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The Development of International Civil Aviation Regulations, 1899-1944

JORDAN BRUCE

A departmental senior thesis submitted to the Department of History at
Trinity University in partial fulfillment of the requirements for graduation
with departmental honors.

DECEMBER 4, 2020

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Introduction

118.800 MHz: Ottawa Tower

AC452: "Ottawa Tower, Air Canada 452 is 10 miles back on the left visual 32"

ATC: "Air Canada 452 altimeter is 30.05"

5 **AC452:** "30.05, Air Canada 452"

ATC: "Air Canada 452 is cleared to land runway 32, winds 340 at 5 to 10"

AC452: "Cleared to land, Air Canada 452"

ATC: "Air Canada 452 contact ground 1-2-1 decimal 9"

AC452: "Air Canada 452"¹

10 There is an art, and a science, to aviation. Not only do pilots need to understand the finer details of lift, drag, and thrust, they must master the process of working within a global system of regulations, norms, and procedures. This international model of commerce has been crafted over the last century by teams of regulators, governments, and individuals working together to unify the world under the aegis of the International Civil Aviation Organization (ICAO). From its

15 origins in the post-war peace conferences after the first World War to its modern-day incarnation formed after the second, the ICAO now forms the basis of the entire conversation above between Air Canada Flight 452 and the Air Traffic Control Tower at Ottawa International Airport. From unit standardization, radio frequencies and airline callsigns to airport codes, operating

20 procedures, and communications standards, the ICAO is responsible for the way we see and interact with aviation today.

¹ "Takeoff to Touchdown," Peter Ivakitsich, accessed November 23, 2020, <http://www.canairradio.com/ttt.html>.

Although the ICAO has received relatively little scholarly attention, the creation of this international organization for aviation standardization is a shining example of the power of positive diplomacy from both rank-and-file diplomats as well as world leaders over the span of 40 years. The hard work of multiple nations, like the United States, Great Britain, France, and Canada, created a new system from scratch. Coupled with the founding of the United Nations, the International Civil Aviation Organization provides for ongoing peace and coordination in the air.

Regulating a Nascent Industry

The International Civil Aviation Organization was not the international community's first attempt at regulating civil aviation. The 1899 Hague Peace Conference marked the first time the governments of the world mentioned regulating airborne devices.² Captain William Crozier, who was the United States delegate to the Hague, wrote that those on a military subcommittee intended to ban the use of "balloons or similar new machines" as a platform for weapons.³ The conference framed air rights, both in the early 1900s and into the future, as subject to a strong dose of international regulation, especially by the great powers of the world. Fortunately, the delegation at the Hague did foresee the rapid development in airspace technology that was coming, but they could not have predicted the emergence of new technologies so rapidly. The conference even attempted to ban automatic weapons for future warfare.⁴ The regulations on airborne weaponry had a built-in self-destruct timer in 5 years, all but guaranteeing a drawn out

² Geoffrey Best, "The 1899 Hague Conference and What Came After," *International Affairs* 75, no. 3 (1999): 626.

³ The Avalon Project. "Peace Conference at the Hague 1899: Report of Captain Crozier to the Commission of the United States of America to the International Conference at the Hague Regarding the Work of the First Committee of the Conference and its Sub-committee," accessed October 3, 2020, https://avalon.law.yale.edu/19th_century/hag99-05.asp.

⁴ Best, *International Affairs*, 626.

fight over the future of airspace security and sovereignty.⁵ By the time of the First World War, there had been a couple of unsuccessful attempts to regulate the air. The onset of the war gave rise to new efforts to impose controls on the skies.

45 The history of civil aviation stretches all the way back to before the Wright Brothers' first flight in Kitty Hawk. In 1901, *The New York Times* ran an editorial speculating about the future of a commercial air-bound transportation service. "Is the airship coming?," it reads, speaking to the boundless potential that ownership and control of the air could bring to a nation, and to the capitalists that chose to pursue it.⁶ When the Wright Brothers got airborne for those 12 seconds on the coast of North Carolina, they made all future development possible.⁷

50 Across the Atlantic, too, the air race was taking off. After the Kitty Hawk successes, French pioneers of aviation were driven to compete for the sake of national pride.⁸ By the end of 1906, Brazilian transplant Alberto Santos-Dumont had successfully completed the first flight of a heavier-than-air machine in Europe – an accomplishment that earned him a monetary prize, as well as instant fame across two continents.⁹

55 Most history books, as well as reporting at the time, credit the Wright Brothers with the first powered flight, but because of the monumental stakes and fame that came along with the title, controversy soon followed. An article in *Popular Mechanics* in 1981 challenged the Wrights' assertions, arguing that German immigrant Gustav Whitehead was actually the first to accomplish the powered flight of a heavier-than-air machine in 1901, nearly two years before the

⁵ Ibid., 626.

⁶ Editorial Board, "The Dream of Aerial Flight," *The New York Times*, September 4, 1901, <https://nyti.ms/39x1ywO>.

⁷ Tom Crouch, *First Flight: The Wright Brothers and the Invention of the Airplane*. Washington, D.C.: United States Department of the Interior, n.d.: 45-46.

⁸ Peter Bakewell, "On Pioneering Wings in France," *Southwest Review* 95 no. 3 (2010): 480.

⁹ Ibid., 484

60 Kitty Hawk experiments.¹⁰ Alberto Santos-Dumont also made claims to the title in 1906, though
his claim was based on the lack of a stabilizing launching rail.¹¹ The rail, which was utilized in
most early flights to supplement wheels for takeoff, made it easier to go straight and gain the lift
required for takeoff. Even during the launch of the fledgling aviation industry, standards and
protocols were unclear and disputed. Early attempts at international regulation, like a meeting in
65 Paris in 1910, were generally unsuccessful.¹² Paris was held in response to incidents of
international border crossings, like when a French pilot crossed the English Channel for the first
time in 1909 and nobody knew if he was allowed to do such a thing.

Many “firsts” took flight in the years after the Wrights found the key to taking and
sustaining heavier-than-air flight. By 1908, pilots were taking passengers, and more and more
70 people around the world trained their sights on flying machines.¹³ As early aviators shattered
altitude, speed, and distance records at an astounding pace, commercial aviation became a real
possibility. In 1914, St. Petersburg, Florida played host to the first scheduled commercial flight,
a 23 minute jaunt across Tampa Bay with just one passenger aboard.¹⁴ By 1918, the air was
being used for a litany of commercial purposes; from ferrying mail across continents to bringing
75 passengers and critical cargo across oceans, aviation was replacing more antiquated modes of
transport.

¹⁰ Roy Bongartz Jr., “Was Whitehead First?,” *Popular Mechanics*, December 1981,
<https://books.google.com/books?id=9tkDAAAAMBAJ&lpg=PA73&pg=PA68#v=onepage&q&f=false>.

¹¹ “Progress of Mechanical Flight,” *Flight International Magazine*, January 2, 1919,
https://archive.org/stream/Flight_International_Magazine_1909-01-02-pdf#page/n9/mode/2up.

¹² John Cobb Cooper, “The International Air Navigation Conference, Paris 1910” 19, no. 2 (Spring 1952): 128.

¹³ Evelyn Charles Vivian, *A History of Aeronautics*, 1920, 102, <https://eds-a-ebsochost-com.libproxy.trinity.edu/eds/ebookviewer/ebook/bmx1YmtfXzEwMzc2MDBfX0FO0?sid=9b05e66b-49b0-444b-97e2-b8921d74f98a@sdv-sessmgr03&vid=5&format=EB&rid=1>.

¹⁴ “Air Liner Begins Trips; Service Installed in Florida, First Passenger Paying \$400 at Auction.,” *The New York Times*, January 2, 1914,
<http://timesmachine.nytimes.com/timesmachine/1914/01/02/101719512.html?pageNumber=1>.

This period of rapid technological improvement brought government interest to the possibilities of aviation. The British, French, and German governments held various competitions (at great expense) in search of a functional military aircraft. The British War Office, in particular, laid out requirements “distinctly more onerous than those of the French trials,” requiring 350 pounds of weight capacity and 3 hours of flight time among other statistics, which was a substantial feat at the time but still a far cry from the expectations placed on aircraft just 10 years down the road.¹⁵ The search was a monumental step in aviation technology.

In his anthology of British aviation history, E. Charles Vivian summarized the situation by writing, “all pre-war records of endurance, speed, and climb went by the board, as the race for aerial superiority went on.”¹⁶ This interpretation could not have been any more correct. European empires, and those countries desiring to become empires, were on the war path, and their imperial competition led them not just toward the Great War, but also on an unstoppable climb to battles over air superiority and control. The 1899 Hague conference, where our story of aviation regulation history starts, had been established in part to provide for disarmament and the prevention of future hostilities perpetrated by airborne machines—and it had failed.¹⁷ Nonetheless, the conferences proved one thing: despite the best intentions of all countries to act in a humanitarian manner and pursue more balanced warfighting techniques that preserved life as much as possible, there was little interest in weakening the power structure that existed in Europe at the time.

¹⁵ “The War Office Competition,” *Flight Magazine*, December 23, 1911, 23, https://archive.org/details/Flight_International_Magazine_1911-12-23-pdf/page/n23/mode/2up.

¹⁶ Vivian, *A History of Aeronautics*, 115.

¹⁷ Nobou Hayashi, “The Role and Importance of the Hague Conferences: A Historical Perspective,” *United Nations Institute for Disarmament Research*, 2017, 3, <https://www.unidir.org/files/publications/pdfs/the-role-and-importance-of-the-hague-conferences-a-historical-perspective-en-672.pdf>.

At the close of the first World War, the Allied powers knew that they would have a significant amount of power when determining the future of aviation. But how best to regulate civil aviation matters remained up in the air. The Paris Peace Conference, convened to provide for long-lasting peace in Europe and around the world, sought to establish international cooperative treaties to make peace possible.¹⁸ While the League of Nations is certainly the name that people remember for overarching international organizations, civil aviation was also addressed through the International Commission for Air Navigation (ICAN). Established through the Convention Relating to the Regulation of Aerial Navigation, the ICAN became the regulatory body for non-war-related matters of the air.

One of the most important matters of discussion at Paris was to determine the sovereignty of the air. French lawyer and one of the first aviation law experts Paul Fachiulle, envisioning discussions of the future, asked, “states have a terrestrial territory and maritime territory. Do they also have an aerial territory?”¹⁹ This was an increasingly central issue for many of the great powers. After a significant investment in aerial navigation and aviation technology throughout the first World War, there was no doubt that “aircraft had already become, even in its embryonic forms, a potent weapon not only of reconnaissance and espionage, but of attack.”²⁰ The need to distinguish between civil and military traffic and ensure that there was a right to innocent passage in worldwide airspace was critical to international security (hence its appearance at Paris) but also to international commerce.

¹⁸ Woodrow Wilson, “Make This League of Nations a Vital Thing,” *International Organization* 10, no. 4 (1956): 525–28, <http://www.jstor.org/stable/2704447>.

¹⁹ Stuart Banner, *Who Owns The Sky: The Struggle to Control Airspace from the Wright Brothers On* (Cambridge, Massachusetts: Harvard University Press, 2008), 43; Arthur K. Kuhn, “The Beginnings of an Aerial Law,” *The American Journal of International Law* 4, no. 1 (1910): 111, <https://doi.org/10.2307/2186458>.

²⁰ Oliver J. Lissitzyn, “The Diplomacy of Air Transport,” *Foreign Affairs* 19, no. 1 (October 1940): 157, <https://doi.org/10.2307/20029053>.

115 The concept of a right to international passage has its origins in 1906. At a meeting of the
Institute of International Law in Ghent, a discussion was held at Fauchille’s suggestion
surrounding the ownership of the air. There were three schools of thought presented: from
Belgium, that there was no owner of the air; from Fauchille serving as the French delegate, who
believed that there ought to be separate rules applied based on the altitude of travel; and from the
120 British delegate, who put forth a proposal that nations had ultimate control of the airspace above
their territory.²¹ The Institute ultimately landed on a proposal provided by Fauchille that dictated
the air is free for all to use, but countries may regulate the airspace above their land to preserve
national security and safety. This is the principle of “innocent passage” that continued to be a
topic of conversation in the pre-war years: could countries regulate the air above them, and could
125 different states determine their own non-congruent rules and make inter-state commerce nearly
impossible?

Aviation as part of the Paris Peace Conference

Not much has been written about the proceedings of the aviation committee that met at
130 Paris. As such, it is difficult to know exactly what happened behind closed doors in one of the 52
different committees that were established to hash out a peace accord at the end of one of the
deadliest wars in modern history. Despite this lack of context, the document that the commission
produced is strikingly detailed and set forth the principles of international law that have applied
to international aviation since its passing. This document, while not perfect, advanced the idea of
135 air regulation and established critical standards for peace in the air.

²¹ United States Department of State, *Aspects of United States Participation in International Civil Aviation*
(Washington, D.C.: Division of Publications, Office of Public Affairs, 1948), 7,
<http://hdl.handle.net/2027/umn.31951001548212r>.

Up first for discussion was the principle of air sovereignty – who officially, really, truly controlled the air above a country’s sovereign territory? The preamble of the Convention for the Regulation of Aerial Navigation , released in October 1919 after its completion at Paris, says that those who signed believe “that the establishment of regulations of universal application will be to the interest of all” and that they want to “encourage the peaceful intercourse of nations by means of aerial communications.”²² Those 29 signatory countries were in search of a peaceful solution that would apply to peacetime civil aviation.²³ The writing, though, was done by the Aeronautical Commission. Delegates from the United States, Great Britain, France, Italy, and Japan had two delegates; Belgium, Brazil, Cuba, Greece, Portugal, Romania, and Serbia each had one delegate.²⁴

Because of its importance to the rest of the treaty, the question of sovereignty was addressed in the first article of the Convention for the Regulation of Aerial Navigation. Article 1 of the Treaty laid out in very specific terms how every power, regardless of their presence at the convention, had “complete and exclusive sovereignty” of the airspace over their country. This resolution, according to aeronautics law pioneer Albert Roper, made the sovereignty of the air “no longer... a subject of discussion.”²⁵ This was a global paradigm shift, especially on the part of the French delegation. In previous discussions about freedom of the air, Fauchille (the French delegate to these previous conferences) had supported true freedom with no state sovereignty, at

²² “Convention for the Regulation of Aerial Navigation,” *The American Journal of International Law* 17, no. 4 (1923): 195, <https://doi.org/10.2307/2212814>.

²³ The signatory countries, in order of signature, are the United States, Belgium, Bolivia, Brazil, the British Empire, Canada, Australia, South Africa, New Zealand, India, China, Cuba, Ecuador, France, Hellenes (Greece), Guatemala, Haiti, the Hedjaz (Saudi Arabia), Honduras, Italy, Japan, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Roumania, Serbo-Croat-Slovenes, Siam, Czechoslovakia, and Uruguay.

²⁴ John Cobb Cooper, “United States Participation in Drafting Paris Convention 1919,” *Journal of Air Law and Commerce* 18, no. 3 (1951): 267, <https://scholar.smu.edu/cgi/viewcontent.cgi?article=3519&context=jalc>.

²⁵ Albert Roper, “The Organization and Program of the International Commission for Air Navigation (C.I.N.A.),” *Journal of Air Law and Commerce* 3, no. 2 (1932): 168, <https://scholar.smu.edu/cgi/viewcontent.cgi?article=3684&context=jalc>.

least at higher altitudes. At the conclusion of the war, the French commission for matters had
155 apparently changed their tune; in late 1918, the Inter-Ministerial Commission of Civil
Aeronautics adopted the theory of state sovereignty and pushed it forward at the 1919 Paris
talks.²⁶ While the remainder of the convention addresses “contracting” states, the worldwide
nature of this article is notable.

Articles 2 and 3, while not a broad worldwide article like Article 1, also had a substantial
160 impact on the remainder of the treaty. While the Paris Peace Conference did not have any
illusion that war would be prevented for all eternity, the purpose of the Convention was to
address civil (non-military) air travel during peace time. The drafters underscored this with
Article 2, which granted the right of innocent passage to all contracting states during
peacetime.²⁷ But like many other aspects of the Convention, this clause only applied to the 33
165 ratifiers of the convention, and had weaknesses that will be discussed shortly. Notably, this list
excluded the United States, the Soviet Union, Germany, and China. Latin America, which at the
time did not have a major air wing, was largely excluded, and the vast majority of Africa was
included by the nature of colonialism. The fractured nature of the conference resulted in an
organization “which was never able to deal with international aviation on a world-wide basis.”²⁸

170 The practical challenges that the fragmented nature of the Convention posed were
enormous. First, each country involved (as well as those who chose not to join in) had ambitious
air goals – not only for economic and military purposes, but for national pride.²⁹ Article 2, which

²⁶ United States Department of State, *Aspects of United States Participation in International Civil Aviation*, 8.

²⁷ “Convention for the Regulation of Aerial Navigation,” *The American Journal of International Law*, 198.

²⁸ United States Department of State, *Aspects of United States Participation in International Civil Aviation*, 1.

²⁹ Marc Dierikx, “Struggle for Prominence: Clashing Dutch and British Interests on the Colonial Air Routes, 1918-42,” *Journal of Contemporary History* 26, no. 2 (1991): 333, <https://www.jstor.org/stable/260794>.

had theoretically given the right of innocent passage to civil aviation, was interpreted to exclude commercial civil aviation.

175 Each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other contracting states, provided that the conditions laid down in the present convention are observed.³⁰

The ramifications of this interpretation were strict, immediate, and intensely damaging to the prospects of international commercial air transport. Under the article's 1919 view, 180 commercial airlines could only fly over other countries with three conditions: the aircraft followed the rest of the technical requirements laid out in the Convention, the state that controlled the territory below the air had to consent to the aircraft being there, and, of course, the aircraft must have been registered with a country that had ratified Paris.³¹ The groundwork for this interpretation was laid in Article 15, which required international airways to "be subject to 185 the consent of the states flown over."³² Large national airlines were a source of pride, and because the strategy of European states had been to claim territory around the globe, the traditional powers needed each other's permission to get there with this new mode of transport.³³

The organization tasked with overseeing, coordinating and ruling on various issues of the air was established by the 1919 Convention. The International Commission for Air Navigation 190 (ICAN), formed by Article 8 of the Paris Convention, was "intended to enhance the development of international civil aviation."³⁴ The French delegation, ever the opportunists, gave Paris the honor of playing host to the first meeting of the ICAN. Attendance at the first meeting of the

³⁰ "Convention for the Regulation of Aerial Navigation," *The American Journal of International Law*, 198.

³¹ Dierikx, "Struggle for Prominence: Clashing Dutch and British Interests on the Colonial Air Routes, 1918-42," 334.

³² "Convention for the Regulation of Aerial Navigation," *The American Journal of International Law*, 201.

³³ For a more comprehensive telling of the British-Dutch aviation rights clashes between 1918 and 1942, reference Dierikx's "Struggle for Prominence."

³⁴ David MacKenzie, *ICAO: A History of the International Civil Aviation Organization* (Toronto: University of Toronto Press, 2010), 15.

commission was included in the convention, too, particularly placing power in the hands of the traditional powers. The United States, France, Italy, Japan, and Britain were guaranteed two
195 representatives (Britain was given more for each of its territories abroad, as well as India). An additional clause increased the powers of the world powers, saying that the group “shall have the least whole number of votes which, when multiplied by five, will give a product exceeding by at least one vote the total number of votes of all the other contracting states.”³⁵ This clause gave the five powers an unchecked veto power and prevented any substantive changes from being made
200 without their support. From the world powers’ point of view, though, this system was fantastic. Changes to aviation standards and laws could be done at will without opposition from smaller nations, whose aviation ambitions may have too much lift relative to their size and economic power.

The ICAN was charged with a great deal of responsibilities as part of their charter. Not
205 only were they responsible for the major legal issues and conflicts that took place over airspace and update the Paris Convention as members voted to do so, they had a litany of technical responsibilities as well. The Convention had included 8 annexes, labeled A through H, that spelled out every manner of technical provision. The convention and its annexes included every area of international air travel – from airport design to the customs process, the Commission was
210 required to pass amendments and issue guidance on technical standards.³⁶ The technical language was verbose and wide-ranging. A whole chapter of the 1919 convention was allocated to discussing the certification process of aircraft and flight crews, including provisions about the licensing procedures for aircraft radios. These minute details, exhaustive as they may have been for the delegations to produce, were crucial to the mission of the ICAN. The push for

³⁵ “Convention for the Regulation of Aerial Navigation,” *The American Journal of International Law*, 204.

³⁶ “Convention for the Regulation of Aerial Navigation,” *The American Journal of International Law*, 204.

215 international standardization was just as critical, or more critical, than any economic clauses or
changes. Aviation technology was rapidly progressing, and the longevity of aircraft forced
regulations to be decisive and less prone to change.

The power, and the fate, of the ICAN was directly connected to the League of Nations.
The first time this connection presented itself was in the initial membership list. Because the
220 League of Nations was established as part of the Paris Peace Conference, belligerent states were
not allowed to join the League or the associated commissions. The Convention says that states
who took part in the war were not allowed to join the organization until 1923, and even then,
they must be admitted by three-fourths of the member states.³⁷ Under the restrictive
interpretations of Articles 2 and 15, as well as Article 5 (which restricted travel over contracting
225 states to only travel done by planes registered by another contracting state) though, this severely
limited the potential power of international aviation. Germany, for example, was unable to join
the ICAN, and therefore nations surrounding Germany that needed to use their airspace were
reticent to sign and adhere to the convention. Edward Warner, an American aviation expert,
wrote in 1926 that the “special position of Germany in relation to commercial air transport that
230 has lain at the root of most of the international difficulties of the last five years.”³⁸

The situation with Germany was a real problem. It is well known that Germany was
given a relatively unfair deal at the close of the war. As a part the Treaty of Versailles, the Allied
powers loaded Germany with reparations payments and strict arms controls, contributing to a
deteriorating government beholden to the winners of the war. The original draft of the
235 Convention had prevented individual states from permanent treaties with non-member states for

³⁷ Ibid., 207.

³⁸ Edward P. Warner, “International Air Transport,” *Foreign Affairs* 4, no. 2 (January 1926): 281,
<https://www.jstor.org/stable/20028446>.

the right of passage, saying that permissions for flight could only be given “by a special and temporary authorization.”³⁹ But by necessarily excluding a majority of continental Europe that relied on German commerce with Article 5’s prevention of treaties with non-signatories, the ICAN had kneecapped its authority and its chance at a legitimate, expansive, organization. A first attempt at rules, passed in early May 1922, forced rigorous technical standards that made it nearly impossible for inter-continental aviation to survive. These “Nine Rules,” which applied to any aircraft in German airspace, were so stringent that “it would hardly have been possible to build an airplane which would fit those rules” and in essence prohibited any Allied transit over the center of the continent due to the proximity of the Alps mountain range.⁴⁰

So, in the first of multiple amendments eventually put forward over the ensuing two decades, the Commission advanced and approved a change to Article 5 in 1922 that expressly allowed individual treaties between two countries.⁴¹ The changes to the Convention did not apply, though, until all members of ICAN had ratified the changes. The path to ratification was long, but eventually, the new language went into effect in December 1926. This change enabled ICAN members to sign individual conventions with Germany, and by early 1930, most of the powers behind the Convention had done so.

Notably missing from the meetings of the International Commission for Air Navigation was the United States. Because the fate of the Paris Convention and the associated Commission were directly tied to that of the League of Nations, the United States had copious amounts of debate surrounding whether to join or not. There were three sides to the debate in the Senate: those that stood for the Treaty of Versailles and believed in its ratification; those that believed

³⁹ “Convention for the Regulation of Aerial Navigation,” *The American Journal of International Law*, 199.

⁴⁰ Warner, “International Air Transport,” 283.

⁴¹ Alfred Wegerdt, “Germany and the Aerial Navigation Convention at Paris, October 13, 1919,” *Journal of Air Law* 1, no. 1 (1930): 2.

the Treaty had flaws, but were still in favor of the broader ideas contained within it; and those known as irreconcilables, who were opposed to the concept of the League of Nations as a whole. William Borah, one of Idaho's senators, was a leader of the irreconcilable movement.⁴² The fears
260 that irreconcilables had about the Treaty of Versailles was the encroachment of an international organization on the rights of the federal government and the consequences those restrictions would have on the American people. Henry Cabot Lodge, the majority leader of the Republican party in the Senate at the time, was stuck between a rock and a hard place with his membership, but was very outspoken against the Treaty as written at Versailles. He believed that if the United
265 States were to "fetter her in the interest through quarrels of other nations, if you tangle her in the intrigues of Europe, you will destroy her powerful good, and endanger her very existence."⁴³

The hesitation to join the League of Nations by the United States undercut its power and efficacy, contributing to its ultimate demise. But if the Paris Convention hadn't been attached to the League, could it have garnered the ratification of the United States? Quite possibly. Many of
270 the reservationists were worried about giving up control and sovereignty to foreign nations or getting too involved in European affairs. But the Paris Convention and ICAN were both structured, at least initially, to prevent signatory countries from giving up any control to an international organization. The only domain where the ICAN had bounding authority was in technical and operational regulations, which did not threaten the national sovereignty and
275 isolationism that the reservationists and the irreconcilables had sought.

⁴² George C. Herring, *From Colony to Superpower: U.S. Foreign Relations since 1776* (New York, NY: Oxford University Press, 2008), 429.

⁴³ Henry Cabot Lodge, "Treaty of Peace with Germany," in *Treaty of Peace with Germany*, (Washington, D.C.: U.S. Government Printing Office, 1919), 16.

The United States gave its signature to the convention, but ultimately did not ratify it in line with the procedures established in Article I of the United States Constitution. But why was the United States opposed to adhering to the rules and procedures spelled out in the 1919 Convention? Part of the reason for the rejection was its alignment with the new League of Nations, but the confusion around Article 15's interpretations and the rights extended to foreign nations caused even more disagreement within the United States government. Reservations to treaties have been part of worldwide standard operating procedure, and when the United States signed the Paris Convention, they reserved their rights from Article 15.⁴⁴ When the Paris Convention was up for revisions in 1929, the chairman of the United States Delegation William MacCracken, Jr. commented on the hesitancy of the United States government to ratify the original 1919 treaty. As he noted:

The American delegation wishes to state that in making these remarks it is not making a reservation on behalf of the United States and is not declaring that its Government would refuse to ratify the Convention of 1919 merely because of Article 15. It merely wished to allow the other members of the Conference to profit by the experience acquired in its own country.⁴⁵

While MacCracken does explicitly say that the presence of Article 15 did not prevent the United States Senate from ratifying the convention, he does remark earlier on in the speech that “a modification of this article would be likely to facilitate the adherence of the 1919 Convention of numerous states that have not yet joined it.”

MacCracken gave this speech while he attended the extraordinary 1929 meeting of the ICAN in Paris. The express purpose of the convention, as well as the invitation sent to the United

⁴⁴ United States Department of State, *Aspects of United States Participation in International Civil Aviation*, 12; “Reservations to Treaties and United States Practice,” Frederic Kirgis, American Society of International Law, accessed November 23, 2020, <https://www.asil.org/insights/volume/8/issue/11/reservations-treaties-and-united-states-practice>.

⁴⁵ United States Department of State, *Aspects of United States Participation in International Civil Aviation*, 13.

States, was to “facilitate the adherence of states which are not parties to the Convention.”⁴⁶ The United States was among those non-adhering countries, but it was not alone. Another notable holdout, despite its acceptance into the organization in 1926, was Germany. While the paper itself has been lost to history, the Ministry of Communications for the German government released an article detailing why it had not been adhering to the standards laid out in the Paris Convention. Apparently, German leaders objected to the different sets of rules that various groups of countries had established.

In 1926, the first of two less significant conferences was held to establish a different version of the aviation order. The Ibero-American Convention, held in Madrid with 21 countries in attendance, was nearly identical to the 1919 Paris document, including the name of the convention itself: the Ibero-American Convention on Air Navigation.⁴⁷ By the ICAO’s own accounts, its function was to replicate the Paris Convention’s substance with one written by Spain to tie her to the Latin American and Caribbean countries she invited to Madrid. Unfortunately, only seven countries ever ratified the agreement, and by 1933, Spain and Argentina denounced the treaty and ratified the Paris Convention in its stead.

The United States, similar to Spain in the Ibero-American Convention, wanted more control over their aviation destiny and more influence over their southern neighbors. They also valued their positive relations with the rest of the Western Hemisphere. In a letter from the Secretary of State to the American Delegation at the sixth Pan-American Conference in 1928,

⁴⁶ The Secretary of State to President Hoover (April 25, 1929), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, 1929, Volume I*, (Washington, D.C.: U.S. Government Printing Office, 1943): 490.

⁴⁷ ICAO, 1926: *The Ibero-American Convention*, accessed November 24, 2020, https://applications.icao.int/postalhistory/1926_the_bero_american_convention.htm.

Frank Kellogg wrote “the Pan American policy takes first place in our diplomacy.”⁴⁸ So at the 1928 meeting of countries from North and South America in Havana, the delegations hammered out a new agreement that would satisfy the growing desire for international aviation in the Americas. In many ways, this document was meant to address the perceived shortcomings of the Paris document by adding clarity to the issues of international air traffic. By Article XXI, the convention explicitly addresses the right for commercial air travel between the Pan-American states:

The aircraft of a contracting state engaged in international air commerce shall be permitted to discharge passengers and a part of its cargo at one of the airports designated as a port of entry of any other contracting state, and to proceed to any other airport or airports in such state for the purpose of discharging the remaining passengers and portions of such cargo and in like manner to take on passengers and load cargo destined for a foreign state or states, provided that they comply with the legal requirements of the country over which they fly, which legal requirements shall be the same for native and foreign aircraft engaged in international traffic and shall be communicated in due course to the contracting states and to the Pan American Union.⁴⁹

In essence, the Havana convention gave the United States the control it wanted over commercial aviation. By late February 1928, commercial aviation across the Americas was free to proceed with little restriction or governmental interference. By 1930, however, with multiple treaties applying to civil aviation around the world, there was a desire to centralize them through the rehashing of the 1919 Paris Convention. In David MacKenzie’s history of the ICAO, he remarks on how “there was little desire to loosen each state’s complete sovereignty over its airspace.”⁵⁰ The world turned on its head, however, when Germany began its march toward creating the Second World War, directing international efforts away from civil aviation and

⁴⁸ The Secretary of State to the American Delegation (January 5, 1928), in United States Department of State, *Papers Relating to the Foreign Relations of the United States, 1928, Volume I* (Washington, D.C.: U.S. Government Printing Office, 1942), 534.

⁴⁹ The Secretary of State to President Hoover (April 25, 1929), in *Papers Relating to the Foreign Relations of the United States, 1929*.

⁵⁰ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 16.

toward building any hope of lasting peace in Europe. All of a sudden, the status quo was good enough while the Western European powers rearmed and redeveloped military aircraft for the nearly-inevitable looming conflict.⁵¹

345

1944 and the Chicago Convention

Few world leaders viewed the new “United Nations” organization as a threat to national sovereignty. Instead, the organization was dedicated “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.”⁵² By exerting international influence through treaties and standardization, the United Nations sought
350 to eliminate many of the stumbling blocks that had caused so much strife in the fallout from World War I.

The outbreak of World War II caused havoc to wash over foreign affairs, and civil aviation regulations were not immune. Passengers and non-military cargo transportation across Europe nearly ceased, and economic power pivoted from the traditional powers and cemented
355 itself within the United States. Nowhere was this more clear than in the air. The United States was largely untouched on its soil, so domestic air travel faced much less of an impact.⁵³ In addition, American aviation companies were responsible for providing tools of war to European allies – particularly transport planes.

⁵¹ Norrin M. Ripsman and Jack S. Levy, “Wishful Thinking or Buying Time? The Logic of British Appeasement in the 1930s,” *International Security* 33 no. 2 (Fall 2008): 152. <https://www.jstor.org/stable/40207135>.

⁵² United Nations, “Preamble,” accessed November 4, 2020, <https://www.un.org/en/sections/un-charter/preamble/index.html>.

⁵³ Malgorzata Polkowska, “The Development of Air Law: From the Paris Conference 1910 to the Chicago Convention of 1944,” *Annals of Air and Space Law* 33 (2008): 73, <https://heinonline.org/HOL/P?h=hein.crasl/nairspl0040&i=80>.

Aviation was one area that needed immediate course-correction. In fact, the issue was so
360 urgent that the Allied powers convened a wartime conference to discuss the future of
international aviation. In March 1943, King George VI addressed his parliament, asserting that
“some form of international collaboration will be essential if the air is to be developed in the
interests of mankind as a whole, trade served, international understandings fostered and some
measure of international security gained.”⁵⁴ Realizing that international airpower was on the rise
365 after the impressive aviation expenditures incurred by the war, the United Kingdom government
reached out to Franklin Delano Roosevelt’s State Department to evaluate interest in a
multinational convention to determine the post-war rules of the sky. On August 29, 1944, a
convention was formally called for by the British and Canadian governments, to which the
United States agreed.⁵⁵

370 The invitation list for Chicago, the site of these negotiations, was similar, though not
identical to, the combination of the 1919 and 1928 gatherings in Paris and Havana respectively.
All Allied countries taking part in the war were included, as well as officially neutral states like
the Scandinavian nations and Switzerland; Argentina, given its alliance with and support of
Germany, was not included in the guest list.⁵⁶ The delegations were selected primarily because of
375 their importance to air travel once Europe was liberated from Nazi control. Similar to other
wartime conferences, the Axis powers were not included despite their importance in civil
aviation on the European continent. This decision can be traced to the optimism of the Allied
powers toward their success in the war; the invitation directly addresses this fact, saying:

⁵⁴ Proposal by the Delegation of the United Kingdom, Report on Conference to Technical Documents Book 1, Box 2, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives at College Park, College Park, MD, 2.

⁵⁵ Letter to President – Report on Conference, Box 6, Entry P24, General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives at College Park, College Park, MD, 1.

⁵⁶ Polkowska, “The Development of Air Law,” 73; MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 25.

380 The approaching defeat of Germany, and the consequent liberation of great parts of Europe and Africa from military interruption of traffic, sets up the urgent need for establishing an international civil air service pattern ... so that all important trade and population areas of the world may obtain the benefits of air transportation as soon as possible, and so that the restorative processes of prompt communication may be available to assist in returning great areas to processes of peace.⁵⁷

385 With the exclusion of Germany, Austria, Italy, and Japan, 55 invitations requesting delegations to Chicago were sent out on September 11, 1944.⁵⁸ The conference was slated to start on or around November 1, 1944.⁵⁹

After numerous omissions and diplomatic infighting had sent the Paris Convention to its demise, the Allied powers were keen to prevent the same mistakes from happening again. The
390 British government took the first step, writing a white paper of policy proposals for the convention. Not only did this paper come as a surprise to United States leaders, the views expressed within it were non-starters for nations both large and small. Great Britain believed that previous treaties had focused too much on technical issues and not enough on economic dispersion. As the British Secretary of State for Air wrote in the white paper, “the growth of air
395 transport was conditioned by political rather than economic considerations and its development as an orderly system of world communications was impeded.”⁶⁰ Especially after the Dutch had defeated the British in the ugly battle over flying over territories, there was a strong desire to prevent political geography from stifling British air growth.

⁵⁷ United States Department of State, “Department of State Bulletin No. 273,” *Department of State Bulletin* 11 (September 17, 1944): 298, <https://heinonline.org/HOL/P?h=hein.journals/dsbul11&i=307>.

⁵⁸ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 24.

⁵⁹ The countries invited to the convention were Afghanistan, Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France (and representatives of the French Dominion), Great Britain, Greece, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Ireland, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Saudi Arabia, Spain, Switzerland, Syria, Turkey, South Africa, the Soviet Union, Uruguay, Venezuela, and Yugoslavia. In addition, the Dutch and Thai ambassadors were invited to represent their countries at Chicago because of the Axis takeover of their official governments. The Netherlands and Thailand are not reflected in the counts of governments in attendance, though their ministers did participate in the committee discussions.

⁶⁰ Proposal by the Delegation of the United Kingdom, National Archives College Park, 1-2.

The white paper was a problem that had to be rectified, at least in theory. Not only had its
400 publishing surprised the United States and Canada, the British parliament had also not had a
chance to review and debate the policy. In a telegram from the United States Ambassador to the
United Kingdom John Winant, he informed the Secretary of State that “several members of
Parliament expressed their annoyance at the appearance of a White Paper on civil aviation before
adequate debate in the House of Commons” and “there will be a demand that the subject be
405 debated before Lord Swinton leaves for Chicago.”⁶¹ Despite the calls for additional debate, there
was very little change to the British aviation policy. Just as they had proposed when calling for
the convention, Great Britain desired an economic organization that could regulate the mainline
routes and ensure that all nations had an equal chance to participate in the economics of the air.
The new convention had to, according to the British delegation, “define the degree of freedom of
410 the air to be enjoyed by the ratifying states” and also “define the international air routes which
should be subject to international regulation.”⁶²

The United States had no desire to see international routes delegated and regulated by an
economic body that had yet to be created. In a letter to President Roosevelt, Assistant Secretary
of State Adolf Berle wrote that “the United States had made the point it could not delegate
415 economic power to an international body except to carry out principles, agreements and law
clearly agreed upon by governments.”⁶³ The United States also wanted to protect the rights of
their airmen. If the British delegation was successful in establishing traffic limits per country,
American air travel would have to match that of Great Britain. Smaller nations, particularly the

⁶¹ The Ambassador in the United Kingdom (Winant) to the Secretary of State (October 18, 1944) in *Foreign Relations of the United States: Diplomatic Papers, 1944, General: Economic and Social Matters, Volume II* (Washington, D.C.: U.S. Government Printing Office, 1967), 561

⁶² Proposal by the Delegation of the United Kingdom, National Archives College Park, 3.

⁶³ Letter to President – Report on Conference, National Archives College Park, 3.

Netherlands, were equally opposed to traffic limits. If states' aviation ambitions exceeded the
420 proportionate size of the country, then the future of air commerce was threatened.

These white paper discussions formed a critical part of agenda-setting, and the two sides at the
heart of these worldwide negotiations were being led by experienced diplomats. Berle served as
the chairman of the United States delegation. Berle was not a traditional diplomat, but he was
well educated and determined to "make history through politics" and on a "quest... to shape the
425 history of ideas."⁶⁴ After matriculating into Harvard College at 14 and graduating from its law
school 7 years later in 1916, he was the youngest graduate to emerge with his skillset. After a
brief stint in the Army during World War I as a signal corps member, he entered the political
landscape in earnest by joining Franklin Delano Roosevelt's campaign as a policy advisor on
credit and corporations. Though he had been a Republican early in his career, he pivoted away
430 from party lines and called himself a "reform-minded political realist."⁶⁵ This belief carried him
into FDR's campaign and into Roosevelt's famed brain trust, where he wrote "the manifesto of
the New Deal" and propelled him into a leadership role in the new administration.⁶⁶ But this
leadership role was the "assistant secretary of nothing," rather than having a specific policy area
to focus on, Roosevelt deployed Berle where unconventional ideas were necessary.⁶⁷

435 This penchant for tackling anything, combined with his desire to work on less prominent
but still critical issues of national importance, led Berle to an unconventional area in 1942:
international civil aviation.⁶⁸ Rather than compete with political giants on the restructuring of the
global economy or the political systems that would keep the new world order in check, Berle

⁶⁴ Jordan A. Schwarz, *Liberal: Adolf A. Berle and the Vision of an American Era* (New York, NY: The Free Press, 1987), 14; vii, <http://archive.org/details/liberaladolfaber00schw>.

⁶⁵ *Ibid.*, 72.

⁶⁶ *Ibid.*, 79.

⁶⁷ *Ibid.*, 81–82.

⁶⁸ *Ibid.*, 216.

440 opted to focus on the future of international air travel. While he came to the table with next to no previous exposure to aviation, he knew two things: aviation was to be just as crucial to world peace as any new political structure; and the diplomacy of international civil aviation ought to be carried out in much the same fashion as the rest of Roosevelt’s foreign policy.⁶⁹

As then-Assistant Secretary of State Berle compiled a high-level team to address the future of world aviation, he did so with the support of both Roosevelt and Secretary of State
445 Cordell Hull, the “father of the United Nations.”⁷⁰ Joining Berle’s delegation to the Chicago Convention was an all-star group of political leaders: Josiah Bailey, the chairman of the Senate Commerce Committee; Owen Brewster, a member of the Senate Commerce Committee; Alfred Bulwinkle, a longtime member of the House of Representatives⁷¹; William Burden, the assistant secretary of Commerce for Air; Retired Rear Admiral Richard Byrd; Fiorello LaGuardia, the
450 chairman of the Canada-United States Permanent Joint Board on Defense; L. Welch Pogue, the chairman of the Civil Aeronautics Board; Edward Warner, the vice chairman of the Civil Aeronautics Board; and Charles Wolverton, a member of the House of Representatives. In addition to the above formal delegation, there were a number of advisors comprising both the Department of War and the American aviation industry; Pan-Am, TWA, American Airlines,
455 Pan-American Airways, and Chicago and Southern Airways (the largest carriers at the time) all had members of their leadership councils on the advisory group, as well as a representative of the National Aircraft War Production Council, which coordinated technical matters between aircraft manufacturers on both the Atlantic and Pacific coasts.⁷²

⁶⁹ Ibid., 217.

⁷⁰ “Truman Decorates Hull at Navy Hospital; He Calls Him ‘Father of the United Nations,’” *The New York Times*, April 16, 1947, 16, <https://nyti.ms/37wFT5i>.

⁷¹ United States House of Representatives, *History, Art & Archives: Bulwinkle, Alfred Lee*, accessed November 4, 2020, [https://history.house.gov/People/Listing/B/BULWINKLE,-Alfred-Lee-\(B001056\)/](https://history.house.gov/People/Listing/B/BULWINKLE,-Alfred-Lee-(B001056)/).

⁷² U.S. Centennial of Flight Commission, *The American Aerospace Industry During World War II*, accessed November 4, 2020, https://www.centennialofflight.net/essay/Aerospace/WWII_Industry/Aero7.htm.

On the other side of the bilateral negotiations at the start of the conference was Philip
460 Cunliffe-Lister, usually referred to as Lord Swinton. Cunliffe-Lister was born into a military
family and followed that path himself, joining the British army and serving throughout World
War I. Before the war broke out, though, he obtained his law degree from Oxford. In 1918, he
ran for and was elected to the House of Commons. Once elected, he served in a number of
prominent roles throughout government, including the Secretary of the Overseas Trade
465 Department, President of the Board of Trade, and Secretary of State for the Colonies.⁷³ A
conservative Member of Parliament, he was elevated to the House of Lords in 1935 and served
the majority of the rest of his life in public service, including as the Minister for Civil Aviation
during the Chicago Conference.

The United States, in response to the British white paper, crafted a “summary of
470 objectives favored by the United States of America with respect to post-war civil air transport.”⁷⁴
While the British and American points appeared at face value to be similar, there was substantial
disagreement in regards to the role of a potential international organization. Where the Brits
wanted a powerful organization that could make decisions for sovereign states, the U.S.
delegation argued for a limited body that had two fundamental powers. The first was mostly
475 technical, allowing for studies about “procedures and practices relating to safety regulations,
flight procedure, airline accounting, dissemination of meteorological information, customs
procedure, standardization of communications equipment and facilities and air navigation
aids.”⁷⁵ This first power did not come with much controversy, at least in its presence. Every

⁷³ A&C Black, *Swinton, 1st Earl of, (Philip Cunliffe-Lister)*, WHO’S WHO & WHO WAS WHO, accessed November 23, 2020, <https://www.ukwhoswho.com/view/10.1093/ww/9780199540891.001.0001/ww-9780199540884-e-160104>.

⁷⁴ Summary of Objectives Favored by the United States of America With Respect to Post-War Civil Air Transport, Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives at College Park, College Park, MD, 1.

⁷⁵ *Ibid.*, 3.

nation in attendance at Chicago agreed that for international air travel to function, the procedures
480 that pilots were required to follow must be equivalent from nation to nation. Where the British
and American proposals differed was in the division of economic power. The British white paper
sought the “enlightened international direction” of an empowered international organization. In
particular, the paper argued for an organization that could “maintain broad equilibrium between
the world’s air transport capacity and the traffic offering” and “ensure equitable participation by
485 the various countries engaged in international air transport.”⁷⁶ The U.S. proposal, though, only
gave the new organization the power to “collect complete information” regarding the economic
performance of airlines.

Chicago became the hub for more than 950 representatives in early November, with
delegations of all shapes and sizes making an appearance. Some countries, like Haiti and the
490 Dominican Republic, sent a single representative to Chicago, while core parts of the global
power structure like France sent sizeable delegations.⁷⁷ Regardless of delegation size, though, the
most important component was their presence. The convention would only be successful if it was
truly worldwide and every country adhered to the technical and economic aspects of civil
aviation.

495 One critical state, however, was missing on the first day: the Soviet Union. Though it had
traveled all the way to Montreal as a final stop before Chicago, the Russian delegation instead
decided to turn around and return home. Early in the morning on September 9th, before the
official invitation had been dispatched to heads of state around the world, Secretary of State Hull
sent a telegram to Ambassador Harriman in the Soviet Union. The message conveyed a sense of
500 importance to the matters at hand. Hull wrote, “the Department desires that you explain to them

⁷⁶ Proposal by the Delegation of the United Kingdom, National Archives College Park, 2.

⁷⁷ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 26.

that since the calling of this Conference is of the utmost urgency, we have not followed the course which we ordinarily would of consulting them before hand nor did we consult any other nation. We trust that the Soviet Government will be in agreement with us with respect to the urgency of this matter.”⁷⁸ Soviet leaders, though, were repulsed by the presence of some neutral countries. Spain, Portugal, and Switzerland were the countries in question, but because of their prominence in European airfare and their colonial powers elsewhere, Spain and Portugal were “highly important to development of international air networks.”⁷⁹ The refusal by the Soviets was unexpected, too, as the United States had made it clear that the nations would be in attendance.⁸⁰ In a show of how the United States viewed the conference, though, they still encouraged the group of Soviet aviation experts to remain at the conference “without participation directly or indirectly in the work of the conference” to be a liaison for Russian needs and opinions at Chicago.⁸¹ Under Secretary of State Edward Stettinius said that the show would go on, and the two core proposals put forward by the British and American delegations would still be used as the basis of discussions.

The conference opened on November 1, 1944, in the Stevens Hotel in downtown Chicago.⁸² In all, of the 55 invitations sent to countries around the world, 53 were represented. Other than the Soviet Union, Saudi Arabia had declined to send With the United States serving as hosts to the conference, they also had the privilege to select the temporary President of the Convention. Roosevelt unsurprisingly selected Berle to lead the convention initially, relying on

⁷⁸ The Secretary of State to the Ambassador in the Soviet Union (Harriman) (September 9, 1944) in *Foreign Relations of the United States: Diplomatic Papers, 1944, General: Economic and Social Matters, Volume II* (Washington, D.C.: U.S. Government Printing Office, 1967), 538.

⁷⁹ “2-Way Air Talks With Russia Go On,” *The New York Times*, October 31, 1944, <https://nyti.ms/3luy6uy>.

⁸⁰ The Acting Secretary of State to the Soviet Ambassador (Gromyko) (October 27, 1944) in *Foreign Relations of the United States: Diplomatic Papers, 1944, General: Economic and Social Matters, Volume II* (Washington, D.C.: U.S. Government Printing Office, 1967), 572-573.

⁸¹ *Ibid.*

⁸² MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 27.

520 his skills as a diplomat and as an aviation generalist to achieve the freedoms that his
administration sought for international aviation. Berle opened the discussions by reading a letter
from President Roosevelt. The letter reflected the wartime nature of the conference, as well as
the drive for international cooperation that drove the conference in the first place. Roosevelt
wrote, “the progress of the armies, navies and air forces of the United Nations has already
525 opened great areas to peaceful intercourse which has been closed for more than four black years.
We can soberly hope that all Europe will be claimed for civilization before many months have
passed.”⁸³ He went on to reference Paris and said, “at that time, however, air commerce was in
its infancy. Now it has reached maturity and is a pressing necessity.”⁸⁴ The convention was truly
remarkable for a wartime gathering, as it brought together countries from around the world—
530 some in total disrepair—and invited innovation and collaboration to create the future of the
industry.

The invitation to the convention allowed a preview of the discussions to come. The three
objectives were to establish “provisional world route arrangements by general agreement,”
“grant the landing and transit rights” that would be used to conduct the air services designed,
535 establish a temporary governing body to manage the transition to the new form of worldwide
aviation, and ultimately transition that temporary body into a permanent one that would provide
recommendations on economic and technological regulations.⁸⁵ The routes created through that
first objective were not to be permanent or binding, however. In the invitation, the Department of
State wrote that the convention would provide for “the early establishment of international air
540 routes and services for operation in and to areas now freed from danger of military interruption”

⁸³ Verbatim Minutes of the Opening Plenary Session, Box 2, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park, 1.

⁸⁴ Ibid., 2.

⁸⁵ “Department of State Bulletin No. 273,” 299.

during the transition to a new aviation landscape.⁸⁶ Temporary routes gave the international community a chance to create new regulations once the permanent governing body was created, but control growth of aviation in the interim.

At the same session as Berle's election as conference president and the opening of the festivities by President Roosevelt, delegates were greeted with the formal agenda for the conference.⁸⁷ First up was the establishment of temporary air routes, including the right to land for technical reasons and carry passengers from one domestic point to another within the same state. The second agenda point was around the technical standards that would govern worldwide aviation. Not only would this cover technical details around how to fly aircraft, but it also would address new issues raised by the increased use of civil aircraft, like customs and entry points. Third was the multilateral treaty that would eventually govern all international civil aviation, looking at not only the rights given to each country, but also to the structure of the governing body that would come to be known as the International Civil Aviation Organization. Finally, the conference would establish an interim council designed to manage the transitional phase of worldwide aviation.

We have already discussed the presence of two proposals: the British white paper and the United States' summary of objectives. Two other groups brought their own full drafts of a convention to the table as well; one, a joint proposal from Australia and New Zealand, and the other, a full draft from the Canadians. The Australian and New Zealand proposal was introduced during a meeting of the full convention and argued for near-complete internationalization of air

⁸⁶ "Department of State Bulletin No. 273," 298.

⁸⁷ "Proposed Agenda of the Conference," *Journal: International Civil Aviation Conference* no. 1 (November 1, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park.

traffic; it was quickly disregarded by most delegations.⁸⁸ Canada had been growing concerned about their southern neighbor's rapid technological and economic growth in aviation and was looking for ways to keep up in the 1930s and 1940s. Despite a strategic geographical and political position on the world stage, Canadian interests had been put to the side during the war to such an extent that they were left out of war support boards in the latter stages of the fight.⁸⁹ The first step for Canadian protectionism was the calling of an informal commonwealth conference to establish a joint position on the status of aviation in the future world order. Canada, Australia, New Zealand, and South Africa, among other commonwealth members not inclusive of the United Kingdom itself, all met in February 1944 to discuss the needs of the lessor commonwealth nations.⁹⁰

Canadians, ever the diplomats, found themselves in a sticky situation when the British expected Canada to follow their policy to the letter and support their proposal at the international conference. In the weeks before the gathering in Chicago, the major players in commonwealth civil aviation summoned their delegations to Canada for a pre-conference meeting to align policy stances. Unfortunately, the end result was “a blaze of glory” and nothing more than three memos with vague positions detailing certain freedoms granted to sovereign states regarding their usage of the air.⁹¹ Beginning with the informal talks and ending with the disaster pre-conference meeting, the Canadians had always sought “the twin pillars of international co-operation and independence of action” for the Canadian people.⁹² To this end, the Canadians prepared their own draft of the Chicago Convention that was designed to be an international compromise. It

⁸⁸ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 35.

⁸⁹ David MacKenzie, *Canada and International Civil Aviation 1932–1948* (Toronto: University of Toronto Press, 1989), 119.

⁹⁰ *Ibid.*, 127.

⁹¹ *Ibid.*, 139.

⁹² *Ibid.*, 142.

was in this vein that the Canadian draft toed the line between their own interests (thereby incorporating the opinions of their allies to the south), the interests of the commonwealth, and most importantly, the international nature of the conference.⁹³

The four agenda items were complex and broad topics. In order to address all of the
585 necessary requirements, the conference was structured around four substantive committees: the
Multilateral Aviation Convention and International Aeronautical Body committee, the Technical
Standards and Procedures committee, the Provisional Air Routes committee, and the Interim
Council committee. In addition, Berle convened the Executive Committee to act as the guiding
hand for the conference's rules, procedures, and overall goals. Berle selected himself to lead this
590 steering committee, as it was also known, which also included delegates from Afghanistan,
Brazil, Canada, China, Colombia, Ethiopia, France, the Netherlands, Norway, the United
Kingdom, and Uruguay, representing 5 of the world's 7 continents.⁹⁴ The notable exclusion from
this steering committee was Australia and New Zealand. While there was plenty of
commonwealth representation on the committee with the United Kingdom and Canada, Australia
595 and New Zealand had brought their own draft of a proposal to the convention, yet there were no
delegates from those states or the southern Pacific region at all. The executive committee made
very few decisions throughout the conference, but their first meeting established the *modus
operandi* of the conference. The committee decided that "as many sessions as possible [be] open
to the press," giving transparency to the outcomes of the conference. As a consequence, there

⁹³ David MacKenzie, *Canada and International Civil Aviation 1932–1948*, 147.

⁹⁴ "Executive Committee," *Journal: International Civil Aviation Conference* no. 2 (November 2, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park.

600 were nearly-daily dispatches around the world, notably in the New York Times and the London
Bulletin.⁹⁵

Despite this commitment to transparency, the executive committee wanted the
convention to move quickly and not devolve into a screaming match like the commonwealth
conference had. As such, it made many subcommittee meetings private to facilitate intimate
605 discussions of sensitive issues without worrying about parliamentary procedures and strict
notekeeping.⁹⁶ Because of this restriction, information known about committee proceedings is
limited and mostly drawn from the *International Civil Aviation Conference Journal*. Published
every working day of the conference, the journal provided the minutes from the previous day's
sessions and indexed the agenda for the day ahead. Finally, it tracked every document produced
610 by convention attendees and assigned it a document number for archival purposes.

Committee leadership was shared at the second full meeting of the conference after the
Committee on Nominations determined which delegates should be slated for leadership
positions. The chair of the Nominations committee hailed from Peru, which as part of the Latin
American bloc fiercely supported the American policy stances on most issues.⁹⁷ The delegates
615 from South Africa and Colombia were handed control of the first committee on the multilateral
treaty and governing body. While this was a consequential and broadly-defined committee,
others received more attention because of their controversial nature. The Technical Standards
and Procedures committee was chaired by the Netherlands and vice-chaired by the Canadian
delegate. The provisional assignments of new air routes, which got at the core of the economic

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 36. Latin American countries were supportive of the United States policies mostly because they aligned more with American beliefs. Aviation technology had not developed to the point of flying across the Atlantic, so they had to rely on overland routes to get to Europe and Africa. Under the British proposal, the Latin American countries would have lost a lot of their aviation power.

620 disagreements between the British and American delegations, was chaired by Berle representing
the United States and vice-chaired by the French delegate. Finally, the committee to establish an
interim governing council was controlled by the Brazilian and Chinese delegations.⁹⁸
Meetings of the individual committees began on the third day of the conference, and it was in
these smaller groups that most decisions were formalized. The negotiations that sculpted their
625 work, though, was performed either in informal meetings between delegations or in smaller
subcommittees. In the first committee, for example, the body created three subcommittees to
address individual issues that were delegated to it: one for the permanent international governing
organization, one for air navigation principles, and one for air transportation principles.⁹⁹ The
informal meetings were particularly important for the United States and United Kingdom
630 delegations. The two parties met frequently, particularly during the middle portion of the
conference, to hammer out their differences on the economic issues at hand.¹⁰⁰

Drafting the Chicago Convention

Now that the committees and subcommittees had been established and the proposals vetted and
635 disagreed upon, the monstrous task of crafting a new world order of aviation was staring the
delegates in the face. Arguably the most complex, but least controversial, component of the
convention was the technical work being led by the Dutch and Canadian delegations. The
leadership proposed splitting technical considerations into eight subcommittees on the functions

⁹⁸ "Resume of Second Plenary Session," *Journal: International Civil Aviation Conference* no. 3 (November 3, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park.

⁹⁹ "Resumes of Committee Meetings," *Journal: International Civil Aviation Conference* no. 4 (November 4, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park.

¹⁰⁰ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 41.

of flying, with two additional committees surrounding the work of regulatory bodies around the
640 world. These subcommittees were:¹⁰¹

1. Communications and airways;
2. The rules of flight (such as yielding and turning) and air traffic control systems;
3. Licensing for flight crew and ground personnel, as well as log books for aircraft;
4. Airworthiness standards for aircraft;
- 645 5. Registration of aircraft in each individual states and how that was demarcated on planes;
6. Technical standards for reporting and distributing weather;
7. Maps and charts;
8. Customs procedures and flight manifests;
- 650 9. Accident investigation and disaster recovery;
10. Publications and forms.

Lord Swinton was in attendance at the first meeting of the larger committee and “urged that the work on technical notes be complete in order to cover the entire field” and be contained “in such form as to go readily into a multilateral convention.”¹⁰² After this edict, the committee
655 agreed that the work produced must be all-encompassing. If the technical regulations had loopholes or gaps, the economic war going on in other committees would fall through because one of the primary goals of the conference – standardization of technology to facilitate worldwide aviation commerce – would have failed and prevented any meaningful international cooperation. The United States was recognized as the technical leader, having used civil and
660 commercial aviation for decades and encountered all possible problems by the time Chicago rolled around. Edward Warner, the vice-chair of the Civil Aeronautics Board and member of the

¹⁰¹ "Resumes of Committee Meetings," *Journal: International Civil Aviation Conference* no. 4, 20.

¹⁰² "Resumes of Committee Meetings," *Journal: International Civil Aviation Conference* no. 4, 21.

United States delegation, was a noted technical expert and brought with him 11 documents that were not coincidentally pre-existing standards for each of the technical areas to be addressed in the technical subcommittees. While he noted that these proposals were drafts based on previous
665 work, the goal was not to get the specific policies down – rather, it was to focus on “form and scope.”¹⁰³ While the forty-four other countries in attendance were given the opportunity to provide alternative drafts, no delegation raised their hands and the technical discussions began using the United States’ proposals as a framework.

Negotiations over technical standards was relatively straightforward. Take, for example,
670 subcommittee six and their discussions over meteorological standards. While this would become a significant topic of discussion later on in ICAO’s history, the discussions at Chicago around content were, in general, less controversial than the establishment of the committee structure. The *Journal* clinically described the process surrounding the standard definitions of meteorological terms, writing “The Subcommittee agreed to clear definitions of meteorological
675 terms as soon as possible and pass them to the steering committee for coordination with other technical subcommittees.”¹⁰⁴ Despite the many inherent complexities that come with technical definitions, the content sailed through subcommittee and was quickly approved by the broader second committee. Mackenzie wrote in his summary of the conference that “the goal was to achieve the greatest amount of standardization in international air travel in an effort to make air
680 travel as easy and safe as possible.”¹⁰⁵ The technical subcommittees finished their work quickly, and the 18th edition of the *Journal* included a special agenda item for the Committee 2 plenary

¹⁰³ Ibid.

¹⁰⁴ "Resumes of Committee Meetings," *Journal: International Civil Aviation Conference* no. 8 (November 8, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park, 53.

¹⁰⁵ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 40.

session: “discussion of approach to drafting the final report of Technical Committee II.”¹⁰⁶ And on November 18, 1944, Committee II met for the last time at Chicago to deliver the work created over the last 18 days. While the conclusions of the technical committee were not final, and there were still issues to address once a regulatory body was up and running, the bare bones of technical standardization had been created.¹⁰⁷

Despite how quickly the work of the technical committees moved, economic discussions in committees I, III and IV moved at a snail’s pace. Committee I, which was focused on the Multilateral Aviation Convention and International Aeronautical Body, had arguably the most broad and challenging job of any of the four content-based committees. The first, and perhaps only, policy that the delegates agreed on was brought by India, who proposed that all delegations “approve whole-heartedly the principle of international cooperation in the domain of civil aviation, and that they express the fervent hope that an appropriate organization to give effect to this purpose be established.”¹⁰⁸ The adoption of this motion signaled two feelings that pervaded the upcoming negotiations: all present at Chicago were fighting for the same end goal, though the ideals and missions of that goal differed from country to country; and that nearly all of the upcoming work would be subject to interpretation and disagreement, even in words that end up on paper and seem cut and dry at face value.

With the complexity of aviation, though, disagreements were inevitable over the fundamental rights of aircraft over sovereign territory. In order for temporary air routes to take off, delegates first had to agree upon rights granted to aircraft of differing nationalities.

¹⁰⁶ "Agenda for Plenary Session of Committee II," *Journal: International Civil Aviation Conference* no. 18 (November 18, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park, 149.

¹⁰⁷ "Resumes of Committee Meetings," *Journal: International Civil Aviation Conference* no. 19 (November 19, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park, 153.

¹⁰⁸ "Resumes of Committee Meetings," *Journal: International Civil Aviation Conference* no. 4, 20.

Conference President Berle was “determinedly opposed” to the “blocs of closed air” that had doomed other forms of international commerce, and prioritized the awarding of landing and transit for innocent passage.¹⁰⁹ Without these rights, civil aircraft were at the mercy of bilateral treaties, the same governmental interference that had been at the root of previous conflicts. Coupled with the right of innocent passage was the right to technical stops and usage of public airports on a “non-discriminatory basis.”¹¹⁰ Technical stops were especially critical because while aircraft technology had developed significantly since the Wright Brothers first flew, fuel loads were still somewhat restrictive and refueling stops were necessary for longer flights, like the transcontinental rights that formed the basis of substantial controversy. Coupled with the right to technical stops and usage of public airports more broadly was the so-called application of cabotage. Would foreign aircraft and airlines have the ability to carry domestic passengers domestically? And more consequently, would this right be given in perpetuity, or would it be temporary until the establishment of the permanent governing board?

Committee I was assigned the four proposals for review: the United States proposal, the British white paper, the independent Canadian proposal, and the trunk routes proposal courtesy of the Australian and New Zealand delegations.¹¹¹ To work through these proposals, the committee was divided into the three subcommittees mentioned earlier: the international organization, air navigation principles, and air transportation principles. Discussions around the international organization were centered around the power vested in the organization. Berle spelled out the United States opposition to any regulatory powers being given to an international

¹⁰⁹ “Many Nations Give Opinions on Airways,” *The New York Times*, November 3, 1944, 1, <https://nyti.ms/35yMWdV>.

¹¹⁰ “Invitation of the United States of America to the Conference,” *Journal: International Civil Aviation Conference* no. 1 (November 1, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park, 4.

¹¹¹ “Resumes of Committee Meetings,” *Journal: International Civil Aviation Conference* no. 4, 20.

organization in his letter to Roosevelt, saying “we simply could not dispositive power over United States air traffic to any international body in the present state of affairs” because “there was no method or project of creating an impartial body.”¹¹² Instead, the United States wanted the
725 organization to have a more consultative role, and one that inspired diplomacy rather than infighting, and discussion rather than overbearing international regulation. The two major powers, America and Britain because of their vehement disagreement, needed to find a resolution that both could live with. The Canadian draft proposal had been the working document of subcommittee 1, and after progress stalled in committee discussions, the Canadians
730 led Berle and Swinton into a private session to hash out their differences.¹¹³ Not much is known about these private negotiations early in the conference, but the *Journal* reports very few meetings took place in the economic committees between November 12th and November 21st, when the committees returned with a new structure.

Clearly the economic factors and discussions were more complex and intertwined than
735 conference leadership wanted to admit. When the economic committees met in full after a conference off-day on November 20th, 1944, it did so in a new joint form of committees I, III and IV.¹¹⁴ For the rest of the conference, the majority of economic conversations would be held in this new format. John Martin, the chief delegate from South Africa, was selected by Berle to lead the new joint committee.¹¹⁵ On November 22nd, at the first meeting of the new joint working
740 group, the United States, United Kingdom and Canada revealed their working document, the

¹¹² “Letter to President – Report on Conference,” National Archives College Park, 8.

¹¹³ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 41.

¹¹⁴ “Resume of Joint Meeting of Committees I, III, and IV,” *Journal: International Civil Aviation Conference* no. 23 (November 23, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park, 162.

¹¹⁵ *Ibid.*, 165

Section of International Air Convention Relating Primarily to Air Transport.¹¹⁶ This document formed the basis of the rest of the conference and lay out all of the economic terms for further discussion. But to get to this document, there were high-level negotiations between world leaders.

745 Everyone knew that civil aviation was critical and that, for the future of the world order, the allied nations needed to agree on the basics to maintain control and order around the globe. Berle read Acting Secretary Edward Stettinius into the situation on November 14 and informed him of the progress made so far. Berle wrote, “the British, who came with a proposal which was not only unacceptable but rather offensively so, took about a week to discover that it would not
750 do, and then asked for guidance in the revised proposal which they are prepared to submit.”¹¹⁷ The original proposal referenced, if course, was the white paper brought to the conference, and the “revised” proposal was in essence the Canadian document. After three weeks of discussions and negotiations, Berle thought the group was nearing a deal. “We are nearing the climax,” he wrote in the same letter to Stettinius, and “I still hope to end this conference in ten days but it
755 may run over by a little.”¹¹⁸ Unfortunately, this prediction was not to be.

The Canadian proposal had objectionable components to both sides. For the United States, the international organization had way too much power without enough national sovereignty. Article I of the Canada draft, which discussed the international governing authority, gave the so-called “International Authority” seven explicit powers. While there were some areas

¹¹⁶ Section of International Air Convention Relating Primarily to Air Transport, Report on Conference to Technical Documents Book 1, Box 2, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives at College Park, College Park, MD, 1.

¹¹⁷ The Chairman of the American Delegation to the International Civil Aviation Conference (Berle) to the Acting Secretary of State (Stettinius) (November 11, 1944) in *Foreign Relations of the United States: Diplomatic Papers, 1944, General: Economic and Social Matters, Volume II* (Washington, D.C.: U.S. Government Printing Office, 1967), 583.

¹¹⁸ The Chairman of the American Delegation to the International Civil Aviation Conference (Berle) to the Acting Secretary of State (Stettinius), November 18, 1944.

760 where all sides were in agreement, like standardized technical regulations and the continued
separation of civil and military aviation, there were two clauses that gave the United States
pause: “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 every state the opportunity of
participating in international airline operation in accordance with its needs for air transportation
765 service,” and “to avoid the development of economically wasteful competitive practices.”¹¹⁹

Over the course of early negotiations, this dispute got worked out, with the United States
agreeing to a more powerful organization that could allocate routes, in exchange for the so-called
“fifth freedom” traffic. But even this bargain was not to last more than a week. By November
20th, negotiations had fallen apart again because of disputes over how to measure international
770 traffic, and it looked like the conference would fall apart without an agreement.

In a last ditch effort to secure a deal between the two major powers, and thereafter the
rest of the world, on civil aviation, President Roosevelt and Prime Minister Churchill exchanged
multiple telegrams during the conference’s slow period on the weekend of November 18th. At
issue was the balance of traffic between countries – were larger countries hamstrung by the
775 amount of traffic the smaller countries could garner on their airlines, or could they maintain
levels profitable given the size of their country? Said a different way, were airlines forced to split
routes, like New York to London, evenly with the national airline of the landing country?
President Roosevelt was not going to let this issue diminish the possibility of the conference
failing to reach an agreement, so he put the onus on him and Churchill to work out a deal more
780 agreeable to both sides.

¹¹⁹ Draft International Air Transport Convention, Report on Conference to Technical Documents Book 1, Box 2, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives at College Park, College Park, MD, 7.

785 The aviation conference is at an impasse because of a square issue between our people and yours. We have met you on a number of points, notably an arrangement for regulation of rates and an arrangement by which the number of planes in the air shall be adjusted to the amount of traffic. This is as far as I can go. In addition, your people are now asking limitations on the number of planes between points regardless of the traffic offering. This seems to me a form of strangulation. It has been a cardinal point in American policy throughout that the ultimate judge should be the passenger and the shipper. The limitations now proposed would, I fear, place a dead hand on the use of the great air trade routes. You don't want that any more than I do.

790 The issue will be debated tomorrow. I hope you can get into this yourself and give instructions, preferably by telephone, to your people in Chicago so that we can arrange, if possible, to agree. It would be unfortunate indeed if the conference broke down on this issue.¹²⁰

In response to the above, Churchill called Roosevelt's bluff, saying that the United Kingdom had "gone to the limit of concession in this draft" in allowing a higher level of fifth freedom traffic to proceed if demand allows it.¹²¹ In closing, Churchill played his trump card: the willingness to walk away. He wrote, "if you cannot confirm the agreement reached on November 17, the Conference should finalise the valuable technical agreements which have been arrived at, and that the rest of the matters should be adjourned for a period during which we can consider the matter at greater length and see whether we can arrive at some solution of the problem."¹²²

800 The United Kingdom would almost surely have preferred this outcome rather than providing more unilateral concessions, like the United States was asking for. A return to the status quo would allow British airlines to rebuild their strength and civil aviation capacities in the post-war years before reopening and encouraging civil aviation growth. Roosevelt, seeking to strengthen 805 the American grip on economic domination in the immediate post-war years, broke out his

¹²⁰ President Roosevelt to the British Prime Minister (Churchill) (November 21, 1944) in *Foreign Relations of the United States: Diplomatic Papers, 1944, General: Economic and Social Matters, Volume II* (Washington, D.C.: U.S. Government Printing Office, 1967), 584.

¹²¹ The British Prime Minister (Churchill) to President Roosevelt (November 22, 1944) in *Foreign Relations of the United States: Diplomatic Papers, 1944, General: Economic and Social Matters, Volume II* (Washington, D.C.: U.S. Government Printing Office, 1967), 585.

¹²² The British Prime Minister (Churchill) to President Roosevelt, November 22, 1944.

strongest negotiation tool: the lend-lease aid that epitomized British reliance on American resources in the war. A telegram to Churchill from Roosevelt did not directly threaten the economic aid, but certainly showed Churchill that he was on thin ice if the delegates at Chicago failed to reach an agreement.

810 We are doing our best to meet your Lend-Lease needs. We will face Congress on that subject in a few weeks and it will not be in a generous mood if it and the people feel that the United Kingdom has not agreed to a generally beneficial air agreement. They will wonder about the chances of our two countries, let alone any others, working together to keep the peace if we cannot even get together on an aviation agreement.¹²³

815 As the discussion between world leaders was ongoing over and above the heads of the delegates, they continued to meet as a combined economic committee to make progress toward a final agreement. A *New York Times* article noted that “despite the incomplete nature of the agreement, it was regarded as representing an important step forward from the seventeenth century idea of trade monopolies, East and West India companies and wars between great
820 powers for control of sea commerce.”¹²⁴ Because the majority of negotiation occurred behind closed doors, the minutes and records of the joint committee meetings are notably brief. On November 29th, the American and British delegations submitted yet another draft of their proposals. The most notable change was ultimately carried through to the final draft of the Chicago Convention: the separation of the freedoms from the convention itself. Though they
825 were functionally connected and a near necessity, signing the two documents that listed the five freedoms would not be a mandatory part of joining the new aviation world; rather, they would only be required to ascertain the fifth freedom rights that so many countries had been outspoken about wanting. The French delegate even went so far as to suggest that the debate was more “a

¹²³ MacKenzie, *ICAO: A History of the International Civil Aviation Organization*, 45.

¹²⁴ Russell Porter, “Plenary Session to Study Air Pact,” *The New York Times*, November 22, 1944, <https://nyti.ms/3qChzYC>.

matter of form rather than substance.”¹²⁵ The Americans, who proposed the idea in the first
830 place, suggested that “a major part of the work of the proposed International Civil Aviation
Organization will grow out of the separate International Air Transport Agreement.”¹²⁶ This new
form of an agreement allowed countries to set aside their differences and agree, at least
temporarily, on a new order of the air.

After a great deal of diplomatic wrangling and pressure campaigning, an agreement was
835 reached. The British plan, “one of limitation,” was on the table against the American plan, which
allowed for countries and their airlines to spin up new air capacity.¹²⁷ Berle described the
following debate as “dramatic and somewhat unexpected.”¹²⁸ The proposals were put toe to toe
and ultimately the United States draft won out with a few modifications. One of the concessions
made by the United States, in order to get any agreement signed, was to defer the controversial
840 changes that the British vehemently objected to until the new provisional body. Until a
permanent council was established, the prominent economic issues – rate control, route
allocations, and other regulations that put more control in the hands of the disassociated
international body – would remain unregulated by the provisional governor of the air.¹²⁹ When it
came time to sign the papers produced throughout the conference, the fifty-two countries present
845 had a couple of choices to make. The core document produced at Chicago, the Convention on
International Civil Aviation Done at Chicago, contained the broad-strokes details of civil

¹²⁵ “Joint Subcommittee of Committees I, III, and IV,” *Journal: International Civil Aviation Conference* no. 31 (December 1, 1944), Journals to Summary of Objectives Box 01, Entry P24; General Records of the Chicago Conference on Intl Civil Aviation, 1943-1945, Record Group 43; National Archives, College Park, 207.

¹²⁶ *Ibid.*, 208.

¹²⁷ The Chairman of the American Delegation to the International Civil Aviation Conference (Berle) to President Roosevelt (December 7, 1944) in *Foreign Relations of the United States: Diplomatic Papers, 1944, General: Economic and Social Matters, Volume II* (Washington, D.C.: U.S. Government Printing Office, 1967), 607.

¹²⁸ *Ibid.*

¹²⁹ Russell Porter, “‘Final Act’ Passed by the Air Parley,” December 6, 1944, 18, <https://nyti.ms/3gg3Ule>.

aviation and its ongoing governance, including details on the provisional and permanent council and assembly structure. A similar interim document was prepared for signatures that would serve as a temporary ratification. The British had proposed and prepared a document that granted the first two freedoms of the air, that of transit, technical, and emergency stops, and nothing more, leaving the opportunity for bilateral agreements between countries as an option. This document was called the International Air Services Transit Agreement. In a similar vein, the United States had prepared a document for those countries agreeing to award the five freedoms multilaterally. This treaty was entitled the International Air Transport Agreement. Finally, different countries, including the United States, had prepared various bilateral agreements to secure some variation of the five freedoms that would last until the permanent ICAO was established.

The Five (or Nine) Freedoms

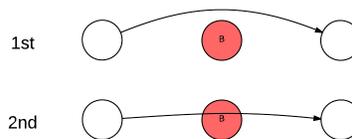
The economic decisions made at Chicago revolved mainly around the idea of aviation freedoms. How would nations and their airlines be able to access air resources of other countries, and would those rights be consistent? In order to understand the views of the various countries and proposals at Chicago, one must possess a fundamental understanding of the different freedoms that have become a crucial component of international aviation today. The diagram below provides a visual representation of the different freedoms.¹³⁰ While freedoms one through five are formally documented in widely respected and ratified international treaties, the higher-order freedoms are much less common and are given usually through bilateral or multilateral treaties between states. The ICAO barricades the legal interpretation of these freedoms behind an

¹³⁰ All diagrams embedded below from: Synchronism, *English: A Diagram of the Nine Freedoms of the Air, for Use in the Article Freedoms of the Air*, accessed November 24, 2020, https://commons.wikimedia.org/wiki/File:Freedoms_of_the_Air_Diagram.png.

expensive manual that it refuses to publish digitally for reasons unbeknownst to the author, but provides a less-than-helpful summary of freedoms on their website.¹³¹ Each freedom is

870 accompanied by a diagram that visually explains how each freedom operates. Circle A, displayed in blue, represents the home state of the aircraft. Circle B and Circle C, colored red and yellow, represent two different foreign nations where the aircraft is not registered. Finally, the lines and arrows indicate the direction of travel and whether the travel is one-way or round-trip.

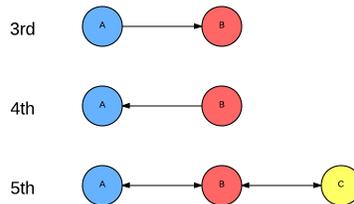
875



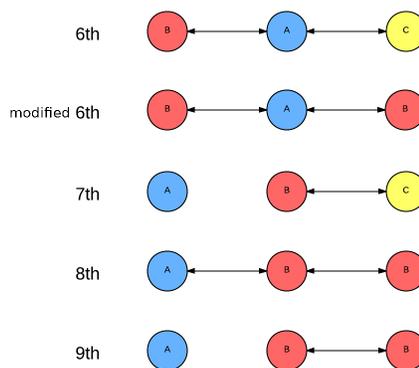
The first two freedoms are derived from the Chicago Convention itself, but included in the separate International Air Services Transit Agreement. The concept of the first freedom is almost
880 a counteraction of sovereignty of the air, yet is essential for the practice of civil aviation. It grants other contracting states “the privilege to fly across [each other’s] territory without landing.” In effect, this allows both scheduled and non-scheduled civil aviation to use the airspace above any party to the convention without discrimination, subject to the technical rules
885 and limitations placed on all states by the Chicago Convention itself. The second freedom is similar to the first, but instead grants the privilege to land in foreign territory for reasons not relating to commerce. This is the so-called technical stop rule, allowing planes to stop for an emergency or refueling as necessary so long as they do not leave people or goods behind. These

¹³¹ “Freedoms of the Air,” accessed November 18, 2020, <https://www.icao.int/Pages/freedomsAir.aspx>.

two rules coupled together form the basis for all of international aviation, as without them,
890 planes could not cross international borders or complete long-haul flights without substantial
negotiation between states.



Freedoms three through five are designed to allow civil aviation to operate as an economic tool.
Where the first two freedoms supported the operation of flights across borders, these allow
895 currency, goods, and services to operate freely between signatory nations. They were also
established at Chicago in 1944 as part of the International Air Transport Agreement. The third
and fourth freedoms are generally granted together, for they are near worthless when standing
alone. The third freedom allows an aircraft to fly from its home state and land in a sovereign
nation for the purpose of scheduled civil aviation. The fourth freedom allows the same aircraft to
900 take off from the foreign nation in which it landed and return to its home state. Finally, the fifth
freedom advances the principles granted in freedoms three and four and gives the same abilities
to aircraft transiting from one country to another with a commercial stop in a foreign state in
between.



905 The ICAO specifically does not acknowledge the freedoms beyond five as official freedoms,
largely because they were not established by an international treaty and are not universally
accepted in the present day. However, they are still important and derive their structure from the
first five that were established at Chicago. The sixth freedom grants the power to fly passengers
and goods from one country to another via the aircraft's home country, and is a cornerstone of
910 modern scheduled commercial air travel. The seventh, eighth, and ninth are much less common
because of their permissiveness. The most well-known example is the European Union's unified
airspace treaty, though Australia and New Zealand also exchange these rights.¹³² In essence,
these three rights give airlines the ability to commandeer traffic from other countries for their
own gain. The seventh freedom allows a flight to be operated between two foreign nations
915 without continuing onto the aircraft's home nation. The eighth freedom allows a foreign aircraft
to complete a domestic leg before connecting onto its home nation, and the ninth allows a
foreign aircraft to complete a domestic flight without any intent to return to its home nation.
These nine freedoms got their start at the Chicago Convention, and without their indoctrination
into law they would not be powering the modern-day aviation system.

920

Where Chicago Landed

The Preamble of the Convention on International Civil Aviation Done at Chicago
summarizes just how powerful, impactful, and timely the work done at Chicago was:

925 Whereas the future development of international civil aviation can greatly help to create
and preserve friendship and understanding among the nations and peoples of the world,
yet its abuse can become a threat to the general security; and

¹³² Wendover Productions, "The Five Freedoms of Aviation," accessed December 3, 2020,
<https://www.youtube.com/watch?v=thqbjA2DC-E>.

Whereas it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;

930 Therefore, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

Have accordingly concluded this convention to that end.¹³³

935 The governments of the world, even at a time of great conflict, saw it necessary to convene a massive gathering of some of the world's top diplomats and technical experts to regulate a growing field that would bring peace and prosperity to the entire world. The leaders of air commerce in the United States and United Kingdom believed, justly, that the world needed an organization to ensure the freedom of access to the year for decades to come.

940 Even before Chicago, the people of the world needed to determine what truly mattered for the post-war good of humanity. To preserve peace, yet still take advantage of the power that control of the air provides, a very fine line had to be toed. It would be wrong to take away the sovereignty of territorial air. Nations owned the territory above as they owned the territory below. Article 1, just as in the Paris Convention issued 25 years before it, gave "complete and
945 exclusive sovereignty over the airspace above its territory."¹³⁴ At the same time, mechanisms had to be created to allow for access to that sovereign territory fairly and equitably.

Civil aviation is the peaceful transport of people and goods via the air. In order to preserve the integrity of the air, the authors prevented signatories from using "civil aviation for any purpose inconsistent with the aims of this Convention," referring to "preserving friendship
950 and understanding."¹³⁵ The transport of military goods, or conducting war through the air, was

¹³³ World Intellectual Property Organization, "Convention on International Civil Aviation Done at Chicago on the 7th Day of December, 1944," accessed December 4, 2020, https://www.wipo.int/edocs/lexdocs/treaties/en/icao-ca/trt_icao_ca_001en.pdf.

¹³⁴ World Intellectual Property Organization, "Convention on International Civil Aviation."

¹³⁵ Ibid.

not tolerated. The powers of civil aviation had to be used for good, and to allow for the equitable access that was desired by all states in various forms, there had to be a fundamental understanding of what civil aviation was.

The mechanisms developed to deal with the diametrically opposed forces—the complete
955 and total sovereignty of the air put up against the necessity of free access and use of that very same airspace—were ingenious and ensured the air travel that future generations would rely on to share messages, ideas, and goods with each other would remain protected. Article 7 allowed each state the right to deny domestic travel by foreign aircraft, provided that they did not “enter into any arrangements which specifically grant any such privilege to any other State or an airline
960 of any other State.”¹³⁶ Giving control of the air to the states, but forcing non-discrimination clauses upon sovereign airspace, ensured that the colonial-era conflicts over sea rights could not occur with a substantially more powerful mode of transport. Gone were the days of bilateral treaties and strong alliances controlling the fate of the world; now, the power rested in the hands of all nations to expand their air power and connect the citizens of each state to the world more
965 broadly. Now there would be a single international convention governing how pilots would be licensed, how aviators would fly over mountain ranges, and so many more policies and procedures necessary for conducting free flight between nations.

The Chicago Convention even thought ahead to situations nobody could have dreamt of in 1944. Article 9 anticipates various isolated national incidents that could justify the disruption
970 of international air commerce, noting:

Each contracting state reserves also the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory, on

¹³⁶ Ibid.

975 condition that such restriction or prohibition shall be applicable without distinction of
nationality to aircraft of all other States.¹³⁷

The incidents of September 11, 2001 and their fallout is likely the most memorable
implementation of this power. Over the course of just two hours, the United States closed its
airspace, diverted dozens of en-route flights to Canada, and prevented all civil aviation from
taking place in its airspace for more than two days.¹³⁸ But the civil aviation treaty held its
980 ground, because it had the foresight to write the language enabling such a move. Supplementing
the original treaty language was the council of states, made up of the leaders in civil aviation
from multiple groups, and an assembly of all signatory states. The design of the ICAO, combined
with its timeless and astute language, fulfill the goals spelled out in the preamble.

It is on occasion necessary, for the good of humanity, to set aside differences and
985 formulate ideas that change the future of the global society. The gathering at Chicago on
November 1, 1944, which numbered nearly one thousand strong, is proof that these shared goals
are always achievable with grit, diplomacy, and a commitment to doing what is right rather than
what is politically expedient. On Thursday, December 7, 1944, the representatives of 54
countries signed onto the future of aviation to ensure that conversations like the one above and
990 the one below can still occur today.

128.800 MHz: Boston Logan International Airport Tower

TK82: "Boston tower, Turkish 82 holding short runway one-five right."

KBOS Tower: "Turkish 82, good evening. line up and wait runway one-five right."

TK82: "Line up and wait runway one-five right, Turkish 82."

¹³⁷ World Intellectual Property Organization, "Convention on International Civil Aviation."

¹³⁸ Sally Donnelly, "The Day the FAA Stopped the World," *Time*, September 14, 2001,
<http://content.time.com/time/nation/article/0,8599,174912,00.html>.

995 **KBOS Tower:** "Turkish 82, winds from two-one-zero at nine gusting to one-eight, cleared for takeoff runway one-five right."

TK82: "Cleared for takeoff, Turkish 82."

KBOS Tower: "Turkish 82 contact departure one-three-three decimal zero, have a safe flight."

TK82: "One-three-three decimal zero for Turkish 82, good night."

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