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# INTERNATIONAL

Department Editor: Richard Kermit Waldo\*

## INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

### I. INTRODUCTION

THE second quarter of 1947 saw the transition from PICAQ to ICAO, from a provisional to a permanent aviation organization. On April 4, the Chicago Convention came into force, and on May 6 the First Assembly of the permanent International Civil Aviation Organization (ICAO) opened in Montreal. Prior to its adjournment on May 27, the Assembly had, among other things, laid down the general policies for ICAO to follow during its first year of operations, and had brought ICAO into relationship with the United Nations by debarring Franco Spain from membership. On the other hand, it had failed (as had the Chicago Conference of '44 and the PICAQ Assembly of '46) to conclude an acceptable multilateral treaty on commercial air rights. Nor was it possible, in the field of private international air law, to conclude a convention on rights in rem in aircraft, as had been widely hoped.

The 21-member ICAO Council, which was elected by the Assembly for a three-year term, opened its first session on May 28. The Council was expected to adjourn by July 1, and to reconvene on September 2. For the first few weeks of its session, the Council devoted itself almost entirely to organizational matters. Dr. Edward Warner was unanimously elected President of the ICAO Council, and Dr. Albert Roper, Secretary-General of ICAO. Both held the corresponding positions under the interim organization. The Air Navigation and Air Transport Committees of the Council also got under way during early June.

During the second quarter, the only strictly technical meeting held was the PICAQ European-Mediterranean Air Traffic Control Conference (Second Special Session). Meeting in Paris from April 15 to 25, this conference agreed upon the air traffic control procedures required for next winter's operations in the area under its jurisdiction, on the basis of last winter's experience. It also agreed upon the dates upon which these procedures were to become effective.

As of June 15, forty-three states had joined ICAO, the latest being Iraq and El Salvador. The membership of PICAQ at the time it gave way to the permanent organization had been fifty.

### II. FIRST ASSEMBLY OF ICAO

#### A. Attendance and Organization.

A total of 47 nations and seven international organizations participated in the Assembly, as follows:

<i>Contracting States</i>		
Argentina	France	Philippines
Australia	Greece	Poland
Belgium	Guatemala	Portugal
Bolivia	Iceland	Siam
Brazil	India	Spain
Canada	Ireland	Sweden
Chile	Liberia	Switzerland
China	Mexico	Turkey
Czechoslovakia	Netherlands	Union of South Africa
Denmark	New Zealand	United Kingdom
Dominican Republic	Norway	United States
Egypt	Peru	Venezuela

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*Non-Contracting States*

Colombia	Iraq
Costa Rica	Italy
Cuba	Luxembourg
Ecuador	Uruguay
El Salvador	Yugoslavia
Iran	

*International Organizations*

CITEJA (Comite International Technique d'Experts Juridiques Aeriens)  
 International Air Transport Association  
 International Chamber of Commerce  
 International Labour Office  
 International Union of Aviation Insurers  
 United Nations  
 World Health Organization

The Assembly's work was divided into six fields, each covered by a separate commission, as follows:

Commission 1 — Constitutional and General Policy Questions  
 Commission 2 — Technical Questions  
 Commission 3 — Economic Questions  
 Commission 4 — Legal Questions.  
 Commission 5 — Administrative and Financial Questions  
 Commission 6 — Financial and Technical Aid Through ICAO

Sections B to G which follow summarize the Assembly's main accomplishments in each of these six fields.

**B. Constitutional and General Policy Questions.**

The most urgent item considered by the Assembly was the relationship agreement between ICAO and the United Nations. The agreement, negotiated in late 1946, had been approved by the UN General Assembly with a reservation to the effect that it could not come into force until Franco Spain had been debarred from membership in ICAO. In line with its overall policy to support the United Nations strongly, the United States took the lead in pressing for the expulsion of Franco Spain and for the resultant coming-into-force of the agreement. The only constitutional means of effecting this expulsion was an amendment to the Chicago Convention. After extensive debate over legal and constitutional issues, and over the policy issue of debarring a state for political reasons from membership in a technical organization, a debarring amendment was adopted by the Assembly. The vote was 27 to 3 (Ireland, Portugal and Switzerland), with 3 abstentions (Argentina, Dominican Republic and Spain). The debarment of Franco Spain will not be legally completed until two-thirds (28) of ICAO's member States have ratified the amendment. However, after the Assembly approved the amendment and Franco Spain's delegation had withdrawn from the Assembly (and had implied its withdrawal from all ICAO activities), a UN representative announced on behalf of his organization that the relationship agreement was now in effect.

As ICAO's first major crisis, the Franco issue engendered much bitterness. Some delegates felt that political considerations should be disregarded in a technical organization such as ICAO. However, the issue was posed squarely by the United States, the United Kingdom, France and others as a choice between support of Franco or support of the United Nations, and was carried on that basis.

Another item for urgent action was the election of the new Council. The ICAO Council is the executive body of the organization. It is in substantially continuous session and directs the work of its committees, divisions (international conferences of technical experts) and the ICAO Secretariat. The following 21 States were elected for a three-year term:

Argentina	Czechoslovakia	The Netherlands
Australia	Egypt	Peru
Belgium	France	Portugal
Brazil	Iraq	Sweden
Canada	India	Turkey
Chile	Ireland	United Kingdom
China	Mexico	United States

All of these countries except Argentina, Portugal and Sweden were carried over from the Interim Council of PICAQ. This will tend to assure continuity of policy on the new Council.

On the motion of the United States, Italy was admitted to membership in ICAQ, under the terms of Article 93 of the Chicago Convention. The Assembly's vote was unanimous on the question. The assent of the UN General Assembly and of Ethiopia, both of which are anticipated, is all that is required for Italy's admission to become final. The assent of France and Greece were obtained at the Assembly. Italy has had a permanent delegation stationed in Montreal for some time, and is expected to play an active role in ICAQ's work, although not a member of the Council.

The transition from the provisional to the permanent organization was accomplished with a minimum of organizational change. The Assembly decided that the incoming Council should continue the practice of substantially-continuous sessions. It agreed to continue the Air Navigation and Air Transport Committees of the Council in their present form (open to membership by all contracting States) for another year. Meanwhile, the new Council will study the question of the desirability of implementing the convention articles providing for a select air navigation commission and an air transport committee restricted to Council member States. The Assembly also established a Committee on the Convention and a Joint Support Committee, both of which existed under PICAQ, and a new Legal Committee, of which more will be said under Section E below.

The Assembly authorized the Council to act as an arbitral body on any differences arising among contracting States relating to international civil aviation matters which are submitted to it, when expressly requested to do so by all parties to such differences. This authorization will obtain pending further discussions and ultimate decision by ICAQ as to the methods of dealing with international disputes in the field of civil aviation. The Assembly's authorization on this matter was necessary since the Chicago Convention limits the Council to decisions on disagreements relating to the interpretation or application of the Convention and its Annexes. The authorization means that the ICAQ Council will have the same power in the arbitral field as did the Interim Council. This is of particular importance because of the provisions in many of the bilateral air transport agreements negotiated by the United States and other countries designating the ICAQ Council as the means by which differences arising out of the operation of the bilaterals would be settled.

Insofar as air navigation matters are concerned, the Assembly directed the new Council to give primary attention to the implementation of the technical standards, etc. already developed, to the maintenance of stability in these standards, and to a general slow-down in the timetable of technical meetings.

The question of language policy was warmly debated, the main question being whether Spanish should continue to be employed to the same extent as under the interim organization. The Latin American States carried their point on this issue, when the following resolution was adopted:

- (a) "Two of the three languages, English, French and Spanish, shall normally be selected by the Council for conducting each meeting, for the systematic interpretation of speeches and statements and for the drafting of final reports. The Council shall decide in each case if there is need for systematic interpretation in a third language. The use of any of the languages thus established may be waived when there is unanimous agreement to do so;
- (b) "The Council shall decide, on practical grounds and in the light of experience, which publications and documents of the Organization shall be issued in more than one language."

A public information policy was adopted primarily aimed at individuals and groups directly concerned with international civil aviation, and only secondarily at the general public in the various member States.

In other major Assembly actions, the Council was authorized to enter into informal working arrangements with other international organizations, both public and private, and it was agreed to convene the Second Assembly in Western Europe (probably Geneva) in late May or early June of 1948.

Finally, the Assembly decided to adopt no amendments to the Chicago Convention at this time, other than the one debarring Franco Spain. Member States shared a feeling that as a general policy the Convention should not be amended until ICAO had had some experience operating under its terms.

#### C. *Technical Questions.*

ICAO activities in the technical field are so numerous and complex that their detailed consideration must necessarily be undertaken by groups of specialists in each of the various categories of technical aeronautical problems (ICAO lists 11 categories). The Assembly was required to review this technical work only in its broad aspects.

It was agreed that PICAQ had performed an excellent job in developing standards, practices and procedures, but, as we have noted above, it was decided that the major emphasis from this point on should be in the direction of implementation of these standards, rather than their further development. It is of interest to note that under PICAQ, these standards had recommendatory force only. Under ICAO, contracting States must apply them unless they notify the organization that they are unwilling or unable to do so, and state the reasons therefor. A general understanding was reached at the Assembly that corrective action with respect to violations of ICAO standards and national laws and regulations would be taken by the State of registration, certification or jurisdiction of the aircraft, airmen or operating agencies, respectively, which had not complied with the rules. This understanding was necessary in the absence of a uniform international code for the enforcement of these rules.

Some of the smaller member States sought to have limitations placed on the length and strength of runways at international airports. As a large air transport operating country as well as a large manufacturer, the United States took the position that no such restrictions should be adopted. In recognition of the problem of costs facing many states who provide international airports, however, a compromise resolution was passed directing:

"That the Council in consultation with the International Air Transport Association and the aircraft manufacturers, study and report upon the trend of aircraft design and the relationship between airline operation and aerodrome design with the object of curbing the increasing cost of runway construction."

Finally, the Assembly recommended that the Council adopt a numbering and dimensional system proposed by the International Air Transport Association (IATA) based largely upon the metric system. In addition, however, the Assembly action provided that the foot, pound or statute mile may be used by States which find it impracticable to use the proposed standard units. Although the action, which culminated long efforts in PICAQ and ICAO on the part of metric system countries, was originally intended to establish a single standard system, it actually sets up a double standard. This is considered by many U.S. technicians to be highly unfortunate, in that it effectively prevents or greatly delays the worldwide adoption of any one numbering and dimensional system.

#### D. *Economic Questions.*

The principal item of business for the Assembly in the economic field was a discussion of the proposed Multilateral Agreement on commercial rights in international civil air transport. The United States Delegation came to the Assembly with its own draft, which reserved for separate bilateral negotiation the exchange of routes in commercial air transport. After considerable discussion on this subject it became apparent that the Delegations were not sufficiently in accord to permit completion at this Assembly of a Multilateral Agreement. The discussions did indicate, however, that there was considerable agreement as to the need for general principles on which a multilateral treaty on commercial rights could be based. The Assembly therefore resolved that a special conference be convened at Rio de Janeiro in October 1947 for the express purpose of developing and submitting a Multilateral Agreement for the consideration of the various States. There is considerable evidence that the United States position on the matter of the separate bilateral exchange of routes has gained more widespread acceptance than was the case before the Assembly convened. Similarly, there is some evidence that the so-called Bermuda capacity clauses, first conceived

at the United States-United Kingdom Bermuda Conference and thereafter included with only minor modifications in other U.S. and U.K. bilateral air transport agreements, may prove to be the basis for the formula on capacity eventually adopted in a multilateral treaty.

The subject of international ownership and operation of the international trunk routes was debated at length. The nations of the British Commonwealth made a vigorous attempt to commit ICAO to studying the question and developing an international chosen instrument plan for presentation to the next Assembly. The United States opposed this procedure with equal vigor. The Assembly finally decided that the Council should continue its studies of possible plans for the internationalization of trunk air routes but only on the basis of material which may be submitted by member States. The Council will also give consideration to arguments against the feasibility of such operations.

Brief discussions were held on the subject of satisfactory definitions of scheduled and non-scheduled operation of international air transport for the purpose of interpreting the Chicago Convention. It was agreed that it was impossible at this time to prepare a definition that would completely distinguish between scheduled and non-scheduled operations, and the Council was instructed to study the matter further.

With respect to the facilitation of international air travel, the Assembly endorsed the steps already taken by the Interim Council in the direction of eliminating unnecessary barriers to international air commerce, and recommended steps designed to push this program vigorously.

The Council was instructed to study further the problems concerned with the reporting of statistics; the filing of agreements; international air mail; and the economic burdens of double taxation, certain insurance requirements, airport charges and charges for the use of air navigation facilities.

#### *E. Legal Questions.*

The most important item before the Assembly in the field of International Air Law was consideration of the draft Convention on Rights in Rem in Aircraft. This proposed Convention provides for the recordation and recognition of property and security interests in aircraft engaged in international air transportation. Such a Convention would be an important contribution to the ability of air transport operators and aircraft manufacturers to finance purchases and sales of aircraft, respectively. Substantial effort was devoted at the Assembly to obtaining sufficient accord on certain basic issues to make possible final approval of the Convention. However, agreement proved impossible, because of the inability sufficiently to reconcile fundamental differences in the basic concepts of several different legal systems. The Assembly did, however, direct the new Legal Committee of ICAO to meet at a time to be determined by the Council for the purpose of finalizing the draft of a Convention concerning the recognition of rights in aircraft.

On the procedural side, the Assembly established for the first time a Legal Committee, its terms of reference including primarily the study and formulation of draft conventions on international air law. As a result of the establishment of this Committee, CITEJA (Comite International Technique d'Experts Juridiques Aeriens), an independent body of legal experts having responsibility for the drafting of conventions on international air law, held its final meeting in Montreal and adopted resolutions for its liquidation. This action was in line with the general policy that all official international organizations in the aviation field should be brought within the framework of ICAO as *the* specialized international aviation agency.

#### *F. Administrative and Financial Questions.*

The Chicago Convention directs the Assembly to fix an annual budget for ICAO. The Assembly adopted a total budget of \$2,600,000 for the fiscal year 1947-48. Although this represents a one-third increase over the \$2,000,000 budget for the fiscal year 1946-47, it is well under the \$3,190,335 proposal submitted to the Assembly by the Secretary-General of PICAQ. The increase over last year's budget was made necessary principally by provision for establishment of five regional offices in various parts of the world. The provision for regional offices is imperative for the purpose of giving assistance to various member States in implementing ICAO standards, practices and procedures.

Regarding the scale of contributions, there were slight adjustments in the number of units assigned to various member States, with the United States agreeing to increase its share from 45 to 57 units. This represents slightly under 20 percent of the administrative expenses of the Organization.

*G. Financial and Technical Aid Through ICAO.*

The Assembly agreed upon basic principles and general policy relating to financial and technical aid through ICAO for furthering the provision of air navigation facilities and services. Summarized, these basic principles are as follows:

(a) The provision of financial and technical aid through ICAO will be based on voluntary action on the part of Contracting States.

(b) The International Civil Aviation Organization through its Council is the international body responsible for the initiation of expeditious action to meet requirements to supply additional air navigation facilities and services where necessary for the operation of international air services.

(c) Aid provided through ICAO will aim to provide air navigation facilities adequate, but no more than adequate, to meet the requirements of international air services in accordance with the standards and practices recommended.

(d) Contracting States will do all possible to arrange for the provision of adequate facilities and services within their own territories before applying to ICAO for assistance.

(e) ICAO will satisfy itself in every case that circumstances actually require the assistance of the Organization.

(f) The rendering of financial and technical aid through ICAO will depend upon willingness of the applicant State to participate and cooperate in the economical provision of required facilities and services.

(g) ICAO will assure contributing States that their funds will be expended under its supervision to insure the utmost economy.

(h) Reasonable user charges in line with general practice may be provided for in any agreement relating to aid through ICAO. Free use of facilities where in line with normal practice may be provisionally adopted by agreement.

A joint support unit in ICAO will administer an emergency revolving fund of \$50,000 established by the Assembly for use where there is danger of a breakdown of an essential facility or service unless immediate action is taken by the Council. The unit will also implement the basic policies outlined just above.

### III. PROGRAM FOR THIRD QUARTER OF 1947

Following the South American Regional Air Navigation Meeting which opened in Lima on June 17, the South Atlantic Regional Meeting will convene in Rio de Janeiro, on July 15. These are the sixth and seventh in a series of nine regional conferences throughout the world.

Two Divisions of the Air Navigation Committee will meet during the quarter in Montreal. Meteorology will open on September 17, and Aerodromes, Air Routes and Ground Aids on September 23.

The First Meeting of the new Legal Committee will probably be held in Brussels on or about September 15.

Early in the fourth quarter, on about October 20, the special conference on a multilateral air transport treaty will convene in Rio de Janeiro.

R. K. W.

## INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

## I. GENERAL

The second quarter of 1947 was an active one for IATA. During late March and April, its Financial, Technical and Legal Committees held their semi-annual meetings. Most of the matters discussed came to a head at the IATA Executive Committee meeting of April 29-May 3 in Montreal, and at the First Assembly of ICAO, in which IATA observers participated actively. Finally, the second Europe-South America Route Conference met in Paris from May 21 to May 24.

## II. EXECUTIVE COMMITTEE

During its four-day session, the Executive Committee approved in principle the admission into IATA of non-scheduled international air carriers. This proposal to expand IATA's membership, now limited to scheduled airlines, must be ratified by the organization's General Meeting at Rio de Janeiro in October.

Also voted was approval of a wide range of measures designed to increase the safety and efficiency of world airline operations. These include provisions for the circulation of preventative technical information; support of route service organizations and international safety coordinating bodies; joint traffic handling arrangements; publication of joint tariffs; and the institution of a universal air travel credit plan.

In the field of safety, the Committee approved as "desirable and urgent" a proposal that member airlines circulate through IATA "preventive information" about technical or operational defects which might have a bearing on air safety.

IATA was commissioned to act as consultant and to provide technical assistance to route service organizations which may be formed to supply aeronautical facilities in areas of the world where individual governments lack the necessary technical or financial resources.

The Executive Committee also endorsed proposals for the organization of a Committee for International Maritime, Telecommunications and Aviation Co-ordination (CIMTAC) and promised IATA's full support in its activities.

The structure of the IATA Technical Committee was streamlined to act more effectively on technical matters, by the merger of its present 11 sub-committees into four divisions covering operations; engineering and maintenance; aids and facilities; and communications and radio aids.

In the traffic field, the Executive Committee approved plans for joint airline action in the maintenance of facilities at intermediate airports along international routes; in the blanket bonding of all international airline agents; and in the setting up of an international credit plan for the purchase of airline bookings.

Sir William Hildred, Director General of IATA, was instructed to make a survey of Gander Airport, at Newfoundland, to determine the possibility of joint operation of various traffic handling facilities by all airlines using the field. It was stipulated that business administration and passenger services would remain the concern of the individual airlines.

Establishment of a universal air travel credit plan suitable for worldwide use is now very near final action, the committee was told.

The Director General was authorized to ask the International Civil Aviation Organization (ICAO) to investigate the imposition of gasoline surcharges at international airports with a view toward their elimination by international agreement. The committee asserted that the charges are "inequitable and bear no relation to the facilities utilized at the various airports," and recommended that a convention on the subject drafted at London in 1939, but never ratified, might be modernized and put into effect.

Creation of an organization to publish a Joint Tariff for Rules and Rates covering the operations of all IATA members was also voted. The publication will be designed for the use of airlines and travel agents and the project is expected to be eventually self-liquidating.

Amended provisions for the conduct of the IATA Traffic Conference, following the recent reduction of conference areas from nine to three, were ap-

proved by the Executive Committee. They will be effective as soon as they have been approved by the governments concerned, and reorganization of the Conferences is expected to be complete within the next 60 days.

The Executive Committee stipulated that the Traffic Conferences are autonomous within the sphere of activity given them in the IATA Articles of Association. It was pointed out that since governments are required to approve the resolutions of the Conferences, they cannot be over-ridden by any other body, including the General Meeting of IATA. The Conferences were asked, however, to keep uppermost in mind the need for worldwide unification.

The committee received a report that the first two clearances of inter-line accounts in the IATA Clearing House at London since its start on January 1 totalled almost \$2,000,000. The London office is now handling both dollar and sterling accounts, but a dollar branch will be opened in the United States in the near future, the group was told.

Also approved by the Executive Committee were negotiations for the formation of a special organization of international airline medical officers within IATA for the purpose of joint action on medical and sanitation problems.

### III. PARTICIPATION IN ICAO ASSEMBLY

IATA observers took part in the deliberations of Commissions 2 (Technical), 3 (Economic), 4 (Legal) and 6 (Financial and Technical Aid Through ICAO). As noted above in the report of the Assembly's accomplishments in the technical field, IATA's recommendations regarding the unification of numbering and dimensional systems, based largely on the metric system, were adopted by the Assembly. The strength of this action, however, was largely watered down by the proviso that any States which find it impracticable to adopt the metric system may continue to follow the English system.

Also in the technical field, IATA, which in general is adverse to the proposal to limit the length and strength of runways at international airports, submitted its views on the matter to Commission 2. While the Assembly took no final action, the ICAO Council was directed to study the problem, in consultation with IATA's experts.

Another matter which the Council was asked to study in conjunction with IATA was in the economic field, and dealt with insurance requirements. On IATA's initiative, the Assembly resolved that the contracting States be asked to accept, so far as possible, from foreign airlines certificates of insurance issued by companies acceptable to the governments whose nationality the airlines possess.

As noted above, the IATA Executive Committee considered the matter of taxation of aviation fuel at international airports and concluded that this type of taxation imposed an onerous economic burden on international airlines. The Assembly coupled this with the whole subject of double taxation, and directed the Council to study taxation practices which contracting States or IATA allege to constitute onerous economic burdens.

R. K. W.