1953

Reorganization Plan Number 10 of 1953 - President's Plan for Separate Payment of Airline Subsidies

Charles S. Rhyne
Calvin M. Cory
William H. Burton
Palmer Hutchenson Jr.

Follow this and additional works at: https://scholar.smu.edu/jalc

Recommended Citation
https://scholar.smu.edu/jalc/vol20/iss2/6

This International Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.
To the Congress of the United States:

I transmit herewith Reorganization Plan No. 10 of 1953, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended.

The reorganization plan provides for the separate payment of airline subsidies, which now are merged with payments for the transportation of airmail. The purposes of the plan are to place responsibility for subsidy payment in the agency which determines the subsidies and to enable the Congress and the President to maintain effective review of the subsidy program. The plan accomplishes these objectives by transferring from the Postmaster General to the Civil Aeronautics Board that portion of the present airmail payment functions which relates to subsidy assistance.

The reorganization plan will not alter the basic national policy of promoting the sound development of air transportation through Federal aid. Nor will the plan in itself change the aggregate amount of revenue for which any airline is eligible. The policy of providing financial aid for airline development was adopted in the Civil Aeronautics Act of 1938, and reflects the broad national interest in securing a system of air transport services adequate to the needs of defense, commerce, and the postal service. Federal aid provided under that act has contributed greatly to the rapid development of commercial air transportation during the past fifteen years. Continued subsidy support will be required for some time to enable certain segments of the industry to achieve the full measure of growth required by the public interest.

At present, airline subsidies are provided by means of mail transportation rates established by the Civil Aeronautics Board and paid by the Post Office Department. In essence, the Civil Aeronautics Act provides that such mail rates may be set at a level sufficiently high to overcome deficits incurred by the airlines on their total operations, including passenger and freight traffic. Total mail payments by the Post Office Department thus include, not only a reasonable compensation for the service of transporting the mail, but also a subsidy element where required to support the general program of airline development. This method of furnishing subsidy restricts the opportunity for congressional and public review, and substantially inflates the reported cost of the postal service.

Under the reorganization plan, the Civil Aeronautics Board will continue to determine the over-all level of payments to be made to the airlines, and will do so in accordance with the existing policy standards of the Civil Aeronautics Act. However, the Post Office Department will pay only that portion which represents compensation for carrying the mail on the basis of fair and reasonable rates determined by the Board without regard to the need for Federal aid. The plan will transfer to the Board the responsibility for paying any amounts in excess of such compensation, this excess being the subsidy element of the aggregate Federal payment.

In the interest of prompt effectuation, the plan contains an interim provision which authorizes the Board to establish without prior notice or hearing the initial rates to be paid by the Post Office Department, subject however to the right of the Board or any affected party to initiate a proceeding at
any time for a hearing and a determination of a new rate. The Board has already made studies estimating the subsidy element contained in airmail payments, and for some time has been setting forth in connection with its mail-rate decisions a breakdown between the subsidy and compensatory elements of the over-all rate. The plan will permit the Board to base the initial rates payable by the Post Office Department on the compensatory rates contained in these studies and decisions.

By providing for a complete and formal separation of subsidy from compensation for the transportation of mail, the reorganization plan will clearly fix the fiscal responsibility for the subsidy program in the appropriate agency. It will assure the Congress and the public of continuing information on the cost of this program. It will give the Congress an opportunity to review and take any appropriate action with respect to the level of subsidy aid in the course of the regular appropriation process. It will also result in a more accurate presentation of the cost of the postal service, by removing from the budget of the Post Office Department a nonpostal expenditure currently estimated at nearly $80 million a year.

The basic principle of airline subsidy separation was recommended in 1949 by the Commission on Organization of the Executive Branch of the Government. Legislation to accomplish separation has been under discussion for several years. Such legislation has generally gone beyond a simple transfer of the subsidy function, and has included provisions which would change existing substantive law. Some of these proposed substantive changes have been the subject of controversy, and have been responsible for the past delays in enacting legislation on this matter. The present reorganization plan provides an opportunity to accomplish immediately the important objective of transferring subsidy payment responsibility, within the framework of existing statutory policy. In view of the general agreement on the principle of subsidy separation, I trust that this plan will have widespread support.

At the same time, the immediate transfer of subsidy payment under this reorganization plan should not preclude the consideration by the Congress of legislation to effect refinements and modifications in the basic law in this field. One such change, for example, would be an amendment of the Civil Aeronautics Act to provide specifically that compensatory rates for mail transportation should be based upon the cost of rendering mail service, plus a fair return. I understand that the Civil Aeronautics Board has been following this general policy in those cases where it has established compensatory mail rates. The reorganization plan will not affect its right to continue applying such a policy in the future. However, I believe it would be appropriate to establish the cost principle as a matter of definite legislative policy.

After investigation, I have found and hereby declare that each reorganization included in the accompanying reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

The reorganization plan, by providing a sounder basis for the administration and congressional review of the affected functions, should in the long run promote increased economy and effectiveness of the Federal expenditures concerned. It is not practicable, however, to itemize in advance of actual experience the reductions of expenditures to be brought about by the taking effect of the reorganizations included in the reorganization plan.

The White House,
June 1, 1953

Dwight D. Eisenhower
PAYMENT TO AIR CARRIERS

Section 1. Transfer of functions. — There are hereby transferred to the Civil Aeronautics Board (hereinafter referred to as the Board) the functions of the Postmaster General with respect to paying to each air carrier so much of the compensation fixed and determined by the Board under section 406 of the Civil Aeronautics Act of 1938, 52 Stat. 998, as amended, 49 U.S.C. 486, as is in excess of the amount payable to such air carrier, under honest, economical, and efficient management, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith at fair and reasonable rates fixed and determined by the Board in accordance with that section without regard to the following provision of subsection (b) thereof: the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

Section 2. Interim provisions. — The Board may fix, without prior notice and hearing, the initial rates to be paid by the Postmaster General under this reorganization plan for mail transportation services rendered on and after the date when the plan becomes effective. At any time thereafter the Board upon its own motion may, and upon the petition of the Postmaster General or the carrier concerned shall, institute new proceedings to fix and determine, after notice and hearing, the rates to be paid by the Postmaster General in accordance with section 1 of this reorganization plan, and the rates so fixed and determined shall supersede the initial rates from the date of the motion or petition.

Section 3. Incidental transfers. — There shall be transferred from the Post Office Department to the Board so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, employed, held, used, available, or to be made available in connection with the functions transferred by this reorganization plan as the Director of the Bureau of the Budget deems to be required for the performance of those functions. Such measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Section 4. Effective date. — The provisions of this reorganization plan shall take effect on the first day of the first calendar month following forty-five days after the date they would take effect under section 6(a) of the Reorganization Act of 1949, as amended, in the absence of this section, and shall be applicable only with respect to services rendered on and after the date on which the reorganization plan takes effect under this section.
FEDERAL AIRWAY USER CHARGES*

"USER charges" refers to a system of payments to be made by the scheduled airlines, and other aircraft operators, to the Federal Government as compensation for use of the Federal air navigation and traffic control system.

Position of the Air Transport Association

The Air Transport Association's Board of Directors has considered this matter at the last two December meetings. In December 1951 they approved a draft statement proposed by the Transportation Association of America on public subsidies to transportation. This is part of a larger statement of national policy to which the ATA was urging all forms of transportation to agree. Following are the excerpts from the subsidy statement concerning airways user charges:

... the ultimate aim in all forms of transport should be that user charges be paid by all classes of domestic transport facility users sufficient to cover their fair share of the cost of building and maintaining the Federal facilities which they need to use.

In the case of domestic air transport and domestic water transport it is felt that in a country made strong by the principles of independence and self-reliance, national policy should clearly be aimed at the ultimate payment of user charges sufficient to cover the user's fair share of the costs of building and maintaining the government facilities they need to use. The major problem here involved is that of timing. In the case of air transport, it is still a young industry with all but a few companies still to some degree dependent on government mail subsidy, and the result of the immediate application of such a principle could only be the closing out of a substantial part of the air transport service which has been so carefully nurtured toward self-sufficiency over the past 30 years. ... It would certainly seem inequitable to apply abruptly the standard set forth in the opening paragraph to either the domestic air or water transport industries.

In domestic air transportation the policy of the government should be to permit and encourage the operation of the air transport system on a basis which will most readily bring about a condition of self-sustenance, without subsidy, and the provisions of the Civil Aeronautics Act, including that section referring to "public convenience and necessity," should be administered with that requirement and objective in mind. Attention should first be focused on the placing of the carriers on a self-sustaining basis, without subsidy payments. As to airway user charges, the first step should be the exaction of user charges which, when taken with the industry's present contributions, will cover the fairly allocated share of the cost of maintaining and operating airway facilities provided by the government and reasonably needed and used by the carriers in their commercial operation. The second step should be to adjust the airways user charges so that they will cover in addition a reasonable proportion of the amortization of the value of future airways facilities supplied by the government. Allocations of cost should of course, reflect the government's active use of its own facilities plus its requirements for standby facilities for later periods of more active military use. Commercial users should not be forced to bear any share of the cost of government facilities which are not necessary for commercial operations.

It should be the responsibility of the Civil Aeronautics Board (or any agency successor to its powers) to report to Congress once every two years on the extent to which the industry, in whole or in part, has reached a state of maturity which makes it possible for it to stand on its own feet, concentrating upon the inherent advantages of its special form of transportation. In the same report the Agency should state to Congress the measures which it has taken under the Civil Aeronautics Act to accelerate the attainment of such a state of maturity. In reaching its conclusions the agency should, of course, consider not only the amount, if any, of subsidy payment by the government and the earnings of the companies

* Report by Ralph Rechel of ATA Economic Research Department, to the meeting of the ATA Public Relations Advisory Committee, Los Angeles, January, 1953.
but also the taxes paid and discounts allowed to the government by the
companies as well.

In December 1952 the Air Transport Association's Board unanimously
decided that

(1) Any studies conducted by the government for the purpose of im-
posing users charges for the use of Federally-provided facilities should
not be directed at the airline industry alone, but should include all other
forms of transportation.

(2) In connection with any such studies, the apportionment of costs
among the users of the Federal airways should reflect substantial charges
for the military standby value of those facilities, and the costs should be
allocated among the airway users on use at the period of peak loads (viz.,
on the basis of the peak-of-demand concept).

(3) The Association and the individual airlines should make every
effort to obtain public recognition of the fact that the airline industry,
through the Federal gasoline and oil tax, is currently paying substantial
user charges to the Federal Government and that this payment, which will
amount to approximately $12,000,000 in 1952, is entirely sufficient to cover
the airlines' fair share of the cost of the Federal airways.

What is the Federal Airways System?

The Federal Airways System is a network of airspaces 10 miles wide,
and of indefinite altitude, that connects all cities served by certificated air-
lines plus some military flying fields. The Administrator of Civil Aeronautics
has the authority to designate and establish the Federal airways. The air-
ways system furnishes four services to all airplanes equipped with radio
receivers and transmitters: air-ground communications, enroute and airport
traffic control, enroute navigation aids, and special low visibility final ap-
proach aids. These aids are available along about 75,000 miles of domestic
airways and at approximately 160 of the busiest airports.

The airways services are supplied to pilots by a wide variety of facilities
operated by the Civil Aeronautics Administration. No attempt will be made
to describe these facilities in detail in this attachment. However, we may
divide these facilities into two groups. The first group operates automatically
and requires no personnel except maintenance technicians. These facilities
include enroute navigation aids (4-course ranges, fan markers, omni ranges)
and most navigation aids used in the approach procedures at airports. One
of the latter, the Instrument Landing System, is usually turned on only when
the weather requires it. These facilities either broadcast continuous radio
signals, or, produce light beams in the case of beacon lights. The second group
of facilities require the presence of operating personnel at all times. These
facilities include aviation communications stations and enroute and airport
traffic control services. Most of these services are available 24 hours a day
except for a small number of airport control towers at the less active airports.

Who Uses the Federal Airways System?

Every airplane and every pilot may use the Federal Airways System if
the flying is done within any of the areas designated by the Administrator
of Civil Aeronautics as airways. Airplanes with no radio equipment may use
beacon lights along the airways at night and may be given traffic control
directions by light gun at any of the 160 airports with CAA traffic control
towers. Unequipped airplanes may also use CAA intermediate landing fields,
either for emergency purposes or as a destination. These airfields are
equipped with runway lights and a rotating beacon and most have caretakers
and telephone service. Airplanes with radio receivers only may receive
weather broadcasts, traffic control instructions, and may receive signals from
navigation aids if they can tune the necessary frequencies. Airplanes
equipped with both transmitter and receiver may use all of the services listed
above and can also ask questions of communicators and traffic controllers,
report their positions for traffic control purposes and verify traffic control
instructions. The addition of receiver channels for signals from navigation aids and instrument landing systems allows the pilot to use all of the services of the airways system. The only limiting factors are the amount of radio equipment in the airplane and the amount of flying that is done within charted airways. It should be noted that pilots must be licensed for instrument flying in order to fly on the airways and use the aids when weather conditions are below allowances for visual flying. In summary it may be said that all airplanes may receive some use from the airways system and aircraft with basic radio equipment may use most of the airways services.

What is Use of the Airways

It is evident from the description that most of the use of the airways is through radio contacts. All airways services are actually communications of one kind or another, some by voice and others by continuous code signals. Pilots may communicate with CAA facilities by telephone on the ground to file flight plans and receive weather aid airport information.

There is no record of the use of the navigation aids which broadcast continuous signals and have no operators in attendance. All counts that measure the use of the airways are made by the people in the communications stations and traffic control towers and centers. These counts are the only means available to determine the amount of use any airplane or group of airplanes makes of the system.

What Are the Problems and Principles of Allocating Costs?

The problem of allocating costs is that of assigning "fair shares" of costs, or responsibilities for incurring costs. The airplanes using the Federal Airways are divided into three groups in the CAA statistics on airways use and, since these groups are suitable for making the initial allocation of user charges, we have made all our trial calculations using the same arrangement. The initial allocation of user charges is between groups and the secondary allocation is between individuals within the groups. The latter problem is solved by our chosen method of collection. The user groups are: 1) Scheduled Airlines; 2) Other Civil Users (included are irregular carriers, fixed base operators, business and industrial flying, and private flying); 3) Military (includes Air Force, Army, Navy, and Coast Guard).

The first consideration in making the cost allocation to the three groups is how much should be allowed for military standby. After considering; a) the volume of traffic generated by the military during World War II (Military Operations were about 65% of total traffic in 1944) and projecting it to a future full-war emergency, b) the fact that the military can instantly commandeer the use of all or any part of the airways system in time of such emergency, and c) the operational priorities the military presently receive, it is our judgment that one-third of the cost of the airways should be set aside for military standby before allocations are made on the basis of the use and cost of the system.

In arriving at the second part of the allocation formula the Association has considered all of the methods proposed in the past for fixing user charges (by CAA and other governmental studies) and all methods commonly used by public utility commissions in fixing rates for utility services. The airways system fulfills the common definition of a public utility as it is a natural monopoly operated by a single organization; its use is indispensable to a large portion of the users; and its services are available to all sectors of the public who wish to use it. After comparing the airways to other public utilities we have found that elements of rate-making used in the telephone and electric power industries are most applicable to allocating cost responsibilities of airways users. It is our judgment that the two-thirds of the annual cost of the airways, remaining after military standby value has been de-
ducted, should be allocated among the user groups in proportion to their use of the airways system at times of peak demand, that is during the days of highest traffic density along the airways and at airports.

**What is the Annual Cost of the Airways and What Are the Shares of the User Groups?**

The government does not produce figures which give an annual cost of the domestic airways system. However, using CAA's accounting records, the Association has estimated the cost of the airways for fiscal year 1952, ending June 30, 1952, as approximately $67,000,000. This includes maintenance, operation, overhead and amortization of the capital investment in airways facilities.

The military standby value (33.3%) in dollars is approximately $22,600,000. The remaining $44,400,000 is divided as follows, using traffic at the peak of demand: Scheduled Airlines, $11,300,000; Other Civil Users, $14,800,000 and Military $18,200,000. It should be noted that the military standby value does not include any allowance for the military traffic currently operated over the system.

**What the Scheduled Airlines are Paying Now.** On the basis of estimated gasoline consumption for calendar year 1952, and at the present federal tax rate of 2c per gallon, the scheduled airlines paid $11,500,000 in gasoline taxes to the Federal Government. In addition oil is taxed at 6c a gallon and on the basis of the estimated oil consumption for 1952 the airlines paid $466,000. It is obvious that these amounts adequately cover the allocated share of the scheduled airlines. It should be emphasized that these amounts are for gas and oil taxes alone and do not include any other income, excise or transportation taxes the industry pays to, or collects for the government.

**The Gasoline Tax as a User Charge.** Gasoline taxes charged to passenger cars, trucks and buses by the state and Federal governments for many years have always been publicly regarded as a charge, or tax, to the user to defray the cost of building and maintaining the highways. Many statements to this effect may be found in state and Federal legislative history.1 Some of the statements to be found in Federal legislative history are included as an appendix.

The aviation gasoline tax was established at the same time as the Federal automotive gasoline tax in the Revenue Act of 1932. At that time aviation gasoline consumption was very small. Federal expenditures on the airways were $8,000,000 a year and were justified as providing air mail service. There

---

1 Representative Will M. Whittington (Mississippi), one time Chairman of the House Committee on Public Works, made the following statement in support of the Highway Act of 1948 on the floor of the House of Representatives:

There was collected in the calendar year 1946 from all sources from gasoline and other Federal excise taxes $882,000,000. This bill authorizes in round figures an appropriation of $557,750,000 for all purposes. In other words, this program is self-liquidating. It has been self-liquidating from the beginning. Those who use the roads pay for them and that is the soundness of this legislation. (Congressional Record, House, April 12, 1948, p. 4337.)

Representative Walter M. Pierce (Oregon): (1938)

There is no other excuse for the National Government levying a tax on gasoline except that it will be contributed for road work. Oregon was the pioneer State in collecting gasoline tax. We approve of this method of raising money for road work. The nearly two hundred millions collected by the National Government from the gasoline tax, and the nearly one hundred millions collected in general taxes on motor vehicles and parts is very justly and properly appropriated to the highways of the various States under the present authorization. (Federal-Aid Highway Act, Hearings before the Committee on roads, House of Representatives, 75th Congress, 3d Session on HR, 8838, p. 557.)

Representative John J. Dempsey (New Mexico): (1938)

I think the Federal participation with States in highway funds has been
were few other users of the airways. There was no Federal money spent on non-military airports at that time. As a result of these factors there is no mention of the position on aviation gasoline taxation taken by the Congress in 1932. The airplane is just one of several gasoline powered machines which were included in the language of the Bill. We regard the aviation gas tax as a user charge in exactly the same way that automotive gas taxes are regarded. The tax pays for our share of the skyways in the same sense that the auto tax pays the driver's share of the highway cost. It should be noted that size and weight of the airplane has no effect on the skyway, in terms of wear and tear, such as is the case with trucks and buses on the highways.

User Charges in the Future

The present 2c gas tax rate was instituted in November 1951 and will of course increase the revenues to the government in proportion as the amount of traffic and size of airplanes increases. This tax rate adequately covers the cost of the airways system as it currently exists. There is little question but what the cost of the system will increase as the Common System is completed and the new traffic control devices, now in the research stage, are completed and installed. We cannot estimate whether the increase in traffic will be sufficient to raise Federal income at the rate of increase necessary to meet airways costs. But we believe this is the best method of collecting user charges because it can be increased or decreased easily to keep user charge payments on parity with the industry's fair share of the costs. We also favor the gas tax because it requires no new legislation, is presently in operation and is simple and inexpensive to collect and because it treats the various users equitably.

one of the most desirable things that we have done, and when you talk about in the past 5 years spending $1,500,000,000, which is true, to assist the States, we should also show that the Federal Government received about $1,400,000,000 back in direct taxes for that specific purpose. (Federal-Aid Highway Act, Hearings before the Committee on Roads, House of Representatives, 75th Congress, 3d Session on H.R. 8838, p. 578.)

Senator Carl Hayden (Arizona): (1938)

What are the revenues which the Federal Government collects from those who use the roads? I have here a tabulation which covers the period from 1916 to 1936, which is the entire life of the Federal Highway Act. In the 20 years there was collected by the Federal Government, from excise taxes relating to motor vehicles, a total of $2,033,922,000. During the same two decades there was appropriated by Congress $1,987,655,000. During that 20-year period we collected more from those who used the highways than the Federal Government expended upon the highways.

In the message now before the Senate the statement is made that during the last 5 years there has been appropriated for public highways, including allotments from emergency appropriations, the total sum of $1,490,000,000.

I shall place in the Record a statement obtained from the Bureau of Internal Revenue showing the collections made from highway users during the past 5 years. Even in the period of depression, when the Federal Government was appropriating more money than ever before for highway construction, when $1,490,000,000 was expended, there was collected $1,337,000,000 from the motor-vehicle taxation, so that those who use the roads have practically paid the entire cost of all the work done with Federal funds on the roads, both for regular Federal aid and by way of emergency-relief expenditures. (Congressional Record, Senate, November 30, 1947. Reprinted in Federal-Aid Highway Act, Hearings before the Committee on Roads, House of Representatives, 75th Congress, 3d Session on H.R. 8838, p. 605.)

Mr. M. W. Watson, Vice Chairman, Highway Division, Association General Contractors of America, Inc. (1938)

There is no reasonable excuse for the present excise tax on motor-vehicle owners, which is an additional tax to those levied against other citizens, except as a charge for the use of roads built by Federal funds. (Federal-Aid Highway Act, Hearings before the Committee on Roads, House of Representatives, 75th Congress, 3d Session on H.R. 8838, p. 159.)
YOUR Committee on Aeronautical Law herewith presents its Annual Report and Recommendations for 1953, a year which marks the 50th Anniversary of power flight:

INTERNATIONAL CONVENTIONS

The current and widespread anxiety emanating from many quarters over the growing tendency toward disregarding the distinction between domestic and international matters in the exercise of the treaty-making powers of the United States is reflected in recent resolutions of the American Bar Association and the so-called Bricker Amendment to the Constitution, now under consideration in the United States Senate. These proposals to limit the presently established treaty-making power are of great interest to your Committee, coming as they do at a time when major treaties in the field of aeronautical law affecting private rights of United States citizens are presently under consideration. We refer to the Warsaw Convention of 1929 governing the liability of air carriers to American citizens for injury or death in international air travel and the proposed Rome Convention governing the liability of international air carriers to American citizens for surface damage caused by aircraft of other nations. Each of these treaties is now under consideration by the government of the United States, the Warsaw Convention for proposed changes, and the Rome Convention for original adherence.

Warsaw Convention

In January, 1952, a subcommittee of the Legal Division of the International Civil Aviation Organization met in Paris and produced a draft revision of the Warsaw Convention. This Convention which originated in 1929 and was adhered to by the United States in 1934, governs the liability of air carriers with respect to passengers killed or injured in international air transportation. The January, 1952, draft revision of this treaty is now being considered by the United States Government so that it may present its position with respect to proposed changes in the treaty when the Legal Committee of the International Civil Aviation Organization again meets in August, 1953, at Rio de Janeiro. The Legal Committee may at that session conclude its study and adopt a draft for submission to the ICAO Council with the recommendation that it be submitted to the ICAO Assembly or to an international conference for finalization.

Your Committee is following this matter closely and will report fully when ICAO takes final action.

Rome Convention

A diplomatic conference convened under the auspices of the International Civil Aviation Organization in Rome, Italy, in September and October, 1952, at the invitation of the Italian Government, completed work on, adopted and opened for signature and ratification or adherence a new Convention on Damage Caused by Foreign Aircraft to Third Persons on the Surface. Thirty-two nations including three which were represented by observers, participated in the work of the conference. Fifteen nations signed the resulting Convention at Rome, October 7, 1952, and three more nations have signed it in the intervening period. No nation has yet ratified it. It will become effective as between the nations which have ratified it on the ninetieth day after the instrument of ratification of the fifth nation is
deposited with the International Civil Aviation Organization. The Convention remains open for signature by any nation until it becomes effective and for adherence without signature at any time thereafter.

This revised Convention has as its purpose the provision of uniform rules and limits of liability applicable to the operator of an aircraft for damages caused to persons or property on the surface in a nation other than that in which the aircraft is registered. It also contains provisions governing the manner in which the nation overflown may assure itself that the operator of the overflying aircraft has insurance or other security for any liability which may eventuate under the Convention. The Convention has no application whatsoever to domestic aircraft.

The United States did not sign the Convention at Rome and has not done so since. Although it possessed the appropriate powers to sign a convention the United States Delegation considered that the Convention, as adopted, contained provisions which depart so substantially from the United States views and posed such important problems of law and policy as to require further careful consideration and analysis. Among the major problems presented which it was felt warranted further consideration are:

1. The inclusion of the principle of absolute liability of the operator for any damage caused by his aircraft, regardless of the existence of fault. The United States sought a convention predicated on a rebuttable presumption of fault.

2. The relatively low limits of liability provided, particularly with respect to large transport aircraft. The Convention contains a scale of limits starting at approximately $33,000 and increasing according to weight, but with the rate of increase becoming progressively lower as the weight increases. Under this scale, the maximum liability for the largest plane in commercial operation today would be approximately $800,000. The United States sought substantially higher limits.

3. The provision of an individual limit of liability for injury or death of any one person of $33,000. The United States opposed any individual limit and particularly one limiting liability for personal injury.

4. The provision whereby absolute liability without any limit in the amount thereof is imposed in cases of deliberate acts done with the intent to cause damage, including cases where such acts were those of a servant or agent acting in the course of his employment and within the scope of his authority. The United States contended that, having adopted the principle of absolute liability, the limits provided by the Convention should be removed only in the most extreme circumstances involving intentional wrong doing amounting in effect to criminal intent, and that in cases of acts of servants or agents, such unlimited liability should be imposed on the operator only when the act is done pursuant to express authority.

5. The provisions governing security for the operator's liability which incorporate the principle that the nation being overflown, while entitled to require insurance or other security for an operator's liability, is compelled to accept as sufficient evidence of the financial responsibility of an insurer the certificate of the nation of registry of the aircraft or of the nation of the domicile of the insurer as to such financial responsibility. This approach also required elaborate provisions for the administration of this system of certificates. The United States urged that the country overflown should be entitled to satisfy itself as to any reasonable doubts in respect of financial responsibility of the insurer.

6. Inclusion in the Convention of the so-called "single forum" solution of the problem of jurisdiction, under which actions for damages under the Convention can be brought only in the courts of the states where the damage occurred, except in certain limited circumstances where the
parties agree upon a different forum, requiring that judgments rendered
in the single forum be executed in other states, subject to specified excep-
tions. The United States urged provisions which would have permitted
considerably more flexibility in the choice of forum while at the same
time assuring the defendant an opportunity to preserve the limits of lia-

As stated, the proposed Rome Convention would limit the recovery by
American citizens for damages on the surface caused by aircraft of other
nations to amounts ranging from $33,000 to $800,000, depending upon the
weight of the aircraft causing the damage. Your Committee is making a
careful study of this Convention and will report its recommendations to
the House of Delegates upon completion of that study.

AIRPORTS

In its Annual Report for 1952 your Committee briefly reviewed “The
Airport and Its Neighbors,” the report of the so-called Doolittle Commiss-
on established by President Truman to examine the problem of airport
location and use. It will be recalled that the Commission was appointed
to study this problem following a series of aircraft accidents in congested
areas near airports in early 1952. The Department of Commerce was design-
nated to seek ways to implement the recommendations contained in the
Doolittle Commission Report and in December, 1952, the Department re-
leased its proposed program to carry the recommendations into effect.

One recommendation of the Doolittle Commission requires that the
dominant runways of new airport projects should be protected by cleared
extensions at each end at least one half mile in length and one thousand
feet wide. This area would be completely free from housing or any other
form of obstructions and would be considered an integral part of the air-
port. A further recommendation requires a fan-shaped zone, beyond the
half-mile cleared extension at least two miles long and six thousand feet
wide at its outer limits to be established at new airports by zoning law,
air easement or land purchase at each end of dominant runways. In this
area the height of buildings and the use of land would be controlled to
eliminate the erection of places of public assembly, churches, hospitals and
schools and to restrict residences to the more distant locations within the
zone.

The Department of Commerce approves of these recommendations and
as part of its program of implementation urges the amendment of the
sponsor's assurance agreements made in connection with the expenditure
of Federal funds under the Federal Airport Act of 1946 to include covenants
not to permit any structures in any cleared runway extensions owned or
controlled by the sponsor and not to use the approach zones for sponsor-
owned places of public assembly or other land uses resulting in concentra-
tions of people, such as schools and hospitals.

The Doolittle Commission recommended that the authority of the Fed-
eral, State and municipal governments with respect to the regulation of
the use of airspace should be clarified to avoid conflicting regulations and
laws. The Department of Commerce concurred in this recommendation. See page 221, infra, for a discussion of pending litigation in the United
States District Court for the Eastern District of New York over the rights
of a municipality to prohibit the flight of aircraft over its territory at an
altitude of less than one thousand feet.

One recommendation of the Doolittle Committee in which the Depart-
ment of Commerce did not concur is that the Civil Aeronautics Act of
1938 be amended to require certification of airports necessary for inter-
state commerce and to specify the terms and conditions under which air-
ports so certified shall be operated. Certificates would be revoked if minimum standards for safety were not maintained. The Department of Commerce is of the position that no such amendment of the Civil Aeronautics Act is necessary as there already exists adequate control over airport use in the Civil Aeronautics Administration operating authorization to scheduled and large irregular air carriers. With respect to the arbitrary closing or abandoning of major airports the Department of Commerce observed that the assurances made by the sponsors of projects under the Federal Airport Act require continued operation of those airports improved with Federal funds, which includes virtually every major airport.

CONFLICT BETWEEN LOCAL AND FEDERAL REGULATIONS

One development which may have far-reaching consequences is the litigation now pending in the United States District Court for the Eastern District of New York, All American Airways, Inc., et al. v. Village of Cedarhurst, et al.

The Village of Cedarhurst, which lies off the end of one of the principal runways of the New York International Airport (Idlewild), adopted an ordinance which would have prohibited the operation of aircraft over the village at an altitude of less than 1,000 feet. Because of the effect of the ordinance upon operations at the airport, the New York Port Authority, which operates the airport, certain airlines using the airport, and the Air Line Pilots Association brought an action to enjoin enforcement of the Cedarhurst ordinance. The Civil Aeronautics Board and the Civil Aeronautics Administration intervened as plaintiffs.

On motion of the plaintiffs, the District Court granted restraining orders and a preliminary injunction. In his order granting the temporary injunction (106 F. Supp. 521, E.D.N.Y. 1952), Judge L. F. Rayfiel found that the ordinance conflicted with the Civil Air Regulations and, for that and other reasons, was unconstitutional.

On appeal from the preliminary injunction, the order was affirmed but the Court of Appeals for the Second Circuit avoided any expression of opinion on the validity of the ordinance. In their answer, the defendants have questioned the validity of the Civil Air Regulations involved and have counterclaimed, introducing theories of trespass, nuisance, and unlawful taking of property without compensation. The matter is now awaiting trial on the merits.

SUSPENSION OF AUTHORITY TO SERVE DESIGNATED POINTS

Extensive litigation during the past year has apparently sustained the Civil Aeronautics Board's power to suspend the authority of an air carrier to serve designated points. As a part of the Board's efforts to promote the development of the local-service airline system, it ordered Western Air Lines and United Air Lines, in separate proceedings, to suspend their operations at certain points, and authorized certain local service operators to serve those points. Both carriers appealed these orders to the appropriate Circuit Court of Appeals. The carriers argued that the Board's order amounted to a partial revocation of their certificates of convenience and necessity, and thus was invalid. The Board, on the other hand, contended that the order amounted to a temporary suspension which they were able to order whenever they determine that the public convenience and necessity so required. The Courts of both the Ninth Circuit and the Seventh Circuit upheld the Board's orders. In both instances the Courts stressed the temporary nature of the suspension action; and, while indicating that the Board, pursuant to its statutory authority to alter, amend, or modify certificates, probably had some authority to make permanent route realign-
ments among air carriers if such realignments did not change the essential character of the air carriers' operations, the Courts reserved their opinions on that issue as applied to these cases. Western Airlines, Inc. v. Civil Aeronautics Board, 196 F. (2d) 933, cert. den. U. S. 97 L. Ed. (Adv. p. 58); United Air Lines, Inc. v. Civil Aeronautics Board, 198 F. (2d) 100.

AIR MAIL SUBSIDY SEPARATION

The effort to secure legislation which would provide for the separate identification of air mail compensation and subsidy continued during the past year, with extensive hearings being held before the House Interstate and Foreign Commerce Committee. The bill before the Committee had previously been passed by the Senate. The House Committee reported the Senate bill with very substantial amendments, but it was not possible to secure the enactment of the legislation prior to the adjournment of the 82nd Congress. Consequently, this legislation is again on the docket of both the Senate and House Committees on Interstate and Foreign Commerce.

It is now questionable whether these Committees will undertake consideration of the legislation, in view of their busy schedules, since the Civil Aeronautics Board has, in effect, accomplished the purpose of the legislation administratively. The Board has issued three reports which identify the air mail compensation and subsidy by carrier, and in all mail rate decisions involving a granting of subsidy the Board identifies that portion of the total amount to be paid which is air mail compensation and subsidy. (Editor's note. See page 210 for President's Reorganization Plan Number 10, 1953).

PRIVILEGED GOVERNMENT DOCUMENTS

A recent decision of the United States Supreme Court in United States v. Reynolds, et al., decided March 9, 1953, arising out of an aircraft accident, is of extreme importance in the field of privileged documents. A B-29 aircraft crashed in Georgia while testing secret electronic equipment for the Air Force. Six of the nine crew members and three of four civilian observers were killed in the crash. In a suit by the representatives of the deceased civilians against the United States under the Federal Tort Claims Act, the plaintiffs moved under Rule 34 of the Federal Rules of Civil Procedure for production of the Air Force's official accident investigation report. Following the submission for the Air Force of a formal claim of privilege on the grounds that the aircraft was engaged in a highly secret mission of the Air Force, the District Court ordered the Government to produce the documents so that it might determine whether they contained privileged matter. The Government declined to do so and the Court entered an order that the facts on the issue of negligence would be taken as established in the plaintiffs' favor. After a hearing to determine damages, judgment was awarded the plaintiffs. The Court of Appeals affirmed. The Supreme Court reversed, holding that under the circumstances the District Court should have accepted the Government's claim of privilege. The Court also indicated that the plaintiffs should have accepted an alternative Government offer to produce for examination the surviving crew members without cost to the plaintiffs. It remains to be seen how great an effect this decision will have upon claims against the United States arising out of accidents involving Government aircraft. It is to be hoped that the decision will not be abused and that in such cases vital information necessary to the plaintiffs' claims will not be withheld on the ground of privilege unless absolutely necessary to the public interest.
LEGAL STATUS OF HELICOPTERS

The tremendous impetus given to helicopter development, production, and use by the Korean experience has greatly advanced the manufacturing art and production facilities. By the end of the 1952 the backlog of orders exceeded $500,000,000. The overwhelming bulk of this was military, but commercial deliveries are increasing and will probably grow rapidly. Federally certificated operations are established in the Los Angeles, Chicago, and New York Metropolitan Areas. Contract helicopter companies are conducting extensive operations. This means that the laws and regulations of the Federal Government, of the states, and of municipalities which are applicable to helicopters will become increasingly important.

The unfortunate legal status of the helicopter at the moment is that it is misclassified. Because it navigates through the air, it is automatically included in the broad definition of "aircraft." All of the vast body of Federal, State, and local laws, regulations, and decisions built up over many years for application to fixed-wing airplanes, is applicable to helicopters, unless exceptions are made, because such laws, regulations, and decisions have always been made applicable to "aircraft." The helicopter, however, which can rise vertically or at any angle, can stand still or proceed at any rate in any direction from zero to maximum speed, which has no forward stalling speed, and which needs no airport but only a small space in which to land, is in a class by itself.

The Federal Government has recognized this in certain of its regulations. Parts 60.17 and 60.30 of the Civil Air Regulations except helicopters from certain altitude and flight visibility minimums applicable to fixed-wing airplanes. An extremely limited number of States have done likewise.

The National Association of State Aviation Officials (NASAO) has recently established a Special Helicopter Committee. One of that Committee's functions is to aid in the re-examination of State laws with a view to making appropriate exemptions or exceptions for the helicopter from aircraft laws and regulations which should be inapplicable to helicopters. One typical illustration of this need is that in many States no "aircraft" can land on or take off from anything but an "airport" which must be duly licensed by State authorities. Sometimes minimum standards for airports (such as the minimum length of runways) are prescribed in the law. Obviously, these provisions should not be automatically applicable to helicopters. A small "heliport" several times the diameter of the helicopter's rotor system, quite inexpensive, and located in the areas where people come from and go to, i.e., congested areas, is a far different matter than an expensive outlying airport.

Laws, rules, regulations, and airport programs designed for applicability to fixed-wing airplanes should be re-examined for non-applicability to the helicopter.

Respectfully submitted by the

AERONAUTICAL LAW COMMITTEE
CHARLES S. RHYNE, CHAIRMAN
CALVIN M. CORY
WILLIAM H. BURTON
PALMER HUTCHESON, JR.
WILLIAM E. MILLER
L. WELCH POGUE
STUART G. TIPTON

ADVISORY COMMITTEE
ROBERT K. BELL
MADELINE C. DINU
WILLIAM A. GILLEN
ROBERT S. LINDSEY
T. JULIAN SKINNER, JR.
EDWARD C. SWEENEY
GIBSON B. WITHERSPOON