Recent Developments in International Aeronautical Law

Albert Roper
RECENT DEVELOPMENTS IN INTERNATIONAL AERONAUTICAL LAW

ALBERT ROPER *

Ladies and Gentlemen: I am to speak on the "Recent Developments in International Aeronautical Law." Before I start trying to explain what has been the recent development of international aeronautical law, let me, please, insist on the two main ideas that inspired all the efforts made in Europe on that ground:

1. The absolute necessity of uniform regulations concerning aerial navigation, and,
2. The utility of a central organization charged with the duty of revising permanently the international regulations laid down, to amend them in accordance with the progress made in aerial technic.

The absolute necessity of uniform regulations concerning aerial navigation is evident. No international air traffic would be possible if a pilot flying, say, from London to India, had to comply with six or twelve different systems of regulations, and the safety of the flights would be seriously reduced if the airmen had to obey various rules of countries whose boundaries they could not even see from the air, and had to use different maps and understand different codes of meteorological information. The necessity is, moreover, unanimously admitted, and you are in this country perfectly aware of the situation.

To avoid any misunderstanding, may I state that when I compare, in my explanations, your country with ours, I do so by comparing the United States of America to Europe as a whole, and your different states to our different countries. This comparison is certainly justified from the point of view of the operation of air lines, because distance is a factor of first importance in aviation. It is also partly justified from the legal point of view, because different regulations may be adopted in your different states. It is not entirely justified from the political point of view, because of the existence of your Federal Government. Also, there is another very important practical difference, due to the fact that one language is used all over the territory of your immense country.

*Secrétaire-Général de la Commission Internationale de Navigation Aérienne, Paris, France. Lecturer to the Air Law Institute.

[395]
You had, nevertheless, to face the problem of the unification of the states' air regulations, and I know that a great amount of work has been done here in that way, and that you are meeting here now especially to discuss this question, and that is why I have so heartily accepted the invitation so kindly extended to me to come here.

Our work in Europe has been greatly facilitated by the fact that the necessity of the unification of the air regulations has been understood by the governments before they started to prepare their national laws and regulations. Furthermore, our Convention of 1919 was drafted before the creation of our European air lines and before the birth of commercial aviation, and this explains most of its defects and at the same time has also been the main reason for its success.

Dr. McNair explained this morning in a most comprehensive manner the origin of this Convention. I shall stress only one point: We succeeded in preparing that Convention in 1919 because the Aeronautical Commission of the Peace Conference that drafted it was composed of airmen, perfectly aware of the difficulties of flying, anxious to facilitate the development of aviation, and with absolute confidence one in another. That is why they easily came to a unanimous agreement, formulating the main principles in one day and drafting the whole convention in a few weeks.

This does not mean that it was perfect, and it could not be perfect, because nobody could foresee, a few weeks after the armistice, what the future of commercial aviation was going to be. Some criticisms were made, and that was not surprising, but the same men who drafted the Convention recognized its defects, and were ready to amend it as soon as they could again meet after the coming into force of the Convention in 1922.

The result of the adoption of the two protocols of 1922 and 1923, amending Articles V and XXXIV of the Convention, was the adhesion of a great number of states to that international agreement. I shall not give an analysis of this Convention, because each of you has a book containing the text of its agreements. After the first debates of 1922 and 1923 we lived a peaceful period of six years. No new criticism of the Convention was officially formulated; on the contrary, its principles were applied in the whole world by all the states, signatory and non-signatory, which during that period prepared their national laws and regulations relating to air navigation.
DEVELOPMENTS IN AERONAUTICAL LAW

The International Commission for Air Navigation abstained, therefore, from all polemics, and applied itself solely to the successful accomplishment of the task entrusted to it by the Convention. It organized itself vigorously as soon as it was instituted, fixed its seat in Paris, decided to meet at regular intervals, created a permanent Secretariat and defined its methods of work by forming for the study of technical questions six Sub-Commissions.

This Commission has held up to the present time eighteen sessions. A large number of items has been studied by it. Without enumerating all of them, the following can be cited as among the most important:

- Establishment of the standard minimum requirements for the issue of the airworthiness certificate, with which all aircraft engaging in international navigation must be provided.
- Determination of methods of employing wireless apparatus in aircraft.
- Publication of maps for air navigation, which are to be prepared in a uniform manner for all countries.
- Unification of the log books and documents on board aircraft, so as to simplify the formalities to be complied with in the course of journeys by air.
- Rules as to lights and signals and the preparation of a Code for Air Traffic.
- Unification of the models of the certificate of airworthiness, certificate of competency and license, so as to permit the ready identification of their holders, whatever be the language in which the documents have been issued.
- Unification of the symbols and terms used in aeronautical technology, which will facilitate international discussions and the translation of studies, researches or tests made or undertaken.
- Medical examinations required for pilots of aircraft.
- Organization of emergency medical boxes on board aircraft.
- Adoption, for calculations, of an international standard atmosphere.
- Composition of the operating crew of aircraft.
- Collection and dissemination of meteorological information.
- Unification of the characteristics required in respect to materials used in aeronautical construction.
- Compilation, centralization and publication of air traffic statistics.

Other questions of equal importance are already submitted for the future deliberations of the Commission. Its program is therefore a vast one; it will continue to enlarge, and it may be considered that the development of international air navigation will greatly depend on the activity of the International Commission for Air Navigation and the value of its labors.

In engaging in all these studies the International Commission for Air Navigation relieves the states parties to the Convention of the difficult and expensive work which the examination of these questions by each one would entail, and it deals with these problems
in the simplest and most rapid manner, inasmuch as it brings into agreement states which, without it, would be obliged, after separate studies, to arrive at laborious agreements in scattered groups.

It renders the further service to these contracting states of ensuring the centralization and dissemination of a somewhat considerable mass of information (national laws and regulations, information regarding aerodromes, wireless transmission, meteorological reports, etc.), a knowledge of which is indispensable to airmen of all countries.

But in spite of its activity and good will the International Commission for Air Navigation did not study all the questions raised by the increasing development of air navigation. To take first the largest ground upon which our Commission did not interfere, I shall point out that the Aerial Private Law was studied by another organization, called the "International Conference on Aerial Private Law." It has been said that that conference was called because our Commission had no competency in the matter.

That is not right.

It is true that no provision relating to private air law is to be found in the Convention of 1919. In fact, an article dealing with the competency of the law of the state flown over and the legal condition of obligations created on board aircraft had been inserted in the original draft of the convention in 1919, but it was taken out on account of the large discussions it raised at that time, where no practical experience of the operation of air lines had been obtained, but that does not mean that the contracting parties cannot decide, if they are in unanimous agreement on that point, to insert now in the Convention new articles dealing with private air law.

The truth is that when the French Government thought, in 1924, that the time had come to discuss the question of the liability of the air carriers and to start the study of the other chapters of private air law only twenty-one states were parties to the Convention of 1919, and consequently represented in the International Commission for Air Navigation. The French Government considered it more advisable, under those circumstances, to call a general conference to undertake, on a larger basis, the discussion of that question of universal interest. There was, moreover, no conflict between our Commission and the French Government, which showed its feelings on the subject by inviting me, in my capacity of General Secretary of the Commission, to be the General Secretary of that conference.
The International Conference on Aerial Private Law was held in Paris in October and November, 1925. Forty-three countries were represented, among them the United States. The United States sent only two observers, Lieutenant-Commander Burg, of the Embassy in London, and Major Yount, of the Embassy in Paris, to this conference.

The conference, after having prepared a draft convention relating to the responsibility of carriers by aircraft, presented a motion having in view the institution of a limited committee of legal experts charged with the preparation of the continuation of the work of the conference by studying in the first place the following questions:

- Damage caused by aircraft to property and persons on the ground.
- Compulsory insurance.
- Establishment of aeronautical registers; ownership of the aircraft, vested rights, mortgages.
- Seizure.
- Hire of Aircraft.
- Aerial collisions.
- Legal status of the commander of the aircraft.
- Way-bill.
- Uniform rules for determining the nationality of the aircraft.

This committee was organized in Paris in 1926. It took the name of the "International Technical Committee of Aerial Legal Experts," and met in 1926, 1927, 1928 and 1929, dividing itself into four commissions, each studying a certain number of questions.

The committee, in the course of these sessions, revised and completed the draft Convention prepared in Paris in 1925, to present a new text to the Second International Conference on Aerial Private Law, which was held in Warsaw, at the invitation of the Polish Government, in October, 1929. Thirty-two states were then represented, and it is to be noted that the United States of America did not send any representatives to that second conference.

The Conference adopted then a "Convention for the unification of certain rules relating to international carriage by air," dated October 12, 1929. This Convention was signed by a certain number of delegates, and will come into force when it will have been ratified by five of the signatory powers. I shall simply say here that by this Convention, "in the carriage of passengers, the liability of the carrier for each passenger is limited to the sum of 125,000 Francs; (new French Francs); in the carriage of registered lug-
gage and of goods, the liability of the carrier is limited to a sum of 2,500 francs per kilogram. As regards objects of which the passenger himself takes charge, the liability of the carrier is limited to 5,000 francs per passenger.

A complete translation into English of this Convention will be inserted in the next number of the Journal of Air Law, published by the Air Law Institute.

The International Technical Committee of Aerial Legal Experts will now go on studying the other questions of Private Aerial Law put down on its agenda.

Another question has also been discussed outside of our Commission. It is the question of Air Mail. When the Convention was prepared in 1919 the Commission had been requested by some of its members to add to it, after the Customs Annex, another Annex of the same character dealing with Air Mail. The Italian delegation was very insistent on that insertion. The Commission did not feel that the time for such action was opportune and such an Annex was not prepared. Therefore, it was left to the Postal Administrations of the various countries to deal with that matter.

In these circumstances, the Air Transport Committee of the International Chamber of Commerce thought fit:

1. To suggest that a special conference of the Universal Postal Union be held to deal with the Air Mail, and,
2. To present to that special conference certain definite propositions.

Such a special conference was held on the proposal of the Soviet Government, at the Hague, in September, 1927, and adopted an "International Arrangement for Air Mail."

This conference was composed of representatives of the Postal Administrations of thirty-seven countries. The United States Postal Administration was represented. The International Arrangement then adopted has been included in the International Postal Convention revised in 1929 by the Postal Conference of London. It has now been in force for five years. I cannot, in the scope of the present discussion, give even a short analysis of this Arrangement. I shall say only that the Association of European Air Companies declared that they were satisfied with it.

Let us now see what has been done as regards the prevention of the propagation of epidemics by public transport air services. This question is manifestly of great importance to the development of air navigation, and it was to be expected that it would
be raised one day or another, inasmuch as the hygienic services of the different countries had occupied themselves with the matter for several years.

It was certain that the Bureau of the International Office of Public Hygiene was competent in the matter, by virtue of an international convention in force for a great number of states, but it was equally certain that the International Commission for Air Navigation could not renounce its interest in any initiatives that might be taken in this connection.

The Director of the International Office of Public Hygiene, having entered into relations with the Secretariat of the International Commission for Air Navigation in the summer of 1929, invited me to attend this sitting of the Quarantine Commission.

I confess that I was not without some disquietude at the time of the opening of the debates, but the spirit in which the discussion was engaged quickly reassured me, as I had the satisfaction of seeing that all the members of the Office were disposed to give the greatest consideration to the needs of air navigation and the necessity for the air services of ensuring communications with the least possible delay.

The Quarantine Commission decided, therefore, to consider measures capable of satisfying the sanitary services concerned without causing prejudice to the rapidity of air communications. A special Air Sub-Commission was created within the Quarantine Commission, which requested me to follow the work of this Sub-Commission and to ensure the liaison between that organization and the International Commission for Air Navigation.

These studies led to the preparation of "Advanced Draft International Regulations," which is a rather long document containing detailed provisions, in order to leave the least possible room for arbitrary decisions. It provides for sanitary aerodromes with sanitary organizations, reduces the sanitary papers to be carried on board the aircraft to the mere entry in the log book of the aircraft of certain information and declarations, and foresees special measures in the cases of plague, cholera, yellow fever, typhus and variola. This "Advanced Draft" will be discussed by the International Office of Public Hygiene in a few weeks, before being presented to the governments.

These are the most important discussions that have recently taken place in Europe, but I think I must say a few words about the international bodies now dealing with aerial matters. They are rather numerous and of different character. Some are govern-
mental, such as The League of Nations, The Pan-American Union, and The International Conference on Aerial Private Law.

Some are simply official, because they are approved or organized by governments, such as Conferences of officials of aeronautical departments, who meet from time to time in Europe, and that also applies to the International Congresses, the first of which was held in Paris in 1921. (I am speaking of the first of the new series after the war, because before the war a certain number were held.) Others were held in London in 1923, Brussels in 1925, Rome in 1927, Washington in 1928, and the next will be held at The Hague in September of this year.

Another group is of a private nature, such as the International Aeronautical Federation, which registers the records; the International Air Traffic Association, grouping the European Air Companies, the International Chamber of Commerce, the International Law Association, and the International Legal Committee for Aviation, which is preparing a "Code of the Air" for the guidance of the governments.

The number of these bodies may seem astonishing, but it would be difficult to eliminate any of them. Each has its own usefulness and, after all, we do not see a serious danger in their multiplicity so long as there is a central governmental body able to choose among their decisions or recommendations that which is to be enforced. This has been the duty of our International Commission for Air Navigation since its institution, and it is the proven usefulness of this body which has led the states who are non-parties to our Convention to adhere to it.

The following table of ratifications and adhesions illustrates the progression since 1922: In 1922, fifteen states were parties to the Convention; Belgium, Great Britain and the British Dominions and India, France, Greece, Japan, Portugal, Jugo-Slavia, Siam and Persia. In 1923 we welcomed Italy, Bulgaria and Czecho-slovakia; in 1924, Roumania, Urugay and Poland; in 1925, Chile; in 1927, the Saar Territory, Sweden and Denmark; in 1928, The Netherlands and in 1929, Panama, and we are now expecting Norway, Finland and Brazil.

This increase was indeed very satisfactory, but nevertheless several very important countries were remaining outside of our Convention, Germany and Spain, for instance, and this situation led to the conclusion of special agreements between neighboring states, and could, perhaps, lead to the formation of new groups of
states, creating a real danger for the unification of the air law. In fact, this situation led to the preparation of two other Conventions, the Ibero-American, and the Pan-American Conventions. The first one was prepared in a conference called in Madrid in 1926 by the Spanish government. Twenty-one states, Spain, Portugal and South American countries, were represented, ten of which had signed our Convention of 1919, and three of which were parties to it.

The Convention that was adopted reproduced exactly except in three instances, the provisions of our Convention. These three differences having been suppressed by the Protocol of 1929, I may venture to say that when this Protocol becomes effective the two Conventions will be identical, and the Ibero-American will probably not subsist.

The Pan-American Convention, signed in Havana February 20, 1928, is of a different character. It was prepared by twenty-one states, eight of which had signed our Convention of 1929, and three more of which were parties to it. This Convention has been ratified by four states, Guatemala, Mexico, Nicaragua and Panama, and has not yet become effective.

A comparison of this Convention with the Convention of 1929 shows several differences, but none of them is of such importance as to be considered as compromising the unity of aerial law. Nevertheless, something had to be done, and the International Commission for Air Navigation was decided upon to make an effort toward a general agreement. An opportunity occurred in October, 1928, when the German Government let be known the reasons it had until then refused to adhere to the Convention of 1929. At that time Dr. Wegerdt, Ministerial Councillor in the Ministry of Communications of the German Reich, published an article entitled, "Germany and the Aerial Convention of 1919" and the proposals contained in this article were later approved by the German Government. In this document the Convention was studied, article by article, and many changes were requested.

The International Commission for Air Navigation declared at once that it was ready to study without delay these German criticisms, and, adopting the procedure proposed by Dr. Wegerdt, decided to hold an extraordinary session, to which all the governments of the non-contracting states would be invited to sit with the governments parties to the Convention.

1. See 1 JOUR. AIR LAW 1, for English translation of this article.
This General Conference was organized by the Commission and held in Paris in June, 1929. Seventeen non-contracting states were represented:

- Germany
- United States of America
- Austria
- Brazil
- China
- Colombia
- Cuba
- Spain
- Esthonia
- Finland
- Haiti
- Hungary
- Luxembourg
- Norway
- Panama
- Switzerland
- Venezuela

Forty-three states were then attending, and they were, with the exception of the Soviet Government, which did not accept our invitation, practically all the states interested in the development of aerial navigation. The delegation of the United States of America was headed by Mr. William P. McCracken, Jr., then Assistant Secretary of Commerce for Aeronautics. After six days of thorough discussion the conference adopted unanimously final resolutions containing a series of recommendations as regards the amendments to be made in the text of the Convention. The American Government had only to formulate certain reservations about a few of these conclusions.

Immediately after the signing of these final resolutions the International Commission for Air Navigation met to make its decision as regards the recommendations of the conference. They were all unanimously approved by the Commission, which adopted at once a Protocol, dated June 25, 1929, bringing into the Convention all the amendments requested. This Protocol has now been signed in the name of almost all of the contracting states. It has already been ratified by several of them, and it will become effective in the near future, possibly in the course of the next year, and the amendments will certainly bring into the Convention most of the states really interested in air traffic.

Let us now see what is the real scope of that Convention, which will, in the near future, ensure at least for Europe, Africa and partly Asia and America the unification of aerial law. An examination of the Convention, undertaken for the purpose of clearly defining the exact sense of its existing provisions by scrutinizing the intentions of the original authors and the motives which
Developments in Aeronautical Law

have given rise to the amendments subsequently made in its original text would enable us first of all to note two facts with regard to the amplitude and signification of the evolution which has taken place.

First, the amendments made to the original text have not changed the general physiognomy of the Convention.

Second, these amendments were not prompted by the need of adapting its text to the progress of aeronautics, but by a desire to ensure the universalization of this agreement by correcting the errors inherent to its origin.

The general principles—sovereignty of the states over the air space, freedom of innocent passage, restrictions warranted by considerations of the public security of the states flown over, equality of treatment for the aircraft of the contracting states, uniformity of air legislation—have not been touched, have not even been subjected to re-discussion; but the methods of application of the Convention, fixed by the restricted group of the ex-allied states, have had to be remodelled and adapted to the necessities of a broad international collaboration.

The "substance of the Convention" has remained intact, but the provisions relating to its application—regime of prohibited areas, special agreements with non-contracting states, nationality of aircraft, development of commercial air traffic, equality of the states in the councils of the international body instituted, admission of non-signatory states—have been sensibly modified.

The merit of the authors of the Convention is in having freely accepted all criticisms with the sole desire of adapting their work to meet its ends. All suggestions having been examined, all difficulties having been overcome by unanimous agreement, we are able to measure the present scope of the Convention. It offers to the contracting states all the advantages resulting from the unification of public aerial law, entailing the standardization of the national regulations, without subjecting these states to exorbitant obligations, without demanding great sacrifices on their part and without exposing them to any danger. We even consider that it respects their rights too scrupulously, for, contrary to what might have been expected, it accords to air navigators facilities which are extremely limited.

Rejecting in its first sentence the theory of the freedom of the air, the Convention sets down as a prefatory principle the recognition of the sovereignty of the states over their air space. This
brutal suppression of the freedom of the sky, so dear to eminent jurists in the early years of the century, has not been criticized by any government; some governments have shown themselves more liberal than others in the exercise of their right of sovereignty, but not one has thought of renouncing it. All of them, contracting or non-contracting, have embodied it in their internal legislation, no doubt because the world crisis has intensified everywhere the national spirit, but more especially because the governments, measuring from the point of view of national defense in the light of the terrible lessons of the war, the importance of the danger from the air, are conscious of their responsibility. The freedom of the sea outside the range of the most powerful guns presents only a relative danger, but the free movement in the atmosphere of aircraft, assimilative to guns of almost unlimited range, has not been accepted since 1919 by any government.

Yet, all the contracting states, appreciating the immense value of the new rapid means of locomotion, felt that they should endeavor to ensure its development, and adopted to this end the second principle of the Convention: “Each contracting state undertakes in time of peace to accord freedom of innocent passage above its territory . . . ;” but reverting to considerations of security, they hastened to complete this paragraph full of promise by the following general prescription, liable to nullify the proclaimed freedom: “. . . provided that the conditions laid down in the present Convention are observed.”

Among these conditions a great number are intended to ensure the uniformity of aerial law and to facilitate air traffic, and it is these that give the Convention its value; but certain among them limit the freedom of passage to such an extent that it is possible, by a strict interpretation, to reduce it to almost nothing.

The restrictions made in the Convention to the principle of freedom of air traffic are in fact important, inasmuch as they recognize the following rights of the contracting states: (1) The right to prohibit flight over certain parts of their territory, which may permit of allowing only insufficient corridors to subsist. (2) The right to fix the routes to be followed, which may entail prohibitive circuitous routes for aircraft. (3) The right to make conditional on their prior authorization the creation of regular international air navigation lines, a system which might lead to the suppression of all air traffic in certain regions.
Under these circumstances, what is the extent of the facilities of passage accorded to aircraft belonging to the contracting states and fulfilling all the conditions of the Convention?

1. A private aircraft is entitled to cross without landing the air space of another contracting state, provided that it follows the route, if any, fixed by the state flown over. It may, however, for reasons of general security, be summoned to land.

2. A private aircraft may pass from one state into another state, provided that it lands, if the regulations of the latter state so require, at one of the aerodromes fixed by such state.

3. A regular international air navigation line may be freely created and operated if the states flown over have not made the creation of such a line conditional on their prior authorization.

The freedom of passage is really very much curtailed and surprise may be felt at hearing it stated that certain states, non-parties to the Convention, hampered in their aeronautical expansion by clauses of the Peace Treaty, would be committing a grave error in adhering to the Convention, inasmuch as they would thus throw open their skies to competitors more advantageously treated.

The Convention in no wise forces the contracting states in this regard, and this may easily be realized by simply listening to the plaints of those who have experienced the solidity of the barriers set up by certain of their associates who have interpreted strictly the restrictive provisions adopted by common agreement. Such interpretations may even lead to veritable abuses of rights, inasmuch as a state which might hold a territory the use of which as a stopping-place would be of vital importance for international air navigation; for example, a lone island in the middle of a vast ocean might, by a strict interpretation of the texts, contrary to the very spirit of the Convention and without having to justify its attitude, suspend all air traffic by simply prohibiting access to the island.

Shall it be concluded therefrom that the Convention of October 13, 1919, has failed in its object, and that an endeavor should be made to substitute for it a more liberal agreement? No, for that would be exchanging the substance for the shadow and making an attempt doomed to certain failure. In point of fact, all the recriminations of authors, all the deliberations of congresses, all the resolutions passed by the associations of the world, will change nothing in the present situation so long as the governments have not modified their concepts. But, if a new diplomatic conference met, it would merely be a reassembling of the governments which
took part in June, 1929, in the conference convened in Paris for the revision of the Convention of 1919.

All those who are really interested in the development of air navigation were present at that time, and by an overwhelming majority, in adopting the new text of the third paragraph of Article XV permitting of making conditional on the prior authorization of the states flown over the creation of any regular international air navigation line, they pronounced in favor of a restrictive interpretation of Article II of the Convention.

It could not be hoped to find that they had so quickly changed their opinion, but on the other hand, if certain among them so desired, there is no text to prevent them from declaring themselves partisans of the regime of liberty, as the new text above mentioned, preferable in that regard to the obscure but more restrictive original text, stipulates merely that "every contracting state may make conditional on its prior authorization" the creation of the lines in question. This, in our opinion, is the key to the situation.

The states which claimed for air lines the freedom provided for in Article II of the Convention—the United States, Great Britain, the Netherlands and Sweden, were only four in June, 1929, and moreover did not think of claiming the "freedom of the air," but only real facilities for air traffic. We believe that tomorrow they will be six, and will no doubt soon become the majority, for as air navigation cannot exist without being international, the liberal regime without which it cannot develop will in any case one day impose itself. But such an evolution cannot be forced. The governments themselves will modify their attitude when the regularity and intensity of air traffic warrants a policy of "laissez-passer."

The action of time is indispensable in this as in other domains. Moreover, the progress made in aeronautical technic is constantly transforming the conditions of use of aircraft. At the time when aircraft flew laboriously just clear of roofs or elevated ground, authors were to be found who defended the seductive theory of the freedom of the air, but no government would have admitted at that time that a foreign aeroplane could pass freely under such conditions over its territory. Owing to the progress accomplished during the war, it appeared normal in 1919 to the states signatory to the Convention to undertake, while laying down the principle of the recognition of their sovereignty, to accord facilities of passage which they regarded as very broad.
At present, in view of the fact that most of the governments endeavor to encourage the national companies whose activities depend to a large extent on the subsidies which they grant them, a movement of regression may be discerned, simply because the competition between the companies is only a competition between the governments which support them and which, as is quite natural, see in their maintenance a question of national prestige.

This crisis can be only momentary. As soon as air lines furrow regularly the continents, and particularly the seas, working with safety by day as well as by night, as soon as the first great international companies appear, as soon as governmental subsidies are no longer necessary, the situation will undoubtedly change.

The states in favor of the regime of liberty, feeling then that they are strong numerically, will be able to accord facilities which, under pain of being dupes, they are still obliged to refuse, and the others will have to hasten to imitate them under penalty of being left on one side. No doubt at that time the states will be seen to be rivals in their zeal to divert the large streams of air traffic toward their territory. We do not believe that the states will be able, for a long time, to renounce their sovereignty over the air space, but the freedom of passage promised in 1919 will soon be so largely accorded that the Convention will produce all its effects.

It is necessary, therefore, to await from the progress of aeronautical technics, only the impulsion which will accelerate this evolution, and to amend unceasingly the regulations annexed to the Convention, in order that air traffic may develop extensively within the limits fixed for it by the present air policy of the governments.

It has frequently been said that the value of the Convention lies in its Annexes, and from a practical point of view this assertion is fairly correct. The Convention does not open up the skies to aircraft, but it renders access thereto possible. As a matter of fact, in the absence of a general convention, the states themselves would have had to lay down their internal regulations; but, in spite of special agreements concluded between neighboring countries, such national regulations would have been dissimilar from the outset, and it would not have been easy to unify them later.

Now, in this matter, unification is indispensable. The marks to be borne by aircraft (Annex A to the Convention) must be of the same nature and distributed according to a general plan to permit of the instantaneous identification of aircraft during flight; the conditions of airworthiness of machines (Annex B) must be
fixed by common agreement, so as to give to the states flown over a minimum guarantee in respect of the solidity and maneuverability of aircraft liable to cause damage on the surface; aircraft cannot cross continents rapidly unless the verification at each landing of the documents to be carried is facilitated by the international unification of such documents (Annex C); international air navigation is possible only because the rules of the Convention as to lights, signals and air traffic (Annex D), have been universally applied for ten years; the public reposes confidence in the operating crews of public transport aircraft because it knows that in all the countries the certificates and licenses of this personnel are issued only after examinations, the conditions of which are at least as stringent as those defined in Annex E to the Convention; and, finally, pilots would not be able to make any long flights if the aeronautical maps (Annex F) edited in the different states were not comparable, or if they bore symbols not having everywhere the same meaning, or if the meteorological information for the safety of flights (Annex G) was transmitted in various languages or different codes.

The necessity of the international unification of these provisions would suffice to justify the existence of a legislative organism charged with the duty of adapting these regulations, promptly and unceasingly, to the progress made.

This powerful and flexible organization was instituted by the Air Convention in 1919, and it is because the International Commission for Air Navigation is indispensable that the Convention should be defended, even by the states which have not yet adhered to it. This necessity has indeed been fully appreciated, and that is what has thus far preserved the Convention, to which many states have rallied, not so much for the satisfaction of confirming by their adhesion the attitude which they had already assumed in establishing their legislation in conformity with its principal clauses, as in order to be able to sit on the Commission and participate in the preparation of the regulations.

This movement should be further accentuated in the future, and this consideration should govern all the activities of the Commission: Realizing the importance of the duties entrusted to it, the International Commission for Air Navigation, keeping to the spirit which has gained for it the esteem even of the adversaries of the Convention, should apply itself to the task of continually bringing nearer to perfection the International Charter confided to its care.
DEVELOPMENTS IN AERONAUTICAL LAW

Its task is immense, for it has to study all problems, inasmuch as its competency is general in a domain unlimited as the air space itself, and its role is delicate, as it has to regulate, prudently but resolutely, all aeronautical activity without ever impeding progress. It is permissible, then, to suppose that it has thus far fulfilled the hopes entertained of it, as its decisions have never been seriously criticised by the contracting states and its studies are followed with flattering attention by the aeronautical services of the states that do not participate in its labors.

It is in this moral situation of the International Commission for Air Navigation that we perceive the best guarantee of the future of the Convention.

Let us come now to some conclusions. If an examination is made of the internal laws hitherto enacted, it is found that they are all founded on the principles forming the basis of the Air Convention of October 13, 1919. To our knowledge only one state, the Union of Socialist Soviet Republics, refuses to admit the freedom of innocent passage of aircraft above its territory, but this attitude is evidently inspired by political considerations, which we have not to enter into.

If, furthermore, the network of special conventions as between state and state is considered, it is seen that by the system of special agreements—compulsorily conforming to the international Convention—concluded by contracting states with non-contracting states, a great number of these latter find themselves led to apply indirectly the provisions of the general convention.

Passing, finally, to an examination of the existing international conventions—Ibero-American Convention and Pan-American Convention—one cannot but realize the artificial character of the partitions which seem to separate them from the Convention of 1919, in view of the fact that numerous states parties to the latter have been able to sign them without embarrassment. It can also be affirmed that the Ibero-American Convention, which probably will not enter into force, would never have been concluded if it had been possible to revise the Paris Convention more rapidly.

As regards the Pan-American Convention, justified in our opinion by the special political situation of the American continent, it can quite well subsist by the side of the Convention of October 13, 1919, made universal, as the latter has very wisely provided in its Article XXXVI for the existence of special agreements in respect to all matters of common interest in connection with air navigation.
We believe, in fact, that regional agreements grouping states geographically, economically or politically near together will multiply in the future within the general framework of the Convention. Already the states of Central and Western Europe, contracting and non-contracting, linked by special air arrangements, meet periodically in conferences at which the multiple practical problems which specially interest them are dealt with. A Mediterranean group is in course of formation; Scandinavian, Balkanic and Far Eastern groups will no doubt be created. The Pan-American group evidently had to appear first.

These crystallizations are normal and in no wise are they disquieting if the unity of aerial law and of the international regulations is insured by the universalization of the Convention. We are convinced that this unity will be progressively followed up. On the entry into force in the certainly very near future, of the Protocol of revision of June 15, 1929, the greater number of the states which participated in its preparation will adhere to the Convention.

The adhesion of Germany will, for a certain time, perhaps depend on considerations foreign to the Convention, as she considers that the measures taken by the ex-allied states to ensure the execution of the military clauses of the Peace Treaties have the effect of depriving her in the domain of civil aviation of certain of the prerogatives attached to the sovereignty of the states, but we do not think that she will observe this attitude long, and on the contrary, we are inclined to believe that the German Government will desire, on the entry into force of the amendments of the Convention voted on her initiative, to come and occupy among the contracting states the place to which the high standing of her aeronautical technic entitles her.

It would be more venturesome to prejudge the air policy that the Soviet Government will adopt in the future, but the impetus it has desired to give to aviation, the important credits it has consecrated to the intensifying of its national propaganda in favor of air navigation, the necessity in which it will find itself when it resumes normal relations with the outside world of developing air traffic, more necessary than anywhere else in that immense territory unprovided with other means of communication, lead us to believe that it will not always shut itself up in its present isolation.

With regard to the American Government, a signatory to the Convention of 1919 which has abstained from ratifying, it may be considered that it has not had hitherto imperative reasons for establishing with the European states in the domain of aeronautics
a connection not in conformity with the general policy it has pursued for ten years. Its geographical situation, between two immense oceans, has enabled it to confine itself first of all to a special agreement concluded with Canada. So long as its aerial expansion aims only at extension to South America, the Pan-American Convention may still suffice, but it will discover the utility of the general Convention when the technical progress achieved permits of the establishment of regular transoceanic air services. Then and thereupon, but no doubt only at that time, the Pan-American Convention will pass into the rank to which it really belongs, vast, certainly, like the Americas themselves, but not world-wide, and the United States will come and occupy the important place that belongs to it in the Convention of October 13, 1919, promoted by this fact to the rank of a universal agreement.

As we look at the matter, the extension of the Convention, progressive—slow, perhaps—but complete, is now only a question of time, and it is so, I think, because the permanent evolution of the organizations of humanity toward unification in every domain and, more generally, toward a general union of all the nations, cannot be stopped.

The nucleus of social organization was originally the family, and every family had to defend its existence against the others. Then they congregated and made tribes, which fought against one another. In the Middle Ages there were in our old countries many provinces, and it has not been easy to bring them together into nations, but who could, in my country of France, for instance, speak now without a smile of the conflicts between provinces that have raised so many wars during the centuries of our national history. The evolution continues, but, thanks certainly to the development of the means of transportation, it is progressing with an increasing rapidity.

What will be the result of this acceleration a few years from now? I venture to think that when the air lines will span the world, our planet will appear so small that there will be only room on it for one civilization. Let us help this evolution by joining our efforts to ensure the unity of air regulations, without which international air navigation cannot progress.

We started the work together eleven years ago. We in Europe have made only a few steps on the way we have to come. Come and join us to finish it.

I am entitled to speak here in the name of the twenty-seven governments that have ratified the International Convention of 1919.
They all very sincerely wish and hope that the Government of the United States of America will soon decide to join them, and take in our International Commission the large place it deserves.

I am personally convinced that this will happen some day, because it is not only the hope of our Commission over there, but also the wish of many of the most prominent men of your country. Last week, in a discussion on the policies of the government with regard to aviation, held in Williamstown at the Institute of Politics, your glorious Colonel Lindbergh, the most brilliant personification of the worldwide family of the airmen, preached, very heartily, the international cooperation in the domain of commercial flying. After him Mr. Clarence M. Young, your Assistant Secretary of Commerce for Aeronautics, lauded our Convention of 1919, and observed “that while the United States was not now a member of the Convention, that did not mean that the situation might not be altered.” It is this sentence that I shall bring back home with the hope of an early universal cooperation. (Applause.)

CHAIRMAN NEWLIN: The first time I had the pleasure of meeting the next speaker was eight years ago this month when, as a member of the Conference of Commissioners on Uniform State Laws, the purpose of which was to make the laws of the various states uniform with respect to those matters as to which they should be identical in form and substance, he gave a report as Chairman of the Committee on Air Law of that conference.

Since that time, I am happy to say, the acquaintance then formed has ripened into a friendship of which I am very proud, and since that time I have been so fortunate as to have had many, many contacts with him on things other than relating to air law, but as to which he has always been sound and resourceful, because, as a matter of fact, Presidents of the American Bar Association come and go, but “Bill” MacCracken, Secretary of the American Bar Association, continues to run.

There is no one, I think, who has done more for the constructive development of aviation, in the broad field which it covers, not only actual flying, but of those many elements that enter into the growth of any new industry and its establishment, than has the next speaker.

He needs no introduction, but I have the pleasure of introducing you the Honorable William MacCracken, formerly Assistant Secretary of Commerce for Aeronautics, Secretary of the American Bar Association, known to everyone who knows him as “Bill,” who will now speak to you upon “The Growth of Aeronautical Law in America.”