PSF Aviation May - Dec. 1944 and Undated Subject File

PSF Aviation

Box 116

P=F: Aviation ANNEX VIII

REVISED PRELIMINARY DRAFT

of an

INTERNATIONAL AIR CONVENTION

Prepared for

The Canadian Government

Ottawa, October, 1944

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1944

CONTENTS

	Page
Summary	5
Preamble	7
Part I —International Air Transport	7
Part II —International Air Navigation	16
Part III—Final Provisions	21
Annex A	—

It is assumed that an overriding treaty of peace will determine the obligations and rights of the defeated powers under this convention.

20128—1½

DRAFT INTERNATIONAL AIR TRANSPORT CONVENTION

SUMMARY

1. The convention establishes an International Air Authority, gives it a constitution and endows it with powers. The Authority has the normal structure of an international organization: an Assembly representing all the member states and a small executive committee which is called a Board. In each region a Regional Council is set up to deal with matters of regional concern.

2. The Authority is charged with the duty of planning and fostering the organization of international air services so as

(a) to make the most effective contribution to the establishment and maintenance of a permanent system of general security,

(b) to meet the needs of the peoples of the world for efficient and economical air transport, and

(c) to ensure that, so far as possible, international air routes and services are divided fairly and equitably between the various member states.

3. The convention is an agreement between states and is not concerned with such domestic questions as whether the international air services of the various member states should be government-owned or privately-owned or whether a state should have more than one government-owned or privately-owned airline company engaged in international air transport. These are matters of domestic policy which each individual member state decides for itself. They are therefore, outside the scope of the international convention.

4. Each member state in the International Air Assembly would have equal voting power. The Board of twelve members, which is elected by the Assembly, must include at least one national of each of the eight member states of chief importance in international air transport.

5. A company wishing to operate an international air service makes application first to its own government. The government, if it approves of the application, forwards it to the appropriate Regional Council. The Regional Council decides whether the applicant should receive a certificate and, if so, under what conditions. The council makes its decisions upon the basis of the traffic likely to be available for carriage on the service. However, in order to provide a fair opportunity and participation by all nations and to provide for recognition of the theory that the most efficient operators should have the right to expand their services, the following principles are to guide the Regional Council in their control of services:

(a) Any nation should have the right to have one of its air line companies operate at least one round trip per week on any international route commencing in that territory.

(b) If a particular air line company has been carrying over a period of a year an average pay load of more than 65 per cent of its carrying capacity, it should have the right to expand its services.

20128—2

(c) If an operator is operating at less than 40 per cent of carrying capacity over a similar period, it should be required to reduce its frequencies, although in no case could its basic rights to operate one round trip a week be taken away.

6. Any service licensed by a Regional Council would have:

(a) freedom of air transit over the airways of all the member states of the region.

(b) the right to land at airports in the region for refuelling, repairs and in emergency,

(c) the right to carry passengers, mails and cargo from the home state to any other member state and

(d) the right to bring back passengers, mails and cargo to the home state from any other member state.

7. A state which considers that a decision by a Regional Council is unfair has the right to appeal to the Board and the Board can set aside or modify the decision.

8. The application for a certificate from an airline which wishes to operate a service passing over territory under the jurisdiction of two or more Regional Councils does not go to all the Regional Councils concerned but goes to the Board.

9. Rates would be adjusted according to characteristics of service such as speed and accommodation but would be intended to permit the most economical operator on a route to cover the full cost of operation and reasonable profit.

10. On questions affecting world security the International Air Authority is made subject to the international security organization which is to be set up by the United Nations.

11. Two or more member states may decide that the best way of operating all or some of the air services between them is not by rival companies each carrying a national flag but by a joint organization. The member states are not prevented from establishing such joint operating organizations. The Board or a Regional Council may recommend to the member states concerned that they pool the air services on certain routes or in certain regions or constitute joint operating organizations to perform certain air services.

12. Two contiguous states, such as Canada and the United States, may reserve services between themselves from the provisions of the convention.

13. A set of general principles has been included to cover such matters as air worthiness, prohibited areas, traffic rules and air navigation generally.

14. The aircraft issued with a certificate by the Board or the Regional Councils will be assured wherever they go in the world of being able to use adequate airports and other ground facilities on payment of reasonable fees and charges. Member states may elect to bear all or a portion of the costs of constructing and maintaining the necessary facilities. If a member state does not so elect, the costs are advanced by the Board and borne by the Board or apportioned among states using the facilities.

15. In order to provide for the prompt establishment of necessary air services at the earliest possible date, contracting states would have the right, for a transitional period beginning with the coming into force of this convention and terminating at an agreed date, to enter into such arrangements as may be agreed by the interested states for the provision of international air services. During this transitional period the limitations of this convention with regard

to routes, frequencies and rates would be temporarily suspended, but contracting states undertake to observe the general principles and objectives of this convention. Upon the termination of this transitional period the provisions of this article and any arrangements made thereunder should cease to have effect, and services, routes or frequencies would be entirely governed by the terms of this convention just as if the transitional period had never existed.

PREAMBLE

The governments signatory hereto agree to the establishment of an International Air Authority, the powers and duties of which shall be subject to review in accordance with Article LVI hereof, at the end of ..... years from the date of the coming into force of this convention and shall be subject to the initial allocation of routes and frequencies and outlets as set forth in the provisions of Annex A to this convention.

Part I

INTERNATIONAL AIR TRANSPORT

Article I

The Authority

Section 1

An authority is hereby established to be known as the International Air Authority and to consist of an Assembly, a Board of Directors, Regional Air Councils and such other units as may be created pursuant to the provisions of this convention.

Section 2

The authority shall plan and foster the organization of international air services so as

(*a*) to avert the possibility of the misuse of civil aviation creating a threat to the security of nations, and to make the most effective contribution to the establishment and maintenance of a permanent system of general security;

(*b*) to avert conflicts capable of creating friction among governments or peoples;

(*c*) to avoid the development of economically wasteful competitive practices;

(*d*) to ensure that, so far as possible, international air routes and services are divided fairly and equitably between the various member states, and to ensure to every state the opportunity of participating in international airline operation in accordance with its needs for air transportation service;

(*e*) to encourage continued development of the peaceful arts of aircraft design and operation;

(*f*) to reject and discourage discriminations between states in the following fields:

(i) operations,
(ii) use of bases and aids to navigation,
(iii) definition of prohibited areas,
(iv) customs arrangements;

(g) to offer the potential users of air transportation safe, convenient and economical services, to offer free choice among alternative services, and generally to meet the needs of the peoples of the world for efficient and economical air transport.

Section 3

The Authority shall have exclusive jurisdiction, pursuant to the provisions of this convention, over international air services, provided that any two contiguous member states may reserve arrangements for services between them.

ARTICLE II

Obligations of Member States

Section 1

Each member state undertakes to give the following freedoms of the air to the international air services operating under the provisions of this convention:

(1) The right of innocent passage,

(2) The right to land for non-traffic purposes (e.g. refuelling, repair, emergency),

(3) The right to discharge passengers, mails and freight embarked for the territory of the state or states whose nationality the aircraft possesses,

(4) The right to take on passengers, mails and freight destined for the territory of the state or states whose nationality the aircraft possesses.

Section 2

Each member state may

(a) designate the route to be followed within its territory by any international air service and the air ports which any international air service may use, and

(b) impose or permit to be imposed on any international air service just and reasonable charges for the use of the air ports and other facilities on its territory, which shall not be higher than would be paid by national aircraft engaged in comparable international services,

provided that, upon complaint by an interested air carrier through the government or governments of which it is a national, the charges imposed for the use of air ports and other facilities shall be subject to review by the authority issuing certificates.

Section 3

Each member state undertakes to make available such radio facilities and to provide such meteorological services as may from time to time be required by the authority issuing certificates for the safety, efficiency and regularity of the air services authorised by it.

Section 4

Each member state undertakes to perform the obligations imposed on it by this convention.

Section 5

Each member state undertakes to permit the operation within its territory of operating organizations constituted under the provisions of Section 3 of Article IX of this convention, provided that permission to an operating organization to engage in domestic air transport within its territory shall be in the discretion of the state.

Article III

The Assembly

Section 1

The International Air Assembly shall be composed of representatives of the member states. Each state may appoint two representatives to the Assembly and shall be entitled to two votes in the Assembly. Each state may cast both its votes allotted if one or more of its representatives is present at any meeting. Decisions of the Assembly shall be taken by a majority of the votes cast except where otherwise provided in this convention. There shall be deemed to be a quorum if the representatives present can cast one-half of the possible votes.

Section 2

The duties of the Assembly shall be:

(1) To designate the countries which may appoint members on the International Air Board.

(2) To elect the President of the Board. The President shall hold office for a period of ..... years.

(3) To meet from time to time as occasion may require and at least once a year.

(4) To examine and approve the annual report of the Board, and to decide any matter referred to it by the Board.

(5) To make regulations governing the preparation of budgets and financial statements by the Board and to approve the annual budget and the financial arrangements made by the Board.

Section 3

The Assembly shall have power:

(1) To determine its rules of procedure.

(2) To fix the salaries of the President and the other members of the Board.

(3) To refer to subsidiary commissions, the Board, or any other appropriate agency any matter within the sphere of its jurisdiction.

(4) To deal with any matter within the sphere of action of the Authority not specifically assigned to the Board or the Regional Councils.

Article IV

The Board

Section 1

The International Air Board shall consist of a President, elected pursuant to the provisions of Article III of this convention, and twelve members. It shall include one national of each of the eight member states of chief importance in international air transport. It shall also include one national of each of four other states designated by the Assembly for ..... year terms. The members shall in all cases be appointed by the governments concerned. The Board shall be a permanent body responsible to the Assembly. In the event of any member of the Board ceasing to act, the state which appointed him shall appoint a successor who shall hold office for the unexpired portion of his predecessor's term of office.

Section 2

The duties of the Board shall be:

(1) To constitute, subject to the approval of the Assembly, the following Regional Air Councils (For example, European, North Atlantic, North Pacific, Inter-American) . . . In constituting a Regional Council the Board shall designate as participating states those member states which are principally concerned in the international airlines of the region. The Board shall also define the boundaries of the region or designate the routes over which the Regional Council shall have jurisdiction. The Board may from time to time revise the lists of participating states and alter the boundaries of the regions or change the designations of the routes.

(2) To decide, subject to the approval of the Assembly, the method of appointment, the salaries and conditions of service of its employees including those members of the Regional Councils who are appointed by the Board.

(3) To establish the rules of procedure of subsidiary commissions and of Regional Councils.

(4) To administer, subject to the approval of the Assembly, the finances of the Authority.

(5) To grant certificates over routes coming within the jurisdiction of two or more Regional Councils, or of no Regional Councils; and in such cases to perform the duties of a Regional Council; or, in its discretion in special cases, to enable one or more Regional Councils to act to the exclusion of any other Regional Council having a technical but not substantial jurisdictional interest.

(6) To conduct research into all aspects of air transport which are of international concern, to make the results of its research known to all the member states and to facilitate the exchange of information on air transport matters between the member states.

(7) To carry out the directions of the Assembly.

(8) To collect, examine and publish information and cost statistics relating to the operation of international air services.

Section 3

The Board shall, acting in accordance with the principles laid down in this convention, have power:

(1) To revoke or alter, after public notice or hearing, any decision of a Regional Air Council including any decision to grant, withhold, alter, amend, modify, revoke or suspend a certificate, and any decision determining frequencies of service, allocation of quotas, or rates of carriage.

(2) To carry out the provisions of Article VII of this convention (Airports and other ground facilities).

(3) To establish, subject to the approval of the Assembly, subsidiary commissions responsible to it.

(4) To institute such training facilities for its employees as it may consider necessary.

Section 4

Decisions of the Board shall be taken by a majority of the votes cast. One-half the members of the Board shall form a quorum. The President shall have a casting vote. The Board shall determine its rules of procedure but the place of its permanent seat shall be decided by the Assembly.

Article V

Regional Councils

Section 1

A Regional Air Council shall be composed of not less than six members. One-third of the members shall be appointed by the International Air Board and hold office at the pleasure of the Board; they shall possess special knowledge of the problems of air transport and shall be nationals of states other than those which are designated by the Board as being principally concerned in the international airlines of the region. The other members shall be appointed by the designated states. The number of members to be appointed by each of the designated states shall be, from time to time, determined by the Board, having regard to the relative importance to each state of the international air transport services under the Regional Council's jurisdiction and to the relative importance of each state in international air transport. The members appointed by designated states shall hold office at the pleasure of the government appointing them.

Section 2

Decisions of a Regional Council shall be taken by a majority of the votes cast. One-half the members of a Council shall form a quorum.

Section 3

Each Regional Council shall appoint a Managing Director who shall hold office for a period of .... years.

Section 4

The duties of a Regional Council shall be:

(1) To grant certificates in respect of international air services within the region; to withhold certificates; to attach to certificates such reasonable terms, conditions and limitations as the public interest may require and as are consistent with the terms of this convention; to alter, amend, modify or suspend any certificate, in whole or in part, or revoke any certificate, in whole or in part, for deliberate failure to comply with any provision of this convention or of any order, rule or regulation issued under this convention or any term, condition or limitation of the certificate.

(2) To review and alter, if necessary, the rates of carriage for passengers and cargo, fixed in the first instance at conferences of air transport operators in that region; and to determine rates of carriage for passengers and cargo, in the event that the air transport operators, after a reasonable period of time, fail to reach agreement; and to consult with the postal administrations regarding rates of carriage for mail; it being understood that rates should so far as may be possible:

(a) permit the most economical operator to cover the full costs of operation and reasonable profit, and

(b) provide for differentials in rates to take into account differences in speed and type of accommodation and all characteristics of service.

(3) To collect and furnish to the Board information and cost statistics relating to the operation of international air services.

(4) To carry out the directions of the Assembly and such duties as may be delegated by the Board.

Section 5

In the granting of certificates in respect of international air services, a Regional Council shall act in accordance with the allocation of routes, frequencies and outlets under the provisions of Annex A to this convention, but may make additional allocations in accordance with the following principles:

(1) Any state wishing to initiate in a region an international service commencing in that state should have the right to operate a minimum quota of a weekly return service, unless its application justifies more.

(2) Any state already operating on a given route, if its existing service have been operating with an average payload over a year of more than 65 per cent of carrying capacity over the route, or over any part of the route, should be allowed to increase its frequencies on the route or part thereof, as the case may be.

(3) Any state already operating on a given route may be required to decrease its frequencies on that route if its capacity services are operating with an average payload, over a year, of less than 40 per cent of carrying capacity; but, except for breaches of this convention, shall not be required to reduce below the one weekly return service referred to in paragraph (1) hereof.

(4) Any state wishing to initiate a new service, in a region, over a new route should have the following principles, amongst others, taken into consideration:

(e.g. average payload already carried by the applicant state in the region;

existing and potential traffic to and from the region.)

(5) If a state wishes to initiate a service which is a branch or extension of one of its existing services, its application should be treated as an application for a completely new route commencing in that state, and frequencies to be allowed should be based upon traffic movements between the country of origin and the new destination.

Article VI

Certificates

Section 1

(1) Applications for certificates may be submitted only by or through governments of member states. An application by a person or corporation shall be submitted through the intermediary of the government of the member state of which the person or corporation is a national.

(2) An application shall normally be made to the competent Regional Council. If the application, however, is for a service which falls within the jurisdiction of two or more Regional Councils or of no Regional Council, the application shall be made to the Board which may refer it to one or more Regional Councils for their opinion.

Section 2

The Board or a Regional Council shall not grant a certificate unless it is satisfied that the government, person or corporation applying for the certificate is able properly to provide the proposed air services, and to conform to the provisions of this convention and the rules, regulations and requirements of the Authority and the competent Regional Council.

Section 3

(1) The holder of a certificate granted by the Board or a Regional Council shall have the right to operate to, within, over and away from the territory of any member state to the extent allowed by the certificate and subject to allocation of routes, frequencies and outlets as provided for in Annex A to this convention and in Article V of this convention. The certificate may allow the holder to make stops in the territory of any member state in accordance with the provisions of Article II, Section 1; and member states shall allow such stops, provided that no certificate shall grant permission to an operator possessing the nationality of one state to take on passengers, cargo or mail within the territory of any other state for discharge within territory of the latter or within the territory of a third state except with the consent of the member state or member states concerned.

(2) Any certificate may be revoked, altered, amended, modified or suspended by the Board or by the Regional Council which granted the certificate.

(3) The Board or a Regional Council shall not grant, renew, alter, amend, modify, suspend or revoke a certificate except after a hearing, except in case of emergency or under the provisions of Article IX of this convention (Relationship to the International Security Organization).

Article VII

Airports and Other Ground Facilities

Section 1

If an air carrier furnished with a certificate by the Board or a Regional Council is of the opinion that the airports or other ground facilities on the territory of a member state are not reasonably adequate for the safe, regular, efficient and economical operation of the air services which it is permitted to perform, it may so inform the government of which it is a national. Such government may, if the complaint is considered to be valid, transmit it to the appropriate Regional Council, or if more than one Regional Council or no Regional Council is concerned, to the Board. After reasonable notice to all member states concerned and after one or more hearings at which these member states shall have the right to be heard, the Board or Regional Council may request the member state to expand its existing facilities or to construct new ones or to man and maintain its existing or new facilities in accordance with standards set by the Board or Regional Council. The Board shall, at the instance of an interested member state, review any request made by a Regional Council and after public notice or hearing may suspend, withdraw, alter, amend or modify its terms. Each member state undertakes, at the earliest practicable moment, to give effect to the requests of the Board or Regional Council.

Section 2

The expenses involved in carrying out any such requests shall be apportioned as follows:—

(*a*) The member state may elect to bear all or a portion of the costs;

(*b*) if the member state bears none of the costs or bears only a portion thereof, the costs (or the remaining portion of them, as the case may be) shall be advanced by the Board to the member state and shall be borne by the Board or be apportioned by the Board, over a reason-

able period of time, between the states (including the member state constructing the facilities) whose air carriers or services use the facilities.

In cases where the Board advances costs it may require a reasonable share of the supervision of the construction work, in the control of the airports and other facilities, and in the revenues derived from charges levied.

Section 3

If a member state so requests, the Board may provide, man, maintain and control any or all of the airports and other ground facilities which it requires in the territory of that member state for the safe, regular, efficient and economical operation of the air services which it or a Regional Council has authorized, and may impose just and reasonable charges for the use of the facilities. The member state shall either provide the land itself or facilitate the acquisition of the necessary land by the Board on just and reasonable terms.

Section 4

A member state may at any time acquire and obtain complete control over facilities on its territory for which the Board has advanced costs under Section 2 of this Article, or which the Board has provided under Section 3 of this Article, by paying to the Board an amount which in the opinion of the Board is reasonable in the circumstances.

Article VIII

Finance

The expenses of the Authority shall be borne by the member states in proportions to be agreed by the Assembly, provided that those expenses of a Regional Council which are, in the opinion of the Board, properly chargeable to the states participating in that Council shall be borne by those states in such proportions as the Board may determine.

Article IX

Relationship to the International Security Organization

Section 1

The Authority shall be subject so far as questions involving world security are concerned, to the organization which may be established among the nations of the world for the maintenance of peace and international security.

Section 2

The Board, when informed by the International Security Organization that such action is required in the interest of world security, shall immediately and without formal hearing grant, withhold, alter, amend, modify, suspend or revoke any certificate in whole or in part and take the measures concerning technical services, operating facilities and bases which the International Security Organization may direct to be taken.

Section 3

The Board shall, when informed by the International Security Organization that such action is required in the interest of world security, constitute, supervise and control one or more operating organizations to operate air services on routes

or in regions designated from time to time by the International Security Organization, provided that such operating organizations shall not engage in domestic air transport within the territory of any state without the permission of that state. The Board may place operating organizations under the supervision and control of the appropriate Regional Council.

Article X

Joint Operating Organizations and Pooling

Section 1

Nothing in this convention shall prevent two or more states from constituting joint air transport operating organizations or international operating agencies, but such organizations or agencies shall be subject to all the provisions of this convention, including those relating to certificates and to the registration of agreements with the Board. The Authority shall determine in what manner the provisions of this convention relating to nationality of aircraft shall apply to the aircraft operated by international operating agencies.

Section 2

Nothing in this convention shall prevent two or more states from pooling their air services on certain routes or in certain regions but such pooled services shall be subject to all the provisions of this convention, including those relating to certificates and to the registration of agreements with the Board.

Section 3

The Board, or a Regional Council may recommend to the member states concerned that they pool the air services on certain routes or in certain regions or that they constitute joint operating organizations to perform some or all the air services on certain routes or in certain regions.

Section 4

A state shall have the right to participate in joint operating organizations or in pooling arrangements, either through its government or through an airline company or companies designated by it. The companies may, at the sole discretion of the state concerned, be state-owned or partly state-owned or privately owned.

Part II

INTERNATIONAL AIR NAVIGATION

GENERAL PRINCIPLES

Article XI

Each member state recognizes that every state has complete and exclusive sovereignty over the air space above its territory.

Article XII

Each member state undertakes in time of peace to accord, subject to the provisions of Part I of this convention in the case of international air services, freedom of innocent passages above its territory to the aircraft of the other member states, provided that the conditions laid down in the present Convention are observed.

Article XIII

Each member state is entitled for military reasons or in the interest of public safety to prohibit the aircraft of the other member states, under the penalties provided by its legislation and subject to no distinction being made in this respect between its private aircraft and those of the other member states, from flying over certain areas of its territory. Each member state undertakes that the allocation and extent of these areas shall not be unreasonably defined.

Each member state may, as an exceptional measure and in the interest of public safety, authorize flight over the said areas by its national aircraft.

The position and extent of the prohibited areas shall be previously published and shall be notified, as well as the exceptional authorizations issued under the last preceding paragraph, to all the other member states as well as to the Authority.

Each member state reserves also the right in exceptional circumstances in time of peace and with immediate effect temporarily to restrict or prohibit flight over its territory or over part of its territory on condition that such restriction or prohibition shall be applicable without destinction of nationality to the aircraft of all the other member states.

Such decision shall be published, notified to all the member states and communicated to the Authority.

Article XIV

Every aircraft which finds itself above a prohibited area shall, as soon as aware of the fact, give a signal of distress provided in Annex ... and land as soon as possible outside the prohibited area at one of the nearest aerodromes of the state unlawfully flown over.

Article XV

Each member state is entitled to conclude special conventions relating to air navigation with non-member states.

The stipulations of such special conventions shall not infringe the rights of the member states under the present Convention.

Such special conventions in so far as may be consistent with their objects shall not be contradictory to the general principles of the present Convention.

They shall be communicated to the Authority which will notify them to the other member states.

NATIONALITY OF AIRCRAFT

Article XVI

Aircraft possess the nationality of the state on the register of which they are entered, in accordance with provisions of Annex ....

Article XVII

The registration of aircraft referred to in the last preceding Article shall be made in accordance with the laws and special provisions of each member state.

Article XVIII

An aircraft cannot be validly registered in more than one state.

Article XIX

All aircraft engaged in international navigation shall bear their nationality and registration marks as well as the name and residence of the owner in accordance with Annex ....

CERTIFICATES OF AIRWORTHINESS AND COMPETENCY

Article XX

Every aircraft engaged in international navigation shall, in accordance with the conditions laid down in Annex .... be provided with a certificate of airworthiness issued or rendered valid by the state whose nationality it possesses.

Article XXI

The commanding officer, pilots, engineers and other members of the operating crew of every aircraft shall, in accordance with the conditions laid down in Annex .... be provided with certificates of competency and licences issued or rendered valid by the state whose nationality the aircraft possesses.

Article XXII

Certificates of airworthiness and of competency and licences issued or rendered valid by the state whose nationality the aircraft possesses, in accordance with the regulations established by Annex .... and Annex .... and hereafter by the Authority shall be recognized as valid by the other member states.

Each member state has the right to refuse to recognize for the purpose of flights within the limits of and above its own territory certificates of competency and licences granted to one of its nationals by another member state.

Article XXIII

No wireless apparatus shall be carried without a special licence issued by the state whose nationality the aircraft possesses. Such apparatus shall not be used except by members of the crew provided with a special licence for the purpose.

No public transport aircraft capable of carrying ten or more persons including the crew, no flying machine whose weight fully loaded exceeds 2,000 kilogrammes, and no airship shall fly in the course of international navigation unless the requirements specified in Annex .... are complied with.

The authority may later extend the obligation of carrying wireless apparatus to all other classes of aircraft in the conditions and according to the methods which it may determine.

ADMISSION TO AIR NAVIGATION ABOVE FOREIGN TERRITORY

Article XXIV

Every aircraft of a member state has the right subject to the provisions of Part I of this convention in the case of international air services, to cross the air space of another member state without landing. In this case it shall follow the route fixed by the state over the territory over which the flight takes place. However, for reasons of general security it will be obliged to land if ordered to do so by means of the signals provided in Annex ....

No aircraft of a member state capable of being flown without a pilot shall, except by special authorization, fly without a pilot over the territory of another member state.

Article XXV

Every aircraft passing through the territory of a member state, including landings and stoppages reasonably necessary for the purpose of such transit, shall be exempt from any seizure on the ground of infringement of patent, design or model, subject to the deposit of security the amount of which in default of amicable agreement shall be fixed with the least possible delay by the competent authority of the place of seizure.

RULES TO BE OBSERVED ON DEPARTURE, WHEN UNDER WAY AND ON LANDING

Article XXVI

Every aircraft engaged in international navigation shall be provided with:

(a) A certificate of registration in accordance with Annex....;

(b) A Certificate of airworthiness in accordance with Annex....;

(c) Certificates and licences of the commanding officer, pilots and crew in accordance with Annex....;

(d) If it carries passengers, a list of their names;

(e) If it carries freight, bills of lading and manifest;

(f) Log books in accordance with Annex....;

(g) If equipped with wireless, the special licence prescribed by Article XXIII.

Article XXVII

The log books shall be kept for two years after the last entry.

Article XXVIII

Upon the departure or landing of an aircraft, the authorities of the State shall have, in all cases, the right to visit the aircraft and to verify all the documents with which it must be provided.

Article XXIX

Aircraft of the member states shall be entitled to the same measures of assistance for landing, particularly in case of distress, as national aircraft.

Article XXX

With regard to the salvage of aircraft wrecked at sea, the principles of maritime law will apply, in the absence of any agreement to the contrary.

Article XXXI

Every aerodrome in a member state, which upon payment of charges is open to public use by its national aircraft, shall likewise be open to the aircraft of all the other member states.

In every such aerodrome there shall be a single tariff of charges for landing and length of stay applicable alike to national and foreign aircraft.

Article XXXII

Each member state undertakes to adopt measures to ensure that every aircraft flying above the limits of its territory and that every aircraft wherever it may be, carrying its nationality mark, shall comply with the regulations contained in Annex.....

Each of the member states undertakes to ensure the prosecution and punishment of all persons contravening these regulations.

PROHIBITED TRANSPORT

Article XXXIII

The carriage by aircraft of explosives and of arms and munitions of war is forbidden in international navigation. No foreign aircraft shall be permitted to carry such articles between any two points of the territory of the same member state.

Article XXXIV

Each member state, may, in aerial navigation, prohibit or regulate the carriage or use of photographic apparatus. Any such regulations shall be at once notified to the Authority which shall communicate this information to the other member states.

Article XXXV

As a measure of public safety, the carriage of objects other than those mentioned in Articles XXXIII and XXXIV may be subjected to restrictions by any member state. Any such regulations shall be at once notified to the Authority which shall communicate this information to the other member states.

Article XXXVI

All restrictions mentioned in Article XXXV shall be applied equally to national and foreign aircraft.

STATE AIRCRAFT

Article XXXVII

The following shall be deemed to be State aircraft:

(a) Military aircraft;

(b) Aircraft exclusively employed in State service, such as posts, customs, police.

Every other aircraft shall be deemed to be a private aircraft.

All State aircraft other than military, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present Convention.

Article XXXVIII

Every aircraft commanded by a person in military service detailed for the purpose shall be deemed to be a military aircraft.

Article XXXIX

No military aircraft of a member state shall fly over the territory of another member state nor land thereon without special authorization. In case of such authorization the military aircraft shall enjoy, in principle, in the absence of special stipulation, the privileges which are customarily accorded to foreign ships of war.

A military aircraft which is forced to land or which is requested or summoned to land shall by reason thereof acquire no right to privileges referred to in the above paragraph.

Article XL

Special arrangements between the member states concerned will determine in what cases police and customs aircraft may be authorized to cross the frontier. They shall in no case be entitled to the privileges referred to in Article XXXIX.

ARTICLE XL A

Nothing contained in Part II of this Convention shall in any way derogate from the powers contained in Part I in respect of regular international air services and wherever there is any conflict between the provisions of Part I and Part II, the provisions of Part I shall prevail in respect of regular international air services.

Part III

FINAL PROVISIONS

Article XLI

The member states undertake to co-operate so far as possible in:—

(a) the collection and dissemination of statistical, current, and special meteorological information, in accordance with the provisions of Annex....hereto;

(b) the publication of standard aeronautical maps, and the establishment of a uniform system of ground marks for flying, in accordance with the provision of Annex....hereto;

(c) the use of wireless telegraph in air navigation, the establishment of the necessary wireless stations, and the observance of international wireless regulations.

Article XLII

(1) the member states will comply with the general provisions relating to customs in connection with international air navigation contained in Annex.... hereto.

(2) Nothing in the present Convention shall, however, be construed as preventing the member states from concluding special agreements in respect of customs, in connection with air navigation provided such agreements are not inconsistent with the provisions of the present Convention. Any such agreement shall be at once communicated to the Authority and by it to all the other member states.

(3) The fuel and oil on board an aircraft engaged in international navigation shall be exempt from customs and excise duties on the arrival of the aircraft at an aerodrome in the territory of any of the member states. Fuel and oil taken on board for the purpose of continuing the journey shall be similarly exempt, provided that the quantity thereof does not exceed that needed for the whole remaining journey as defined in the log book.

Article XLIII

(1) In case of any disagreement between two or more member states relating to the interpretation or application of the present Convention, the matter shall be referred to the Permanent Court of International Justice, provided that. if any one of the states concerned has not assented to the Statute of the Court the matter shall, on the demand of such state, be settled by arbitration.

(2) If the states do not agree on the choice of the Arbitrators, they shall proceed as follows:—

Each of the Parties shall name an arbitrator, and the arbitrators shall meet to name an umpire. If the arbitrators cannot agree on an umpire, the states shall each name other member states and the state or states so named shall proceed to designate the umpire by agreement or by each proposing a name and then determining the choice by lot. The arbitrators and the umpire shall jointly constitute a Court of Arbitration which shall settle its own procedure and give its decisions by majority vote.

(3) The decision of the Permanent Court or of the Court of Arbitration, as the case may be, shall be final and binding on the parties to the dispute.

(4) Disagreements relating to the technical regulations annexed to the present Convention, shall be settled by the decision of the Authority.

(5) If any disagreement involves the question whether the interpretation of the Convention or that of a regulation is concerned, this question shall be decided by arbitration in accordance with the procedure laid down in paragraph (2) of this Article.

ARTICLE XLIV

In case of war, the provisions of the present Convention shall not affect the freedom of action of any of the member states, whether as belligerents or as neutrals.

ARTICLE XLV

The provisions of the present Convention are completed by the Annexes ..... which shall have the same effect and shall come into force at the same time as the Convention itself.

ARTICLE XLVI

For the purpose of this convention the expression:

(a) "Air Service" means any scheduled air service performed by an aircraft for public use such as the transport of passengers, mail or cargo.

(b) "International Air Service" means.....

(c) "Member states of chief importance in international air transport" means the 8 member states selected annually by the assembly on the following basis.....

(d) "Nationality of aircraft" means the nationality of the state in which the aircraft is registered.

(e) "Territory" of a state means all territory under the sovereignty, suzerainty, protection, jurisdiction, authority or mandate of that state.

ARTICLE XLVII

Other Agreements and Arrangements

Section 1

As between member states this convention shall replace the International Aerial Navigation Convention signed at Paris in 1919, the Ibero-American Convention on Aerial Navigation signed at Madrid in 1926, and the Pan-American Convention on Commercial Aviation, signed at Havana in 1928.

Section 2

The member states severally agree that this convention is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with its terms, and undertake not to enter into any engagements inconsistent with its terms. In case any member state shall, before becoming a member of the International Air Authority, have undertaken any obligations toward a non-member state or a national of a member state or a non-member state inconsistent with the terms of this convention, it shall be the duty of such member state to take immediate steps to procure its release from such obligations.

Section 3

The right of any member state to enter into any convention or special agreement with any other member state or member states concerning inter-

national air transport is recognized, provided that the convention or agreement shall not impair any rights or obligations of any of the member states arising out of this convention. Every such convention or agreement shall be forthwith registered with the Board and shall as soon as possible be published by it. No such convention or agreement shall be binding until so registered.

Section 4

All agreements or working arrangements between operating companies regarding international air services shall be forthwith registered with the Board and shall not be binding until so registered.

ARTICLE XLVIII

Provisional Procedure

Section 1

Until the Board shall decide otherwise, the jurisdiction of the Regional Councils shall extend as follows:

Section 2

Until the Board shall decide otherwise, the membership of the Regional Councils shall be as follows:

Section 3

Until the Board or the competent Regional Council shall decide otherwise the persons or countries to whom routes, frequencies and outlets have been allocated under the provisions of Annex A to this Convention shall be deemed to possess certificates issued by the authority.

Section 4

The first meeting of the Assembly shall be summoned by ..... as soon as the Convention has come into force to meet at ..... within two months after the date of coming into force of the Convention.

Section 5

The following procedure shall govern the election of the Board at the first meeting of the Assembly. Each of the eight member states of chief importance in air transport, selected by the Assembly, shall, as soon as possible and not later than six weeks after the date of coming into force of the Convention, nominate one of its nationals for membership on the Board. Each national delegation may nominate one person to fill one of the remaining four seats on the Board. The chairman of the Assembly shall prepare a list in alphabetical order of all the persons thus nominated and shall submit this list to the Assembly which shall vote by secret ballot. Those four candidates who obtain the highest number of votes shall be considered as elected.

ARTICLE XLIX

Transitional Period

In order to provide for the prompt establishment of necessary air services at the earliest possible date member states shall have the right, for a transitional period beginning with the coming into force of this Convention and terminating .....to enter into such arrangements as may be agreed by the

interested states for the provision of international air services. During this transitional period the limitations of this Convention with regard to routes, frequencies and rates shall be temporarily suspended, but member states undertake to observe the general principles and objectives of this Convention. Upon the termination of this transitional period the provisions of this article and any arrangements made thereunder shall cease to have effect, and services, routes or frequencies shall be entirely governed by the terms of this Convention just as if the transitional period had never existed.

ARTICLE L

Amendments, Ratifications, etc.

Section 1

Amendments to the articles of this Convention shall be examined and adopted by the Assembly. All such amendments must be ratified by ..... of the member states before they become effective.

Section 2

Amendments to the Annexes of this Convention can be proposed by either the Assembly or the Board. An amendment shall be binding on the member states as soon as it is adopted by the Assembly by at least two-thirds of the total possible votes.

Section 3

The Convention shall come into force in respect of ratifying states when it has been ratified by ..... of the signatory states. The date of coming into force shall be notified to all signatory states by ..... Upon the coming into force of the Convention its provisions shall be subject during the transitional period of ..... years to the regime as set forth in Article XLIX of this Convention.

Section 4

Any non-signatory state may adhere to this Convention at any time after it has come into force. Adherence shall be notified to ..... who shall inform all signatory states.

ARTICLE LI

This Convention shall remain in force for a period of ..... years, and not less than ..... months before the expiration of this period the powers and duties granted to the Authority shall be reconsidered at a conference of the member states hereto, and the convention reviewed in the light of the experience gained.

aviation folder 3-44

PSF

INTERNATIONAL CIVIL AVIATION CONFERENCE

[redacted] December 7, 1944

files

My dear Mr. President:

I have the honor to report the results of the International Civil Aviation Conference, held at Chicago from November 1 to December 7, 1944.

I

As you are aware, on August 29, 1944, the British Government, through Lord Beaverbrook, requested this Government forthwith to call an international conference on civil aviation, adding that if for political reasons the United States was unable to call such a conference, the British Government would be glad to call it in London. The original of this message is in the files of the State Department.

Later, on September 7, 1944, the Canadian Government delivered to the State Department a memorandum likewise requesting that we call such a conference. The Canadian Delegation in Chicago informed me that this was done not at the request of the British Government but separately.

In response to this, the invitation (Annex I) was sent to all of the governments of the world with the exception

The President,

The White House.

DECLASSIFIED
State Dept. Letter, 1-11-72
By R. H. Parks Date JAN 19 1973

exception of enemy and former enemy governments, and the Government of Argentina. All of the governments accepted this invitation with the exception of Saudi Arabia. Among the governments accepting was the Government of the Soviet Union, a copy of whose acceptance is in the files of the State Department. In this document notation was made that the Soviet Union decided to accept despite the fact that the neutrals were included as well as belligerents, no doubt in recognition of the fact that certain neutrals, notably Sweden and Portugal, held a geographic position requiring their action if world aviation lines were to be opened. Subsequently, the Soviet Union withdrew its acceptance on the ground that Spain, Portugal, and Switzerland were included in the Conference.

Draft agenda was likewise prepared (Annex II) and circulated to the various governments. No suggestions were made thereon, and it became the agenda of the Conference.

Shortly before the convening of the Conference, the British Government published a White Paper (Annex III) without prior consultation with the United States. This publication caused a certain amount of surprise, since it set out very firmly the British insistence that routes

should

should be allocated and rates determined by an international body which should have overriding powers in the economic field. In preparatory discussions the United States had made the point that it could not delegate economic power to an international body except to carry out principles, agreements and law clearly agreed upon between governments.

The United States Delegation consisted of:

Adolf A. Berle, Jr., Assistant Secretary of State, Chairman
Josiah W. Bailey, Chairman, Committee on Commerce, United States Senate
Owen Brewster, Member, Committee on Commerce, United States Senate
Alfred L. Bulwinkle, House of Representatives
William A. M. Burden, Assistant Secretary of Commerce for Air
Rear Admiral Richard E. Byrd, U.S.N., Retired
Fiorello H. LaGuardia, Chairman, United States Section, Permanent Joint Board on Defense (Canada-United States)
L. Welch Pogue, Chairman, Civil Aeronautics Board
Edward Warner, Vice Chairman, Civil Aeronautics Board
Charles A. Wolverton, House of Representatives

The Delegation had the services of Mr. Robert A. Lovett, Assistant Secretary of War for Air, and Mr. Artemus L. Gates, Assistant Secretary of the Navy for Air, as Consultants. As Advisers, who might also represent the point of view of the aviation industry, we had the benefit of the services of Colonel H. R. Harris, Chief of Staff, Air Transport Command, and

formerly

formerly one of the principal operating officers of Pan American-Grace Airways; Commander Paul Richter, U.S.N.R., of the Bureau of Naval Operations, and previously one of the principal operating officers of T.W.A.; Mr. Ralph Damon, Vice President, American Airlines, Inc.; Mr. John C. Cooper, Vice President, Pan American Airways; Mr. Carleton Putnam, President, Chicago and Southern Airlines; and Mr. Frank Russell, National Aircraft War Production Council, Inc. A full list of the Delegation is appended as Annex IV.

II

The Conference convened in Chicago on November 1. Before doing anything else, I invited Lord Swinton, Chairman of the British Delegation, to lunch. After the usual courtesies, Lord Swinton spoke of the White Paper as the unchangeable British position. I pointed out that this White Paper was merely a re-statement of the British position as given to Dr. Warner and myself by Lord Beaverbrook in London in April 1944 in preparatory discussions. We had then made it clear that such a position was substantially impossible of acceptance, since it amounted to mere blanket delegation of power to an international body with no knowledge of what this body was designed to do. We had asked clarification of the

British

British position which we had not got.

Lord Swinton then stated that the British desire was that they should have roughly one half of the Atlantic traffic, and that in general they felt that United States lines should not play any great part beyond the Atlantic gateways. "Did you really think we were going to change our minds?" he asked. The general conception appeared to be that American aviation had no particular reason to exist on the Continents of Europe, Africa and Asia, beyond the seacoast.

I observed that as far as I could see the British Government was asking not merely for United States money and for United States planes, but likewise for United States traffic to put in her planes. Also, other countries besides the United States and Britain had to be considered; nor could we relinquish aviation as a global form of commerce. It did not seem to me that United States airmen would take kindly to the proposition that they were only of use when they were fighting to liberate other countries, after which they were to be asked to get out of the air. We thought there was a large and expanding field with ample room for everyone. Further, development of United States aviation was

vital

vital to United States defense and indeed of cardinal importance in stabilizing the post-war world. We felt that more money would be lost than made in operating world routes; but we did attach primary importance to the continuing right of communication and the general spread of contacts, commercial and cultural and otherwise, through the constant shuttling of air traffic throughout the world. This seemed thus a major means by which the world could be unified in peace and understanding.

At the Second Plenary Session of the Conference three complete statements of position were made: one on behalf of the United States Delegation in the form of a speech to which all of the United States Delegation had assented, even including Senator Brewster; which is attached as Annex V.

Lord Swinton then made a speech setting out the British position, attached as Annex VI.

Mr. C. D. Howe, Chairman of the Canadian Delegation, thereupon made a third position (attached as Annex VII) and propounded a Canadian draft designed to be a bridge between the British and the United States position. This draft is attached as Annex VIII.

The

The Conference thereupon organized itself in the usual fashion. The details are aptly set forth in the Proceedings of the Conference and need not be covered here. We selected as Vice Presidents of the Conference the Chairman of the French Delegation and the Chairman of the Chinese Delegation; and gave chairmanships of the four main committees respectively to Mr. John Martin, of the South African Delegation (this chairmanship had been offered to Lord Swinton, but he declined, saying that he wished to be more in the position of advocate than of moderator), to Dr. M. P. L. Steenberghe, Chairman of the Netherlands Delegation, to myself in connection with routes, and to Dr. Hahnemann Guimarães, Chairman of the Brazilian Delegation. We likewise adopted as a rule that all sessions of the Conference and all sessions of the Committees should be open to the press; but subcommittees would be either open or closed at the discretion of the chairman.

III

The Committees went to work on non-controversial matters, but obviously could not make substantial progress on air transport matters until the exact positions of the United States and Great Britain had finally been clarified. In consequence, the three delegations

which

which had submitted complete plans, namely, the United States, Great Britain, and Canada, went into inter-delegation conferences. These lasted ten days and were strenuous in the extreme. The various documents which appear in the voluminous Proceedings of the Conference largely reflect the propositions and counter-propositions which were made in an endeavor to find common ground.

(a) International Organization

The first problem discussed was that of the power of an international organization. We stated very bluntly that we simply could not cede dispositive power over United States air traffic to any international body in the present state of affairs. For one thing, there was no method or project of creating an impartial regulatory body: instead, the memberships in that body were to be apportioned among states and would represent political interests. Under these circumstances, any international body had to be in the position of applying exact defined rules agreed to by all hands. The fundamental problem was therefore drafting of the rules.

We said we could agree to an international body primarily to stimulate consultation and to make recommendations; and that if recommendations were not

satisfactory.

satisfactory, the international body might get together the interested parties and cause them to work out their difficulties. The enforcing power would have to remain in the several countries,--an international body at this stage of the game would have neither the machinery nor the prestige to enforce orders. The British finally acceded to this position, agreeing that obligations taken by treaty or agreement were quite adequate to meet the situation. Accordingly, agreement was reached on an international Council responsible to an international Assembly, the Council to have recommendatory powers; and failure to agree to recommendation would give rise to a prompt process of diplomatic consultation.

(b) Avoidance of Rate Wars

The second problem related to rates. There was general agreement that some method ought to be found of avoiding rate wars and other violences of competition which have disfigured transportation history. Substantial agreement was finally reached on a clause to the general effect that rates should be agreed upon by conferences of air operators analogous to ship operators conferences--a procedure which is specifically authorized by the Civil Aeronautics Act of 1938, and to which the United States can therefore agree. We were

fortified

fortified in this by an opinion of the Attorney General to the general effect that such agreements were legal provided they were approved by the Civil Aeronautics Board. Since under the recommendatory procedure these agreements would come back to the various countries for acceptance, the procedure would be to have such operators agreements referred to the Civil Aeronautics Board. While the Civil Aeronautics Board does not have general power of enforcement, it could make it plain to any United States operator who violated an agreement that he would thereby forfeit diplomatic protection for his landing and transit rights abroad. It was the opinion of our operating advisers that no airline would violate an agreement thus made. By consequence, we felt that we had an adequate machinery.

Lest the operators conference become simply a new version of a cartel organization, the clause agreed on provided that no operator might be excluded and that every operator must be included; and that their agreements must come up for scrutiny before the international organization where any complaint of injustice or hardship could be heard. In such case they could be further reviewed through consultative action in case of serious difficulty.

The

The rate arrangements were, however, to be part of a general agreement on air transport. This clause was later withdrawn when the other possible arrangements on air transport went by the board.

(c) Rights of Commercial Entry

Third, we then got down to the main problem of commercial air rights. The British wanted agreements which would severely limit international rights in air transport. They were prepared to concede the so-called "freedoms of the air", namely:

(1) Freedom of innocent transit;

(2) Freedom of technical stop;

(3) Freedom to take traffic from the homeland out to other countries;

(4) Freedom to take traffic from other countries back to the homeland--and possibly, to a limited extent,

(5) Freedom to pick up and discharge traffic between points en route--

if, but only if, their operations were severely limited, traffic routes parceled out, and so forth, by an international body, or conceivably by rules appearing in a convention.

We naturally asked what these rules were to be.

The first position taken by the British was that they wished at all times a 50-50 division of the traffic between the United States and Great Britain in respect of

the

the Atlantic Ocean. We said we were glad to concede equal opportunity, but we saw no reason for conceding half the traffic to Great Britain--especially since a very great part of the traffic would not be with Great Britain at all. Further, more than 50% of the traffic had been of American origin, consisting as it did very largely of Americans going and coming to and from the Continent of Europe. The British formula was that each country should have a right to carry traffic "originated" in that country--origination meaning the traffic embarked therein--irrespective of how it got there or where it came from. We said that if we were talking national origin we should want to know where the traffic began, et cetera, but what we really wanted was reasonable and open competition. Ultimately the British abandoned this point. They then proposed, through the medium of an extremely intricate formula, a plan whose outline is virtually as follows:

Each country on establishing an international route should be allowed to run planes having capacity sufficient to take care of one half the traffic embarked in the country of origin, destined for the country to which the route was to go. Thereafter, when these planes ran "full" (which in operators language means running at an

average

average of 65% payload), the number of planes or air-carrying capacity running between the points might be increased. The right of increase became known as the "escalator clause".

This sounded simple enough. But on examination it becomes extremely complex. As long as planes are running merely between two points--say, New York to London--it amounts to acceptance of a free competitive system subject only to the requirement that before plane capacity on a run is increased, the operator must show that his existing plane capacity is running substantially full. But if the line runs between more than two countries--say, New York-London-Paris-Rome-Cairo--the question was whether the plane capacity could be increased not merely by through traffic running from New York to Paris, or from New York to Rome, or from New York to Cairo, but also by pick-up traffic which the plane might get between London and Paris, Paris and Rome, and Rome and Cairo. Our own statistics, thoughtfully provided by Dr. Edward Warner, show that between New York and Buenos Aires, for instance, only 15% of the traffic is "through", from the United States terminal to each point. On that basis we would be limited to one plane a week between New York and

Buenos

Buenos Aires--whereas actually we have a thriving trade route with a great many more planes than that. On the basis of one plane a week the operation simply cannot be economical or self-supporting.

Accordingly, we argued that while the British idea offered a good arrangement for the United States across the Atlantic Ocean and possibly across the Pacific, in substance it strangled any United States line beyond the Atlantic gateways. It was even more bitterly unjust to the lines of every other country; for instance, the Netherlands could not operate its KLM line at all. We asked how the British BOAC could run a self-supporting line into India--or the French to the Far East, or the Belgians to the Belgian Congo. The British had no answer to this. It was evident that they expected other arrangements not appearing in the agreement would be made in respect of the European lines, though they at no time disclosed what these arrangements would be. They may have had in mind bilateral agreements with the countries through which they passed by which their lines might pick up traffic; while other lines might not.

It was plain that if the capacity which a United States line could run from, say, New York to Cairo,

were

were limited by the through traffic from New York to Cairo and could only increase as the terminal-to-terminal traffic increased, no sane operator would ever establish such a line. And if the rule were bad for the United States, it would be hopelessly harsh to small countries like, say, the Netherlands, which do not have anything like the terminal traffic had by the United States.

At one point in the negotiations we thought we had arrived at an agreement with the British by which pick-up traffic might be taken on, and that this traffic might be included in "escalating", that is, in adding plane capacity provided the planes were running full. This was the interpretation we put upon one of the drafts. Dr. Edward Warner, who was handling this phase of the negotiations with the British experts, had a statement from the British experts that they so construed it, and we thought we saw a possible agreement. However, after three days of negotiating on this basis, the British suddenly made it plain that they did not propose to have any pick-up traffic included as a basis for "escalation",--and we were back where we started. I have some reason to believe that this was done on orders from London, but it may have been a misunderstanding

between

between experts during an extremely wearying period of night negotiation.

The Canadians in a last desperate effort to bring about a compromise agreement submitted a plan which went very far towards bridging the gap between the United Kingdom and the United States. With some slight modifications which we were prepared to work out, and if the British had been willing to agree on the escalation features, this would have been an acceptable compromise. However, the British did not agree. It was then that the American draft of what later became the Air Transport Agreement was worked out, first as a proposed Protocol and later as a proposed Executive Agreement.

Lord Swinton at this point stated that he was absolutely limited by his instructions and could do nothing. We accordingly agreed that we would put our respective positions before a joint subcommittee comprising representatives of all the countries at the Conference. Swinton based his entire position in favor of his proposed limitation on the ground that smaller countries had to be protected against having their traffic taken away from them,--apparently by United States competition.

By

By consequence, after ten days of extremely difficult negotiation, we reported out to the Conference the points on which we had been able to agree; and also our alternative plans. The British plan was one of limitation, as above described; ours was a plan by which each country, having established its transport lines, might increase capacity as rapidly as its planes filled up.

There followed the tensest debate of the Conference. Lord Swinton presented the British view, urging the necessity of protecting small nations from competition. I presented the United States view which was for freedom of the air, with competition, and without cartel or other similar agreements, and without limitation except for the proposed arrangement against rate wars, and the "full plane" clause.

(The debate was in fact a modern version of the old controversy when Grotius argued for the freedom of the seas, and Selden argued for the closed seas; a debate which went on in the 17th century until it was finally settled by the British adopting the freedom of the seas. Another almost exact historical analogy is the debate which went on in this country when Livingston in New York tried to argue for limitation and allocation of steamship transportation as against Fulton and

Daniel

Daniel Webster who argued for open transportation and freedom of development of steamships.)

The position taken by the United States was, of course, its classic view. Historically, this country maintained it in connection with the sea. In air matters, the United States Delegation advocated freedom of air transit at Paris in 1919, and at Habana in 1929. The United States Delegation at Chicago solidly supported the policy,--with the exception of Senator Brewster who has continuously argued for monopoly arrangements made between the United States and Great Britain, on the theory that the modern world required proceeding on the basis of power politics.

The close of the debate was dramatic and somewhat unexpected. Fifteen small countries in quick succession got up and protested against the British position. They said it meant strangulation and, far from protecting them, it virtually excluded them from the air. This position, which was supported by all the expert opinion of the Conference, was most ably argued by the Netherlands, obviously to the great surprise of Lord Swinton. At the close of it, the British position was smashed flat, even the Canadians deserting the British and the New Zealanders declining to support their position.

The

The following day, after consultation, the United States Delegation proposed that all matters which had been agreed upon be embodied in a convention; and that a side agreement consisting of the mutual grant of the "five freedoms" be drawn, open to those countries which wished the exchange as between themselves. This was done after consultation with the Chinese, who urged it; with the delegates of the 19 other American republics, who asked that this be done; and with the delegates of the Scandinavian bloc, which was very firm for some such arrangement. The Netherlanders, Turks, and Spaniards likewise urged some such arrangement.

We accordingly drafted and put in a document along this line.

V

Lord Swinton then asked whether we would not join in a motion transmitting all of the matters not yet agreed upon to the proposed Interim Council for further study and report. This was in accordance with the agenda of the Conference, since at the time of calling the Conference all of us had contemplated this possibility. I declined to make the motion but said that if Lord Swinton would make it, I would second it, and in subcommittee the motion was made and seconded. Mayor La Guardia gave notice that he would like to speak on the motion in

Plenary

Plenary Session.

The following day a Plenary Session of the Joint Subcommittee was held, and La Guardia spoke. He said that if we could not get "five freedoms", we ought to get four, and if we could not get four, we ought to at least have freedom of transit and technical stop. Lord Swinton then made a speech which was equivocal but which was interpreted as meaning that the British would join in agreement on the "two freedoms"--right of transit and technical stop. He said he would be glad to make his position plain if a motion to that effect were made. At once and unexpectedly, the Netherlands Delegate made such a motion. This obviously took the British Delegation by surprise. I was presiding and I adjourned the Plenary Session, referring the motion to the Joint Subcommittee for discussion and report.

On the following day, the British stated that they were prepared to accept agreement covering the "two freedoms"--right of transit and technical stop. This in turn surprised us, because Swinton had steadily and bitterly opposed any such agreement throughout the entire Conference--saying that they could not touch freedom of transit and technical stop except as a part of an

agreement

agreement including the "controls" on which we had been unable to agree.* Thereupon, taking the United States document proposing mutual exchange of the "five freedoms", the British drafted an almost exactly similar document containing mutual exchange of the "two freedoms" among the countries signatory to it. This, as a second side agreement, was proposed and approved by the Conference.

For the United States, this was a real gain.

The countries which agreed to exchange between themselves the "five freedoms" were isolated blocs in various parts of the world--and the blocs could not interconnect. But with freedom of transit and technical stop these countries could interconnect and thereby enable commerce to be carried on.

Meanwhile,

---

* I think that part of the reason for this was that everyone by this time knew exactly the real interests involved. Freedom of transit and technical stop meant on the British part grant of stop at Newfoundland, which makes transit possible across the Atlantic. At the moment, there is no commercial route across the Atlantic which does not involve the transit of Newfoundland and a stop at a Newfoundland point--this being the nearest North American landing both to Iceland and to the Azores. On our side, freedom of transit means permitting a stop at Hawaii or the Aleutians, thereby making it possible to connect Australia and New Zealand with Canada, an old and entirely legitimate ambition. Had the British opposed publicly the "two freedoms", they would have been in a position of keeping Australia and Canada disconnected, and at the same time of endeavoring to prevent American commercial crossings in the Atlantic--a position which would have been hard to justify before the public opinion both of the United States and of the British Commonwealth.

Meanwhile, we had been canvassing the question of bilateral agreements, along the lines of a standard form which was being worked out in Committee III, with those countries which might not wish to sign multilateral documents granting freedom of transit and commercial entry. We obtained a number of understandings looking towards these agreements. Among the countries which proposed to enter into such agreements were: Portugal, Spain, Belgium, Iceland, Greece, Turkey, Sweden (who also proposed to sign the "five freedoms"), Czechoslovakia, Poland, Lebanon, Iraq, and Canada. It was likewise plain that a number of other countries wished to enter negotiations as rapidly as possible. We were prepared to carry these to a conclusion at Chicago. However, on Monday, December 4, a shift in the State Department personnel took place and the Chairman of the United States Delegation, having been Assistant Secretary of State in charge of air matters, ceased to hold that position. This left no one in Chicago authorized to sign such agreements; and it likewise created some doubt in the minds of the other countries as to whether a shift in United States air policy was not imminent. They were later reassured on that score; but a short period of difficulty ensued which was happily worked out by the

very

very solid and self-assured conduct of the United States Delegation to which I am extremely grateful. Some of these documents have since been signed in Washington. A number of other negotiations are pending, capable of being brought to a successful close if they are followed up.

While this had been going on, a huge amount of work had been going on also in the field of standardizing technical practices, services, and requirements. This is being separately reported on by the Civil Aeronautics Board, and no better testimony to the tremendous scope of the work can be found than in the very large number of agreed documents in ten separate technical fields which appear as annexes to the main Convention and the interim agreements. Technicians generally agree that this is a major advance in handling technical arrangements so that planes can fly safely throughout the world, which has yet been taken. I cannot pay too high tribute to the corps of United States experts who worked up the material in advance of the Conference, and were able to convince the foreign delegations that they were both practicable and wise. In general, it may be said that the United States technicians gave a base for the handling of

technical

technical air practices throughout the world, and that the world, having examined them, was glad to accept the base they proposed.

The documents proposing an Interim Council and Assembly to handle air matters until such time as a permanent convention might be ratified by not less than twenty-six nations, were so drawn as to leave the choice of the first Interim Council and the seat thereof to the Conference itself. The seat was disposed of after a spirited contest between the French Delegation, which wished to have the seat at Paris, and the American countries who wanted to have it in Canada. In a close vote, Canada was selected as the choice for the seat of the Interim Council, and the choice of the permanent seat was left for the Assembly as and when the Convention should have been ratified.

Likewise, the Conference was to choose the Interim Council, and this precipitated a tide of electioneering and political deals which would have done credit to a municipal election. The American republics argued that since they constituted more than a third of the countries represented, they were entitled to seven out of the 21 seats on the Council. The British obviously wanted a much heavier representation of Europe, and

later

later it appeared that they were insistent on the representation of India--a point which did not appeal to most of the other countries present because they thought India did not have an independent air policy. At a closed Plenary Session of the Conference elections were held by ballot, the results of which appear in the Proceedings. The memberships in the Council were to be distributed among three categories:

(1) Major air operators, which, under the ruling of the Executive Committee, were to be eight in number, leaving one vacancy to be filled by the Soviet Union should she later adhere to the arrangement;

(2) Countries which contributed facilities in air operation, which were fixed at five in number;

(3) Eight countries which were to be so distributed as to assure geographical representation of the various regions of the world.

The balloting finally resulted in a not unintelligent distribution of countries in these various categories; giving, however, seven seats to Latin America and six to the Continent of Europe, and not including India. At the closing Plenary Session of the Conference, Norway, which had been elected to the Council, proposed to retire in favor of India. I then consulted with the American bloc, saying that I thought it would be a useful and generous gesture if El Salvador, which had been

elected

elected as representing Central America, would resign in favor of India and decline to accept the Norway resignation. Salvador declined to do this; but Cuba, which had played a leading part, offered to make the sacrifice. The attitude of the Cuban Delegation is entitled to the highest commendation in this regard; and I may add that I think it creates an obligation for the United States to support Cuba on the next occasion when a Latin American choice has to be made. It was not easy for the Cuban Delegation, which had won a fair victory in an open field, to sacrifice this position. For that matter, there was something ironical in having Cuba dash to the rescue of the British Empire which had been unable to obtain general support for her insistence on the inclusion of India.

By unanimous consent it was determined not to accept Norway's renunciation, to accept Cuba's with great thanks, and to elect India in her place. Thereupon the British and the Indians, who had been saying in substance that if arrangements were not made they would not sign any papers, came into camp.

The Conference thereupon came to a close.

In result, we have:

(1) A

(1) A permanent convention providing for permanent international organization, and providing for technical standardization, and bringing up to date the air navigation provisions of the Conventions of Paris and of Habana;

(2) An interim agreement capable of being put into effect by executive action covering substantially the same ground ad interim prior to ratification of the Convention;

(3) A document by which the signatories thereto mutually exchange rights of freedom of transit and freedom of non-traffic stop (document of the "two freedoms") capable in my judgment of being put into effect as an executive agreement under the powers delegated to the President and the Civil Aeronautics Board by the Civil Aeronautics Act of 1938;

(4) A document by which the signatories reciprocally grant to each other the "five freedoms" (commonly known as the "five freedoms" or United States document), likewise in my judgment capable of being put into effect as an executive agreement; and

(5) A set of completed or partially completed negotiations for bilateral agreements between the United States and a considerable number of countries in various parts of the world.

So far as the strictly American interest is concerned, the combination of bilateral agreements, right of transit and technical stop, and "five freedoms" agreements vastly enlarge possibilities presently available to American aviation. The full benefits for American aviation cannot be completely ascertained until the negotiations for bilateral agreements are concluded; but the commitments obtained are such as to make it

plain

plain that these, if properly handled, can be brought to prompt fruition.

On the international side, the great issue of air transport has been faced and met; the positions are fully understood; an international organization capable of administering the agreements made has been established, and the same organization is charged with the duty of carrying forward further study in those respects on which agreement was not reached.

This is rather more than the Department of State and the United States Delegation had expected to be able to obtain when the Conference assembled.

Finally, a substantial beginning has been made towards opening the air to commerce. It is not too much to say that we entered the Conference in the law and atmosphere of the 17th century; and we came out with a fair prospect of obtaining 20th century conditions.

Faithfully yours,

A. A. Berle, Jr.

Adolf A. Berle, Jr.
Chairman, United States Delegation
President of the Conference

Enclosures:

Annexes I to VIII,
inclusive.

PSF: Aviation

BOOKS *and the* ARTS

ROOSEVELT AND HISTORY

BY MAX LERNER

THE American people, Mr. Dooley once reminded us, build their triumphal arches out of bricks, to have missiles handy when their heroes have fallen. So with Franklin D. Roosevelt, who had had his taste of Carlylean hero-worship and is now experiencing one of the fiercest lynching bees in our history. In this context the annotating and publishing of five volumes of the President's state papers*—one for the years of his governorship and one for each of the years of his first term, with volumes for the later years to follow—is an act of historical consciousness. Mr. Roosevelt is making his appeal from the distortions of the day to the perspective of the generations.

His volumes deserve that sort of perspective. They represent a significant event both in the art of history and the history of publishing. One could devote considerable comment to such things as the excellent format; the order and clarity of the editing by Judge Samuel Rosenman, who was the Governor's counsel and has been the President's literary aid and adviser; the dramatic story the speeches and messages tell of political conflict and national crisis and vast administrative effort in dealing with it; the light that the President's prefaces and notes and the excerpts from press conferences shed on the inside history of some of the major events and on future policy. But these are not volumes to be reviewed briefly either for text or gloss. It takes a week of reading merely to hit the high spots of the 3,500 pages, a million and a half words; one would need a small volume for adequate comment and criticism. I prefer to meet the President's courageous gesture toward history by a more foolhardy gesture, and risk setting down a few reflections that the volumes evoke on Mr. Roosevelt's place in what Justice Holmes has called "the campaign of history."

I use the Holmes phrase deliberately. For there can be no doubt that Mr. Roosevelt would be but small shakes if history had not conscripted him to its wars. The figure of him that emerges even from these relatively formal pages is a warm and human figure, with a lusty flair for both talk and action—but it is not that of a superman. Had he come to the Presidency at another time—say in 1924 instead of 1932, he might never have emerged as more than a skilful politician, with a sharp mind, an expansive manner, a sense of command. The first volume of these papers, dealing with his years as governor, is entitled The Genesis of the New Deal only as a historical afterthought. It needed the years that his sickness gave him of enforced isolation and brooding reflection to develop in the Roosevelt of the 1920's a sense of mastery over himself and others; but it needed the tensions of the Great Depression to evoke that mastery and give it a historical framework within which it had an impact on events. Roosevelt was an able officer whose generalship would never have emerged exept in a war atmosphere. It is no accident that the metaphors throughout the volumes on the Presidency are war metaphors. An intense, embittered, truncated personality like that of Napoleon or Hitler carries war within him wherever he goes and imposes that war on the world. Such a man is a coil of wild serpents, and he uses history as the arena for their mortal embrace. But a man like Roosevelt, whose energies are closer to the surface, needs the outer compulsions of economic collapse and social crisis to mobilize those energies and evoke the martial in them.

But what has been the character of this war? It started as a war against the depression; it has been transformed, by the inescapable logic of events, into a war between an intrenched minority and an awakening majority. I doubt that this trend was either conscious or deliberate. One can read in the successive volumes the President's struggle against it, the conflict between his inherited traditions of thought and action and the coercion of events. There is agony to be read in these volumes. For Mr. Roosevelt was not born to lead the democratic phalanxes. History will see in him the paradox of a landed aristocrat and gentleman farmer, a *rentier* living on funded income, who had to place himself for a period at the head of the urban and agrarian masses. He has always conceived of himself as making the minimum necessary adjustments to the conditions of capitalist collapse; but even that minimum has been fought so bitterly by one of the blindest ruling classes in history that Roosevelt had to become the conscious leader of the majority forces in order to save capitalism despite the capitalists. In one important sense his class roots have enabled him to assume this role. Had he come from the lower middle class he might have turned out a Hitler; had he come from labor, a Ramsay MacDonald; had he come from the financial group, a Neville Chamberlain. But coming from the landed gentry, with a tradition that had always included a distaste for money-making and not much of a knack at it, he has had a detachment from the economic rulers of America that a man who was one of them or a man who envied them and panted for their position could not have had. Only a member of an old family, a little amused at the fierce pecuniary and speculative absorptions of the *novi homines*, could have had the

* "The Public Papers and Addresses of Franklin D. Roosevelt." Random House. Five Volumes. $15.

THIS DOCUMENT IS THE BEST
AVAILABLE. EVERY TECHNICAL
EFFORT HAS BEEN TAKEN TO
INSURE LEGIBILITY.

PSF: Aviation

courage to break with them and take the punishment.

In considering a final estimate, one must remember that the war is still going on and history is written by the survivors. A historian in a fascist America will set Mr. Roosevelt down as weak, indecisive, degenerate, a prisoner among reckless socialist theorists, a dreamer bemused in a humanitarian dream. A historian in a socialist America will see in him a confused but well-intentioned forerunner, who saved America from the anarchy of laissez faire but brought it close to collapse by his failure to carry through the logic of his own premises. Mr. Roosevelt himself does not have, and these volumes do not reveal, a clearly articulated social philosophy. He learns rapidly but retains slowly; he is a brilliant improviser but not a cogent thinker; he is a tactician without being a theorist. Yet he has a constant sense of historical perspective. He knows that we are living on the thin edge of history; he has no illusions about an individual's capacity to rule the forces of the historical process; far more than Lincoln or Andrew Jackson he is aware of his relation to the upsurging movements of American democracy, and of the strength and purposes of the opposing forces.

There are certain things that history will concede his having accomplished toward survival—a framework of social-security legislation, a basic code for labor bargaining that has given organized labor a chance to double its numbers, a set of cushions against precipitous bank panic, a gentleman's code for the marauders of the securities markets, a start toward public control of the utilities and other big business, a liberalization of the Supreme Court and a process of popular education on the judicial process. Above all else his role has been that of the educator who has had an enormous influence in changing the premises of popular thinking and political discussion. But will that prove enough? Twice he had a chance to go beyond this framework of achievement—once in 1933 in the midst of the general panic, when he could have nationalized the banking and credit system; a second time after his reelection in 1936, when instead of deflecting his energy on a constitutional fight he could have spent it on driving through a decisive program of economic planning. He muffed both chances.

If, as I suspect, Roosevelt's failure turns out to be like that of other reformers who have willed the ends without daring to will the means, he will be better remembered for his inadequacies than for his achievements. Yet whatever the outcome, he will be remembered also as a man who, without being of the people, was able to come near them; who, without being a scholar or an artist or a great master of words, was able to grasp and to some degree communicate what the common man dimly felt. The needs and hungers and aspirations of the ordinary man and woman speak, in all their confusion, through these volumes as they have never spoken before in the state papers of an American President since Lincoln. If these voices eventually will have to find far different channels for expression, it will be because the human vision of the reformers is clearer and stronger than their economic grasp and their political tenacity.

BOOKS

Ship Ahoy and Let 'Er Buck!

BOWLEG BILL, THE SEA-GOING COWBOY. By Jeremiah Digges. The Viking Press. $2.

MOVE over, you myth-makers, wonder-spielers, tale-stretchers, fancy yarn-spinners, and just plain bull-throwers! Make room there on the "Lyars' Bench" for one who comes, eyes glittering like the Ancient Mariner's, to log a tale of a cow-hand's strange adventures with the creatures of the Deep and the Not-Too-Deep, including sparm whale, swordfish, blue shark, sea sarpint, mermaid, and the skipper's wife, as well as many others. To which have been generously added "new and valuable hints to the Whaleman, Fisherman, and Young Student of Deep-Water Navigation." Not too young however, for Jeremiah Digges has as free and easy and outrageous a fancy, and as quick and slick and supple a tongue, as any you have ever gasped and marveled at.

What miracles have been performed on the "Lyars' Bench," one of the oldest and certainly the humanest of human institutions! With its invention the human spirit was born, for here was the birthplace of the gods, the demi-gods, the great folk heroes—from Jahveh with his pillar of fire, to Paul Bunyan and his Blue Ox. What tall tales have been told here of Odysseus, Moses, Jonah, Sinbad, Robin Hood, Mike Fink, and John Henry. And now comes Bowleg Bill—eight feet three inches of him, "without them long-heeled boots"—from the shoal flats of Wyoming, where he was "harbor-pilot to them big schools of Western cattle—them hermaphrodite-rig bulls that are growed for their meat."

Digges does not tell us, unfortunately, just what trail and bottle Bowleg Bill hit to get himself unhorsed at last in a pulparee down in old New Bedford. It may be that Bowleg Bill was never quite sure himself. Anyway, when he came to on the deck of the whaleship Sawdust Sal, a foul blubber-boiler, a bucko mate was giving him the once-over, marveling at the way he "paid off on opposite tacks from the waist down" and feeling of his angora chaps, being quite baffled as he muttered that he'd seen many a strange sight in his time but never "a man that chafes so severe he needs rope-yarns to his drawers." Bowleg Bill did not like the ship or his work there, having to "sashay around on all them poles and wires," so he ordered the skipper to wheel the damned thing around for home—pronto!—which was done after he'd neatly trimmed the skipper's mustache with his forty-four.

But Bowleg appears to have acquired a taste for salt water, and put to sea many times again. He showed the hands many tricks with ropes never before dreamed of in the horse latitudes. By general acknowledgment, whenever he seen his duty, he done it, in his own stylish and competent way. He broke Slickbritches, a two-ton hoss-mackerel, to the saddle. He joked and jousted with swordfish, sea sarpints, the devil himself, without being tossed. Tiring of its idle Oompa-diddle-diddle, he found new and surprising use for the skipper's bull bassoon, and ever did right by all women—even Our Nell, who turned up rather unexpectedly as the sea witch of Gloucester and was properly branded where an honest man's brand should be.

Digges is at his witty and colorful best in such stories as Mutiny on the Leery Liz and Gawd-Damned Historic, in