

1951

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Recommended Citation

John C. Cooper, *United States Participation in Drafting Paris Convention 1919*, 18 J. Air L. & Com. 266 (1951)
<https://scholar.smu.edu/jalc/vol18/iss3/2>

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UNITED STATES PARTICIPATION IN DRAFTING PARIS CONVENTION 1919

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THE extent of United States participation in the preparation and drafting of the Convention relating to the Regulation of Aerial Navigation (Paris 1919) has been little appreciated. The fact that the United States signed this convention but did not ratify it is well known. But the more important fact that its delegates took a leading part in urging the adoption of certain of the basic principles of the convention, and that its representative on the Legal Subcommittee cast a crucial deciding vote which may have changed much of the subsequent development of the international law of commercial entry of the aircraft of one contracting State into the territory of another, is practically unknown.

The Paris Convention (as it will be referred to hereafter) was drafted by the Aeronautical Commission of the Peace Conference in Paris in 1919. The delegates of the United States on the Commission were Rear-Admiral H. S. Knapp, U.S. Navy, and Major-General M. M. Patrick, U.S. Army. Their report submitted to the Secretary of State of the United States, dated from Paris 10 July 1919,¹ together with the official minutes of the Aeronautical Commission,² and the verbatim stenographic report of the meetings of the Legal Subcommittee of the Aeronautical Commission³ constitute original source material which no student of the period should overlook. As stated by the United States delegates, the background of the organization of the Aeronautical Commission was as follows:

"The Aeronautical Commission of the Peace Conference was formed as the result of an invitation made by M. Clemenceau, President of the Preliminary Peace Conference, in his letter of 25 January, 1919, to the principal Allied and Associated Powers, in

¹ Report of the United States Delegates to the Aeronautical Commission of the Peace Conference (transmitted to the Secretary of State July 10, 1919). [Ms. in National Archives, Washington].

² Conférence de la paix, 1919-1920, *Recueil des actes de la conférence*, Partie VII, Préparation et signature des traités et conventions divers, Procès-verbaux et textes, A—Conventions générales entre alliés, 1) Commission de l'aéronautique. Paris, Imprimerie nationale, 1933.

³ *La Paix de Versailles-Aéronautique*, Paris, Editions internationales, 1934, p. 217s.

which he proposed that such a body be created. Considerable correspondence took place between Heads of Governments, and finally the President of the United States authorized participation by the United States on the new Aviation Committee, and the American Delegates received appointments as the representatives of the United States on the Inter-Allied Aviation Committee. The first meeting of this Committee took place on the 6th March, 1919. . . .

"The Aeronautical Commission was formally recognized by the Supreme Council of the Peace Conference by communications dated the 12th and 15th March, 1919 . . ." ⁴

The formal action of the Supreme Council of the Peace Conference referred to by the United States delegates was contained in the resolution prepared and introduced by Balfour of Great Britain, to which Clemenceau (France) and Lansing (United States) consented, as follows:

"It is agreed —

1. That the existing aviation Commission, consisting of two representatives each of the United States of America, the British Empire, France, Italy and Japan, with five representatives of other States at the Conference shall be recognised and invited to consider: —

- (a) Aerial matters arising out of the work of the Preliminary Peace Conference or referred by the Commissions set up by the Conference.
- (b) A Convention in regard to International Aerial Navigation in time of peace.

2. That the question of the commercial aviation to be allowed to Germany be referred to this Commission." ⁵

When the Commission was finally set up, it actually consisted of two delegates from each of the following States: United States of America, Great Britain, France, Italy and Japan; and one delegate from each of the following seven States: Belgium, Brazil, Cuba, Greece, Portugal, Rumania and Serbia. A very considerable part of the work of this Commission was devoted to military problems, particularly the effort to prevent or limit German air rearmament after the conclusion of peace. The historic failure of this effort must be charged to the Supreme War Council and not the Aeronautical Commission, whose views were overriden.⁶ These current military problems did have some effect on the drafting of the Paris Convention, but not nearly so much so as has been sometimes charged. The men who actually wrote the convention were civilians and international lawyers familiar with much of the his-

⁴ Report of the United States Delegates to the Aeronautical Commission, *op. cit.* p. 1. For additional facts as to the background of the formation of the Aeronautical Commission, see: Albert Roper, *La Convention internationale du 13 octobre 1919 . . .*, Paris, Recueil Sirey, 1930, Chap. 2; Kenneth W. Colegrove, *International Control of Aviation*, Boston, World Peace Foundation, 1930, Chap. 4; John C. Cooper, *The Right to Fly*, New York Henry Holt, 1947, pp. 57-58.

⁵ U. S. Department of State, *Papers relating to the Foreign Relations of the United States-The Paris Peace Conference 1919*, Washington, U.S. Govt. Print. Off., 1942-Vol. 4, p. 342.

⁶ For discussion of these problems, see: Cooper, *The Right to Fly*, *op. cit.*, Chaps. 4 and 5.

toric development of international transport law, although the basic principles on which the convention was founded were adopted by the Aeronautical Commission itself which consisted largely of military and naval officers. The Legal Subcommittee, which actually prepared the convention, did not meet until after these principles had been agreed upon.

On March 17, 1919 the Aeronautical Commission met to examine "the fundamental principles which should be adopted for air navigation in such manner as to permit the Subcommittees to take up their work following the directives fixed by the Commission." Present among others were Admiral Knapp and General Patrick for the United States, assisted by Col. E. S. Gorrell, who in later life became president of the Air Transport Association of America. The United States delegates took an immediate and decisive part in directing the course of the discussion. On the motion of Admiral Knapp the Commission adopted as its first principle the acceptance of the rule that each State is sovereign in the airspace above its territory, as follows:

"1. Recognition: (1) of the principle of the full and absolute sovereignty of each State over the air above its territories and territorial waters, carrying with it the right of exclusion of foreign aircraft;

(2) of the right of each State to impose its jurisdiction over the air above its territory and territorial waters."

As its second principle, the Commission adopted the following:

"2. Subject to the principle of sovereignty, recognition of the desirability of the greatest freedom of international air navigation in so far as this freedom is consistent with the security of the State, with the enforcement of reasonable regulations relative to the admission of aircraft of the contracting States and with the domestic legislation of the State."

On motion of General Patrick, it was decided that this principle would apply only to contracting States and not to all foreign States. This was clarified by the third principle adopted by the Commission as follows:

"3. With regard to domestic regulations relative to the admission and treatment of the aircraft of the contracting States, recognition of the principle of the absence of all discrimination on the ground of nationality."

While no dissenting voice was heard on the acceptance of the principle of national airspace sovereignty, sharp differences later developed as to the extent to which aircraft of contracting States should be authorized by the convention itself to have commercial privileges into and through the territory (including the airspace) of other contracting States. It is interesting to note that the delegates of the United States took so positive a position on the subject, when the United States had taken practically no part in official discussions prior to World War I

as to the extent of the right of a State to control the use of its airspace by foreign States.⁷

The United States had made no preparations prior to the Peace Conference to assist in drafting a post-war convention for the regulation of international peacetime air navigation. On the contrary, both Great Britain and France had given careful and extensive thought to the subject and had prepared drafts of proposed conventions and international regulations. The official minutes of the Aeronautical Commission contain both British and French proposals for an international convention. But the evidence is incontrovertible that draft conventions were also prepared by the delegates of the United States (apparently while the Aeronautical Commission was in session) and were circulated to other delegations and were actually considered and used in the final draft of the convention. The report of the United States delegates to the Secretary of State says: "Draft Conventions relating to International Air Navigation, as drawn up by the Delegates of Great Britain, France, Italy and the United States were exchanged among the various Delegations and served as a basis for discussion and solution of the questions presented to the Sub-Commissions in their work of drawing up an international Convention. (Copies of these drafts appended, marked C-1 to C-6 enclosed herewith)."

The exhibits to the United States delegates' report are actually as follows: C-1, the British draft convention just as it appears in the minutes of the Aeronautical Commission, with added notes and comments by the United States delegation; C-2, a provisional draft of regulations for adoption in Great Britain to cover civil aviation "pending the settlement of an international convention;" C-3, an English translation of the draft convention proposed by France, together with added notes and comments by the United States delegation; C-4, an American draft international convention; C-5, a second American draft; C-6, a document entitled "Italian Proposed Draft Convention for Air Navigation," but correctly described in its sub-title as "Italian Air Ministry Proposal for Aerial Navigation Laws."

The evidence in the report is not clear as to which of the two United States drafts stated the final position of the delegation. However, comparison of the texts (to be discussed hereafter) and other evidence clearly indicates that the second draft stated the official United States position. The first draft (C-4) comprised thirty articles and seemed to be nothing more than a redraft of the British proposal. The second American draft (C-5) comprised twenty-six articles, was more

⁷ My own extensive and as yet unpublished research on the historical development of the law as to the right of a State in the airspace above its surface territories indicates that without question the rule of national airspace sovereignty was an accepted and generally understood part of international law prior to the outbreak of World War I, that the acts of States during the war were consistent with the existence of this rule, and that the attacks on the rule prior to World War I were purely doctrinal and never accepted or supported by any formal position of any State in the international community. The Paris Convention did nothing more than restate the existing international law on the subject.

condensed, and varied in important details from the British proposal. A copy of this draft was furnished after the Peace Conference by General Patrick to Mr. Ray Stannard Baker and appears as one of the documents in his semi-official work *Woodrow Wilson and World Settlement*. Referring to this draft, Baker states that "their draft furnished many of the articles finally incorporated in the convention."⁸ The text of this second, and apparently official, American draft is printed with this article as an appendix.

The noteworthy feature of the British draft, so far as international air law is concerned, was its statement in favor of sovereignty in the air coupled with extremely broad privileges of flight — practically what we would now call the "Five Freedoms." Great Britain had long favored official acceptance of the right of each State to control flight over its territory as the basic principle of international air law. As early as 1911 a proposed "Aerial Navigation Bill" had been drafted in Great Britain (although never introduced in Parliament) which opened with the following recitals:

"WHEREAS the sovereignty and rightful jurisdiction of His Majesty extends, and has always extended, over the air superincumbent on all parts of His Majesty's dominions and the territorial waters adjacent thereto:

"And whereas it is expedient to regulate the navigation of aircraft, whether British or foreign, within the limits of such jurisdiction, and in the case of British aircraft to regulate the navigation thereof both within the limits of such jurisdiction and elsewhere:"⁹

It was therefore not surprising that the British 1919 draft was based on sovereignty, but nothing in published discussions prior to World War I indicated that the British Government did favor the widely extended commercial air navigation privileges suggested in the draft presented at Paris. The critical articles of the British draft are as follows:

"Article 1: — The High Contracting Parties recognise the full and absolute sovereignty and jurisdiction of every State over the air above its territories and territorial waters, but subject thereto the aircraft of a contracting State may fly freely into and over the territories of the other contracting States provided they comply with the regulations laid down by the latter. Such regulations will permit the free navigation of foreign aircraft except in so far as restrictions appear to the State to be necessary in order to guarantee its own security or that of the lives and property of its inhabitants and to exercise such jurisdiction and supervision as will secure observance of its municipal legislation. The regulations shall be imposed on foreign aircraft without discrimination except in times of great emergency when a State may deem it necessary to safeguard its own security. It is, however, agreed that any one contracting State may refuse to accord to the aircraft of any other

⁸ Ray Stannard Baker, *Woodrow Wilson and World Settlement . . .*, Garden City, N.Y., Doubleday Page, 1922, Vol. 2, p. 460, Vol. 3, p. 419.

⁹ *Reports of the Civil Aerial Transport Committee . . .*, London, H. M. Stationery Office, 1918 (Cd. 9218), Appendix B to Report of Special Committee No. 1.

contracting State any facilities which the latter does not itself accord under its regulations.

“Article 2:— Each contracting State shall have the right to impose special restrictions by way of reservation or otherwise with respect to the public conveyance of persons and goods between two points on its territory, but such restrictions may not be imposed on a foreign aircraft where such aircraft is proceeding from one point to another within the territory of the contracting State either for the purpose (1) of landing the whole or part of its passengers or goods brought from abroad or (2) of taking on board the whole or part of its passengers or goods for a foreign destination, or (3) of carrying between the two points passengers holding through tickets or goods consigned for through transit to or from some place outside the territory of the contracting State.”

The privileges contemplated by these two articles were limited to aircraft of contracting States. This was emphasized further by the provisions of Article 3 of the British draft which stipulated that “no contracting State shall, except by special and temporary authorization, permit any foreign aircraft to fly over its territory” unless it possessed the nationality of a contracting State.

The French draft presented at Paris was much shorter and simpler than the British draft. It contained no definitive statement as to national sovereignty in the airspace, but was based on that legal theory. This necessarily follows from Article 1 of the French draft which stated that “Only aircraft belonging entirely to owners belonging to one of the contracting States . . . shall be allowed to fly over the territories of the contracting States.”

The notes included in the exhibits to the United States delegates’ report referred to above are most illuminating. The form in which they are presented indicates that they were among the papers circulated to other delegations. Commenting on the French draft, the United States delegation suggested the inclusion of a preliminary article as follows:

“The contracting States declare that the sovereignty of States extends throughout the atmosphere above their own territories, including their territorial waters; but that no State may claim sovereignty of any part of the atmosphere over the High Seas or over waste portions of the land that are subject to no particular jurisdiction.”

Commenting on the necessity of an article of this kind, the United States delegates said:

“The sovereignty of the atmosphere is nowhere the subject of any formal international agreement. It is fundamental to any consideration of international aerial intercourse, as it is also to aerial questions connected with a state of war. Even if it be held that there is a common consent to the effect of this proposed Article, it will be declaratory—a formal conventional statement removing the subject from the realms of speculation in so far as the attitude of the assenting contracting parties is concerned.”

Commenting further on the French draft, they added:

"The Draft nowhere expressly stipulates that a contracting State shall permit foreign aircraft, even of other contracting States, to enter its jurisdiction. It may be presumed that this has been intentional in a draft prepared with so much care. In the light of their peculiar qualities — in peace in connection with Customs, Health, Immigration and Espionage laws, and in war because of their ready conversion into powerful military instrumentalities, and the difficulties of effective control at all times — the day does not seem to have arrived when any obligation to permit foreign aircraft to enter a State's jurisdiction should be adopted by international agreement. The most that should be attempted is to arrive at a set of general rules governing aircraft if they are permitted to enter foreign jurisdiction. Intentionally or unintentionally the Draft does no more than this."

Commenting on the British draft, the United States delegates indicated that the first clause of the first paragraph (as to sovereignty) "should be made a separate and independent article," adding:

"The remainder of Article I definitely permits the free navigation, with certain restrictions, over the territories of contracting States, in which it differs from the French Draft."

Apparently the United States delegation was at first inclined to accept the British position. The first American draft (Exhibit C-4 to the delegates' report) opens with definitions of "aircraft" and of "territory", then follows with an article to the effect that "The High Contracting Parties recognize the full and absolute sovereignty and jurisdiction of every State over the air above its territories," followed by new articles 3 and 4 as to the extent of the privileges of flight of contracting States:

"Article 3: — Subject to the provisions of Article 2 and to the municipal regulations laid down by any contracting States, the aircraft of each contracting State may fly freely into and across the jurisdiction of the others. Such municipal regulations, except in so far as restrictions appear to the State to be necessary in order to safeguard its own security or the lives and property of its inhabitants, will permit the free navigation of aircraft of the contracting States, and will not require foreign aircraft to land in an intervening State when on a through flight whose points of departure and arrival lie on opposite sides of that State. The regulations shall be imposed on aircraft of contracting States without discrimination except in times of great emergency when a State may deem it necessary to safeguard its own security. It is, however, agreed that any one contracting State may refuse to accord to the aircraft of any other contracting State any facilities which the latter does not itself accord under its regulations.

"Nothing in this convention, however, shall be held to abridge the right of any contracting State to forbid the entrance of foreign aircraft within its jurisdiction upon due notification to the other contracting States.

"Article 4: — Each contracting State shall have the right to impose special restrictions by way of reservation or otherwise with

respect to the public conveyance of persons and goods between two points on its territory, but such restrictions may not be imposed on an aircraft of another contracting State where such aircraft is proceeding from one point to another within the territory of the former contracting State either for the purpose (1) of landing the whole or part of its passengers or goods brought from abroad or (2) of taking on board the whole or part of its passengers or goods for a foreign destination, or (3) of carrying between the two points passengers holding through tickets or goods consigned for through transit, to or from some place outside the territory of the contracting State."

The development and change in the position taken by the United States delegates can best be noted by comparing these paragraphs with Articles 1 to 4 inclusive and Article 7 of the later American draft (attached as an appendix hereto).

In Article 1 of the latter, State sovereignty is recognized "in the airspace" above the territory of a State. So far as extensive research discloses, this is the first occasion on which a draft convention used the more exact term "airspace" rather than the term "air."¹⁰ The United States delegation is entitled to this credit.

Article 2 recognized the right of every State to exercise "such jurisdiction and supervision as will secure observance of its municipal legislation." The only limitation is that regulations shall be imposed on foreign aircraft without discrimination. It is clear from Article 7 that the term "foreign aircraft" in Article 2 means aircraft of contracting States, so that in substance Article 2 would have permitted States to impose such regulation on the entry of foreign aircraft (aircraft of other contracting States) as any State might desire provided regulations were applied without discrimination. This is a far and radical departure from the position in the British draft which would have prevented a State from restricting landings of aircraft of contracting States for the purpose of discharging or taking on board passengers or goods from abroad or destined for a foreign point. Article 4 is a statement of the undertaking of each State in time of peace to accord the liberty of innocent passage above its territory to the aircraft of other contracting States. This appears to be the first statement of this principle in approximately the form in which it finally appeared in Article 2 of the Paris Convention.

The comparison of other articles of this American draft will indi-

¹⁰ Of course eminent legal authorities had for years insisted that State sovereignty existed over the airspace and not over the gaseous air. See, for example, what is perhaps the earliest statement of this distinction when Westlake in 1906 at the meeting of the Institute of International Law challenged Fauchille's doctrinal insistence on "freedom of the air," saying: "I accept battle on the basis of the report; that is to say, on the principle of the freedom of the air, or, more exactly, the airspace. The air is itself something that cannot be possessed, which is carried at the will of the winds—today in Belgium, tomorrow in France or in Holland. What we have about us is not the air. It is the airspace." [*Annuaire de l'Institut de droit international*, Vol. 21, 1906, p. 297.]

cate the extent to which it influenced textually the Paris Convention, although the other passages are not of equal importance.

The actual draft of what eventually became the Paris Convention was first discussed in the Legal Subcommittee. The most active members of this subcommittee were civilians, although two were holding temporary military rank. Professor Buzzati, the chief Italian spokesman in the Legal Subcommittee, had long been known as an expert in international law. With other Italian jurists he had participated in the organization of the Verona conference in 1910, one of the earliest held on the subject of international air law. To Buzzati fell the task of taking the various drafts available at Paris and producing an actual text for the consideration of the Legal Subcommittee. It is known that he had available the text of the almost completed draft convention which resulted from the abortive international conference in Paris in 1910, as well as the texts of the new drafts submitted at Paris in 1919. While the minutes do not show his actual use of the second American draft, the internal evidence, as indicated earlier, appears to be conclusive on the point.

Professor de La Pradelle of France was the chief spokesman for that State in the Legal Subcommittee. He was already recognized as one of Europe's outstanding authorities on international law, had participated in pre-war air law discussions, and had assisted in drafting the French proposals for a post-war convention.

Captain H. S. Bacon was the chief spokesman for the United States on the Legal Subcommittee. He had practiced law in New York prior to World War I, had been on duty with the United States Air Force in Paris in a legal capacity during the war. After the war he returned to civilian life and practiced law in Paris until World War II.

Captain Tindal-Atkinson and Mr. White-Smith were the chief British spokesmen. Both were members of the British bar. The former held a commission in the R.A.F. during the war, but returned to civil life and a distinguished career in England after the war.

Anyone who desires to understand the real legal background of some of the critical clauses of the Paris Convention should study with care the stenographic reports of the sessions of the Legal Subcommittee and particularly the arguments presented by these thoroughly trained jurists and legal experts. Of special importance were the discussions that arose from the effort of the British delegates to have incorporated in the final convention the broad privileges of commercial flight between contracting States contemplated in Articles 1 and 2 of the British draft.

Though it is little known, the almost complete draft convention prepared at Paris in 1910 included a provision as to the establishment of international airlines, and as to cabotage. Article 21 of that draft, somewhat freely translated into English, read as follows:

"Each contracting State has the power to reserve the profes-

sional transport of persons and goods between two points on its territory to national aircraft alone, or to aircraft of certain contracting States, or to submit such navigation to special restrictions.

"The establishment of international airlines depends upon the assent of interested States."¹¹

At one of the first meetings of the Legal Subcommittee (March 20, 1919) Atkinson (Great Britain) had stated that the British point of view was that air navigation ought to be as free as possible, each State reserving the right to take measures which concerned its security and to lay out corridors over which air navigation would pass. At the meeting of March 22nd the early clauses of the convention were adopted almost in final form covering the questions of national airspace sovereignty, innocent passage, restricted zones, as well as the provision in original Article 5 that no contracting State would admit flight over its territory to the aircraft of non-contracting States except by special and temporary authorization. At the session of March 26th Buzzati brought forward his draft Article 15 as to the right of each State to reserve professional (commercial) air traffic between two points in its territory, suggesting language almost identical to that contained in Article 21 of the draft 1910 convention quoted above. He also suggested an Article 16, as to the establishment of international airlines depending on the consent of interested States, quite similar to that in the draft 1910 convention. At this point Atkinson (Great Britain) pressed the British point of view under which national restrictions could not be imposed on aircraft of contracting States seeking to disembark or to take on all or part of its passengers or goods coming from or destined abroad. He argued that if commercial aircraft provided passenger service from London to Constantinople and passed through Paris, it ought to be allowed to take on passengers at Paris for Constantinople, but that this could be prevented under the proposed Article 15. In other words, using more modern terminology, the British delegate insisted that the convention ought to give full Fifth Freedom rights to the commercial aircraft of every contracting State operating on through routes.

De La Pradelle (France) contested the British point of view. He was prepared to accept the position that an international line ought to have the right to fly over national territory without stopping or landing, but that concessions must stop there. He insisted that each State ought to remain absolute sovereign of what occurred on its territory — that no one had sufficient experience as to the conditions

¹¹ The French text read:

"Chaque Etat contractant aura la faculté de réserver le transport professionnel de personnes et de marchandises, ayant lieu entre deux points de son territoire, aux aéronefs nationaux seuls ou aux aéronefs de certains Etats contractants ou de soumettre cette navigation à des restrictions spéciales.

"L'établissement de lignes internationales de communication aérienne dépendra de l'assentiment des Etats intéressés." [Conférence internationale de navigation aérienne, Paris 18 mai-28 juin 1910, *Procès-verbaux des séances et annexes*. Paris, Imprimerie nationale, 1910, pp. 188-199.]

under which international lines would be established to fix definite regulations, and that France could not accept the commitments (suggested by the British proposal). Buzzati (Italy) stated that the Italian delegation supported the French position. In the case of an international line from London to Constantinople, he questioned whether passengers or goods should be picked up at Paris for Turkey if a French line existed between Paris and Constantinople. (A very modern statement of present day commercial Fourth and Fifth Freedom problems.) Buzzati added that these were new questions and that no one knew how international lines would be set up in future.

The question was further discussed at the meeting of March 26th. Atkinson and de La Pradelle restated the British and French positions. The British proposal was formally put to a vote. It was supported by the delegations of Great Britain and of Japan (the latter having taken no active part in the discussion), and was opposed by the delegations of France, Italy and the United States.

Thus, the vote of the United States was controlling on this critical question. Had the United States representative in the legal Subcommittee supported the British position, an entirely different draft convention might have been reported to the full Aeronautical Commission and might have been there adopted. Instead of a convention which authorized interested States to regulate the establishment of international airlines over their territories, such a convention would have denied the right of any State to restrict the disembarkation of passengers or goods from abroad brought in by airlines of other contracting States, or the embarkation of passengers or goods destined for points abroad. Such a convention would in substance have meant that what we now consider as Third, Fourth and Fifth Freedoms commercial privileges would have been written into the Paris Convention from the beginning.

The United States delegates took an active part in the discussions in other subcommittees and participated in the final discussions in the full Commission before the convention was opened for signature. The United States was also represented on the final drafting committee. But at no point was its influence as controlling or decisive as on the occasions mentioned in detail above.

In summary it may be said that the contributions of the United States to the drafting of the Paris Convention included the suggestion of the use of the technical term "airspace" and not "air" in stating the principle of sovereignty; in using the term "innocent passage" as it appeared in the final draft of the convention; in insisting on the principle of sovereignty in the airspace to the extent that it refused to support the British position which sought to write into the convention wide privileges for the future development of international airlines.

APPENDIX

DRAFT CONVENTION SUBMITTED TO THE AERONAUTICAL COMMISSION OF THE PEACE CONFERENCE HELD AT PARIS IN 1919 BY THE AMERICAN MEMBERS, REAR-ADMIRAL H. S. KNAPP AND MAJOR GENERAL MASON M. PATRICK

[Attached as Exhibit C-5 to Report of the U.S. Delegates to the Aeronautical Commission of the Peace Conference to the Secretary of State, July 10, 1919. Also in: Ray Stannard Baker, *Woodrow Wilson and World Settlement*, New York, Doubleday Page, 1922, Vol. 3, pp. 419-424.]

ARTICLE 1

The contracting states recognize the full and absolute sovereignty and jurisdiction of every state in the air space above its territory and territorial waters.

ARTICLE 2

The contracting states recognise the right of every state to establish such regulations and restrictions as appear to the state to be necessary in order to guarantee its own security or that of the lives and property of its inhabitants, and its right to exercise such jurisdiction and supervision as will secure observance of its municipal legislation. These regulations shall be imposed on foreign aircraft without discrimination, but it is agreed that any one contracting state may refuse to accord to the aircraft of any other contracting state any facilities which the latter does not itself accord under its regulations.

ARTICLE 3

Each contracting state shall have the right to impose special restrictions by way of reservation or otherwise with respect to the public conveyance of persons and goods between two points on its territory.

ARTICLE 4

Each contracting state undertakes in time of peace to accord the liberty of innocent passage above its territories to the aircraft of the other contracting states, subject to the conditions established by this convention.

ARTICLE 5

Each contracting state has the right to prohibit the aircraft of other contracting states from flying over certain zones of its territory.

If a state exercises this right, it must publish and notify beforehand to the other contracting states the location and extent of the forbidden zones. All of the aircraft of a state except those belonging to its military establishment and other state-owned aircraft engaged in public business, shall be excluded from any zones which are forbidden to foreign aircraft.

ARTICLE 6

Every aircraft which finds itself over a forbidden zone shall at once give the signal of distress provided for in Article — of the regulations annexed hereto, and as soon as possible shall land at a station outside the prohibited zone but as near as possible thereto and within the territory of the state within which the prohibited zone is located.

Any aircraft when called upon to land by signal or otherwise must do so at once. Each state shall publish and notify to the other contracting states the landing signals adopted by it.

ARTICLE 7

The present convention applies solely to aircraft possessing the nationality of a contracting state. No contracting state shall, except by special and temporary authorization, permit any aircraft to fly over its territory unless such aircraft does possess the nationality of a contracting state.

ARTICLE 8

An aircraft shall possess the nationality of the state upon whose official register it is borne. Every aircraft of a contracting state which leaves its jurisdiction and enters the jurisdiction of another contracting state shall be borne upon the official register of the states whose nationality it possesses. No aircraft of a contracting state shall be permitted to enter the jurisdiction of another contracting state unless it belongs wholly to nationals of a single contracting state.

Joint stock companies, limited liability companies, and all other incorporated or associated bodies shall be considered nationals of the state under the laws of which they are created. At least two-thirds of the stock of all such companies which operate aircraft in interstate traffic shall be owned by nationals of the state under the laws of which they are created, and all of their directors shall be nationals of such state.

ARTICLE 9

So long as an aircraft possesses the nationality of one of the contracting states in accordance with Article—, no other state shall confer its nationality upon it. In cases where the home station of an aircraft is in the territory of a contracting state whose nationality it does not possess, the later shall be immediately notified of its registration by the state in which it is registered.

ARTICLE 10

The contracting states will exchange and will forward to the Permanent International Aerial Commission every month lists of new entries on their registers and of the annulment of entries made on their registers during the preceding month.

ARTICLE 11

The aircraft of a contracting state when within the jurisdiction of another contracting state must bear their nationality and registration marks and the name and address of their owners.

ARTICLE 12

Every aircraft which passes from the jurisdiction of the state whose nationality it possesses into the jurisdiction of another contracting state shall be provided with a certificate of air worthiness issued or authorized by the state whose nationality it possesses.

ARTICLE 13

All commanding officers, pilots, engineers, and other members of the operating crew of an aircraft of a contracting state which passes into the jurisdiction of another contracting state must be provided with certificates of their competency and licenses issued or authorized by the state whose nationality the aircraft possesses.

ARTICLE 14

Certificates of air worthiness and certificates of competency and licenses issued or authorized by the state conferring nationality upon an aircraft will be recognised as valid by the other contracting states, provided they are

issued in accordance with the conditions of this convention and the regulations appended hereto.

Each contracting state shall have the right to refuse to recognise certificates of air worthiness or certificates of competency or licenses issued to any of its own nationals by another contracting state.

Such non-recognition shall immediately be notified to the state which had issued the certificates and to the state where the aircraft has its home station.

ARTICLE 15

Every aircraft engaged in interstate navigation must carry:

- (a) A certificate of nationality.
- (b) A certificate of air worthiness.
- (c) Certificates of competency and licences for its operating crew.
- (d) If merchandise is carried, a bill of lading and a manifest.
- (e) A log book.

ARTICLE 16

All aircraft log books shall be kept for two years after the last entry and shall be presented when demanded by the public officials of any contracting state within whose jurisdiction the aircraft may be.

ARTICLE 17

The proper authorities of a contracting state shall verify the documents which its aircraft must carry and it is their duty to verify the quantity, quality, weight and measure of any merchandise carried and to furnish the manifest.

ARTICLE 18

Each contracting state agrees to take all necessary measures to assist aircraft in distress.

ARTICLE 19

Each contracting state agrees to allow aircraft belonging to other contracting states to land on all landing fields in its territory which are available for general use by its own nationals. The landing charges and charges for sojourn will apply equally to all aircraft of the other contracting states without distinction on account of nationality.

ARTICLE 20

Transportation by aircraft of explosives, arms and ammunition, and of any other dangerous material is prohibited in international traffic.

ARTICLE 21

Each contracting state has the right to prohibit the use of photographic apparatus above its territory and also the right to develop any films or plates found on board an aircraft, and the right to take possession of any apparatus and plates which have been used above its territory.

ARTICLE 22

The following will be considered as state-owned aircraft:

- (a) Military aircraft.
- (b) Aircraft used for state service other than military, such as customs and postal service, police, etc.
- (c) All other aircraft which are the property of the state.

All other aircraft are considered as private aircraft.

ARTICLE 23

Without special authorisation which may be granted by any contracting state, military aircraft belonging to one contracting state will not enter the jurisdiction of another contracting state. Any military aircraft which finds itself or which without such authorisation is found within the jurisdiction of a contracting state shall be subject to all of the conditions contained in this convention.

ARTICLE 24

There shall be created under the name of _____ a central office at _____ . The expenses connected therewith shall be borne by the contracting states in such proportions as shall be fixed by the permanent commission provided for in Article _____ .

ARTICLE 25

This bureau shall be under the control of a permanent commission consisting of two representatives each of the United States, France, the British Empire, Italy and Japan, with five other representatives nominated by the remainder of the contracting states.

This commission is empowered to collect, collate, publish and distribute information of every kind concerning aerial navigation; to render opinions upon questions in dispute at the request of the contracting states concerned; to examine proposals for any modification of the provisions of this convention; to recommend such modifications as may seem necessary; in general, to conduct such investigations or carry on such other work as may be for the benefit of the international aerial traffic of the contracting states.

ARTICLE 26

To this convention there are attached regulations which have the same force and effect as the convention itself and which will be put in force at the same time. The provisions of this convention and of the attached regulations may be modified at any time after agreement between the contracting states.