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D. Goedhuis

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THE AIR SOVEREIGNTY CONCEPT AND UNITED STATES INFLUENCE ON ITS FUTURE DEVELOPMENT*

BY PROFESSOR DR. D. GOEDHUIS

Netherlands Civil Air Attaché in London, Paris, Lisbon and Madrid. Professor of Air Law at Leyden University, *formerly* Secretary General of the International Air Traffic Association.

IN the year 414 before Christ a play was produced in Athens in which Aristophanes described how the birds when building a free city in the air beat off the legislators who came to offer their services. If Aristophanes could look at the present situation in the air and see in what measure the legislators have prevented the birds of this day from unfolding their wings, he would have prided himself on his foresight.

I should like to submit some thoughts on the question of how protectionist tendencies have gradually come to dominate the air scene and some ideas for your consideration as regards the further development of rules to govern international aviation relations. It is now about half a century ago that the principle of the state's sovereignty over the air space above its territory began to be recognized. The reason why this principle found rapid and universal recognition was that the state's need of authority over its territorial air space was clear and urgent. It quickly became manifest that sovereignty over the land and territorial waters can never be made effective if the air be beyond the jurisdiction of the sovereign power—it quickly became manifest that sovereignty over the air space is indissolubly linked up with that over the surface territory. While agreement on the principle that the state should have sovereignty over its territorial air space was easily achieved, the views of both statesmen and writers in respect of the nature and contents of this sovereignty have been deeply divided and continuously changing.

The very first question concerns the nature of the sovereignty concept *in general*. Does sovereignty mean an absolute quality, an unrestricted power, or is it only in the relative sense that the state is sovereign? In his excellent lectures for the Academy of International Law given in 1953, van Kleffens, exploring this theme in all its aspects, concluded that the doctrine of absolute unfettered sovereignty has few adherents left in our day; with the sole exception of extremists of the left and of the right who seem incapable of discerning historical reality.

Now as we shall see, much of the confused and incoherent thinking about inter-state aviation relations flows from the acceptance of an antiquated atavistic notion of unrestricted sovereignty, from the acceptance of a doctrine of “*uneingeschränkte Herrschergewalt*” which can

* Prepared as a lecture for the United Nations Lawyers Group.

only lead to a complete negation of international law. Thinking about the aviation problem has been vitiated by the adoption of an ancient positivist doctrine according to which sovereignty could be limited only by rules to which states had given their positive consent; and as no positive consent had been given sovereignty in practice was considered to be unlimited by any rule. Later I shall have something to say about the reasons why this situation arose. It is sufficient to mention here that I consider it an axiom that in the air just as on the surface the state can be sovereign only in the *relative* sense.

FIVE MAJOR AIR CONFERENCES

Of the considerable number of international air conferences which have been held during the last half century, there are five which have directly or indirectly exerted a very great influence on the development of the doctrine of air sovereignty: The International Conference on Air Navigation in Paris in 1910, the Versailles Peace Conference in 1919, the Conference of the I.C.A.N. (International Commission for Aerial Navigation) in Paris in 1929, the International Civil Aviation Conference in Chicago in 1944 and the Geneva Conference of the ICAO in 1947. These, in broad outline, give a picture of the fluctuating and often conflicting attitudes of the states which play the most important part in the development of international civil aviation. I should like to examine these Conferences briefly in the light of the adoption or rejection of sovereignty limiting legal rules.

The International Conference on Air Navigation of 1910

In May 1910, at the invitation of the French Government, nineteen states sent representatives to Paris, to participate in an International Conference on Air Navigation.¹ A new era was about to be opened and the general climate was favorable. Politically the world was still living in the century beginning with the Peace of Paris of 1815, in which a balance of power had been attained that produced the most remarkable progress in practically every field. The economic field was governed by liberal ideas directed towards a promotion of international traffic and in international law intense progress had been achieved. It was in the beginning of the 20th century that the idea of the sovereign state in the sense of an omnipotent completely self-determining entity was definitely rejected.

The Conference failed to achieve positive results. I cannot here go into the reasons for this failure; but the Conference has been of importance because it brought out clearly the leading thoughts in the minds of the delegates regarding the regime of the air. The delegates did not formulate definite principles concerning the nature of their rights over their territorial air space, but there can be no doubt that the rights claimed by all states implied the rights of a sovereign power. However

¹ See article by John C. Cooper, "The International Air Navigation Conference, Paris, 1910" 19 *Journal of Air Law and Commerce* 127 (1952).

this did not mean that they considered this sovereignty to be an *unrestricted* power. All the delegations recognized that the rights of the states were restricted by the principle of freedom of passage in favour of foreign aircraft. Particular attention should be called to the analogy drawn by many delegates between the right of entry of aircraft and the right of entry of ships in foreign territory, which latter right, flowing from the general principle of freedom of navigation, is based on a rule of law existing "*pleno jure gentium*." This freedom is part of the general and well recognized principle of the freedom of maritime communications to which a few years ago the International Court of Justice referred to once again in the Corfu Case and which finds its basis in the *social needs* served by this freedom. It seemed completely obvious to the delegates that these social needs would equally exist in the field of air communications. The Conference was unanimous in considering freedom of passage in the words of the Report by the President as "*un fait normal qui devait sans hésitation être reconnu*."

The Versailles Peace Conference of 1919

What happened at the Peace Conference in Versailles is of essential importance for the understanding of the sovereignty concept in the air. A "Commission de l'Aéronautique" was charged with the drafting of an International Air Convention. The discussions of the Commission took place partly against the background of ideals of individual and national freedom, of an understanding of the need for co-operation in social and economic affairs, and partly against the background of a post-war mentality of distrust of the ex-enemies. And then there was another thing. The fighting powers had used every effort to develop the aeroplane because of its destructive element. An "odium" rested upon aviation as a result of what de Madariaga had once called: "The unholy origin of its power."

At Versailles the text of an article was adopted in which the rule was laid down that every state has complete and exclusive sovereignty over the air space above its territory (article 1 Paris Convention). This text was taken over by the Convention of Madrid (Ibero-American Convention) of 1st November 1926 and the Convention of Havana (Pan-American Convention) of 20th February 1928. The Chicago Convention of 1944 followed the footsteps of its predecessors. As the confused and controversial thinking about the meaning of this article still persists today, it may not be superfluous to add some further observations to the various explanations already given on this subject. The crucial point is this: did the authors of the article want to indicate that the power of the state over the air was an unrestricted power? Was that the reason why the words "complete and exclusive" were added to the term "sovereignty"? Or were they simply meant to convey that only the subjacent state is entitled, to the exclusion of all others, to exercise legal power?

The Minutes of the Conference show that the delegates were unanimous in considering freedom of passage for foreign aircraft as being indispensable for the international community but—and here we come to the heart of the matter—from this international community the delegates wanted to exclude the ex-enemy states. In the Report of the Legal Sub Commission it was stated that, whereas the right of sovereignty was to be vigorously maintained in regard of third (i.e. ex-enemy) states, this right was not to be exercised in regard of states that trusted each other. Thus the Conference halted between two opinions. One of absolute unlimited sovereignty with regard to ex-enemies; one of relative sovereignty limited by freedom of passage in the case of the states that trusted each other. In respect of “trustworthy” states, this freedom was considered normal—as a principle of law—inherent to the air regime. It was not realized that the proclamation of such an over-strained concept of sovereignty in the first article of the Convention would of necessity be of consequence, not only for ex-enemies’ aviation but for the *whole* of international aviation. It was thought that this indispensable freedom for the “trustworthy” community of states could be guaranteed by stipulating in article 2 of the Convention that each Contracting State undertakes to accord freedom of innocent passage to the aircraft of the other Contracting States. By this a *conventional* basis was therefore given to the right of passage. On account of the wish to exclude the ex-enemy states, the view was formed that there was no way of acting otherwise. Eventually, however, this led to the right of passage becoming regarded as no more than a concession, whereas it is very clear from observations by the authors of the Convention that this right was considered a “*conditio sine qua non*” for international aviation.

The International Air Conference of 1929

In the first years after 1919 no great difficulties were encountered with regard to application of the sovereignty concept. The general political and economic background was favorable. Appreciation of international law was growing. The liberal ideas by which international traffic was governed also had their influence on international aviation. Room was left to private air transport initiative. The public element had not yet eliminated the private one. The leading part in international air communication development was played by Western-European Aviation Companies who with regard to *European* air transport showed understanding for the inter-dependency of aviation interests. It is significant that the first conflict of interests in aviation concerned in intercontinental service. In 1928 Imperial Airways wished to fly a service over the Belgian Congo. The United Kingdom, still holding the view that air sovereignty was limited by the principle of freedom of passage, was of opinion that this service could be taken into operation without special permission. Belgium was opposed to this. The question of prior permission was discussed at the Air Con-

ference of 1929 and it was at this Conference that the principle of freedom of traffic, at least for regular air services, was completely abandoned by a great majority of states. Of the thirty-one states represented, there were only four, the Netherlands, the United States, the United Kingdom and Sweden, who continued to consider the restriction of air sovereignty as a *necessity*. What were the motives underlying the wish to unrestrictedness as demonstrated at the Conference? Considerations of security were put forward, but it was fear of competition and uncertainty with regard to the state's own ability by which this unimaginative attitude was prompted. Not the slightest attention was paid to the question what consequences the proclamation of the principle of total unrestrictedness would have on the development of world airlines.

During the second decade, from 1929 to the outbreak of World War II, the retrogressive tendencies were further accentuated. Towards the middle of this decade both the United States and Great Britain left the camp of the fighters for freedom of air traffic. Though continental air traffic in general was able to surmount the obstacles laid in its way, inter-continental aviation was on the other hand delayed for years by the reluctant attitude adopted by several states towards the operation of air services of other nationalities.

Through the outbreak of the war in 1939 the controversies were suspended for six years. This did not, however, result in an interruption of the academic polemics. After the first war years, statesmen, writers, aviation experts, all began to proclaim and to defend divergent views as regards the rights in the air to be exercised by states after the war.

In was in November 1943 that President Roosevelt, feeling it was time to take an interest in the affairs of post-war air transport, called a meeting at the White House. The Report on the meeting clearly shows that Roosevelt wished air sovereignty to be limited by a considerable freedom of air traffic—unrestricted 5th freedom rights to be recognized, only cabotage traffic to be reserved.

The Chicago Aviation Conference of 1944

It was these liberal ideas which the American delegation tried to introduce at the International Civil Aviation Conference of Chicago in 1944. The American efforts, seconded strongly by the Dutch, to limit air sovereignty by the principle of freedom of air traffic, failed however.

In the Chicago Convention the text of article 1 of the Paris Convention was taken over and so was the principle, adopted in 1929, that regular international air services could be carried on only with the definite permission of the overflown state. This did not mean that sovereignty was entirely unrestricted. In article 5 of the Convention the right of non-scheduled flight has been agreed to. As well from the history of the article as from its wording taken as an entity it is in my

opinion clear that those who drafted and adopted the article meant to create the right for operators of non-scheduled flights to carry them out without prior permission. In practice, however, a majority of states unfortunately interpret article 5 in a way which renders it for the greater part illusory.

As regards the regime of international air services two attempts were made to limit, outside the Convention proper, the sovereignty by freedom of passage. This freedom was embodied in two annexes. The one embracing the right to fly plus the right to commercial traffic,² the other limited to the right to fly without commercial rights.³ The first attempt failed through lack of a sufficient number of signatory states. The second attempt proved a success, and a success which, as we shall see, is still growing. It offers one of the few really bright spots in the sky darkened by all kinds of restrictions.

When the war was over and aviation wished to stretch its peaceful wings, this was in most cases (in all those which did not fall under the International Air Transport Agreement) possible only under the regime of bilateral agreements. The difficulties in concluding such agreements were at first tempered by an until then unknown need for air transport as a result of the severe disorganization of transport means on land and sea. But soon protective tendencies made themselves felt more and more.

The Geneva Conference of 1947

A Conference, convened by the ICAO in Geneva in November 1947, to develop a multilateral agreement on the exchange of commercial rights in international civil air transport, showed the esteem for rules of law to govern aviation relations at its lowest ebb. With only one dissenting vote the Conference accepted a resolution providing that the multilateral agreement would impose no obligations on its parties to enter into route agreements, entry into route agreements remaining entirely discretionary with the parties concerned. It is difficult to imagine a greater demonstration of separateness, of unbridled self-assertion, of a narrower nationalistic approach.

Why was it that the common interest in civil aviation was so totally ignored and that the idea according to which a full and free exploitation of the new power of flight would result in untold benefit to the world seemed irretrievably lost in the maze of restrictions? Here again factors of a general and of a specific nature played a part. The Conference took place in a time of growing West-East tension—which in general led to the fetish of an ultra-sovereignty. It was a period in which the undervaluation of international law was at its height. During his lectures at the Academy of International Law in 1948 Rousseau concluded: "*que jamais les Gouvernements n'ont autant invoqué la souveraineté qu'aujourd'hui et sur un ton qui laisse loin derrière lui*

² International Air Transport Agreement.

³ International Air Services Transit Agreement.

les plus véhémentes affirmations des Chancelleries de l'Europe monarchique ou impériale." These factors undoubtedly contributed to the unfavorable climate of the Conference. But the specific reason for its failure has to be sought in the great majority of states being concerned only with the short term economic interests of their own aviation services. It was believed that these interests could be safeguarded only by rules which could be invoked against any competition of foreign airlines. This was the reason which led the delegates to indulge in a concept of sovereignty which had originally been considered atavistic.

What happened in the eight years' period which has elapsed since this abortive Conference? Can certain trends be discovered in this, tending to a limitation of the excessive sovereignty claimed by many states in 1947? The answer to this question is not an obvious one because so many conflicting tendencies have manifested themselves. And the facts cannot always be ascertained—much of the drama of aviation being played behind the scenes.

THE PERIOD 1947–1954

Let us first look at some statistics as regards the regular international airlines: from 1947–1954 passenger traffic has increased by 172%, cargo traffic by 283% and mail traffic by 148%. To the superficial observer this seems very satisfactory. Lissitzyn, however, in an article published in 1951⁴ clearly showed to what a considerable extent direct and indirect subsidies are granted to aviation. In his yearly report for 1954, Sir William Hildred, Director General of the International Air Transport Association (I.A.T.A.) uttered a grave warning about the financial situation of I.A.T.A. airlines. Sir William estimated that their profit margin, on a global basis, is little more than one per cent.

This far from satisfactory situation is partly due to the numerous restrictions of all sorts which are being imposed on the operations of a very great number of airlines.

A document published by ICAO in January 1953, entitled: Analysis of Economic Provisions in Bilateral Commercial Air Transport Agreements filed with ICAO,⁵ shows that nearly 300 bilateral agreements have been concluded between the members of ICAO. If it were not for the fact that many of these agreements contain stipulations which render real *economic* operation of the airlines particularly difficult, the conclusion might be drawn that unfettered air sovereignty has not taken on such outrageous forms. Needless to say that the greater the number of states' touch-points in the air, the more evident the interdependence in aviation will become. But as long as these agreements contain so many restrictions and as long as their duration is only one year or less, the basis of international air traffic will remain very

⁴ "Public Aid to Major Foreign Airlines" 18 *Journal of Air Law and Commerce* 379 (1951) and 19 *Journal of Air Law and Commerce* 38 (1952).

⁵ (AT-WP 301).

unstable. In this, from various points of view not very optimistic picture, there are, however, two bright spots. First, since 1947, the number of signatory states of the International Air Services Transit Agreement has grown from 29 to 43. If one considers that these 43 states operate nearly 90% of the total air traffic of the world with the exclusion of Soviet Russia and China, the ultimate consequences of this development will be far-reaching. Some writers have put forward that freedom of passage now is to be considered a *norm of customary law*. Here they are guilty, however, of wishful thinking and they allow themselves to be guided by their ideas on "jus constituendum." Among the states which have ratified the Chicago Convention there are still twenty-one that have not accepted the Air Services Transit Agreement. Among the latter there are Italy, Brazil, Eire and Portugal. In particular the last two are still strongly opposed to freedom of passage. Developments in the last few years point, however, to a *steady* growth of a *feeling of necessity* for such rule. The second bright spot is the striving for liberalization of air traffic in Europe. By a conference, held at Strasbourg in 1954, recommendations were accepted, directed towards a greater exchange of landing rights between European countries. A conference to be held in 1955 will try to reach positive results in this field and moderate optimism in this respect seems justified.

Summary of Sovereignty Concept

Summing up in a few words the undular movement of the air sovereignty concept in the last fifty years: Originally, air sovereignty was held to be limited by freedom of passage, as a rule valid "*pleno jure gentium*" because this freedom was considered *indispensable* for the community of states; after that, this freedom was no longer considered indispensable, but the states thought it *useful* to accept this freedom by treaty; next, there began a period in which the sense of usefulness became increasingly weaker and an extravagant idea of sovereignty obtruded itself. In the last few years, the idea has been gaining ground that no healthy development of world air transport is possible on the basis of absolute sovereignty.

What is in store for the future? One of the reasons why prophesies in the field of air relations are so risky is that aviation, economically as well as technically, is still in an experimental stage.

One thing is certain and that is that the future regime of the air will be influenced decisively by the attitude of the United States who operate more than half of the total world air transport. Now the conflicting currents of thought regarding the limitation of air sovereignty are reflected more clearly in the aviation policy of the U. S. than in that of any other country. It is often taken for granted that its own aviation interest is the easiest thing for a nation to know and to understand. This, however, is far from being the case. It is true that for some countries their aviation interest is clear. Holland is a case in point. From its birth as a nation, Holland's well-being has

been determined by the freedom of maritime navigation. As Mahan said in his famous book "The Influence of Sea Power upon History": "If England was drawn to the sea, Holland was driven to it. Without the sea England languished but Holland died." An important part of Holland's indispensable imports has always had to be paid for by transport services to the world. The air having replaced the sea as the greatest medium of communication for mankind, freedom of air traffic is of essential importance to my country and, ever since the beginning of international air transport, successive Dutch Cabinets have striven for the acceptance of the principle of freedom of communication by air. The U. S., on the other hand, have found, and still find it extremely difficult to assess their own aviation interest.

American Aviation Policy

When American aviation policy is viewed as a whole, it can be divided into four periods:

from 1919 to the second half of the thirties; from the second half of the thirties to 1943; from 1943 to 1946; from 1946 to the present time.

The first period was governed by the principle of free air traffic which was considered indispensable for the healthy development of world aviation. It was a policy that appealed to the American pioneer spirit—constructive, affirmative, uninfluenced by fear of competition. It was realized that American aviation would need landing rights all over the world and the growth of the idea of freedom was helped by the fact that hardly any reciprocal rights were as yet asked for. In 1919 at the Peace Conference of Versailles, the United States fought for freedom and in 1929 at the International Aviation Conference in Paris, they continued their fight, strongly supported by Holland, England and Sweden.

In the second half of the decade 1930–1940, the picture changed through the air conquest of the oceans. Foreign countries began to request landing rights on American territory and fear of extensive competition led to the United States abandoning their original policy of freedom and accepting a policy of protection. There can be no doubt that owing to the growing pre-war international tension, security considerations played a certain role in the development of the restrictive attitude. But the influence of the security factor can easily be overrated. A clear sighted American, Parker van Zandt, once drew attention to the rather common practice in international aviation relations: to conceal narrow commercial motives behind arguments ostensibly advanced in the name of security.

In 1938 Edward Warner, at that time a member of the Civil Aeronautics Board, published in "Foreign Affairs" an article entitled "Atlantic Airways," in which American air policy was defined as follows: "no regular commercial aviation in the United States under a foreign flag without simultaneous provision for an equal amount of

American flying on the same route." Another member of the CAB declared at that time that the United States did not wish to experience in American civil aviation the development of a situation parallel to that which existed in the shipping industry over the Atlantic, where of the 75% of the travellers who originated in the States only about one-third were transported by American shipping lines. Now there is a fundamental difference between America's competitive strength in aviation and in shipping to which I shall refer later. At this moment I should like to call your attention to a historical parallel which I drew, in an article written shortly before the outbreak of the war, between the evolution that England passed through before adopting the principle of the freedom of the sea and the evolution of the United States in respect of the principle of free air traffic.

When Spain and Portugal, after the voyages of Columbus and Vasco da Gama, went so far as to divide the great oceans between them, England and Holland started to fight these extravagant pretensions. Queen Elizabeth, protesting against these claims to Mendoza, the Spanish Ambassador, in 1580, declared that: "her subjects would continue to navigate that vast ocean since the use of the sea and air is common to all." From the moment that Spain and Portugal were compelled by force to recognize the acquisition by England and Holland of important colonies in the East and West Indies, the division of the oceans became a dead letter. But after England had succeeded in achieving her object of freedom of passage, the idea of Queen Elizabeth that the sea and the air is common to all was forgotten, and England began to lay claim to the Sea of England which, for convenience's sake was described as the sea between England and the opposite shores. However, at the end of the XVIIth century England abandoned her restrictive attitude, to become once more and for good the strongest champion of the freedom of the seas.

Why did England not persist in her claim to unlimited sovereignty over the so-called Sea of England. Through her naval strength, which at that time had achieved absolute superiority, England *would* have been able to assert these claims. There were, I believe, two main reasons why England did not continue to do so. The foremost reason lay in the resistance of the spirit of the age full of the principle of freedom. England realized that the inequalities created by her restrictive attitude would result in an ever growing opposition and that *in the long run* mankind would be victorious in its revolt against the principle of sea exclusiveness. Political realism prompted England to sacrifice an immediate advantage for the sake of achieving a situation that would afford ultimate results more conducive to both prosperity and peace. The second reason lay in the superior competitive strength of the British mercantile marine, which put her in the happy position that her specific maritime interests coincided with the general interest of the world in free maritime communications. I need not stress here of what vital importance the freedom of the seas has been in the spread

of civilization and the improvement of living standards all over the world.

Parallel Policy of U. S. and England

Coming back now to the parallel between the United States' attitude towards air communications and England's attitude towards sea communications, the United States in the first decade of aviation fought against the ideas of an *unlimited* air sovereignty just as England had fought against the pretensions of the Spanish and the Portuguese to the oceans. When the United States had received, in the second half of 1930–1940, the landing rights necessary for their transoceanic lines they turned their backs on the principle of freedom and endeavored to protect the position achieved by the application of the principle of unlimited sovereignty—just as England, after having achieved her aim of freedom of navigation with her colonies, started to apply the principle of sovereignty over the so-called Sea of England.

Continuing this parallel, I predicted in 1939 that just as England reverted to her original standpoint, the United States would return to the principle of freedom of air traffic, and for exactly the same reason: on account of the realization that this freedom would afford *ultimate* results more conducive to prosperity and peace, and the realization that United States aviation was and would continue to be the strongest in the world.

And at the Chicago Conference in 1944, it looked as if the prediction would prove correct. President Roosevelt in his message to the Conference, referring to the attempt of some centuries ago to build great empires based on domination of great sea areas, expressed the hope that such mistake would not be made in the air and that the delegates would not dally with the thought of creating great blocks of closed air. He concluded his message by saying: "Let us work together so that the air may be used by humanity to serve humanity." Professor Berle, the Head of the American delegation, defined the United States policy as follows: "A general system of rights for planes to travel and to carry international commerce should be set up, becoming the established custom of commerce by air, as similar arrangements have become the settled law by sea." In an excellent article entitled "Opening the Sky," written by William Burden and published by the State Department after the Chicago Conference, the writer expressed the American attitude, saying: "The United States seems motivated by the same combination of self interest and idealism that moved Great Britain to assume her historic attitude towards ocean transport."

Why did Roosevelt revert to the principles on which United States aviation policy was originally based? In the first place an explanation may be sought in motives of a general political nature. Roosevelt was convinced that a lasting peace could be built only on a world in which commerce and transport were free or almost free and he was convinced that America's political and economic strength were so great that after

the war nothing would prevent the United States from playing the dominating part. He wished to use the United States' economic strength in order to realize the vision of a prosperous and peaceful world. But the flame of freedom kindled by Roosevelt did not shed its light for any length of time. By the middle of 1946 it was extinguished. This change in aviation policy coincided with a change in the general economic policy of the United States. Owing to unexpected political and economic realities the United States reverted to the system of politicizing international economic relations. As far as aviation relations were concerned it became evident that various members of the Senate were strongly opposed to application of the principle of free air traffic, partly because they were of opinion that it was undesirable from a competitive point of view that foreign transport companies should enjoy unrestricted possibilities to maintain communications by air with the United States and partly because they esteemed American security insufficiently safeguarded by a principle of free air traffic.

FUTURE U. S. POLICY

What will the future United States' attitude be? Will protectionist or liberal principles tend to dominate the American approach towards the problem of international aviation relations? If it is already in general a risky business to venture prophesies in a field so full of uncertainties, confusions and contrasts, such prophesies are especially hazardous if made by an outsider. But I shall be so bold as to take the bull by the horns and predict that American aviation policy will lay a growing emphasis on the removal of obstacles which so greatly hamper the healthy growth of world aviation. This opinion is based on the following considerations.

In general, the economic policy of the present Administration is directed to widening and deepening the channels of trade. In this policy aviation is at the moment not yet included, but there can be no doubt in my opinion that it *will* be, for the simple reason that world aviation is a factor of ever growing importance in the re-creation of a world market. Protectionism in aviation is incompatible with efforts towards the liberalization of foreign trade.

But even if the American national interest is considered merely in the narrow sense of that of the United States aviation companies, a liberal policy can ultimately only be of advantage. In the last two years there has been a growing tendency in various countries to try to curtail American air operations. In a country wishing to operate aviation services on a world-wide basis these tendencies are of course detrimental—but a state, especially a state the aviation of which is competitively the strongest in the world cannot expect other states to be liberal if its own attitude towards foreign air services is restrictive. In the aviation field, just as in every other field of human activities, one cannot—perhaps unfortunately—have it both ways.

Lower U. S. Operating Costs

There is no time to go into the question of the competitive strength of United States aviation. Let me only mention to you the operating costs per ton-km of the United States international air operators compared to those of the European operators. In 1953 the American operating costs were 109 cents (in Dutch currency) whereas the European were 123 and the United States domestic operators' only 71, notwithstanding the fact that American salaries and wages were nearly three times as high as the European.

The trait, ingrained in the American character, to find in freedom the strongest guarantee for prosperity, will, I believe, make itself growingly felt in the approach towards the aviation problem. Should the future American aviation policy evolve in a more liberal way, the chances of developing international rules limiting the present completely arbitrary exercise of air sovereignty would be very greatly increased.

Let me end by reverting once more to the history of international communications in general. In the first place this history has shown that where a new means of communication has come into existence, mankind has always been too slow in reacting to its potentialities, and forecasters about its development have always erred notably on the side of underprediction. In the second place the history of communication has shown that through the development of traffic, the economic requirements of transport have always gradually superseded the purely political considerations. In the great majority of states which maintain air communications, the air traffic companies belong either entirely or in considerable part to the state. The United States is a notable exception. Notwithstanding a still not very flourishing economic position, private capital shows signs of being interested in air transport in an increasing number of countries. This will lead to a diminution of *excessive* interference by the state and to a better balance between the public and private elements in aviation.

The realization that the chances for peace are furthered by an increase in general prosperity and perception of the important role air transport can play in a balanced growth of world economy will favor the recognition of the necessity for sovereignty limiting rules of law. As the legal conscience tends to further the factors that protect, promote and enhance life, it is the task of the lawyers to help to create in the minds of the public a realization of the social element in aviation. It is this element that Sir Winston Churchill undoubtedly had in mind when he declared Civil Aviation to be "the greatest instrument for international solidarity."