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AVIATION CONTRIBUTIONS TO THE DEVELOPMENT OF INTERNATIONAL COOPERATION— INTERNATIONALIZATION: OBJECTIVES AND METHODS

By INSTITUT FRANCAIS DU TRANSPORT AERIEN

The French Institute for Air Transport, an association of private status, is an active contributor to aviation research and study including studies in the political, legal, technical and economic fields of aviation. A complete freedom of judgment that the Institute enjoys has proved a valuable element in general appreciation of its work.

The Institute was created by Mr. Henri Bouché, Representative of the French Government at the Council of ICAO. The Chairman of the board of trustees is Mr. André Siegfried, economist and geographer, member of the French Academy.

The French approach to the problems of international organization of aviation has proceeded with a view to including in its examination the main issues of national policies. The reasons and consequences of this stand are analyzed in the following study which appears under the collective signature of the Institute since a teamwork method is used. The Director of Studies of the Institute is Mr. Abel Verdurand and Mr. Erik Wessberge, his assistant for political and economic matters.

THE scope of the subject to be treated here justifies, it is thought, a title of a very general character. One of the fundamental aspects of the problem under consideration is, in point of fact, to determine whether in the effort toward international cooperation it is advisable — or indeed possible — to separate the different types of aeronautical activities now closely bound together in the framework of national policies. Should the fields of military aviation, on the one hand, and of civil and commercial aviation, on the other, be dissociated and approached separately? Should the operational aspect of aeronautics be treated apart from construction and production problems? To speak of “international ownership and operation of air transport” (the current expression used in documents and debates since the Chicago Conference) amounts, it would appear, to solving part of the problem before even setting down its terms. Any discussion on internationalisation in the field of aviation reaches far beyond that of civil air transport. The interdependence existing between the various activities of aviation is a fact, which finds its expression in the words “*air policy*.”

Our initial purpose, then, should be to set forth clearly the general and far-reaching objectives that are contemplated in this program of international cooperation. Is the problem an economic one, and are we concerned mainly with a cost-reducing policy? If so, emphasis will naturally be laid on the advantages of joint operations and even of joint

production. Are we rather preoccupied by the matter of world security? In this case, the military element should be dealt with on a priority basis. In the present circumstances we are confronted in fact with both these aspects of the problem and both appear to need an urgent solution. Thus to determine the objectives will entail proportioning our efforts and providing for the articulation of the various branches concerned (civil aviation and military aviation; construction and operation) within the framework of international policy and organisation.

Once the part to be held by commercial air transport in the general program has been determined, one should turn to the problem of how to establish practical schemes of cooperation in this limited field. There are two points, it would appear, on which discussion may focus at this stage:

In the first place, it is necessary to determine in what fields of civil and commercial aviation joint operations will be organised. There appear to be for this purpose a number of *fields of application* with various possible criteria. For instance, should joint operations be organised on the basis of the different types of services: trunk line, regional, vicinity, or feeder services (a functional criterion)? Should the differentiation of routes and traffic sources be taken into account (geographical and economic criteria)?

In the second place, one should study the *methods of application* of joint operations with special reference to the status of the organisations. What organisational patterns are we contemplating? Is international cooperation to be concentrated on joint management and organisation of services, as in the Scandinavian Airlines System? Should it be extended to the ownership of airlines, as advocated by Australia and New Zealand, and embodied in the "Anzac Pact" between these two nations? There are a number of relevant problems to be solved: that of the nationality of aircraft; also that of the establishment of organisations with legal capacity and a truly international status.

It may also pay to study a plan for gradual adaptation of international transport to the new operating regime contemplated, this adaptation possibly requiring to work by stages (the successive stages of pools, joint operations and finally joint ownership).

The method of approach to our subject which we have accordingly adopted may be summed up as follows:

1. General objectives of international air cooperation;
2. Fields of application for joint operations;
3. Methods of application for joint operations.

GENERAL OBJECTIVES

According as the objectives of international cooperation will hinge on world *security* or on world *economy*, efforts and achievements will concentrate on the military aspect or on the civil and commercial aspect

of aviation. The study of the schemes proposed in the past — by no means a remote one, since it dates back to the period between the two world wars — shows that these two preoccupations, the political one and the economic, inspired the debates in the course of which these schemes were submitted.

Discussions in the Committee for Cooperation between Civil Aviations, which met in Geneva in 1930, working under the authority of the League of Nations (Communications and Transit Section), laid emphasis on the economic advantages to be gained from cooperation under the shape either of specialized services (mail, for instance) or of regional set-ups operating in a well characterized geographical area, for example, Europe. A few years later, the Disarmament Conferences (1932-1934) set the problem in its broadest terms. This was the occasion when a French plan was proposed, providing for the establishment of an international air police force and the internationalisation of civil air transport, the latter being conceived primarily as one of the conditions and methods of application of the air disarmament program.

The scheme for post-war air organisation advocated by the British Labour Party before its access to government also linked together the objectives of world security and of economics. To quote from the well-known pamphlet "Wings for Peace," "the real issue before the world is: how should flying be organised and controlled, both as a means of coercion and as a means of transport"?

The internationalisation scheme proposed by New Zealand and Australia at the Chicago Conference was meant to be applied to civil aviation, in fact, expressly to the limited field of World trunk routes. But the security problem had not been disregarded here, as is evidenced by the clear reference to the Atlantic Charter, one of the attainments of which is stated to be "Freedom from Fear." The New Zealand and Australian joint proposal amounts, in fact, to extending to the world organisation of trunk services the regional set-up established between these two countries, pursuant to the 1944 Cooperation Agreement, known as "Anzac Pact." Now, it is essential to remember, in this connection, that this agreement covers, together with civil aviation, regional defense, immigration and other matters of common interest. Thus, while it is evident that we are in presence of a cooperative effort in the field of civil aviation, it is also quite clear that this is part of a more comprehensive agreement which has been concluded—a point that cannot be overstressed—between two countries enjoying a common ground of language, civilization and political regime.

From these considerations it would appear that it is hardly possible to separate the two essential functions of aviation, the military and the civil one, when it comes to defining the broad objectives of international policy. The word "general policy" remains the key to the prob-

lem, as stated at the outset, it being understood that the term "policy" covers the fundamental political elements involved in this problem. It is on this point that an agreement should be secured, first and foremost.

This, however, does not preclude the possibility of studying and establishing organisational schemes in the different spheres of aviation, which assume in practice concrete and sufficiently characterized shapes. Keeping in view the unity of final objectives, it should indeed be practicable to set up frameworks for cooperation, corresponding to the various types of aviation activities, these being sufficiently differentiated under actual conditions. Furthermore it may be well to bear in mind that the trend in aeronautical developments may be toward sharper and sharper differentiation in the near future. The inauguration of the guided missile, as a weapon for attack and defense, will probably mark an important stage in this evolution which is already in progress.

In proportion as it tends to assume the shape and function of a missile, the aircraft attains a greater degree of specialisation. This feature, of course, does not exclude utilising the various types of aircraft with crews in a military scheme which is bound to require mobilisation of all available means, aeronautical and other. But it implies none the less the possibility of establishing organisational frameworks all the more efficient technically and cooperatively as they would be based on less questionable functional criteria. For example, once the missile has reached a satisfactory degree of technical development, it would be possible to adapt it to, say, a function of close territorial defense and accordingly provide for its utilisation by the corresponding State in a system of joint defense. One may visualize for the future the creation of an international air police the instrument of which would be not the airplane, as contemplated in 1932, but the missile.

It thus appears possible, even under existing conditions, to engage in cooperative efforts in different spheres of aviation. The security objective may be sought and attained through regional agreements concluded in accordance with Article 52 of the Charter of the United Nations. The economic objective may center on joint operating schemes.

It would probably be necessary to complete this policy by adding a third far-reaching objective to the two mentioned above: this would be the objective of *operational safety*, a technical counterpart for political security. The overall program would then be defined and characterized by the three following goals for which ample justification is to be found in our present Air Charter, the Chicago Convention:

— the objective of "*sound and orderly*" development of air transport might be attained through application of the principles and recommendations resulting from the Chicago Conference. Some of these, it will be recalled, constitute the matter of the so-called "missing chapters" of the Convention (those which should have dealt with commercial rights on a multi-lateral basis), while others

are definitely outlined in this document, notably in Chapter XVI, dealing with joint operating organisations and pooled services;

— the objective of *technical safety* might be attained through application of the principles and cooperation provisions included in Chapter XV of the Convention, some of which have already found practical application;

— finally, the objective of *political security* might be attained under the wider authority of U.N.O. (pacts and regional agreements) in cooperation with I.C.A.O., such a cooperation being provided for in Article 64 of the Chicago Convention.

FIELDS OF APPLICATION FOR JOINT OPERATIONS

Cooperating schemes and policies in the matter of civil air transport should take into account the diversity existing in this field. In the present stage of development, certain functions in air transport correspond to established services and may thus be utilised as a basis for international organisation, or at least furnish valuable suggestions for this purpose.

The "Anzac Pact" and the joint New Zealand-Australia proposal at Chicago provide for the establishment of an international air authority which would be responsible for ownership of aircraft and organisation of services, these being limited to the trunk route network. One of the inconveniences here is held to be the lack of definition of what just a "trunk-line service" is. Such a definition, however, may not strike Australian or New Zealand experts as necessary in their own particular case, since the notion of a trunk service may be somewhat naturally derived from the position of two remotely located countries that are not flown over by international routes. Countries whose territories are part of large continental areas and are liable to be crossed in all directions as "gateway" or "corridor" nations (such as Mexico, Egypt or India) would probably be justified in requiring that notion to be defined with the best possible accuracy.

It is suggested that criteria for a suitable definition here should be thought out not in geographical, but rather in functional or technical terms. Airline operators currently speak of certain stages or legs of routes as being "trunk stages or legs" as opposed to others that are not "trunk," these differences and features being based on the optimum utilisation of aircraft operated for the various air services. There is reason to think that, very far from confusing the situation (as some contend it would) the establishment of joint operating systems would contribute to define such basic notions and clarify actual terminology. In present conditions it is possible for a country such as Portugal (a purely theoretic example) to limit or even suppress Fifth Freedom Rights which the French airline would wish to exercise on its trunk route to South America, while these rights would be granted more lib-

erally to the Scandinavian airline on the same route between Europe and South America. The motive invoked is that the Stockholm-Lisbon leg of the route constitutes a "trunk stage," whereas Paris-Lisbon is not. This practice may be held to be discriminatory and does in fact assume such a character in a pattern of services established through bilateral agreements and operated by competing airlines; it would cease to be discriminatory and would become a sound practice within an organisation providing for the distribution of services (trunk services, feeder services, vicinity services, etc. . . .) among countries (or groups of countries) in the framework of a regional set-up, Western Europe for instance.

In spite of the diversity that characterizes present efforts and achievements in the construction and production field of aviation, the types of transport planes (at least for passenger and mail traffic) are gradually being reduced to a few, already adapted now to the various services. The constructor and the airline operator both think in terms of "trunk service" and "regional service" (or long-range and short range). It was found unpracticable at the Chicago Conference to adopt the French proposal to define international services on the basis of stage-lengths, even though only approximate figures were suggested. In current practice, however, this notion of stage-length proves a valuable one and it might well be retained for the purpose of organizing international networks in joint operating schemes. In such cooperative schemes, all considerations of competition being discarded, the planes could be operated in the best capacity conditions for services which would thus present quite a satisfactory characterization. At present, trunk air liners departing from the capitals of North-Western Europe (Amsterdam, Brussels, London, Paris), bound for East and Central Africa, use Tunis or Tripoli as their first landing point. Now, of these two points it is Tripoli, according to the airline operators concerned with these routes, that is in the better situation in respect to certain operational conditions such as capacity of aircraft, rotation of crews, etc. . . . "Tripoli," they will say, "is our trunk-line landing point; Tunis is not, or is much less favourably so." Now, Tripoli is only some 300 miles south of Tunis. This example shows that (a) the notion of stage length does constitute in practice an organisational factor and (b) this notion may be defined with some degree of accuracy.

It will be recalled that in the course of recent debates in the British Parliament on the matter of the B.S.A.A. and B.O.A.C. merger, a proposal was put forward to reorganise the Corporations on the basis of criterions somewhat similar to those under examination here. According to the proposed scheme, the British air services would have been distributed between three Corporations, as follows: Atlantic Corporation (North and South); Empire Corporation (overseas routes); and European Corporation. This organisation, it was contended, had the advantage of simplifying a certain number of important problems, such

as training of crews and personnel, servicing and maintenance, etc. . . ., this result being obtained through greater specialization. It would be possible, under such conditions, to utilize aircraft for services that would be adequately characterized: very long range aircraft for the Commonwealth and Empire routes, long range and medium range aircraft for the Atlantic routes and short-range aircraft for the European sector.

This scheme is not the one that has been adopted for the reorganisation now in progress, but it received favourable comments from the press. The one that has been adopted is in itself interesting: it provides for the establishment of operating lines, each of which will utilize a definite type of aircraft. In this case the basis of organisation is clearly a functional criterion, not a geographical one, as the same type of aircraft may be used on networks in different areas but of similar operational characteristics (the Constellations, for instance, on the North Atlantic route and on the London-Sydney one). The efforts and achievements made by Great Britain to organise its national and international air services are quite obviously of the utmost interest for our subject, since the British organisation functions on a world-wide scale.

If a well-defined network or even only a single route is selected for the purpose of joint operation, the advantage will be to concentrate initial efforts on a limited field and thus to acquire indispensable experience for an international policy quite new in its main trends. For example, a group of European countries might agree to operate jointly the Europe-South America route; there would also be an opportunity for an even more restricted group of European countries to operate the trunk route from Europe to the Far East and South Pacific (Indo-China, Indonesia and Australia).

The specialisation which is implied in such limited schemes would not be incompatible with other types of air transport activities, both national and international. The New-Zealand-Australia Cooperation Agreement has the great merit of providing for a very flexible organisation, the joint scheme bearing only on trunk services, while each of the two countries retains the right to organise its own internal services on the one hand, and international regional services, on the other. It is also to be noted that in the Scandinavian set-up, each country operates its own internal network. Thus, in these two systems the cabotage problem has been waived — a difficult one indeed.

This principle of providing for flexibility and adequate articulation of services may turn out to be a very important one, as it may possibly help in combining (or reconciling, if necessary) the policies of joint operations and of the Multilateral Agreement, the latter being conceived for regional application. Thus, one might think of establishing for the Europe-South America trunk route a joint operating system with the participation of a group of European countries (also perhaps

some South American countries), while the international regional network in each of these well-defined areas (Europe and South America) would be organised in a multilateral framework, through multilateral agreements with the same governing principles bearing on cabotage rights, vicinity traffic, feeder-line services for the trunk lines, tariffs and settlement of disputes. It may well be that multilateralism is not a stage on the way to joint operation. A more realistic outlook would possibly be to consider the former merely as another form of cooperation that may coexist with the joint operations policy, each of them finding sufficient justification in the very diversity of air transport services, according to areas, types of services and categories of traffic considered. The countries of Western Europe might decide to conclude a Multilateral Agreement on cargo services, a field in which strict regulation of international competition appears somewhat less necessary than in the other categories. Some national administrations contemplate a very liberal regime for cargo transport. This multilateral cargo agreement might afford opportunities for including charter or contract non scheduled operators into the scheme, as their case is another intricate question to solve. In the same territorial group passenger and mail traffic might be dealt with through joint operating schemes. Cooperation might also be considered in the construction field: once European industry will be in a position to produce the necessary aircraft, it might prove practicable and indeed very useful to create a joint chartering agency working in parallel with an operating organisation, the former's function being to furnish the latter with aircraft.

These very general indications suggest possible trends in future cooperative efforts. International air transport policy appears to stand now at a fork in the road, one way leading to the Multilateral Agreement, the other to perhaps more concrete shapes of cooperation through joint operation. This situation ought to be examined very carefully during the coming months. It is our view that the uniformity of principles and practices implied in a multilateral agreement can only find practical application in limited and well characterized operating patterns to be defined in regional or functional terms, or both. The necessary adjustments would also be made through application of a set of common rules bearing on consultation, arbitration, etc. . . . Failing this, it appears that this uniformity of multilateralism, with the non-discrimination it entails, runs the risk of conflicting with other quite legitimate types of organisations, albeit more limited in scope. The principle of non-discrimination set forth in the Chicago Convention should not be made to serve as a pretext for barring the way toward the attainment of the higher objective which the Convention states to be "sound and orderly" development of air transport through closest possible international cooperation.

METHODS OF APPLICATION FOR JOINT OPERATIONS

Once the fields of application have been determined and selected, the problem is to establish the legal structure of the joint operating system or systems. What shapes can the status take?

The joint effort may bear on the management of the operating agency established and on the organisation of services. This entails utilising a common capital stock without the agency necessarily owning the latter. The agency is entrusted by the participating air lines with the specific function of organising operations. Such is the situation in the Scandinavian System. With reference to this particular point, B.C.P.A. (British Commonwealth Pacific Airlines) appears to function along the same line.

In the case of the Scandinavian Consortium, ownership of the aircraft remains vested in the three national airlines. This constitutes a guarantee for non-participating States, but from the standpoint of its international legal status it appears to be a drawback, since the delegation of administrative power entrusted to the S.A.S. does not confer upon it any legal capacity. The Civil Aeronautics Board of the United States, failing to find any "de jure" status in S.A.S., had to recognize its existence "de facto," with the additional comment, however (to be found in the docket dealing with the granting of a foreign permit to S.A.S.), that this organisation might come under the heading of an association, as defined in United States internal law. In the case of B.C.P.A. the solution was simplified through the incorporation of the joint organisation in Australia and according to Australian legislation. In the same way the S.A.S. representative agency in the United States could be immediately recognized owing to its having been incorporated in conformity with the legislation of the State of New York.

It thus appears that the legal capacity required for a truly international joint agency may be conferred upon it either by incorporating it in a State (one of the participating States, a non-participating State or again an international territory) to whose legislation it will be subjected, or by establishing the agency through an international convention.

One of the weaknesses in the status of the Scandinavian System lies, it would appear, in the fact that it derives its international character not from an intergovernmental agreement but from an agreement between the airlines. The Governments concerned only participate in the Consortium to the extent of their financial and administrative participation in their respective air lines. Thus the internationality of the Consortium is of limited scope and functions; it is, one might say, indirect. The S.A.S. may be contrasted on this point with the international authority established by the "Anzac Pact," a body which results from an intergovernmental agreement between New Zealand and Australia.

Now, it may be contended that direct participation of the Governments in the establishment and functioning of joint organisations is the better solution of the two *if this type of international cooperation is to fit in the general policy of the countries concerned*. It is also, of course, the more difficult and complicated solution, since it involves broadening the problem and building upwards from the base, that is determining the general objectives, as stated in the first part of this study. Whether the problem is to coordinate through cooperative schemes the efforts toward security and economy, or to coordinate — also along cooperative lines — aircraft construction and organisation of operations, it is finally on the States themselves, without any conceivable degree of delegation, that the main responsibilities are found to rest. It has been remarked, rightly enough, that whether of nationalized or of private status, the international airlines of the various States are in fact the representatives of these States, fully deserving in this respect their current name of "Flag-lines." The efforts undertaken in the United States to bring under the control of the C.A.B. and of the State Department the international activities of the airlines in financial, political and economic matters show quite clearly that such problems are ones of government responsibility and should be set at the level and in terms of general policy.

The discussion thus reverts to its initial phase, emphasis being laid on the coordination of objectives. The conclusion is that it is probably only on this basis that anything constructive should be attempted. There will be nations whose political principles and trends will prompt them to build up a system of international cooperation by working upwards from an experience of joint operations and gradually extending this initial field of application. There will be others whose national air policy, insofar as it stresses efficiency of airline operation rather than general organisation, will be opposed to such schemes, but these nations may well be brought to cooperate along these lines if it is imperative for them to cooperate closely in other fields, notably in the military one. Thus States divided on such and such an aspect of their national policies ought to find, by reason of circumstances, a common ground of agreement when facing their responsibilities on higher political issues.