

INFLUENCES AFFECTING INTERNATIONAL AVIATION POLICY

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Transportation has a fundamental relationship to every phase of a nation's well-being. The economic and cultural maturity of peoples and their governments depends upon it. The United States and Great Britain are classic examples of the application of that principle; our neighbors of the Western Hemisphere, including Canada, vividly demonstrate its less aggressive application. Therefore, the development of the airplane as a practical means of transporting passengers and cargo has had a profound impact on the social, political and economic life of every nation on earth.

As a matter of record, the airplane did not become a serious factor in transportation until after World War I. In fact, the technical development of aeronautics is traceable to the stimulation which it received between 1914 and 1918. During that period the military authorities of the world recognized the airplane as an important instrument of reconnaissance and destruction. The exploitation of its lethal qualities laid the groundwork for the development of its peace-time potentialities. Experience gained in World War I served to emphasize the fact that aviation could no longer be treated as an exotic experiment.

As the direct beneficiary of this development, our air transport industry promptly proceeded to link the resources and markets of the United States and Latin America to a web of air routes. The resulting intensification of travel had a tangible effect on every state in the Union and on our sovereign neighbors throughout the Western Hemisphere. One thing is certain: the advent of practical air transportation in the Americas served to destroy the political vacuum in which we had lived since the Monroe Doctrine was promulgated.

In so far as the United States is concerned, the phenomenal advancement of its domestic air transport industry resulted in cultural as well as commercial benefits. The sheer dynamics of aviation and the uninhibited air element in which it functioned were psychological factors of vast importance. However, it is noteworthy that, aside from the experience gained in Latin America by Pan American Airways and its affiliates, this new form of transportation was considered mainly as an adjunct of the home economy. Such an attitude is attributable mainly to the fact that the United States was the most ideal laboratory on earth in which to conduct the experiment. On the other hand, the air transport systems of Europe were nurtured

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on a diametrically opposite philosophy. This is singularly true of Great Britain and the Netherlands because of the nature of their geographical and economic interests. In other words, their far-flung possessions and their dependence on foreign commerce made it imperative that their air transport systems be preponderantly of an international character. It is to such fundamental considerations as these that we may look for an explanation of the confused and restricted growth of international aviation policy.

The determination of the international air policy of the United States calls for consideration of two factors: (1) the operations of United States flag lines in international commerce, and (2) the operations of foreign flag lines on a reciprocal basis to or within United States territory. Between World War I and the passage of the Civil Aeronautics Act in 1938, various divisions and bureaus of the Department of Commerce were entrusted with the regulatory and policy-making responsibilities, chiefly in connection with the domestic aspects of aviation. However, when the first American flag air carrier ventured across our national boundaries, new complications arose which promptly aroused the interest of the Department of State. Therefore, in 1926 the Congress of the United States passed an act "to encourage and regulate the use of aircraft in commerce and for other purposes." This act, which became known as the Air Commerce Act of 1926, defined "air commerce" as "transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of business, or navigation of aircraft from one place to another for operation in the conduct of a business." It then went on to state that the term "interstate or foreign air commerce" meant air commerce between any state, territory or possession, or the District of Columbia "and any place outside thereof." Although the Air Commerce Act of 1926 was a progressive step, it failed to meet the demands placed upon it by the rapidly growing air transport industry. Twelve years later the Congress enacted the Civil Aeronautics Act of 1938.¹ Although far from perfect, the 1938 Act has proven to be extremely satisfactory. Under it there was created an administrative organization, known as the Civil Aeronautics Authority. It was comprised of five members, an administrator and an Air Safety Board. Approximately two years later, as the result of President Roosevelt's desire for intra-departmental reorganization, the Civil Aeronautics Authority was redesignated as the Civil Aeronautics Board, and has continued to function as such since that time. The general powers and duties of this agency are described in Title II, Section 205, as follows:

"a. The Authority² is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or specific rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out such provisions and to exercise and perform its powers and duties under this Act."

¹ 52 STAT. 977 (1938), 49 U. S. C. §401 *et seq.* (1940).

² Amended by the Act of July 2, 1940, Pub. L. No. 721, to read: "The Civil Aeronautics Board."

This authorization is significant against the background of policy declared in the 1938 Act, in which policy the international aspect of aviation conspicuously appears.³ Aside from comprehensive rules and regulations in connection with the conduct of our domestic air transport system, the Act contains provisions concerning the issuance of certificates and permits for international operations by American and foreign air carriers. These provisions wisely recognized air transport as an instrumentality of national policy. This is borne out by the comprehensive "international" provisions of the Act, such as those requiring the approval of the President⁴ and prescribing the functions of the Secretary of State⁵ in certain situations.

For a considerable time prior to 1938 a strong trend toward centralized authority was taking place throughout the world. The corollary of this trend was an upsurge of government intervention and, in many instances, government ownership. By the time Hitler's armies overran Poland, very few truly independent private business enterprises existed except in the United States. Official channels became the chief means of communications between peoples, and the conduct of international relations rapidly became an amalgam of "joint undertakings" involving economic, diplomatic and military considerations.

By the fall of 1939 the principle of "mutual aid" had been fully aroused from its peace-time dormancy and burgeoned prolifically until the surrender of Japan.

³ Sec. 2 of the Act, 49 U. S. C. §402 (1940) is headed "Declaration of Policy," and provides:

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

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

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

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

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

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

"(f) The encouragement and development of civil aeronautics."

⁴ Sec. 801 of the Act, 49 U. S. C. §601 (1940) provides: "The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Authority before hearing thereon, and all decisions thereon by the Authority shall be submitted to the President before publication thereof. This section shall not apply to the issuance or denial of any certificate issuable under section 401(e) or any permit issuable under section 402(c) or to the original terms, conditions, or limitations of any such certificate or permit."

⁵ Sec. 802 of the Act, 49 U. S. C. §602 (1940) provides: "The Secretary of State shall advise the Authority of, and consult with the Authority concerning, the negotiation of any agreements with foreign governments for the establishment or development of air navigation, including air routes and services."

Most of the special "privileges" granted thereunder are "for the duration." Therefore it is likely that they will be terminated on short notice unless their prolongation is formally approved by the government or governments that granted them. This will bring into sharp focus the "privileges" granted by certain of the United Nations to the Air Transport Commands of the Army Air Forces and "NATS," its Navy counterpart. The extent and significance of these air transport operations is evident in the performance of the Army Air Force organization which is the larger of the two services. By the fall of 1944 the international routes of the Air Transport Command were extended to approximately 160,000 miles and literally gridironed the face of the earth. In the spring of 1945 its "ferrying" and "transport" operations accounted for a total of nearly one and one-half million "flown" miles per day.

However, the greatest significance of the Air Transport Command operation lies in the fact that its diversified and extensive war-time activities were carried on in considerable proportion by private American air transport companies that were, in effect, sub-contractors of both our Army and our Navy. Thus our private air carriers accumulated an incalculable amount of international experience and created for their industry a fund of prestige from which they may be expected to draw in the days that lie ahead of us. On the other hand, the operating "privileges" extended to the Air Transport units of our Armed Forces on the basis of "military necessity" may prove to be a distinct liability when our government attempts to convert them into peace-time commercial "rights." In other words, the formidableness of our private international air carriers may add to the sum total of the psychological obstacles which will be encountered by our State Department negotiators. In fact, it is apparent that the prestige which has accrued from the global air transport activities of our military establishments is believed by important British economists to constitute a dire threat to the trade position of the Empire. Thus it may be expected that international air transport policy will not be considered solely from the standpoint of aviation but, unfortunately, is likely to become engulfed in broader considerations that each nation in its sovereign judgment deems to be necessary. For instance, the tremendous impact of the war on the economy of Great Britain is unquestionable. Regardless of the denials of her statesmen, she is in serious difficulty and undoubtedly will resort to the most drastic practises in order to regain her equilibrium. Also, Russia's unpredictableness in that regard will serve further to confuse the issues.

If we concede the vital importance of Great Britain and Russia in the shaping of the postwar world, then it is imperative that we properly evaluate their respective positions concerning international civil aviation. If we analyze the British position from the standpoint of her past as well as her present situation, it will not be too difficult to blueprint the motives behind her sometimes conflicting positions. The same may be said of Russia, although the latter is infinitely more complicated and difficult to analyze. Nevertheless, it would seem reasonable to assume that, in no small measure, the attitudes of Britain and Russia are chargeable to diplomatic

maneuvering. However, regardless of the dissimilarity of their motives and objectives, both governments have one thing in common: they consider non-military aviation strictly as an economic dependency and therefore refuse to view its development except in relationship to overall policy.

On the other hand, the United States has appeared from time to time to favor the view that business considerations should not be permitted solely to influence international air transport policy, since cultural and security values "vital to the future of mankind" are involved. Thus many interested United States officials hold that aviation policy should be worked out independently of other problems. In that connection, the following views were expressed by Mr. Welch Pogue, Chairman of the Civil Aeronautics Board:⁶

"Indeed they are complex in the extreme. They are interrelated with many matters of national concern and inject new considerations into the international field, a field already filled with difficult issues. We make our first mistake, therefore, if we blithely approach these problems upon the assumption that the future of aviation can be readily worked out more or less as an incident to the consideration of other problems."

From the viewpoint of the United States it would appear to be logical and sound to segregate international aviation problems from "interrelated matters" or, as is frequently the case, matters that are utterly unrelated. Unfortunately, however, the international air transport policy of the United States, unlike its domestic counterpart, must be patterned in such a manner as to make it reasonably acceptable to the sovereign governments whose airspace, terrain or territorial waters we would seek to utilize. Experience shows that, aside from certain mutually desirable basic principles, the tendency of all governments is to reserve definitive commitments for country-to-country (bilateral) negotiations. Thus the specific subject of air transportation invariably has become "incidental" to other considerations.

Although many aviation devotees feel that such a situation is highly undesirable, the fact remains that it is identical with the principles that are commonly employed in domestic commercial strategy. It would be the height of naïveté to contend that the United States desires an "open sky" primarily to improve the welfare of mankind. By the same token, it would be unfair to contend that the refusal of Great Britain or any other nation to conform to our views is necessarily reprehensible. Once again we are confronted with an attempt to rationalize an international problem on the notably fallacious and dangerous theory that since the "open sky" principle would conform to the requirements of the United States, it should be acceptable to the rest of the world—regardless of any political or economic incompatibilities that may exist. This line of reasoning is usually accompanied by carefully chosen slogans concerning human progress and liberty, which have the effect of putting the nations that would oppose it in the position of being literally anti-social. The natural concomitant of such tactics is friction, which in the long run produces nothing better than angry and unsatisfactory compromises.

⁶ Address delivered at meeting of National Aeronautics Association at Minneapolis, Minnesota.

Perhaps it would be well briefly to consider the diplomatic background of international aviation in order to obtain a clearer understanding of the principle of "air sovereignty" which, having survived since the heavier-than-air craft became a practical means of transportation, still remains as the most potent obstacle to the practical liberation of the world's airways.

There is common agreement among students of aviation history that the Air Navigation Convention concluded in Paris in 1919 laid the cornerstone of international aviation policy. Although the Paris Convention was not formally accepted by the United States Government, it has in certain aspects withstood the test of time. In fact, it is noteworthy that it has been used as a pattern for all of the subsequent bilateral and multilateral international aviation commitments that have been entered into by our government. Ratification by the United States of the Havana Convention in 1928, and its adherence to the Warsaw Convention of 1939, served to etch more deeply the basic principles contained in the Paris Convention. However desirable these undertakings may have been, they were not sufficiently comprehensive to keep pace with the rapid growth of the world-wide air communications.

Perhaps the most commonly recognized principle contained in the Paris Convention concerns the question of air sovereignty. This restrictive principle has provoked many attempts to establish an analogy between maritime transportation and the relatively new art of air transportation. In view of the importance of ridding aviation policy of any inherited inhibitions, a brief reference to the origin of the principle of "freedom of the seas" would appear to be in order. In that connection, Dr. D. Goedhuis, lecturer in Air Law at Leiden University, holds the following views:⁷

"Before, however, considering the results attained at these three international conferences, attention may be drawn to the fact that in international communications certain basic principles remain the same in cause and in effect from age to age. Thus, through the establishment of the great maritime routes, resulting from the discovery of the passage by the Cape of Good Hope and the discovery of America, the world acquired an entirely new aspect: the importance of portions of the earth and their consequent interest to mankind were fundamentally changed by maritime navigation. In a study of the character of maritime navigation, two main elements should be distinguished: (1) the social element, 'man's union with man,' and (2) the element of power, which is to be subdivided into the economic instrument and the potential military instrument. The second element has led in the history of the sea to rivalries often culminating in violence; the first element, however, has caused the law of nations to score its first successes by reducing the pretensions of states to the exclusive use of the sea. Through the conquest of the airspaces the aspect of the world has changed in the same way as it was changed in the sixteenth century through the conquest of the seas. The bases of economic and political power are being gradually shifted and national ambitions transformed; and in the future air commerce will exercise an ever-growing influence upon the wealth and strength of nations. The air will become more and more, therefore, not only a scene of commercial activities, but of political developments, and the question of air routes will soon emerge as one involving some of the primary objects of the external policy of nations.

⁷ D. Goedhuis, *Civil Aviation After the War* (1942) 36 AM. J. INT. L. 596.

"In air navigation the same two main elements can be distinguished as have been determined in sea navigation. As through air navigation, however, the limitations of time and space which nature imposes upon man are overcome to an even greater extent than through navigation by sea, the social importance of this newest means of communication surpasses that of all the older means. Since the economic strength represented by air routes constitutes, as does that of sea routes, an instrument of political power, neither of them can, even in the purely economic field, be separated from politics. As far as potential military value is concerned, especially for ancillary services, such as training, supply, and troop carrying, again an analogy exists, though in aviation the threat from a military point of view is even greater than in sea navigation, the former penetrating to the heart of a country, horizontally as well as vertically, and practically knowing no bounds.

"A clear realization of the analogies in the problems of sea and air communications is a necessary precedent to the formulation of those ideas which are to determine the future status of the air.

"Taking into account the two main elements in air communications that have been distinguished, the international rules which are to govern these communications should satisfy two fundamental conditions. They should further the development of air navigation as much as possible; but, as this development will necessarily lead to rivalries, the rules should be such as not to create a sense of injury or injustice which would cause the rivalries to culminate in violence."

It becomes important, therefore, to understand the principle of "air sovereignty" not only because of its common acceptance but because of its deep-rooted emotional significance. In substance, it asserts that (1) each state has sovereignty over the air space directly above its territory and territorial waters; (2) each state may decide in its discretion to permit any foreign aircraft to use the air space under its sovereignty.

Prior to the Paris Convention, various theories had been advanced by reputable sources with respect to the extent to which the air space might be used as a means of transportation. Two major theories appear to have been advanced. Proponents of one theory held that the air was absolutely free and that it could not be subjected to the control of any country. Later certain proponents of this theory modified their position by holding that the air space closest to the earth "into which structures on the surface extended" should be subjected by the subjacent state to such restrictions or prohibitions as were deemed to be appropriate. This school of thought held that the air space above the height of structures on the surface up to the highest altitude which could be reached by aircraft should enjoy complete freedom from restrictions.

The proponents of the second theory refused to compromise in any manner and bluntly held that the air space was a part of the territory belonging to the subjacent state and was subject to the exercise of the sovereignty of that state.

The practical application of these two major theories received serious consideration from the Institute of International Law and the International Law Association prior to the adoption of the Paris Convention. However, the framers of the final Convention settled the question by providing an article which stated that "the High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory." Thereupon each of the contracting

states undertook to accord "freedom of innocent passage" above its territory to the aircraft of the other contracting states. Article 15 of the Convention provided, in part: "Every aircraft of a contracting state has the right to cross the air space of another state without landing. In this case it shall follow the route fixed by the state over which the flight takes place." However, in the third paragraph of Article 15, the following language occurs: "The establishment of international airways shall be subject to the consent of the states flown over." If we apply the yardstick of practical experience to Article 15, we inevitably reach the conclusion that, aside from strictly academic discussions, it has resulted in according a limited freedom of passage in the time of peace to private aircraft, but has given no such freedom to regularly scheduled commercial air carriers. In the meantime, the United States Government has recognized the right of each country to require prior authorization for the establishment and operation of a regular air transport service for foreign aircraft over its territory. In 1929 at the Extraordinary Meeting of the International Commission for Air Navigation, only four of the 31 participating countries voted in favor of freedom of passage in international air commerce. At the conclusion of this meeting, the text of Article 4 was amplified to read as follows: "Every contracting state may make conditional on its prior authorization the establishment of international airways and the creation and operating of regular international air navigation lines, with or without landing, on its territory." Also, Article 15, as amended, makes it possible for the contracting parties to impose more specific restrictions on foreign air carriers within their air space. The right to restrain the foreign aircraft from flying over certain "prohibited areas" or "in exceptional circumstances" is to be found among these restrictions.

The influences of the Paris Convention are best demonstrated in the following air conventions and agreements which the United States has entered into with other sovereign states since 1919. The multilateral undertakings are the Conventions of The Hague, Warsaw, and Havana, and the bilateral agreements are with Belgium, Canada, Colombia, Denmark, France, Germany, Great Britain, Iceland, Irish Free State (Eire), Italy, Liberia, Mexico, the Netherlands, New Zealand, Norway, Spain, Sweden, and the Union of South Africa. They include such subjects as reciprocal recognition of certificates of airworthiness for imported aircraft, air navigation, certificates of competency or licenses for the piloting of civil aircraft, and air transport services. Upon examining these records, it becomes apparent that little or no difficulty was experienced in arriving at international understandings in matters pertaining to the technical aspects of aviation. However, it becomes equally apparent that a restrictive tone permeates practically all such undertakings in so far as the granting of "rights" is concerned.

Obviously, the parties to the great majority of the formalized diplomatic undertakings other than the bilateral air transport agreements merely extended general privileges which carefully avoided impingement upon the principles of "air sovereignty." In other words, the sum total of the multilateral conventions of Paris,

Havana, The Hague, and Warsaw, and the preponderant part of the bilateral agreements to which the United States Government became a party, are innocent of any abridgment of the "sovereignty" principle. Ambiguities abound in all of the multi-lateral conventions with the possible exception of the Havana document, which, nevertheless, still invites interpretative arguments.

Therefore, it is significant that, twenty-five years after the Paris Convention, the United States delegation at the International Civil Aviation Conference (held at Chicago between November 1 and December 7, 1944) maintained the view that:⁸

"Worldwide development of civil aviation is a powerful force for world unity and world peace;

"A general system of rights for planes to travel and to carry international commerce should be set up, becoming the established custom of commerce by air, as similar arrangements have become the settled law of commerce by sea;

"These rights of transit and commerce should be available to all nations, permitting equal opportunity and reasonable competition; and

"All nations should join in a world organization designed both to prevent competitive excesses and exploitation, and to maintain technical facilities and standards."

In the cold light of retrospection, the progress made at the Chicago Conference is regrettably overshadowed by the fact that the unenlightened principle of "air sovereignty" escaped serious impairment. The use of the terms "freedoms" in connection with the Air Transport Agreement of the Final Act of Chicago obviously was a psychological experiment, but it did not impress many of the really important conferees. After the opening session of the Conference it became apparent that the American conception of "freedom" was at considerable variance with the view of the United Kingdom and of many other nations. This basic irreconcilability had a most undesirable effect upon the final outcome.

Shortly before the Chicago Convention was convened, the press of the United Nations was almost unanimous in pointing out the dire need for "teamwork and understanding engendered in the war effort" in order to avoid "the selfishness and stupidities of the past." None was more eloquent than the *London Times*, which recommended in its editorial columns that nothing be left undone to achieve in Chicago "the fullest and freest exploitation of the new power of flight with its untold benefits to all the world." The position that was taken by the British delegation at Chicago was, to say the least, at considerable variance with such views. However, that should not have been surprising.

The *bête noire* of the Final Act of Chicago was and still is Paragraph 5 of Section 1 of the International Air Transport Agreement. In other words, it is the fifth of the so-called "Five Freedoms." It reads as follows:⁹

"(5) The privilege to take on passengers, mail and cargo destined for the territory of any other contracting state and the privilege to put down passengers, mail and cargo coming from any such territory."

⁸ Adolf A. Berle, Jr., *Freedoms of the Air* (March, 1945) 190 HARPER'S MAG. 327.

⁹ See DEP'T OF STATE, INTERNATIONAL CIVIL AVIATION—FINAL ACT AND RELATED DOCUMENTS (1945) 91 for text of this Agreement and this paragraph.

Although the British subscribed to the Transit Agreement and to a plan for a permanent international aeronautical organization, they refused categorically to subscribe to Section 5. Their objections were characteristically realistic and, to most observers, had an undertone of fierce determination to prevent any further encroachments on their weakened economic position.

Approximately three months after the Chicago Conference, former Assistant Secretary of State Adolf A. Berle, Jr., its chairman, made the following brief summary of what he considered to be the essence of the Final Act of Chicago:¹⁰

"The results are what count. The conference obtained:

"1. Agreement to a method of international organization, calling for an air council and for annual air meetings.

"2. An agreement, familiarly known as the 'two freedoms'¹¹ agreement, by which all of the nations which sign it exchange among themselves the privilege of going through the air of one another's countries along reasonably direct routes (which, however, may be designated in each country), along with the privilege of landing for refueling, repair, and the like. This amounts to a generalized right of transit for a plane to go from its own country by reasonably direct route to and through other countries, and to refuel and overhaul on the way. As of January 19, 1945, this document has been signed by representatives of twenty-nine countries, whose area includes more than half of the area of the globe and an overwhelming majority of its population.

"3. A second instrument, known as the 'five freedoms'¹² agreement, consists of a mutual exchange of privileges not only to transit, but to take on and discharge traffic, including not only traffic between the country of the plane's origin and the country of its landing, and from there back home again (the third and fourth freedoms in the Canadian analysis) but also the privilege of picking up traffic en route. This last is essential, of course, if long lines are to be maintained; for airlines, like shipping lines, subsist not merely on traffic from the homeland to other countries and back, but also on traffic between points on the way. Again at the date of this writing, this agreement had been signed by some eighteen nations and several more had indicated their intention of signing it.

"These agreements, taken together, open whole subcontinents to peaceful air commerce. Any country, by adhering to the documents of the two freedoms and the five freedoms, may at once enter this already great and growing basin of air commerce. There were no such opportunities open before."

Although, as Mr. Berle stated, a heartening number of delegations "signed" the "Five Freedoms" agreement, it is noteworthy that ten months after the Conference was concluded only nine governments have formally accepted it. They are: Afghanistan, China, El Salvador, Ethiopia, Liberia, the Netherlands, Paraguay, Turkey (with reservations) and the United States.¹³

¹⁰ Berle, *supra* note 8.

¹¹ Text is found in *op. cit. supra* note 9, at 87.

¹² See *supra* note 9.

¹³ In an article entitled *The Chicago Air Conference—Accomplishments and Unfinished Business*, Mr. Edward Warner, former Deputy Chairman of the Civil Aeronautics Board, said: "The main unfinished business at Chicago concerned the rights of conducting trade. The two-freedoms agreement on transit will enable commercial aircraft to go wherever trade is to be found; but actually to engage in picking up and discharging passengers and goods will be possible only in the territories of the limited number of states which have signed the five-freedoms agreement. If trade is to be carried on, either a new attempt must be made to find a general formula or a network of bilateral, trilateral and quadrilateral pacts must be negotiated." DEP'T OF STATE, BLUEPRINT FOR WORLD CIVIL AVIATION (Pub. No. 2348, Conf. Ser. 70, 1945).

In other words, 45 out of the 54 governments that attended the Conference appear to have decided that their best interests would not be served if they became parties to a multilateral agreement which would deprive them of the bargaining advantages inherent in the bilateral type of negotiation. Certainly the importance of the position taken by Great Britain cannot be minimized; nor can Russia's refusal to participate be ignored. The same may be said of several other strategically located nations that have shown no interest in the ultra-liberal American proposal. However, it is not too optimistic to assume that when some of our valiant comrades across the seas have had an opportunity to bind their wounds, they may undergo a decided change of attitude toward the "Fifth Freedom" and its antithetical principle—"air sovereignty."

Many serious students of international relations feel that the Chicago Conference failed mainly because the American delegation lacked the sure instinct and vision to neutralize in some degree the frank concern of many nations regarding the overpowering superiority of American air transport enterprises. The argument is advanced that because of the radical nature of Paragraph 5 of the "Five Freedoms" its inclusion in the Final Act of Chicago was inept and amateurish. In other words, it is felt that the American delegation "won a skirmish and lost a battle" as the result of its impetuosity. On the other hand, there is a strong feeling that a modification of Paragraph 5 could have been put into effect at a later date in country-to-country (bilateral) agreements. In any event, we must face the fact that in the immediate future our former allies will be more concerned with the stark realities of postwar survival than we may have the capacity to understand. There is no reason to believe that any nation will yield to logic or idealism unless by so doing it can protect its own interests. The desire of a nation such as ours to extend its unparalleled domestic air transport system to every trade center on earth is highly laudable, but unless we are willing to make substantial compromises we should be prepared for serious difficulties, and shape our aviation policy accordingly.