not be feasible if freedom of transit is not provided. The Division of Political Studies felt that the concept of the proposed Authority should either be broadened far beyond the scope of the original proposal in order adequately to meet security requirements, or else that it should be narrowed to provide for airports only at a few key points in isolated areas.

In the original proposal, it was suggested that the proposed Authority administer major airports in enemy territory and in territory the allegiance of which is subject to later determination, airports at strategic points in territories of nations not able or willing to construct such airports, and airports constructed in whole or in part at the expense of members of the United Nations outside their respective territories. It was further considered that the airports of the Authority should be available for United Nations military use and for international commercial air transport.

In view of the comments which have been received, it appears that further study should be devoted mainly to the creation of an international administrative agency for airports in isolated areas for use as staging points on international routes. In the event that such an agency is created

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and later proves useful for other tasks, an expansion of its functions would not be impossible.

The question of freedom of transit is related to the feasibility of the proposed international agency, but it is not necessarily to be assumed that all members of the United Nations must have military and commercial access to all of the airports which might be turned over to an international agency. A more feasible rule would grant access in accordance with transit rights for the surrounding territory and territorial waters. If freedom of commercial transit is established as a general rule of international law, the problem will disappear to that extent. Meanwhile, transit for commercial air transport purposes will continue to be governed by bilateral arrangements, and the access to airports of the proposed agency could be determined accordingly.

International transit privileges may eventually be provided for military air forces operating under specified conditions as part of a general system of security arrangements. Until such a system can be devised and constituted, it would be undesirable to attempt to provide for postwar military transit as part of the arrangements for an international agency administering commercial airports. However, even though initially organized to serve only the needs of air commerce, an international airport agency might have military value because it would assure the continued existence and maintenance of airports which may be of vital military importance at some future time.

International Organization for Civil Aviation

Whether or not any international agency is created to operate airports, there will undoubtedly be need for an agency to replace the prewar International Commission on Aerial Navigation. This Commission was created by the Paris Convention of 1919, to which the United States did not adhere. The Commission did a great deal of creditable work and performed an essential role in European civil aviation, but was unattractive to this country because of domination by European political and technical influences. Before the era of transoceanic flying, it was more convenient for this country to make its own arrangements in this hemisphere and to develop its own aviation technical standards, which have been markedly different in important respects from those prevailing in Europe.

After the war, the necessities of safe operation will require unification of technical standards on a world-wide scale, and the political, economic, safety, and technical problems arising out of international operations will be far more pressing than before. It will be essential for this country to participate in any international agency which deals with these matters, and we should take an active part in creating a new agency along suitable lines. As a minimum, such an agency should conduct periodic international conferences of representatives of the national aeronautical authorities, and should maintain a staff to perform the following functions:

a. To

a. To study procedures, practices, laws, and international agreements and conventions applicable to international aviation, in both the economic and safety fields and with respect to matters both of public and private law,

b. To make comparative studies of accounting, subsidies, unfair competitive practices, and discriminatory actions by governments,

c. In the safety field, to compare and interpret national airworthiness requirements, operational standards, and methods of accident investigations, and

d. To make recommendations for appropriate action by interested governments and organizations.

The functions just outlined are essentially of an informational and advisory character, although the work might have great influence if competently performed. The question will undoubtedly arise as to whether it would not be desirable to go much farther in the creation of an agency with investigative, regulatory, and enforcement powers in economic and safety fields. The specifications for such an agency may be drawn directly from the powers of the United States Civil Aeronautics Board with respect to domestic air transportation in this country. The Board passes on all applications for new routes, awards certificates for operations, regulates rates, controls subsidies, investigates major accidents, and sets safety standards.

It is not hard to demonstrate the need for such an agency in international aviation. The problems are those of how to create it, how to give it sanctions, how to prevent it from becoming the victim of conflicting national pressures, and how to make certain that it will operate in the public interest. These problems present legal,

administrative,

administrative, and political difficulties which in some cases appear insoluable, at least for the present. The nature and powers of an international aviation organization with regulatory functions would necessarily be largely dependent upon the character of the general political and security arrangements which are made for the postwar world. It therefore may not be possible to organize a new international aviation organization in permanent form before the final peace settlement.

Meanwhile, there is need for an immense amount of preparatory work which could well be carried on under the auspices of an interim international commission. Such an interim commission should perform the following functions: (1) it should prepare plans for the eventual permanent organization, (2) it should prepare plans for other aspects of the peace settlement affecting civil aviation, and (3) it should carry on the informational and advisory functions of a permanent organization, as previously outlined, to the extent that they are possible during the war.

It should be recognized that if eventually it proves impossible to create an international aviation agency with strong regulatory powers, a vacuum will exist which must be filled in other ways. Rate-making arrangements and the control of competition will largely devolve upon conferences of the air transport operators, which will probably operate in a manner similar to the conferences of steamship operators. If the conference system is not to be abused, measures of control will be

necessary

necessary. It will probably be necessary to make elaborate arrangements for bilateral or parallel administrative action by the aeronautical authorities of the countries most concerned in each major competitive situation.

There appears to be a general fear in some quarters abroad that the United States will heavily subsidize its international air transport operators, with grave danger of cutthroat competition on a widespread scale. It is believed that these fears are largely unjustified. Nevertheless, without committing this country in advance to any international act, it is obviously desirable to approach with an open mind any specific proposals which may be made for international organization or cooperative action to hold unjustified subsidies to a minimum.

The Problem of Procedure

We have an understanding with the British that matters of international aviation policy will be amicably discussed "at an opportune time." It appears to be assumed that such discussions might be (a) with United Kingdom representatives alone, (b) with representatives of all members of the British Commonwealth of Nations, or several of them, (c) at a "Big Four" conference of representatives of the British Commonwealth, China, Russia, and the United States, or (d) at a conference of all the United Nations and associated powers.

It is extremely difficult to say which of these possible procedures should be followed. In terms of immediate self-interest for post-war air transport operations, our greatest need is clearly for rights of commercial air entry from the major powers, together with the necessary transit and refueling rights, particularly at the Azores and a few other strategic points. But an obviously self-interested mutual arrangement among the great powers would outrage all others. Many of those others control airports built at our expense for war purposes, and we cannot afford to put them at the end of any list of those with whom we will deal. The general problem of freedom of transit and technical stop must also be considered. A United Nations conference would be necessary to adopt any general principle on the subject and might be successful in achieving general adoption of the principle only while the unifying influence of the war is being felt, if success is possible at all.

Insofar

Insofar as the question of procedure is dependent upon the attitudes of other countries, there is need for a series of preliminary conversations with representatives of as many countries as possible.

Subject to the outcome of such conversations, there would seem to be a good prima facie case for a United Nations Aviation Conference at an early date. There is universal interest in the subject and a general awareness that new international policies will be necessary in the post-war period, coupled with much misunderstanding and misinformation as to possibilities and prospects. A conference is probably necessary in order to bring about the formation of an interim international commission, the need for which has already been pointed out.

A United Nations Aviation Conference would not necessarily delay the negotiation of bilateral agreements on commercial entry in cases where they are urgently needed, nor delay bilateral agreements in settlement of questions arising out of airport construction. The opposite might well be true. Until there is some consensus of world opinion on many issues, attempts to write bilateral agreements to cover particular matters are likely to be stalemated by innumerable uncertainties of outlook.

Closely related to the question of international procedure is that of the procedure to be followed by the national authorities of this country, particularly the Civil Aeronautics Board. Under the Civil Aeronautics Act, before a certificate for a new international operation can be issued, various procedural steps must be taken which normally

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consume about eight months after the beginning of active consideration by the Board. Some means of expediting this procedure must be found if new post-war operations are not to be unduly delayed, particularly in view of the difficulty the Board faces in handling a large number of new route cases simultaneously. It is clear that it would be desirable to begin considering applications by carriers for new foreign routes as soon as this can be done without adverse repercussions abroad, but clarification of the situation through an international conference may be necessary as a first step.

APPENDIX

The statutory declaration of policy which appears as Section 2 of the Civil Aeronautics Act of 1938 is as follows:

Sec. 2. In the exercise and performance of its powers and duties under this Act, the Authority shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity--

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The regulation of air commerce in such manner as to best promote its development and safety; and

(f) The encouragement and development of civil aeronautics.

Other pertinent sections of the United States code relating to monopolies and combinations in restraint of trade are as follows:

TITLE 15.--COMMERCE AND TRADE

§1. <u>Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty</u>.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

§2. Monopolizing

§2. Monopolizing trade a misdemeanor; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, ch. 647, §2, 26 Stat. 209.)

§18. Acquisition by one corporation of stock of another.

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corportion engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce . . .