The International Aviation Policy of the United States

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International aviation is one of the fields in which the United States Government has not yet developed a comprehensive policy. It is true that the need for such a program has not appeared to be pressing. The United States is a vast empire with no great foreign airlines sweeping across our skies. Not yet built are the projected seadromes which will bring European airlines into direct contact with our shores. Visits by the Graf Zeppelin and the Dornier Do-X are still considered as matters of curiosity rather than as the beginning of a new system of trans-Atlantic communication. Tours made by American aviators in European and Asiatic countries are events to be arranged in each particular case by resort to old diplomatic methods. And all of this is in the face of the fact that our invasion of the Canadian and Latin American field has shown that the lack of an international policy hampers the development of our aeronautical system.

If the growth of aviation proceeds as rapidly in the coming decade as in the past the foreign contacts of the United States will become increasingly complex. Under these conditions an enlightened Government will develop a policy which will run ahead of present events, seeking to promote not only the welfare of its own people but also the development of aeronautics as a human enterprise in which all great nations participate. In this connection it should be pointed out that the position of France today in the aeronautical world depends not entirely upon the record of her aviators and engineers in the history of the art of flying, but fully as much upon the contributions made by French jurists, administrators and

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governmental experts to the problem of international regulation of aviation.

The following proposals are offered as the basis for a comprehensive foreign air policy on the part of the United States.

Uniform Internal Regulation

In the first place, the United States may well put its own house in order. International aviation will ever be facilitated by complete uniformity in regard to internal regulation. In a centralized state like France, flying is not hampered by varying local requirements. An aviator and his machine are subject to the same general rules no matter what part of France he flies over, and thus a foreign pilot is not required to master separate groups of regulations for every department of the Republic. Even in federal states, such as Germany and, in a measure Russia, uniformity is maintained by a proper degree of centralization or integration. The supreme virtue of aviation as a mode of transportation is its speed; hence, any interference with rapidity of movement as a result of differing regulations in local districts is to be avoided.

The forty-nine jurisdictions in the United States, to say nothing of the various territorial and colonial districts, offer a difficult problem in administration. Fortunately, the authority of the federal government over interstate commerce is not now in principle, seriously challenged. But there are several matters such as quarantine, taxation and other possible burdens on interstate commerce which still present complications. The immediate future seems to offer little prospect that foreign airlines will operate in intrastate transportation. But the operation of such airlines in foreign and even interstate commerce is a matter of concern in the present generation.

Obviously the program for uniformity of federal, State and municipal air laws, regulations and practices should go forward.¹ Twenty-one States have so far adopted uniform air laws.² But even more beneficial than uniform State laws is the extension of

¹ Attention is called to the program presented by the Aeronautics Branch of the United States Department of Commerce. See Air Commerce Bulletin, March 16, 1931, pp. 467-468. Compare an address by Fred D. Fagg, Jr., on “Incorporating Federal Law into State Legislation” in 1 Jour. of Air Law, 199-204 (1930); and Warren Jefferson Davis on “State Regulation of Aircraft Common Carriers” in 1 Air Law Review, 47-60 (1930).

² In addition to the Uniform State Law for Aeronautics and the Uniform State Air Licensing Act, note that the American Bar Committee on Aeronautical Law has just submitted its proposed Uniform State Aeronautical Code at the September, 1931, meeting at Atlantic City.
the national Air Commerce Act of 1926 to cover practically every phase of interstate flying. There is need for constant and immediate revision of air traffic regulations to meet the requirements of a rapidly developing industry. This can best be accomplished by a centralized supervision which will not be obliged to await the slow process of local legislation and regulation. In only five States does the legislature meet annually; in 42 States, sessions are biennial; while in one State, quadrennial. At the same time, the difficulty of obtaining local uniformity in revision of the application of legislative rules is immense.

There will always be a constitutional question as to the exact demarcation between federal and State regulation of interstate commerce. By virtue of the police power reserved to the States under the Constitution, States have asserted a right to regulate such things as the height of flying or the route to be followed over populated areas. How far does this local power to regulate extend? In a series of cases dealing with railway transportation, shipping, pipelines, telegraphs and telephones, the federal courts have developed the rule that Congress or federal agencies may regulate even intrastate commerce insofar as necessary to preserve federal control of interstate and foreign commerce. In other words, the States may not impose physical, financial or administrative burdens upon commerce reserved exclusively to federal control. Under these circumstances the federal government is warranted in pushing the realm of national supervision as far as the courts will permit.

Finally, all regulation of interstate and foreign commerce should be reduced to the minimum requirements necessary to insure public safety and welfare. There is no virtue in governmental regulation of itself. At the most, supervision by governments is merely a means to an end. There is need to guard the public from inexperienced or criminal pilots, to lay out routes of travel over populated districts, to prescribe the height of flying in the interest of public safety, to test the airworthiness of planes, to prevent smuggling, to check the spread of contagious disease by air traffic, and to frustrate military spying by the creation of pro-


5. Compare the address of Colonel Clarence M. Young before the Air Law Institute in August, 1931. 1 Jour. of Air Law, 423-32 (1930).
hibited areas. But, in the interest of a new and rapidly developing industry, governmental supervision should be made as little burdensome as possible. Constant study is required in order to ascertain whether regulatory measures have not become archaic and should be relaxed, or whether new regulations are not required in the interest of both the public and the industry. Because of this need for constant revision of air rules, the commonwealth is better served by central rather than by local control.

The International Air Navigation Convention of 1919

The same logic which applies to the promotion of uniformity of regulation within the territory of the country also argues for uniformity within the family of nations. It is assumed that international flights are to be encouraged. True it is that every foreign pilot who flies over our territory is a potential belligerent who in case of war becomes a valuable asset to an enemy state because of his acquaintance with our terrain and air equipment. But this is a problem which more immediately concerns European nations. America has small cause to fear an aerial invasion by a powerful enemy. Thus, if such inveterate foes as France and Germany, France and Italy, or Germany and Poland, in the interest of international aviation, can admit foreign pilots in daily flights over their territories, surely the United States is in no position to offer convincing arguments in mitigation of a policy of aerial isolation. Foreign intercourse through air traffic, like other phases of international commerce, is generally beneficial to all participants. Flights of national heroes like Blériot, Graham-White, Lindbergh and Byrd make for international good-will. Established schedules such as the great airlines in Europe and the Pan American Airways through Latin America promote trade and foster international education.

A complexity of national regulations governing air traffic is a hindrance to international aviation. Hence the valiant effort of France, Great Britain and other air powers to maintain a system of universal aerial regulation. American representatives at the Paris Peace Congress assisted in the draft of the International Air Navigation Convention of 1919 which set up a uniform régime of international regulation with a Commission (the Commission Internationale de Navigation Aérienne) meeting each year to revise the rules and secure amendment to the treaty. But the American

6. For the text of this treaty and protocol of amendments, see International Commission for Air Navigation: Convention relating to the Regula-
Government failed to ratify the convention and become a participating member in C. I. N. A.

The twenty-nine states now comprised in the system include Great Britain and the Dominions, France, Italy, Belgium, Poland, Portugal, the Saar, Czechoslovakia, Jugoslavia, Greece, Bulgaria, Rumania, Sweden, Norway, Denmark and the Netherlands. The Asiatic members are Japan, Siam and Persia. From South America come Uruguay and Chile. Due to an almost fatal blunder the central powers in the World War were, in the beginning, excluded from membership. But this prohibition has been removed, and in 1929, amendments to the Convention were initiated specifically to meet German objections. It thus seems probable that Germany and Austria will soon become members. Hence, C. I. N. A. constitutes today the only air régime embracing all continents on the face of the globe and bidding fair to become a well-nigh universal system.

What is the practical achievement of C. I. N. A.? There appears to be a number of minimum requirements as to airworthiness certificates, pilots' licenses, registry of aircraft, markings and signals which are workable rules whether they are applied in Japan, or Chile or France and the adoption of which greatly facilitates international traffic. Such rules have been formulated in the régime of C. I. N. A.—the rules of permanent character being incorporated in the treaty, the rules of temporary character being included in the annexes to the treaty which can be revised from year to year by vote of the signatory states. The feasibility of the rules has been tested by time; the efficacy of the uniform system is yearly depicted in the meetings of C. I. N. A., and thus far only one of the member states—Panama—has seen fit to withdraw from the organization.

America's failure to ratify the Convention of 1919 was a result of the stampede at the close of the World War to withdraw from European affairs and even from many phases of international co-operation. In justification of this policy of isolation it has fre-
quently been said that C. I. N. A., as well as the League of Nations, represents merely a European régime. But such statements are incorrect. Japan, the leading Asiatic air power is a member, and other Asiatic states as well as South American and Oceanic states actively participate.

Viewed as a problem of international government there appears to be no valid reason why the United States should not join C. I. N. A. If there is any apprehension that such a policy would mean a surrender of our sovereignty over the superjacent air it should be dispelled by reading the first article of the convention which stipulates in unequivocal language that: "The high contracting parties recognize that every power has complete and exclusive sovereignty over the air space above its territory." This principle, as a part of the treaty, cannot be altered without the consent of every signatory power. On the other hand, if the argument is that international regulation can best be accomplished by regional systems, like a Pan American union, a European federation, or a Pan Asiatic movement, the answer is equally sound. Regional systems have their place, but universal systems like the League of Nations, the World Court, the Universal Postal Union and the International Office of Public Health offer advantages in the mechanics of international co-operation that cannot otherwise be obtained.

Experienced diplomats are aware of the benefits to be derived from a policy permitting America, by representation in the yearly meetings of C. I. N. A., to participate in the development of international regulation of aviation and at the same time to smooth the way for adjustment of disputes similar to our controversies with France over the monopoly of South American routes.

**The Pan American Commercial Aviation Convention**

American membership in C. I. N. A. would not involve our abandonment of the Pan American air régime. It is possible and also desirable that a regional system including all countries of the Americas should exist by the side of the universal régime. There is nothing inherently antagonistic between universal and regional

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*formation, Bulletin No. 14, November, 1930, p. 20; Department of State: Treaty Division: Monthly Bulletin of Treaty Information, April, 1929, p. 5. The United States accepted the invitation to be represented at the extraordinary session of C. I. N. A. in June, 1929, to draft a protocol of amendment to the Convention of 1919. The American delegation consisted of William P. MacCracken, then Assistant Secretary of Commerce, and Joseph R. Baker, a drafting officer of the Department of State.*
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systems, particularly so, in case that all members of the regional régime share the benefits and responsibilities of the world-wide group. If it is believed that international co-operation with Latin American countries can be promoted by a special régime beyond the benefits gained by association with these states in C. I. N. A., then by all means the Pan American union should be employed for this purpose.

The Pan American Commercial Aviation Convention was originally drafted on the initiative of the United States and signed at the Sixth Pan American Conference held in Havana in February, 1928. After three years of deliberation, the United States Senate has finally ratified the Convention (February 20, 1931). Down to the present time, only four Latin American countries—two of them satellites of the United States—have ratified, these states being Guatemala, Mexico, Nicaragua and Panama. Thus, the Convention does not afford at present a wide basis for co-operation in the New World.

Suspicions have been entertained in various quarters to the effect that the American promoters of the Pan American Convention expected to raise up a regional régime as a rival to C. I. N. A. Without attempting an examination of the justification of such apprehensions, attention should be called to the fact that an undisguised competition has actually appeared in Europe. In 1926, after Spain's withdrawal from the League of Nations, Prima de Rivera called a conference of the two Iberian powers and all the Latin American states. The result was the Ibero-American Air Convention, the text of which is almost an exact duplication of the Air Navigation Convention of 1919. But the widely trumpeted Ibero-American régime has not found wide acceptance. Portugal has failed to ratify the Convention; and Spain's ratification has been


followed only by that of Mexico, Paraguay, the Dominican Republic and Costa Rica.

There are not lacking America aerial experts who propose that the best method for reconciling all interests would be to have the United States sign and ratify the Ibero-American Convention in the expectation that our example would be followed by Germany, and ultimately by all the powers now included in C. I. N. A. The answer to this proposal must be that such an indirect method for bringing the United States into the universal régime appears even more laborious than the task of persuading the Senate to ratify the Air Navigation Convention of 1919.

It is frequently assumed in the United States that the Pan American Convention of 1928 adequately compensates for American abstention from C. I. N. A. and that it brings to the New World all the benefits of international co-operation offered by the Convention of 1919. The assumption is incorrect. As a regional agreement, supplementary to a universal régime like C. I. N. A., the Pan American Convention may be considered as an admirable makeshift arrangement. But if it is to serve as the only multilateral aviation agreement to which the United States is a party, it is incomplete and defective. The Pan American Convention was never intended to secure uniformity of regulation even as to registry of ownership, customs procedure, markings and signals, nor to impose high standards as to certificates of airworthiness and pilots' licenses. The Convention was negotiated at a time when American aviation interests were, with justification, pressing the Department of State for the negotiation of arrangements to facilitate the extension of American airlines throughout Latin America, the privileges accorded to the United States, of course, being reciprocally granted.

Furthermore, the Convention was an arrangement between states of great inequality in aeronautical development. The United States was the only country with an aircraft industry and with any extensive foreign airlines. Some of the twenty-one states possessed almost no aircraft equipment and lacked adequate facilities for testing competency of pilots or airworthiness of aircraft. Standards and methods varied in a high degree. To meet this situation, the negotiators of the Convention adopted an awkward formula which has the virtue (or defect) of not interfering with any domestic regulation. Under Article XII, aircraft are to be provided with certificates of airworthiness issued by the state whose nationality they possess. And while the aircraft of each
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state shall have the liberty of engaging in air commerce with the other Pan American states without being subject to the licensing system of these states, nevertheless each government reserves the right to refuse to recognize as valid the certificates of any foreign aircraft which after inspection are deemed to lack airworthiness as defined under the local regulations, and in such cases further transit may be refused until local specifications are met. Thus the United States, with high standards of airworthiness, may prohibit the flights of planes from a Latin American signatory state whose requirements are so lax that defective machines are granted certificates, assuming of course, that no bipartite agreement bars such action. On the other hand, some Latin American state, with inferior inspection regulations, on a mere technicality, may halt the flight of an American plane although this machine be the last word in safety and performance.

The failure of the Convention to secure uniformity is further illustrated by the provision as to pilots' certificates. Article XIII stipulates that pilots shall be provided with certificates which "shall set forth that each pilot, in addition to having fulfilled the requirements of the state issuing the same, has passed satisfactory examination with regard to the traffic rules existing in the other contracting states over which he desires to fly." In other words, the inspectors in each state are expected to be familiar with the regulations of twenty other states whether published in English, Spanish or Portuguese, and no matter how recently issued!

In conclusion, it may be said that the Pan American Convention of 1928 cannot be considered as a substitute for the Air Navigation Convention of 1919. It does not attempt to introduce uniformity in domestic regulations. On the other hand, it is probably true that whatever uniformity is feasible for the Americas is also feasible for the entire world and is already included in the provisions of the Convention of 1919. Hence the inadequacy of the regional agreement could be corrected by the general ratification of the universal agreement.

Revision of the Pan American Commercial Aviation Convention

Whether or not the United States joins C. I. N. A., the Departments of State and Commerce should seek for an early revision of the Pan American Convention of 1928. There are certain defects that call for amendment. In the first place, the Convention practically bars Canada from participation. It is true that Article
XXXV provides that any state may adhere to the Convention by giving notice thereof to the Cuban Government. But there is no provision for Canada's representation in the Pan American Union, which under the treaty is endowed with administrative functions, and no self-respecting state should be expected to adhere to a treaty entrusting even minor governmental powers to a board on which it has no seat. This exclusion of Canada gives us the appearance of attempting to seize an advantage in Latin America not shared with our Anglo-Saxon neighbor. The inclusion of Canada would require the amendment of the Convention Relating to the Organization of the Pan American Union. But, in this respect, the latter Convention is also defective. Canada should have been invited long ago to participate in the Union.

In the second place, if the United States joins C. I. N. A., the Pan American Convention probably needs some slight revision in order to bring it into harmony with the universal régime. For instance, it should be made clear that the provisions of Articles XII and XIII of the Convention of 1928 apply as between two states only in case one or both of them are not members of C. I. N. A.

If the United States continues outside the universal air régime, wise policy would seem to demand amendment of the Pan American Convention by general agreement so as to insure some degree of uniformity in domestic regulation in the Western Hemisphere. In case the Seventh Conference of American States is to convene in the year 1933—five years following the Havana Conference—the present time is none too soon to begin negotiations for such revision.

Collaboration with the League of Nations

According to the Covenant of the League of Nations the universal air régime appears to come within the League's competence. Article XXII provides that all international commissions hereafter established by general treaties shall be placed under the direction of the League. Likewise, Article XXXIV of the Air Navigation Convention of 1919 stipulates that C. I. N. A. shall be under the League's direction. But inasmuch as C. I. N. A. was established by a treaty almost contemporaneous with the Covenant, and since it is hoped that nations which have refused membership in the League will accept membership in C. I. N. A., the League statesmen have refrained from pressing their advantage under Article
XXII. Thus C. I. N. A. exists as the chief administrative organization of the universal air régime, somewhat independent of the League.

This does not mean that the League has no air program. The General Conferences on Communications and Transit held at Geneva have confronted the problem of international air navigation in conjunction with the problems of railway and steamship transportation. As a result, an Air Transport Co-operation Committee is now studying the problem of an international organization of air systems. In time, a program for international co-operation in the administration of great airlines will probably emerge. America has sent a delegate to only one of the three General Conferences and is represented only by an "official observer" in the Air Transport Co-operation Committee. Active participation is recommended in regard to both the special Committee and the Fourth General Conference on Communications and Transit which will meet in Geneva on October 26, 1931.

The solution of many international problems would be expedited if the United States abandoned the archaic policy of isolation and assumed membership in the League. Viewed from the standpoint of political science, constructive statesmanship demands the inclusion of every state in the League of Nations. But if the ideal course is obstructed by political considerations, at least collaboration with the League is not too much to expect. Hence, a constructive American policy for aviation will propose in the first place membership in the League, and failing this, collaboration with the aeronautical agencies of the League.

The Permanent Court of International Justice

Disputes are bound to grow out of any international commercial enterprise. Our airlines in South America have already raised controversial questions. If the ordinary channels of diplomacy are incapable of settling such disputes, the machinery of arbitration and adjudication is available. After years of discussion, the nations of the world have set up the Permanent Court of International Justice, which is at present the only permanent general international court in existence. A conspicuous part was played in the
drafting of the statute of this court by an eminent American jurist, Elihu Root. But it is a sorry commentary on American statesmanship that after years of lip service paid to arbitration and judicial settlement we have declined membership among the signatory powers.\textsuperscript{13} No constructive program of foreign policy can afford to omit a demand for adherence to the World Court. The State Department should also seek to amend Article XXVI of the Pan American Convention to the end that disputes arising from the interpretation or execution of the treaty shall be referred to the World Court rather than to rely upon a special system of arbitration. The same provision also should be written into all bilateral air treaties hereafter negotiated on the part of the United States.

\textit{The Codification of Private Air Law}

International collaboration in the codification of air law is not limited to the field of public law, but has been extended to so-called private international law. In this movement, France has taken the lead. When air navigation was still confined to balloons French jurists proposed an international code of air law, and some years later a private association known as the Comité Juridique International de l'Aviation undertook the task of drafting a project of such a code. It is not surprising that after the World War, the initiative for governmental action on this subject should have come from the French Government. The First International Conference of Private Air Law was summoned by the French Foreign Office to meet in Paris in October 1925. Forty-three states participated.

This conference discussed the problem of the responsibility of the shipper in aerial traffic, amended the French project of a treaty on this subject, and then referred it to the respective governments for further study prior to convoking another conference. Before adjourning, the conference established the Comité International Technique d'Experts Juridiques Aériens, with an office in Paris. The Comité (commonly called C. I. T. E. J. A.) has held various meetings in Paris, Madrid and Budapest with an average of about 23 states represented. Its chief accomplishment has been the preparation of the draft of the convention on liability of carriers in international air traffic. This draft was later studied by the Second

\textsuperscript{13} In 1923, the President recommended to the Senate to advice and consent to the adhesion of the United States to the Protocol of Signature of the Court. \textit{Congressional Record}, February 24 and March 2, 1923, pp. 4498-4504, 5067-5068; \textit{Senate Document}, Nos. 309 and 342, 67th Congress, 4th Session.
International Conference of Private Air Law which met in Warsaw in October, 1929, with delegates from 31 states. The Convention was signed by fourteen states, and constitutes the first achievement in the codification of private international air law. In the meanwhile, C. I. T. E. J. A. has been retained as a drafting commission for future conferences and after a series of sessions culminating in a session in Budapest in October 1930 it completed the draft of a convention regarding responsibility for damages caused to third parties on the ground. This draft will be laid before the Third International Conference on Private Aerial Law which will meet in May 1932.

What part does the United States play in this process of codification of private air law? Unfortunately, merely a secondary role. In the Conferences of 1925 and 1929, we were represented only by "official observers", and our participation in the sessions of C. I. T. E. J. A. has been by the same method. As a consequence, although our representatives are able experts, they are circumscribed by their anomalous position.

Until recently we have failed to pay even the modest sum of 5,000 francs which each participating state is asked to contribute annually to the expenses of the secretariat of C. I. T. E. J. A. In 1928, our Department of State urged the President to recommend to Congress the annual appropriation of $250 for the quota of the United States toward the expenses. President Coolidge did so recommend, and, at the behest of the late Stephen H. Porter, the House of Representatives passed a resolution authorizing this yearly appropriation. But it was too late in the session for action by the Senate. In March 1930, another recommendation by the Department of State to President Hoover resulted in the passage of the appropriation.
of a second resolution by the House of Representatives, but action again failed in the Senate. Finally, on February 10, 1931, the Senate passed the resolution, with the result that the Second Deficiency Act for the fiscal year 1931, approved by the President on March 4, 1931, contained appropriations for the American share in the years 1930-1932. But this is only a beginning. It is to be hoped that hereafter the United States will actively participate in the significant movement for the codification of private air law, that we will be represented in C. I. T. E. J. A. and in the conferences by delegates rather than by "official observers", and that the Warsaw Convention of 1929 for the Unification of Certain Rules relating to International Air Transportation will be signed and ratified.

**Bilateral Air Agreements**

In August 1930, the Department of State announced that it was in the process of negotiating with various powers a series of bilateral air agreements similar in substance to the provisions of the Arrangement of 1929 with Canada. The states mentioned by the Department were Great Britain, the Irish Free State, Union of South Africa, Australia, New Zealand, France, Germany, Italy, Spain, and the Netherlands. The policy is commendable. Even nations that subscribe to a universal régime find it necessary to have a series of bilateral agreements with other powers. It is noteworthy that while most European bipartite air agreements are in the form of treaties, the Department of State expects to negotiate its understandings in the less permanent form of executive agreements. In view of the "treaty-wrecking" habits of the Senate, this procedure may be well advised. Moreover, executive agreements can be
revised by a simple exchange of notes without having to resort to a new treaty and a new ratification.

The disadvantage of executive agreements lies in the very virtue that we have already mentioned, namely the lack of treaty status and permanency. Under Article VIII, the Arrangement with Canada can be terminated by either party on 60 days' notice—a rather short time for denunciation.\(^{20}\)

It is not to be assumed that the Arrangement of 1929 corrects the lack of uniformity in the domestic regulations of Canada and the United States which prevail as a result of American failure to join the universal air régime. Quite rightly, the Arrangement makes no attempt to promote general uniformity of internal regulations. The province of establishing uniformity belongs to universal agreements not bilateral treaties.

**Simplification of Customs Formalities**

Customs formalities offer hindrance to travel and traffic in every part of the world. In railway transportation, the consignor is compelled to secure the customs blanks of all countries of transit as well as the country of destination and to make the proper declarations in the languages of the respective states. Passenger traffic on land and water is also hampered with tedious passport formalities and customs inspections. If the virtue of air-transportation is speed, it is evident that much of the advantage of flying may be destroyed by these proverbial burdens upon the traveller and the exporter. Accordingly, air traffic companies have applied to governments for more expeditious customs and passport procedure.

The problem has been attacked from an international angle under the aegis of the League of Nations. A Conference on Passports, Customs Formalities and Through Tickets, convened in Paris in 1921, recommended certain administrative changes which were widely adopted throughout Europe.\(^{21}\) A Second Passport Conference in 1926 even studied the question of the total abolition of the

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system of passports and visas.\textsuperscript{22} The question of reducing customs formalities has also been considered in a series of Economic Conferences one of which drafted the Convention relating to the Simplification of Customs Formalities signed at Geneva in 1923 which has been ratified by thirty states.\textsuperscript{23} Another conference, in 1927, adopted the Convention for the Abolition of Import and Export Prohibitions and Restrictions, signed by twenty-nine states.

In railway transportation some progress has been made in the matter of securing a uniform international customs office declaration.\textsuperscript{24} Similar arrangements are expected to facilitate transportation by aircraft. But only a beginning has been made in solving this vexatious riddle of politics and economics. The contribution of the United States to its solution has not been conspicuous. We have sent delegates to the two Conferences for the Abolition of Import and Export Prohibitions and Restrictions, held in Geneva in 1927 and 1928, but have sent only "official observers" to the Tariff Conferences of 1930 and 1931. Inasmuch as the question of reduction of customs formalities borders on the question of free trade, American participation in certain of these conferences has been somewhat restrained. It is not within the scope of this article to discuss the tariff. It must suffice here to suggest that high tariffs are in themselves the most formidable barrier to trade. If the sole interest of air traffic were considered, trenchant arguments might be advanced in favor of free trade.

The governmental formalities enforced upon our own borders include the regulations governing entry and clearance enforced by the Aeronautics Branch of the Department of Commerce, the regulations of the Customs Service and of the Public Health Service in the Department of the Treasury, and the regulations of the Immigration Service in the Department of Labor.\textsuperscript{25} Some degree of

\textsuperscript{22} League of Nations: Minutes of the Plenary Meetings of the Passport Conference, held at Geneva, May 12th to 18th, 1926, p. 16.


\textsuperscript{24} In particular, mention should be made of the results of the Conference between the Customs and Railway Administrations, called by the Italian Government at Florence in 1929, and attended by representatives of seven European states.

\textsuperscript{25} Compare Air Commerce Bulletin (Department of Commerce), May 15, 1931, pp. 583-584.
formalities is certainly necessary. The system is cumbersome at its best, and there is always room for improvement. We have seen a few untoward incidents in the administration of entrance regulations, such as occurred at the arrival of the Graf Zeppelin at Lakehurst upon Dr. Eckener's first commercial voyage to the United States. But, in general, American administration of such formalities has been efficient and courteous, and less time-consuming and exasperating than the European and Asiatic.

**Tariff on Aircraft and Aircraft Equipment**

Sound policy dictates a reduction of the tariff on aircraft and aircraft equipment. This should be done in the interest of aviation as an art useful to science, as an industry, and as a sport. Air transport companies whether or not connected with domestic manufacturers, would then be able to import foreign equipment in cases where the foreign machine was superior in quality or lower in cost than the American product. American traffic would receive immediate advantage from the new inventions and improvements in the German, British and French aeronautical industry.

The Hawley-Smoot Tariff of 1930 kept the same rate as the Tariff of 1922, namely a duty of 30 per cent ad valorem on airplanes and their parts. A reduction to 15 per cent would not be unreasonable, provided it were made upon a reciprocal basis, limited to imports from such countries as granted reductions in customs duties imposed on aeronautical imports from the United States.²⁷

**Triptych Agreements**

Methods of facilitating touring by aircraft have engaged the attention of the leading aeronautical states. One obstacle to be overcome is the problem of the guarantee to be given in order that aircraft entering a country on tour will not be retained within the territory without payment of the customs levied on imported machines. To facilitate tours by motor-cars, European customs administrations make use of a ticket, called the *triptych*, permitting touring automobiles to be brought into a country for a temporary period without payment of customs duties. A similar arrangement

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²⁷. In 1929, the United States exported 354 airplanes. The total value of exported airplanes, engines and parts was $9,202,385. *Annual Report of the Assistant Secretary for Aeronautics*, 1930, p. 47.
for touring aircraft has been sponsored by the International Aeronautic Federation, a combination of the National Aero Clubs of twenty-seven countries with headquarters in Paris. Agreements have been negotiated between the customs administrations of eleven states and the National Aero Clubs in each state whereby permits are issued to persons desiring to bring a machine into a country for touring. These permits (carnets des passages en douane) are valid, as a rule, for one year. Under the agreement, the National Aero Clubs guarantee the payment of any duties on touring aircraft which are not brought out of the country within the time-limit of the carnets. As a result, touring aircraft owners find their way smoothed by their National Aero Clubs and a considerable amount of governmental red tape is avoided.

This simple and satisfactory system is employed by France, Great Britain, Germany, Italy, Japan, the Netherlands, Belgium, Czechoslovakia, Spain, Switzerland and Rumania. It is not used by the United States, although precise attention is given by the Departments of State and Commerce to arranging through diplomatic channels for the tours made by American aviators abroad.

International Air Mail

In recent years the foreign air mail service of the United States has greatly expanded. At present we have two services to the West Indies and Latin America. Following the inauguration of the air mail services to Brazil and to Jamaica in 1930 we maintain transportation of correspondence to every country south of us. In 1930, American planes flew 2,503,973 miles of the scheduled 2,520,357 miles, making a performance of 99.34 per cent of the authorized service. The transportation of the mails on these routes is paid for on the basis of the mileage flown in both directions; and in 1930, amounted to $6,001,395. This appears to have been an amount in excess of the postage collected from the sale of air mail stamps plus the amount paid by foreign govern-

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28. As to the procedure to be followed in American airplane flights in Europe and the Near East, see Publications of the Department of State: Press Releases, August 30, 1931, pp. 115-116; Air Commerce Bulletin (Department of Commerce), April 1, 1931, pp. 498-499; 500-501, July 15, 1931, pp. 32-34.

29. Compare Annual Report of the Postmaster General, 1930, pp. 42, 144; Publications of the Department of State: Press Releases, December 13, 1930, p. 445. Under the Jones-White Act of 1928, the Postmaster General is authorized to enter into contracts with concessionaires for the transportation of the mails by aircraft overseas at fixed rates per pound or per mile which shall not in any case exceed $2 per mile each way. 45 U. S. Statutes at Large, 248, 1449.
ments for carriage of their mails by our planes. The difference may be considered as a governmental subsidy to the air line contractors.

There is reason to believe that the subsidy to airlines transporting foreign mails should be increased, at least during the period of experimentation and pioneering. The Pan American Airways System, the company operating the American passenger and mail services to Latin America, has experienced deficits for the past two years. The rate paid for carriage of our mails on most of the Latin American routes is two dollars per mile. Under the Merchants Airship Bill introduced by Senator McNary in the Senate in December 1930, the Postmaster General would be authorized to make contracts for carriage of the mails on airships across the Atlantic at rates not more than twenty dollars per mile. When it is recalled that the loads of these lighter-than-air craft will be much heavier than the loads of airplanes, the maximum rate does not appear excessive. There is even probability that with the service established the Post Office would realize a revenue therefrom. In any case, this trans-Atlantic enterprise should receive the support of the Postmaster General.

Through the initiative of the International Chamber of Commerce the Universal Postal Union has moved to simplify and expedite the passage of air mail services. These facilities are now made available to patrons of the United States postal service. It should be noted that the United States was represented by delegates in the important Conference of Postal Administrations at The Hague in 1927. American participation in all international conferences of this nature should be one of the first tenets of our foreign policy.

**National Legislation**

National legislation is needed for the promotion of international aviation. The provisions of the Air Commerce Act of 1926

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30. With a total income of $3,907,540 in 1929, the deficit was $317,412. In 1930, the income was $5,609,938, while the deficit was $305,271. See *Aviation Corporation of the Americas, Holding Corporation for Pan-American Airways System: Annual Report to Stockholders, 1929*, p. 10; 1930, p. 15.


cover many phases of public regulation, and indeed afford active encouragement to private enterprise, particularly in connection with the establishment of the Aeronautics Branch of the Department of Commerce. This administrative office, with its able personnel, has rendered inestimable service to aeronautics. There are, however, several fields of legislation and many means of encouragement for which the Air Commerce Act fails to provide. For instance, the Act does not cover air traffic overseas. Congress undoubtedly has power to legislate regarding American craft flying over the high seas where no nation has exclusive jurisdiction.

The Merchants' Airship Bill, introduced by Senator McNary in the last session of Congress, seeks to extend to overseas aviation the provisions of a number of well-known and well-tested statutes such as the Precious Goods Act, the Fire Statute, the Limitation of Liability Act, the Harter Act, and the Ship Mortgage Act—all of them redrafted to apply to aircraft rather than merchant vessels. Also are included provisions for a mail subsidy modelled on the Jones-White Act of 1928, together with a requirement drawn from various shipping acts as to the minimum percentage of citizens of American nationality comprising the crew. The Bill authorizes traffic agreements with the approval of the Secretary of Commerce which otherwise would be in violation of the Sherman Anti-Trust Act. Another provision permits the employment of officers of the Army and Navy whose salaries would be paid partly by the government and partly by the airship companies—a practice very common on British, French and Italian airplane lines where even military planes have been used for commercial purposes. Finally, the Bill authorizes the use of army and navy airports and equipment by American air traffic companies engaged in foreign commerce at a reasonable compensation.

The Merchants' Airship Bill, which had small chance of passage in the last session of Congress, deserves careful study. There are features that obviously should be revised. For instance, the provision for the employment of volunteers from the Army and Navy should apply to airplanes as well as airships. There are other features which require careful scrutiny, as for instance the provisions drawn from the Harter Act regarding bills of lading. But,

34. 44 U. S. Statutes at Large, 568.
in all events, legislation of the character provided by this bill should be placed on the federal statutes.

**Governmental Subsidies**

There is a common impression to the effect that the American people have always been opposed to governmental subsidies. Our history shows the contrary. It is replete with instances of State and federal subventions. The annals of no country make record of a more gigantic subsidy than that granted by the federal government in the building of the transcontinental railways. Aid to arduous enterprises which will redound to the welfare of the nation is a sound public policy and consistent with American practice.

No extensive argument is required to prove that at the present time aeronautics is a proper subject for governmental aid. Aircraft transportation on a practical scale is of such recent origin, the financial hazards are so great, and the possibilities for human progress so extensive, that the government is fully justified in rendering considerable financial assistance.

In Europe and Asia, governmental subsidies include: (1) subventions to airlines for passengers; (2) subventions for mail service; (3) subventions to aircraft manufacturers by payment for prototypes; and (4) indirect subsidies to the industry by large orders from the War and Navy Departments for military aircraft and equipment. In France, Germany, Great Britain, Italy and other countries, subsidies are given to air traffic companies carrying passengers on the basis of miles flown in scheduled routes. Each year, the French Government distributes about 8 million dollars in such subsidies; Germany, 7 millions; and Great Britain nearly one and a half million. Without this support the greater number of the air routes would needs be curtailed or even abolished. In France, not a single airline pays expenses. On the Paris-Marseilles line, the traffic receipts amount to only 20 per cent of the operating costs; governmental subsidies make up the remaining 80 per cent. The Compagnie Générale Aéropostale which operates the extensive service to Africa and South America has commercial receipts to the extent of only 19 per cent while subsidies amount to 81 per cent of expenditures. Even the popular Paris-London line, operated by the Air Union, the most paying of the French lines, does not recover from its patrons more than 38 per cent of the cost of operation, the government pays the balance. Somewhat similar
comparisons can be made for the airlines of Germany, Great Britain and Italy. 36

Most European governments appropriate large sums for research and construction of prototypes; the French budget carries an item of nearly six million dollars for this form of subvention to aircraft manufacturers. 37 And, finally, all governments made an indirect subsidy to the industry by huge purchases of military planes. The German Government, which is prohibited, under the Treaty of Versailles from constructing military machines, makes a handsome annual appropriation for the Zeppelins which Dr. Eckener so efficiently navigates around the world. 38

In the United States no subsidies are granted for passenger transportation. Contracts for carriage of the mails alone are made. In 1930, the total amount paid by the government to airlines within the United States was $14,618,231; and to airlines extending out of our territory, $6,001,395. 39 If it is estimated that these sums constitute at least two-thirds of what the government recovers in postage, the actual subsidy granted to airlines is far smaller in proportion than the subsidies paid in France, Great Britain, Germany and Italy. Certainly the policy of granting subsidies to American airlines should be continued, and perhaps extended.

Like European governments, the United States makes an indirect subsidy to the manufacturing industry by large purchases of military and naval machines. Some companies, like the Glenn H. Martin Company of Baltimore, which supplies a large share of the naval airplanes, find a considerable portion of their business with the War and Navy Departments. If, and when, international agreements for limitation of air forces begin to curtail the purchase of war machines, and consequently reduce the amount of indirect subsidy to the aircraft industry, sound policy will call for the grant of direct subsidies to the manufacturers, or else for governmental awards to commercial companies for the purpose of experimentation.

subject to the War and Navy Departments. In 1927, the Preparatory Commission for the Disarmament Conference recommended that all governments separate the administration of military and civil aviation; and the Assembly of the League of Nations, in the same year, adopted a resolution urging this reform upon all member states. None of the great military powers have seen fit to comply, greatly as the change is needed in the interest of peace. American views on this subject should be effectively expressed.

**International Radio Regulation**

Since the radio has proved so serviceable to aviation, a constructive aeronautic policy will include a proposal to promote the proper international regulation of this form of communication. The United States played a prominent part in the International Radio Conference held in Washington in 1927. Our policy of opposing monopolies of communication facilities and of prevention of interference between stations has won approval, and this policy will probably find continued support from our delegation to the International Radio Conference to be held in the spring of 1932.

A forward step was taken by the Aviation Radio Conference between American and Canadian delegates in New York in April 1930. A plan for the co-ordination of airways communications and radio aids to aviation in Canada and the United States was adopted. The plan should be developed and similar arrangements negotiated with our Latin American neighbors.

**An Educational Program**

Propaganda is not to be despised. A wise government will seek to build up popular support of its policies by means of an educational program. With this end in view the Departments at Wash-
ington may well promote a publicity program favorable to international aviation. The series of special periodicals—the Treaty Information and Press Releases—published by the Department of State, are most serviceable aids to education. Likewise, the Air Commerce Bulletin, issued semi-monthly by the Department of Commerce, together with the weekly mimeographed Foreign Aeronautical News serve a useful purpose. These publications are ably edited. They should be continued and even extended.

Conclusion

In conclusion a constructive foreign air policy for the United States, as proposed in the foregoing pages, calls for the adoption of the following proposals:

1. Uniform legislation throughout the United States, reducing regulation to minimum requirements of public safety and welfare.

2. Adhesion to the International Air Convention of 1919 and active participation in C. I. N. A.

3. Reliance upon the Pan American Commercial Aviation Convention of 1928 as a regional system in a subordinate capacity rather than as a rival to the régime of C. I. N. A.

4. Revision of the Pan American Convention of 1928 to bring it into harmony with the International Air Navigation Convention of 1919, and the inclusion of Canada in this regional agreement.

5. Collaboration with the air problem of the League of Nations, or better yet, membership in the League and leadership in the League's air program.

6. Adherence to the Permanent Court of International Justice, and the inclusion in all our air agreements of provisions to submit to the Court all cases of international dispute regarding the interpretation or execution of these agreements.


8. Negotiation of a series of bilateral treaties to facilitate international communication.

9. Reduction of customs formalities to the minimum requirements.

10. Reciprocal abolition of protective tariffs on aircraft and aeronautical equipment.
11. Adoption of the system of "triptych agreements" facilitating aviation tours in foreign countries.

12. Promotion of air mail services through the encouragement of airlines to foreign countries and participation in the air mail program of the Universal Postal Union.

13. National legislation for the promotion of international air traffic and overseas aviation.

14. Governmental subsidies to airlines and the aircraft industry.

15. International limitation of armaments including air fleets, codification of the rules of aerial warfare, and separation of military and civil administration.


17. Promotion of an educational program favorable to international aviation.