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Editorials

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EDITORIALS

THE FEDERAL SENATE'S NEGLECT OF THE NATION'S INTERNATIONAL INTERESTS*

1. When the curtain rose last December on the third session of the 71st Congress, it revealed in the stage-setting one feature as changeless as usual, viz., the Senate table covered with papers representing the nation's international interests, unattended to. The Constitution unfortunately requires the Senate's "advice and consent" before the Executive can make contracts deemed necessary for the protection of our international rights and the improvement of our international relations. But to those rights and relations the Senate is callously indifferent.

We do not refer simply to the pending World Court treaty; we refer to the whole field of foreign relations. The President early in the session sent to the Senate a special message asking for prompt action on ten other treaties. Two of these treaties have been pending before the Senate for *five and six* years respectively, three for *three* years; three for *two* years; and one for *one* year. "Inasmuch as these treaties affect numerous phases of private and public endeavor," the President wrote, "I earnestly commend their *early* conclusion to the attention of Congress." And they have already been waiting there for years!

There are also nine other international pacts, not technically treaties, to which the President called the Senate's attention as awaiting its action. This makes twenty in all.

2. We shall not here catalogue the subjects thus so long neglected by the Senate. But we shall, from another quarter, give a striking instance of the Senate's brazen neglect of its duty to the Nation's international interests. This instance we choose because the subject is one of obviously notable importance, because the proposal was not open to the slightest doubt or controversy, and because it called merely for an expense of an item of \$250. We refer to a proposal to pay our share of the expense of the International Technical Committee of Aerial Legal Experts, meeting annually in Europe.¹ This committee, representing thirty-nine nations, corres-

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1. The documents showing the above facts are set forth in (Jan. 1932) 3 JOUR. OF AIR LAW 42.

ponds in international air law to our National Conference of Commissioners on Uniform State Laws, well known to all lawyers. On May 24, 1928, President Coolidge transmitted to the 70th Congress a note from the Secretary of State asking for a joint resolution appropriating not more than \$250 annually to meet the expenses of participation in the work of this committee. What was the result of this simple request?

(1) On May 28, 1928, four days later, the House passed the resolution. But the Senate adjourned next day, without acting on it.

(2) In the second session of that Congress in 1929, no action was taken by the Senate.

(3) At the first session of the 71st Congress, the request was once more made by the President, on April 1, 1930, transmitting a similar note. On May 29, 1930, it was passed by the House; but no action was taken by the Senate during all that year.

(4) On Feb. 10, 1931, the resolution was finally concurred in by the Senate.

Note this record then: The House passed this resolution in *four days*, when first requested. But the august Senate waited *nearly three years!*

This is a sample. And there are now twenty other international interests of the United States being obstructed by the Senate's inexplicable inertia.

3. We say "inexplicable." But there will be at least one explanation for the Senate's inaction during the present session; for it will be too profoundly absorbed in its most favored occupation, viz., bargaining for offices. The vacancy created by resignation in the federal Supreme Court in January brings into the arena the greatest prize, rarely offered for contention, viz., the nomination of an Associate Justice of the Supreme Court. Possessed as they are of the unconstitutional conviction that theirs is the nominating prerogative, the august Senators must now naturally suspend all attention to public business, national or international, until they can agree as to who shall be the winner of this prize. It is a tremendous thrill for the Senators, with all the intrigues, the bargainings, the tradings, that have been going on since January 12! Some of the Senators will no doubt figure hopelessly in the jostling, like the littler lions in Daniel's den. For already from two circuits there are two members each in the court, and from another circuit there have also been two members for many years; which leaves four circuits with one each, and four circuits with none.

Shall not the empty ones be filled? Yet there is only one prize. The Senators from the emptiest circuits are hungriest, of course; but it remains to be seen whether they have anything substantial to bargain with, "thing" here meaning the exercise of their veto rights on favorite measures of their colleagues from other circuits.

It is not a spectacle pleasant to dwell upon. We refer to it here because until this period of feverish bargaining has elapsed, there is no prospect of any action being taken on the twenty pending treaties urged by the President for prompt attention.

4. Buzzards look like eagles, and may well be mistaken for them, when soaring far aloft in the vast void of the empyrean. But on close inspection, as they sit wrangling around their prey, one is disillusioned.

Senators look like statesmen, in the lofty and lucid ambient of the text of our Constitution describing their duties. But in their performance of those duties under that Constitution, what do they look like?

JOHN H. WIGMORE.

PROPOSED UNIFORM AERONAUTICAL CODE: IDEAS OF TWO COMMITTEES HARMONIZED

When the Aeronautical Law Committee of the American Bar Association presented its report for 1931 at Atlantic City, there seemed to be some opposition, as expressed on the floor at the conclusion of the Chairman's report. This opposition centered on two suggested statements in the report, with reference to the Committee's opinions on air law. One of these was the Committee's definitely expressed disbelief in the theory that ownership of airspace was vested in the owners of the land beneath. The other was the Committee's definite belief that the owner of an aircraft was not or should not be absolutely liable for all damage done to persons and property on the ground.

This belief was diametrically opposed to the belief of prior committees, which had shaped and prepared the Uniform State Law of Aeronautics, adopted by the Aviation Committee of the Commissioners on Uniform State Laws and the American Bar Association in 1925.

The proposed Uniform Aeronautical Code tentatively suggested by the Aeronautical Law Committee had withdrawn the declaration of ownership of airspace, omitting it entirely from the Code, and had restated the liability rule with reference to persons and prop-

erty on the ground, changing it from absolute liability to a statement of a presumption of liability, in other words, the prima facie rule.

While the personnel of both committees has changed considerably since 1925, there were still on the Aviation Committee of the Commissioners on Uniform State Laws several members who had participated in the work of that Committee in 1925 and prior thereto, and consequently a conference for the purpose of harmonizing the views of the two committees was indicated as a necessity.

A joint meeting, therefore, of the aviation Committee of the Commissioners on Uniform State Laws, and of the Aeronautical Law Committee of the American Bar Association, was held at St. Louis, January 29th. Those present were Randolph Barton, Jr., Chairman, George G. Bogert and W. A. Lybrand, of the Commissioners' Committee, and Mabel Walker Willebrandt, John C. Cooper, Jr., Howard Wikoff, Edgar Allan Poe, Jr. and Geo. B. Logan, Chairman, of the Aeronautical Law Committee of the Association.

After a lengthy discussion of the principles of law involved and particularly after a discussion of the decision of the United States Circuit Court of Appeals, 6th Circuit, in the case of *Swetland v. Curtiss*, the conferees reached the conclusion that the statement of ownership of airspace, heretofore contained in the Uniform State Law of Aeronautics, was no longer justified, and that its omission from the proposed Uniform Aeronautical Code was proper.

On the other hand, the conferees agreed that the rule of absolute liability should be invoked in case of damage to persons or property on the ground, resulting either from the operation of aircraft or from articles dropped or thrown therefrom. In reaching this conclusion as to absolute liability, the conferees decided that the word "owner" should not be construed to mean, in all cases, the record owner. The conferees recognized that the owner might not be in fact responsible for the operation of the aircraft, but that the aircraft, when stolen or when validly leased, was not being operated for the account of the owner, and that it was the operator for whose account the plane was being operated and not the owner in such cases, who should be held to the rule of liability above described.

It was further agreed that the owner should not include persons holding title to an aircraft under conditional sales contracts solely as security for unpaid purchase prices, or holding title as

mortgagees in chattel mortgages for the same purpose, and that in these cases, the conditional sale vendee or the chattel mortgage mortgagor should in fact be the one accountable for the results of the operation of the aircraft.

The exact phraseology of these agreed provisions of the Uniform Aeronautical Code was left to be framed by Mr. Bogert of the Aviation Committee of the Commissioners and by Mr. Logan, Chairman of the Aeronautical Law Committee of the Association.

Other provisions of the Uniform Aeronautical Code were discussed, and the views of the conferees brought into thorough accord.

A study was likewise made of the proposed Uniform Airports Act, and it is anticipated that these two proposed statutes, in a form acceptable to the joint committees, will be presented to the American Bar Association for its approval at the meeting to be held in Washington, D. C., in 1932.

GEORGE B. LOGAN.

CAPTAIN FRANK M. MCKEE*

In the untimely and shocking death of Frank M. McKee, aviation has lost one of its most important leaders. During the War he was in charge of the balloon repairs department in France for all American Air Forces, and he was one of the few men in the U. S. Army Air Corps to hold both the heavier-than-air and lighter-than-air craft licenses. As director of Aeronautics for the State of Ohio, Frank has demonstrated the many-sided qualities of his character and training. As President of the National Association of State Aviation Officials, he has successfully guided that youthful organization past no small number of obstacles.

As a pilot, he thoroughly understood flying; as a former commercial operator, he knew the aviation business; as an official, he knew the limitations of regulation. The result was a record of performance unexcelled, and a host of friends wherever he was known.

The State of Ohio has lost a really great official. The National Association of State Aviation Officials has lost its Chief Pilot. We who knew him have lost an irreplaceable friend.

REED G. LANDIS.

*Hon. Frank M. McKee, Director of Aeronautics, State of Ohio, and President of the National Association of State Aviation Officials, died at his home in Columbus, Ohio, on March 12th, of organic heart disease.

THE 1932 INTERNATIONAL CONGRESS OF
COMPARATIVE LAW

This Congress will be the first world's congress of lawyers since the St. Louis Exposition of 1904. It is expected to result in a world-organization of the legal profession—the first time in history.

The Congress is being sponsored by the International Academy of Comparative Law, a select body of jurists, including five members from the United States, Justice Harlan Stone, Dean Roscoe Pound, Hon. John B. Moore of New York, and James B. Scott, of Washington, and Prof. Borchard of Yale University; its president is Judge A. S. de Bustamante, of Havana (member of the World Court), and its Secretary is Prof. Elemer Balogh of Berlin, who is also Executive Secretary of the Congress.

Each nation has a national organizing Committee; the Attorney of the United States, Mr. Wm. D. Mitchell, as head of the Department of Justice, is chairman of the United States Committee; Lord Chancellor Sankey heads the British National Committee; and the Ministers of Justice in other countries have the corresponding positions. Some 50 countries have appointed National Committees.

Any member of the Bar or Bench may attend the Congress as auditor. Delegates may be designated by any Bar Association. Thus far some 70 Associations in this country have named delegates.

For both auditors and delegates the Congress attendance-fee is 12 Dutch gulden (\$4.80). Twenty topics have been selected for report and discussion; on request the undersigned will send a list of the topics.

It is hoped that the International Filene-Finlay Translator microphone system can be installed, thus making it possible for every delegate to listen to his own language to the instantaneous translation of all speeches.

To interest lawyers in making the Congress the occasion of a European vacation, the "Lawyer's Pilgrimage" and other tours have been arranged at reduced rates, costing from \$580 to \$965. Further information about these tours may be obtained from the North Shore Travel Service (State Bank and Trust Company Building), Evanston, Illinois. For information as to the Congress, write to the undersigned.

JOHN H. WIGMORE.

AIR TRANSPORT AND THE JOURNAL

The present number of the JOURNAL OF AIR LAW contains three articles on the general topic of certificates of convenience and necessity for air carriers, and the inclusion of so much certificate material in this issue has forced the cutting down or entire omission of many department items. The subject is timely and this April symposium, added to previous articles¹ published in the Journal, offers a rather complete picture of the certificate question. However, there remains some difference of opinion and these writings will doubtless stimulate others which may suggest other solutions. The question has already been raised as to why any certificate regulation for safety purposes is necessary if federal and state air laws provide that all aircraft and pilots must be licensed. The question has merits, and it will undoubtedly be answered, along with others, in a subsequent article.

1. *Thomas H. Kennedy*, "The Certificate of Convenience and Necessity Applied to Air Transportation", 1 JOURNAL OF AIR LAW 76, and *Howard C. Knotts*, "Certificates of Convenience and Necessity for Air Carriers," 3 JOURNAL OF AIR LAW 58.

For other articles on the carrier question, generally, see Note 3 on page 227.