

MIT

**INTERNATIONAL CIVIL AIR  
TRANSPORT—TRANSITION  
FOLLOWING WW II**

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**Massachusetts Institute of Technology  
Flight Transportation Laboratory**

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## PREFACE

This report is the text of a seminar given by Mr. Pogue for the course "Air Transportation -- Economics, Management and Planning." The course was presented by MIT's Flight Transportation Laboratory in cooperation with the Technical Assistance Bureau of the International Civil Aviation Organization. The course is part of the Advanced Study Program in Air Transportation, given under the auspices of the Center for Advanced Engineering Study.

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June 15, 1979

INTERNATIONAL CIVIL AIR TRANSPORT--TRANSITION FOLLOWING WW II

Lecture Delivered on June 15, 1979 in  
Cambridge, Massachusetts, in the Course  
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nology in Cooperation with the Interna-  
tional Civil Aviation Organization on "Air  
Transportation--Economics, Management, and  
Planning"

By

L. Welch Pogue\*

I. INTRODUCTION

International air transport, like many 20th Century marvels which are taken so much for granted today, broke out from its cocoon, so to speak, shortly after the end of World War II (WW II), took wing, and soared. Theretofore, its growth had been retarded by fear of flying, by restrictive policies in granting civil air rights based upon narrow views about the sovereignty of nations over their air space and by the inevitable "bugs" that plague the early phases of most innovative

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technologies.<sup>1/</sup> This paper will undertake to trace the high points in that post-WW II metamorphosis.

## II. MOTIVATION BEHIND THE INVITATION OF THE UNITED STATES TO THE 1944 CHICAGO INTERNATIONAL CIVIL AVIATION CONFERENCE

A striking feature of the 20th Century has been the explosion of technology. In this respect, this Century gets the highest marks in all recorded time. This vast field includes the 1903 invention of powered flight. For the first time man and his cargo could sail through the air at incredible speeds. The dream of countless generations had come true-- in our Century.

In the airplane's "slipstream", so to speak, came turbulent impacts upon the world's economics, culture, politics, and military concepts. National power relationships were torn apart and reformed. Age-old concepts, such as the doctrine that there would always emerge some strong nation or alliance of nations exercising the regional "balance of power," became obsolete. Aviation had "reduced the world to manageable proportions" so that two or three nations could dominate the world's big stage.

Although military aviation had a dramatic place in the tense World War I struggle, it had only a minor impact upon the outcome of that war as a whole. In World War II, however, the technology had advanced so much as to make air power a major factor. "Air power", as used in this paper, includes both military and civil aviation in all of their forms and uses. This advance of air power brought on the acceptance of civil air transport as a factor of great significance upon civilization. As aviation had come to perform increasingly important roles in

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<sup>1/</sup> The first diplomatic conference to consider international flight regulation met in Paris, France, May 10, 1910. Although it adjourned June 29, 1910 without reaching any agreement, the early French proposal that "air navigation is free" was largely overcome by British and German positions which favored the adoption of the doctrine that each nation possesses "sovereignty of the air space" above its territory. "The International Air Navigation Conference, Paris, 1910", John Cobb Cooper, 19 Journal of Air Law and Commerce 127 (Spring 1952). The subsequent Paris Convention of 1919, the Havana Convention of 1928, and the Chicago Convention on International Civil Aviation of 1944, stated, in positive terms, that each state possesses sovereignty of the air space over its territory.

all phases of war-time life (including accelerated industrial production), the imagination of men's minds leaped to the view that in the post-war era, the airplane would "shrink" the world so much, both militarily and in a civil sense, as to make every civilization, and its trade and commerce, available to every other civilization on earth. Suddenly, civil aviation had become vitally important.

In the civilian use of the international air transport, however, some manmade rules needed development to permit it to operate. Therefore, unlike the free use of the high seas for worldwide operations by ships, concepts of sovereignty of nations over their airspace prevented the use of the "ocean of air," except by agreement of the nation whose air space was used.

As the meteoric advancements during WW II in the capacity of the United States to manufacture large aircraft (including both transport aircraft and big bombers) became known throughout the world, fear of the post-war superiority of the private, international airline operators of the United States sprang up in the minds of leaders in foreign countries.<sup>2/</sup> These leaders, for the most part, viewed future air transport operations by their various countries as glamorous, a badge of prestige, and a way to gain extraterritorial exhibition of their country's flag and status. Furthermore, they had only the history of operations of ocean shipping under the "Freedom of the Seas" doctrine as precedent on which to base their predictions concerning the development of international civil air transport. That doctrine had been launched in 1608, by the famous lawyer and statesman, Hugo Grotius (1583-1645), who had been retained by the Dutch East India Company to establish the right of

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<sup>2/</sup> Somewhere in the course of WW II, Mr. Harry Hopkins, representing President Franklin D. Roosevelt, reached an understanding with Britain's Prime Minister Winston Churchill that England would concentrate her aircraft manufacturing efforts on fighters (particularly Spitfires) and the U.S. would concentrate on large bombers (particularly daytime bombers) -- the British had been using night-time bombers (with lesser target accuracy than daytime bombing would permit) in order to reduce the hazard from anti-aircraft fire-power. The result of several years of this division-of-labor was -- as indicated in the text -- the U.S. was ready with its know-how for the operations of large aircraft (transatlantic transports had to be large to have the necessary range) -- England was not as ready.

Dutch traders to sail through the South Atlantic and the Indian Ocean (claimed to be owned by Portugal) on their way to trade in the Dutch East Indies. In a brilliant brief, he laid the basis for the doctrine. Eager Dutch traders and commercial interests placed it into practice. Later the English endorsed the Dutch-born Freedom of the Seas doctrine and policed it vigorously with their powerful Navy as a method of assuring British commercial interests of the right of access to commerce and trade all over the world.

As a result of this doctrine, the nation possessing the strongest and most amply equipped commercial shipping fleet could, and in some well-known cases did, monopolize the richest markets of the world. The quantum of service was elastic and access to markets was practically unlimited.

Prior to World War II, it had been common practice (with limited exceptions) for the United States privately owned air carrier to make such bargains as it could on its own for air routes and rights in foreign countries. On October 15, 1943, a new United States policy was announced. On that date, the Department of State and Civil Aeronautics Board (CAB) issued a joint statement. It was to the effect that thenceforward air routes and rights would generally be negotiated by the Department of State in close collaboration with the CAB. Thus, the curtain for action by and between governments on the international stage was rung up in anticipation of the ending of the war.

Soon thereafter, the industrial might of the United States began to tilt the scales in the direction of the defeat of Germany and Japan. As this result dawned on the minds of the leaders of the war-torn countries, they began to worry about the United States airlines running operations offering massive services all over the post-war world with their big transport airplanes and converted bombers. This could be done long before such devastated nations would be able to set their economic houses in order and turn to the matter of mounting an air transport operation of their own. This became a matter of worldwide deep concern.

Thus, to clear the air in this worrisome area of apprehension, the Civil Aeronautics Board (CAB), with the approval of the Department of State, held a press conference and made public a map of its intended post-war international air routes. A copy of that map appears at the end of this paper as Attachment 1. In the case of every important route, it constituted a reasonably direct route out from and back to the home base in the United States. There were no proposed wandering "tramp operations" criss-crossing the oceans of air of the world (as had sometimes been the case with sea shipping) and the United States evinced



no intention to take advantage of the distress of other countries. The deep concern in the world about the imagined overreaching intentions of the United States to "monopolize" all the important air markets immediately disappeared, leaving only a vague fear that the United States operators would somehow, even on the limited direct routings, with low rates and high capacity levels, overwhelm the efforts of the operators of other countries.

### III. CHICAGO 1944 INTERNATIONAL CIVIL AVIATION CONFERENCE

It was at this point (late summer of 1944) that the idea was conceived of calling a conference of nations of the world to be held in Chicago, Illinois, beginning November 1, 1944. The United States invitation was issued to 55 nations, then constituting all of the principal world states except enemy nations. Fifty-one nations sent delegations (over 1,000 delegates, consultants, and advisors). "There is a tide in the affairs of men" is a well-known observation (which Brutus made to Cassius on the field of battle) which applied here. There was but a tiny period in history, relatively speaking, when so many elements were favorable for the open consideration and debate of this vitally important subject. That period began when the conviction became current that the German/Japan Axis would be defeated and it ended with the actual surrender of Japan (following the disintegration of Hitler's Germany) in 1945. Earlier, the allied world was exerting every muscle to win -- there was no adequate time or energy left for post-war planning; and later, the renewing contentions between victorious allies struggling to recover their status in the world would have immensely complicated the acceptance of even reasonable proposals. But by November 1, 1944, the opening day of the Chicago Conference, the apprehension, which I have mentioned, had been quieted, WW II was closing down, and men's minds were ready for a great lunge forward in civil air transport services. Tomorrow would be too late. So thought Assistant Secretary of State, Adolph A. Berle Jr.; and he was right.<sup>3/</sup>

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<sup>3/</sup> It is interesting to note that for the first time in modern times, the official languages of the Conference were to be limited to English and Russian (not French), but Russian was dropped when the Russian delegation, on their way to the Conference, mysteriously turned around at Fairbanks, Alaska, and returned to Russia, never to be heard from again during the Conference. (The Union of Soviet Socialist Republics became a member of the International Civil Aviation Organization on November 14, 1970.)

### A. Objectives of the Chicago Conference

The invitation to the Conference was ambitious. It divided its objectives into three parts: (1) The establishment of provisional world air route arrangements by general agreement; (2) The establishment of an Interim Council to act as a clearinghouse and advisory agency during the transitional period; and (3) Agreement upon the principles to be followed in setting up a permanent international aeronautical body, and a multi-lateral aviation convention dealing with the fields of air transport, air navigation, and technical subjects.4/

It is instructive to bear in mind that when invitations to international conferences are formulated and issued, it is generally the case that the delegation to represent the host country has not yet been appointed. Such was the case here. The U.S. Delegation ultimately formed included strong-minded personalities.5/

The views and philosophies of this Delegation and its consultants and advisors importantly influenced the positions taken by the United States, as will be noted.

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4/ Invitation of the United States of America to the Conference, Department of State Publication 2282, page 2, Conference Series 64 (1945).

5/ The United States Delegation consisted of Assistant Secretary of State Adolph A. Berle, Jr., as Chairman (he also was elected President of the Conference); Senator Josiah W. Bailey of North Carolina, Chairman of the powerful Committee on Commerce of the Senate; Senator Owen Brewster, of Maine, a Member of that Committee and an aggressive leader in the field of international aviation; Alfred L. Bulwinkle, of North Carolina, an influential Member of the House Interstate and Foreign Commerce Committee; William A. M. Burden, Assistant Secretary of Commerce and Air; Rear Admiral Richard E. Byrd, U.S.N., Retired; Fiorello H. LaGuardia, Mayor of New York City and Chairman, United States Section, Permanent Joint Board on Defense (Canada-United States); L. Welch Pogue, Chairman of the Civil Aeronautics Board; Edward P. Warner, Vice Chairman, Civil Aeronautics Board; and Charles A. Wolverton, Member of the House Interstate and Foreign Commerce Committee. Among the Consultants were: Artemus L. Gates, Assistant Secretary of the Navy for Air; J. C. Hunsaker, the great Chairman of the National Advisory Committee for Aeronautics; and Robert A. Lovett, the dynamic Assistant Secretary of War for Air (the Department of the Air Force had not yet been created).

The headquarters of the older, more limited efforts to regulate international air services (principally in the area of safety) had theretofore been in Paris, France. In view of the unquestioned leadership in civil air transport services of the U.S. operators, it became almost an obsession on the part of the U.S. Delegation to remove the headquarters for international civil aviation from Paris to the New World. This was accomplished but with considerable reluctance on the part of European nations, particularly France. Canada and Cuba vied for the honor of being the locus of the new world organization. Ultimately, Montreal, Canada won and became the new headquarters.<sup>6/</sup>

B. Unsuccessful Proposals Concerning the Establishment of Air Routes and Services

Very early in the Conference, it became clear that England and her many supporters (including, of course, all of the Commonwealth nations, then still in full flower) leaned heavily toward restrictionism -- i.e., government dictation in advance of specific air routes, rates and fares, and conditions of service; whereas the U.S. leaned heavily the other way -- i.e., toward freedom of action in the structuring of future international civil airline development. This was a division destined to continue for some time.

Australia with the strong support of New Zealand and the reluctant acquiescence of the United Kingdom (whose delegation was chaired by the dominant Lord Swinton, a close friend of Winston Churchill) proposed a one worldwide service to be owned by governments and to be operated by nationals from the nation-owners. This idea was sternly opposed by the United States and was soon tabled. It gained no further active status during the Conference. The idea persisted in one form or another in the halls of the Conference until its dedicated sponsors, one by one, sadly gave up the lost cause.

The United Kingdom, joined by Canada, espoused an international Civil Aeronautics Board. It would have had absolute power over (1) routes, (2) who operated them, (3) rates and fares, and (4) various competitive practices.

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<sup>6/</sup> From the perspective of world power politics, this was acceptable. Canada is a relatively small nation in population, it is a member of the British Commonwealth of Nations (thus pleasing to the valiant British ally), and it is a country whose prospect was that of stability and peace.

The United States Delegation was adamantly opposed. The intra-United States Delegation reasoning was that the foreign elements (particularly the European nations) would consolidate their interests in such an international regulatory commission and would, for the most part, be against those of the U.S. The British concept, though pursued with vigor, soon was, in effect, tabled because of the intense opposition of the United States.

The concern of those favoring restrictionism and, therefore, favoring an international CAB was based upon the fear that the strong United States private carriers would flood the markets with capacity and would offer very low rates and fares, thus squeezing out competing foreign air carriers.

### C. The International Air Transit Agreement

An outstandingly successful proposal for action on a multi-lateral basis was that the nations of the world should, by treaty, agree to permit peaceful civil air transit through their air space. This proposal was made by the United States in the form of the International Air Transit Agreement.

Section 1 of that Agreement provides that "Each Contracting State grants the following freedoms of the air in respect of scheduled air services:

"(1) The privilege to fly across its territory without landing;

"(2) The privilege to land for non-traffic purposes."

This was signed, ratified by 92 nations and is in effect today. It is a great boon to world civil air services. Theretofore, the right to fly through the airspace of any nation with civil aircraft had to be bargained for. Before you can discharge or take on passengers or cargo at a foreign point, you must first get there. In most cases, intervening countries, many of which may be adequately served by other services, must be overflown. The question of the right to get there was the first problem to be met in the then international air riddle.<sup>7/</sup> The International

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<sup>7/</sup> "Common sense In Aviation Thinking," by L. Welch Pogue, Chairman, Civil Aeronautics Board, delivered before the Greater Twin Cities Chapter, Nation Aeronautics Association, at Minneapolis-St. Paul, Minnesota, April 9, 1943.

Air Transit Agreement addressed itself to that problem. The opening of the ocean of air to peaceful international airline transit use constituted a milestone of progress. That result alone would have justified the holding of the Chicago Conference.

D. The International Air Transport Agreement

Another proposal for action on a multilateral basis was that the nations of the world should, by treaty, agree to permit the establishment of air routes and services on a reasonably direct routing. This proposal was made by the United States in the form of the International Air Transport Agreement (sometimes called the "Five Freedoms Agreement"). Article I, Section 1, provided (in part) that:

"Each contracting State grants the other contracting States the following freedoms of the air in respect of scheduled international air services:

- (1) The privilege to fly across its territory without landing;
- (2) The privilege to land for non-traffic purposes;
- (3) The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;
- (4) The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
- (5) The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.

"With respect to the privileges specified under paragraphs (3), (4), and (5) of

this section, the undertaking of each contracting State relates only to through services on a route constituting a reasonably direct line out from and back to the homeland of the State whose nationality the aircraft possesses."

The Air Transport Agreement was signed at the Conference (December 7, 1946) by 20 nations; and by 8 more later -- a total of 28.8/

Now I must pause for a more general discussion of this important agreement. It manifested the "open opportunity" position of the United States government at the time the Conference was called. The United States was prepared to issue a general invitation to the carriers of all governments to establish routes to the United States if other governments would give similar rights to our carriers.9/ Thus United States air transport would be able immediately to establish and to begin development of the routes already laid out by the Civil Aeronautics Board. United States carriers would not be held up by foreign governments'

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8/ The 20 nations signing under the date of December 7, 1944 were: Afghanistan, Bolivia, China, Dominican Republic, Ecuador, Haiti, Honduras, Lebanon, Liberia, Mexico, Netherlands, Nicaragua, Peru, Sweden, Turkey, United States, Uruguay, Venezuela, Danish Minister, Thai Minister. The nations signing later were: Costa Rica (3/10/45), Cuba (4/20/45), El Salvador (5/9/45), Ethiopia (3/22/45), Guatemala (1/30/45), Iceland (4/4/45), Luxembourg (7/9/45), Norway (1/30/45), Paraguay (7/27/45), Switzerland (7/6/45), Syria (7/6/45), Union of South Africa (6/4/45). Spain also signed but reserved 5th Freedom Rights.

It should be noted that except for the United States, no major State with a potentially significant traffic contribution exposed that traffic to the service permitted by this Air Transport Agreement.

9/ The current United States policy is remarkably similar to the one being advocated thirty years ago. The United States is attempting to convert the present restricted international air transport environment to a free market with unlimited routes and rates, and capacity regulated only by the carrier's home government.

desire to delay operations until their carriers were prepared. As the Conference proceeded, this position was sharply challenged not only by foreign governments fearing United States predominance but by members of the United States delegation who argued that, for a short term advantage, the United States was being unduly generous in giving away the potentially rich United States air transport market for routes of limited value. To them a process of bilateral bargaining seemed better.

The advocates of the latter position won the day.

The Agreement was never ratified by the United States. The Department of State sent the Agreement to the Senate for such action; but it was recalled before the Senate had an opportunity to act upon it. It never came into force. 10/

The conflicts which surrounded this Agreement are reflected in dramatic events which were going on "behind the scenes." They, in effect, scuttled any multilateral, international route authorization even though it was a stated objective of the invitation to the Chicago Conference. We should turn now to that dramatic bit of history.

E. Chairman Berle's Dismissal as Assistant Secretary of State

At this time, the Conference was drawing to a close. It was about December 4, 1944 that I received an urgent message from Chairman Berle to come at once to his room in the Chicago Stevens Hotel (where the Conference was being held). Upon arriving there, I saw that Chairman Berle's countenance was ashen but he was in complete control of himself. Berle said:

"Mr. Pogue, I have just received a telegram from President Roosevelt stating that he

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10/ On July 25, 1946, the United States gave the required one year's notice of withdrawal from this Agreement. Department of State Bulletin of August 4, 1946, p. 236.

This recall was taken while the treaty approving the Convention on International Civil Aviation was pending. There were many who thought that that treaty would have been in much jeopardy if the Administration had continued to support the International Air Transport Agreement which was strongly opposed by some leading Senators.

has accepted my resignation as Assistant Secretary of State. That is particularly interesting because I have never submitted any resignation, nor has it been suggested that I do so. However, I have not been removed as Chairman of the United States Delegation nor as President of the Conference, and I intend to close the Conference without mentioning this development if you will support me in doing so."

I assured Berle that I would support him; and Adolph Berle carried on as Chairman of the United States Delegation and as President of the Conference until he closed it. This thoroughly able, responsible and patriotic public servant continued to preside with a firm hand and with an outflow of inspiring oratory as to the significance of this great Conference and as to its achievements. It demonstrated an indomitable spirit of courage and a willingness to subordinate one's personal ego to a larger cause.

There was further discussion between Berle and me of the reasons for this extraordinary timing of action concerning him coming 3 days before the scheduled close of the Conference. It was clear, Berle stated, that certain airlines were violently opposed to any multilateral route resolution. When Berle had gone along with the Air Transport Agreement, he had acted in a manner contrary to the stated wishes of some members of the Delegation. It seemed clear that someone in a position of power had requested his immediate dismissal as Assistant Secretary of State. This was most humiliating while the Conference was still in session. The President yielded, although theretofore he had been very supportive of Berle and of his ideas (President Roosevelt soon appointed Adolph A. Berle as Ambassador to Brazil -- seemingly a consolation action).

F. Air Routes and Rights to be Negotiated in Bilateral Air Transport Agreements

Thus, it became clear from a very high level that it was intended that all United States approaches to the establishment of international air routes through multilateral action was dead for the immediate future. Even the ultimate fate of the International Air Transport Agreement was easily predictable, although Berle did not withdraw it. Several years later an attempt to revive the multilateral approach was the subject of a conference in Geneva, Switzerland and still later in Montreal, Canada. Both efforts failed.



As if it had been known all along that the Chicago Conference would not provide for multilaterally authorized worldwide air routes, there had been developed in the Conference a "Form of Standard Agreement for Provisional Air Routes"<sup>11/</sup> sometimes referred to as the "Chicago Standard Form." Although originally drafted in multilateral language, it was used by the United States and other countries as a basis for bilateral air transport agreements until modified by the U.S./U.K. Bermuda Agreement, referred to below. This Chicago Standard Form imposed no restrictions on capacity, rates or fares, or traffic generated and carried between third countries.<sup>12/</sup>

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<sup>11/</sup> "Bilateral Air Transport Agreements Concluded by the United States," by Joe D. Walstrom, Department of State Bulletin, December 22, 1946.

<sup>12/</sup> Although it was clear at once that the bellwether nation to lead off in the new order of bilateralism was the British, they were not ready for operation and would not negotiate at that time. Ten small nations did, however, sign bilateral agreements.

Thus, although no specific action was taken on the program of endorsing the proposal to secure air rights commercially through bilateral agreements, it was the general impression of the Delegates at the termination of the Conference that those rights were to be obtained thereafter in that manner.

The provisions of the Chicago Standard Form were used in most of these early bilateral air transport agreements. It included clauses providing for the intergovernmental exchange of air rights to be exercised by designated airlines of the respective countries; equality of treatment and non-discriminatory practices with respect to airport charges, the imposition of customs duties and inspection fees, and the exemption from such duties and charges in certain cases; mutual recognition of airworthiness certificates and personnel licenses; compliance with laws and regulations pertaining to entry, clearance, immigration, passports, customs, and quarantine; criteria as to ownership and control of each country's air services; registration of pertinent agreements with PICAQ; termination of agreement on one year's notice; and procedure for amending the route annex to the agreement.

IV. The International Civil Aviation Organization (ICAO); and the Provisional Predecessor Thereof (PICAO)

The multilateral approach to international civil air services was achieved in the field of safety. Here, the Chicago Conference was a great success.

The task of preparing a Convention on International Civil Aviation was undertaken by Subcommittee No. 2 of the Conference, of which I was Chairman. The Organization which we established deals primarily with matters of safety--and it deals with them extensively.<sup>13/</sup> In order to avoid the charge that nations (particularly the United States) were unconstitutionally delegating their sovereign power to an international organization, it was worked out so that ICAO does not, on its own authority, make safety rules and standards; it merely recommends them and all nations are to use their best efforts to place them in effect; and if they cannot do so, they must so report to ICAO. This has worked well.

The establishment of an Interim Council to act as a clearing-house and advisory agency during the transitional period--was, in effect, provided through the Provisional International Civil Aviation Organization (called PICAO), which served for several years as the predecessor of ICAO. When the assembly of PICAO met in May 1947, following the coming into force of ICAO in April, PICAO was, in effect, dissolved inasmuch as it was intended to be Provisional only until ICAO became effective.

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<sup>13/</sup> The Convention on International Civil Aviation was ratified by the Senate July 25, 1946; it was ratified by President Truman August 6, 1946; and it came into force April 4, 1947. 61 Stat. 1180 (1947).

The almost instant and continuing success of PICAO and, beginning in 1947, of ICAO was due, in no small part, to the outstanding leadership and ability of Edward P. Warner (1894-1958). He resigned from the CAB (of which he was Vice Chairman) to become President from the outset in 1945 of the Council, first of PICAO and then, in 1947, of ICAO. He remained as President until 1957. In addition to being an able aeronautical engineer he received many honors and awards in other fields. He was a genius, with superior talents for leadership, for administration, for coping with international political issues, for integrity, and for being a truly great human being. He seemed to have been born for this very assignment.

In summary, the Chicago Conference was a great success, although there were disappointed idealists who dubbed it a "failure" because it did not settle all large issues. Those who took that negative view could hardly have given proper weight to the incredibly restrictive barriers placed in the way of international air transport in the 20-year period before Chicago. In any case, the great achievements of the Chicago Conference were: (1) The International Air Transit Agreement took off successfully for a CAVU (ceiling and visibility unlimited) flight to success; (2) ICAO and its predecessor, PICAQ, were firmly and successfully catapulted into international responsibility; and this made it possible (a) to hold intact (to the extent deemed feasible) the worldwide airways and communications facilities which had been established during the war; (b) through the ICAO machinery to provide for the development of worldwide cooperation on aircraft, airway, and air traffic control problems; (c) to arrange for the reciprocal recognition of aircraft and aircrews certification among member states; and (d) to treat with the entire range of technical and operating problems of international civil operation as a result of the flexibility given to ICAO. These were remarkable achievements, consummated at the right moment in time. In addition, the headquarters of the international civil aviation governmental cooperation was established in Montreal, Canada; and numerous impractical fringe concepts which almost certainly would have deterred international civil aviation's progress for many years were eliminated at Chicago.

#### V. International Air Transport Association (IATA)

We shall now turn to the International Air Transport Association (IATA) and the reasons for its organization. During the wide-ranging debates at the Chicago Conference, both in formal sessions and at lunches, dinners, and in diverse other talking-places, it had become clear that the United States post-WW II air operators were apt to be the bellweathers in the international civil aviation field, thus setting the pace in equipment, rates, and fares, and other conditions of service. The need felt by the British, as well as other European nations (not including Ireland, Sweden, and the Netherlands) for protection against United States predominance which had manifested itself throughout the Conference caused them to seek means by which United States air carriers could be checked, without constant exercise by them of unilateral power to regulate rates and service of United States carriers. The situation from their standpoint was made worse by the fact that even the United States government had no legal power to regulate rates and services of its own international carriers.

It was but natural, inasmuch as the British international airline was wholly owned by the government, that the thoughts of the British would turn to having an association of operators control fares and conditions of service as an alternative to wholly unilateral regulations of the United States carriers. It is highly probable that this British concern is the origin of the new efforts to form what came to be called IATA.

There were also good practical reasons for creating the organization and vesting it with power to agree on rates and service. Since each government retained the power to accept or reject rates and capacity operated into its territory, some type of international machinery was necessary to iron out differences between governments on these issues. Otherwise, operations involving a large number of countries would be faced with an impossible position. No one wanted governments to become involved in these detailed determinations and an association of operators acting with approval of governments was regarded as entirely appropriate for this purpose.

One or two very informal meetings between invited representative operators were held in Chicago (while the Conference continued) to discuss the possibility of organizing the international operators. After the adjournment of the Conference on December 7, 1944, a later meeting attended by many more representatives of the future international operators was held in Washington, D.C., under the auspices of the Air Transport Association whose acting president was Stuart G. Tipton. But it was not until April 1945 in Havana, Cuba that a still larger meeting of such representatives was held and an organizational structure was adopted.<sup>14/</sup> In any case, this was in good time because a sizeable period of "lead

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<sup>14/</sup> It is non-governmental and is formed under a special Act of the Canadian Parliament, given Royal assent in December 1945. Its headquarters are in Montreal. (Facts About IATA, International Air Transport Association, p.2) Its predecessor was organized at The Hague in 1919.

Additional light upon the origins of the new IATA is given by John C. Leslie:

"The Chicago Conference, of course, was at the government level and the senior delegates

(Footnote <sup>14/</sup> continued on page 17)

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(Footnote 14/ continued from page 16)

were government officials. However, many delegations included airline advisers. This meant that a number of pre-war foreign airline executives, familiar with the old IATA, were in Chicago attached to national delegations. With the consent of their respective delegations, they formed a drafting Committee 1/ to draw up the Articles of Association of a new IATA to succeed the old IATA. The old IATA had its headquarters in Europe and had confined its activities to Europe; the only outside member was Pan American Airways. Now it was necessary promptly to form a new association with a global outlook and worldwide membership. A fresh start was psychologically and practically necessary.

"In April 1945, just a few months after the completion of the Chicago Conference, the new IATA had its organization meeting in Havana, Cuba. Sixty-one airlines met at the Hotel Nacional to consider and adopt, as amended, the Articles of Association proposed by the Chicago drafting Committee. With that, the new IATA was launched on 19 April 1945. (Legally, the Association was unincorporated until its Canadian charter was issued on 18 December 1945.)"

"International Air Transport Association: Some Historical Notes", John C. Leslie Journal of Inter-American Studies and World Affairs, Vol. XIII, Nos. 3 & 4."

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1/ (The drafting committee consisted of John C. Cooper, Jr., as Chairman (Pan American Airways), Major J. Ronald McCrindle (British Overseas Airways Corporation), Per Norlin (Scandinavian Airlines System), John Slater (American Export Airlines), Henry Gorecki (LOT of Poland), Pedro Chapa (Cia. Mexicana de Aviacion), Luis Machado (Compania Cubana de Aviacion), and F. Flocon (France)).

time" seemed necessary if there was to be some reasonable chance of persuading the CAB to approve the structure of IATA. Such approval was required in order to give the United States members of IATA immunity from the rigorous penalties of the United States antitrust laws which, in general forbade agreements (or even meetings or discussions) between competitors on such things as rates, fares, capacity, and competitive conditions of service.

IATA had been promptly labeled as an international group of operators who were banding together to fix rates and fares (technically "rates" apply to cargo and "fares" apply to passengers). The association was somewhat unthoughtfully labeled as a "cartel." A "cartel" is succinctly defined by Webster's New Collegiate (1974) Dictionary as "a combination of independent commercial enterprises designed to limit competition." IATA does not qualify because (1) the airlines are not independent (many are owned, and all are subject to regulation, by their own governments); (2) many international airlines are instrumentalities of their owner-governments more than they are commercial enterprises; (3) IATA cannot even discuss competitive matters with United States airlines without their government's approval to do so in advance; and (4) IATA is not always seeking high fares. In fact, it has often happened that it is the low cost -- not the cartel-like high cost -- carrier who, because of the unanimity rule, could and has held out for its lower fare. If its owner-government prefers tourists with their tourist spending money to higher air fares, its air carrier merely holds out for the lower fare. Thus, whatever its faults may be, its "cartel-implanted label" is a misnomer for many reasons.

Apart from its rate and fare fixing functions, IATA also does many other things which are beneficial. Its technical services, its traffic conferences, its collection and dissemination of traffic statistics, its technical surveys, its active program for the facilitation of travel, its clearinghouse connections and numerous other services which it renders, are performed better through the organized IATA group rather than would be the case with each airline acting for itself.<sup>15/</sup> In any case, however, the matter of securing CAB approval would not be easy. This approval did not come until the United States was faced with the ultimate issue in Bermuda in February 1946. The reasons for the government approval of IATA will, therefore, be set out in connection with the development of what was achieved at the Bermuda Conference between the United States and the United Kingdom in 1946.

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<sup>15/</sup> IATA is now undergoing a considerable readjustment of its organization. A carrier, e.g., may participate in many of IATA's technical functions without participating in its rate and fare functions.

VI. The United States-United Kingdom Bilateral Air Transport Agreement (1946) -- The Bermuda Agreement

Following the 1944 Chicago Conference on International Civil Aviation, the United States kept urging the United Kingdom to the conference table to develop a bilateral air transport agreement. The lack of such an agreement was holding up everything else in the development of an international civil air route system. But the British were in no hurry. They were not ready, they felt, to open up the skies to the powerful United States operators.

In the background, a highly significant program of a different sort was steadily proceeding toward an explosive climax. War-devastated Britain was literally gasping for its financial breath of life. It had had one of the most severe experiences in recorded history to finance its heroic war effort. During the latter half of 1944 the proposal that the United States should extend a \$3,750,000,000 line of credit to Britain, good up to December 31, 1951, became an issue that rocked the United States from coast to coast and from border to border. This loan was to be in addition to compromising to \$650,000,000 the lend-lease debt of Britain to the U.S. Interest was to be at the rate of 2%; but a 5-year grace period made the effective rate 1.62%.<sup>16/</sup> This loan was to be "subject to the approval of the legislatures of both countries."<sup>17/</sup> One will find in the Congressional Record of this period a great many speeches, statements, reprinted editorials, articles, studies, and addresses on the matter. Most of the substantive positions are negative. Reflecting a considerable volume of sentiment was a Fort Wayne, Indiana News Sentinel editorial (on December 18, 1945), concerning this proposed loan entitled "Stop This Thievery."<sup>18/</sup> The Wall Street Journal published an article with a dateline of November 13, 1945, entitled "Ballyhoo for Britain" which was calculated to inflame the nation against the loan.<sup>19/</sup>

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<sup>16/</sup> Krock, "The Basic Reasons for the Credit to Britain", New York Times, December 7, 1945, 91 Cong. Rec., Part 13 p. 5471, December 11, 1945.

<sup>17/</sup> Statement, dated December 6, 1945, issued by the President of the United States and the Prime Minister of Great Britain. 91 Cong. Rec., Part 13, p. A 5342., December 7, 1945.

<sup>18/</sup> 91 Cong. Rec., Part 13, p. A 5649, December 18, 1945.

<sup>19/</sup> 91 Cong. Rec., Part 13, p. A 5649, December 18, 1945. Some choice extracts from the article give the flavor of many other sentiments of those times on this matter.

On December 12, 1945, the very influential Congressman Celler stated on the House floor (in confirmation, it would seem, of the Wall Street Journal article's report that about

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(Footnote 19/ continued from page 19)

"Washington.---The American public is expected to drop its opposition to a loan for Britain between now and the turn of the year.

"It won't happen by accident.

"Five top Government agencies are mobilizing their opinion-manufacturing machinery for a campaign which will start soon and which officials say will be running at full tilt by December, when Members of Congress will be home listening to constituents. The payoff will be legislative action in January.

"Between now and then the pressure will pile up. Some maneuvering will be in public view, carefully timed. Speeches will be made by Cabinet members, for instance. Some of it will be a bit more obscure; the Government aims to help in preparation of many a magazine article, Sunday newspaper feature, and privately sponsored radio programs plugging the loan.

#### Many 'Off-the-Record' Sessions

"A great deal of the activity will be entirely behind the scenes. Plans are afoot for 'off-the-record' sessions in Washington and other cities from coast to coast, in which officials will indoctrinate businessmen, club-women, labor and farm leaders, and representatives of literally hundreds of miscellaneous organizations--all carefully chosen for maximum influence on public thinking.

"Religious leaders, both ministers and laymen, will be among those welcomed to Washington for education, officials say, much as during the campaign to sell the Bretton Woods monetary plan.

(Footnote 19/ continued on page 21)



70% of the American people were then against "a large credit for Britain.") --

"Mr. Speaker. I heard with interest the remarks of the gentleman from New York (Mr. Reed) and it clearly indicates there has developed, and properly so, an intense opposition to the so-called British loan which amounts to \$4,000,000,000, including \$650,000,000 for lend-lease in transit. . . ." 91 Cong. Rec., Part 9, p. 11927.

Among the earnest efforts made by U.S. political leaders to support the loan, was that made by Under Secretary of State Dean Acheson whose address on the subject was introduced in the Congressional Record on February 21, 1946. After he spoke first with warm approval of the Bretton Woods agreement for an international monetary fund and an International Bank for Reconstruction and Development, all designed to restore world trade and the economic viability of nations, he then strongly supported the pending loan to Britain. Among other strong positions taken, he stated:

". . . Or we had a chance of taking a narrow viewpoint. We could have said, 'Well, we have

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(Footnote 19/ continued from page 20)

"Meanwhile, representatives of Britain in the United States have been specifically instructed to keep quiet about the projected loan.

"The American strategy is all drawn up. It is incorporated in a State Department document bulking 100 pages or so which has been distributed to key officials in the Treasury Department, Commerce Department, Federal Reserve Board, and Agriculture Department.

#### Study Shows 70 Percent Oppose Credit

"This includes a section entitled 'Special Report on Public Attitudes on Foreign Policy,' based upon unpublicized governmental polls of public opinion. This study, which also includes analyses of press and radio comment, is understood to show that about 70 percent of the American people are presently against a large credit for Britain."

done enough for the British. We sent them \$25,000,000,000 worth of lend-lease during the war. We did all that and now we have our own problems.' The result of that attitude would have been that the British would have been forced to adopt the only alternative open to them--a desperate one which offered no real hope to them or anyone else. It was that alternative of trying to pull the Empire closer and closer together, of saying, 'We will make a contract to sell to Australia and they will buy from England. Or Australia will sell to South Africa and buy from England.' Deals within the Empire: That was the alternative. It was an alternative which would mean a lowered standard of living throughout the world; it would mean lowered markets for the United States. For the prosperity of this country can no more continue in the face of a descending and impoverished world than it could continue in the period of the thirties.

Those were the alternatives and, faced with that situation, some of the criticisms which I hear seem to me to be uninformed and almost frivolous." 92 Cong. Rec., Part 9, p. A 977, February 21, 1946.

It was not until July 17, 1946 that the Chancellor of the Exchequer of the United Kingdom announced (July 17, 1946) "The American Congress has now approved the loan. . . .We have a common interest in reviving trade throughout the world and in providing good standards of living for men and women everywhere."<sup>20/</sup> However, at the end of 1945, debate in the United States over whether or not the loan should be approved was at white heat. The outcome of the issue was in doubt.

With the war just recently at an end, with international civil air transport stalled until we could persuade the British to negotiate with us, with ever increasing embarrassment on the British side because it looked as if they were holding numerous nations back in their civil air transport development because the British were not ready, and with the very important objective of securing the all important \$3,750,000,000 loan (plus the \$650,000,000 lend-lease compromise) within reach if all major obstacles were removed, the British suddenly switched tactics.

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<sup>20/</sup> Extension of Remarks by Congresswoman Frances P. Bolton, July 17, 1946. 92 Cong. Rec., Part 12, p.A4211, July 17, 1946.

They issued an invitation early in January 1946 to the United States to meet in uncharacteristic haste in about 10 days in Bermuda for the purpose of negotiating two agreements. The first concerned the commercial use of 4 out of 7 ocean bases in the Caribbean and in the North Atlantic (something the United States wanted very much but which had theretofore been used by the United States for military purposes only). The second was the long-desired new bilateral air transport agreement. The invitation was accepted at once.

The agreement on the bases was developed first with comparative ease. Then came the more difficult air transport agreement negotiations. The issues in the air transport negotiations of most significance were:

(1) The British wanted government control of such things as the capacity which each airline would operate and of the rates and fares charged, with such controls spelled out in advance of operations, that is, predetermination of those matters. They were most apprehensive that the U.S. operators would flood the market and put in very low rates and fares. The United States, on the contrary, was vigorously opposed to predetermination of those issues. Furthermore, the Congress had given no power to the CAB or to any other agency or Department to regulate international rates, fares, equipment, or schedules. Hence, the CAB could not agree to predetermination of those issues because that would be contrary to the intent of Congress and because the CAB had no power, in any event, to do so.

(2) The United States wanted the unrestricted right to take on traffic in a foreign country and carry it on to another foreign country on its long routes ("fill-up" traffic), whereas the British wanted to severely restrict such a right and to require that the capacity offered on any route be related directly to that required to properly service traffic from and to the homeland of the operating carrier.

Here, again, it was the fear that the United States operators would flood the world's air markets with massive capacity at very low rates and fares which made the opposition so tenacious in their restrictive attitudes.

These issues were fought over with vigor and for a long time. The resulting agreement contained ambiguities; but the major objective was not to draft a model document, but, rather, to reach an accommodation which would break the "log jam" and get international air transport into the air. The Bermuda Agreement did that. Both countries in a joint statement released September 19, 1946, agreed that the Bermuda Agreement in its essential characteristics provided a reliable basis for the orderly development and expansion

of international air transport.<sup>21/</sup> It lasted over 30 years and served as a model around the world, generally speaking, for 65 bilateral agreements. That seems to speak well for the achievement of the "metamorphosis" mentioned at the beginning of this paper. In any case, it worked.

The largest issue, that of predetermination, was ultimately resolved in this manner. The British were adamant in their refusal to let rates and fares go uncontrolled; but, since the CAB had no direct power over such matters, the United Kingdom agreed to relax their insistence upon predetermination of the capacity to be operated if the U.S. would approve letting the operating carriers fix rates and fares, subject to the veto thereof by the home government of each carrier. This meant approval by the CAB of the organization and structure of IATA, so that carriers could meet, discuss, and fix rates and fares, subject to veto by the home governments, without violating the United States antitrust laws. Such approval came reluctantly from some members of the CAB. But, eventually the organization and structure of IATA was approved in Bermuda for one year (later extended indefinitely) where the members of the CAB were present. One member rendered an extensive dissent, although a question may linger as to whether or not he would have done so had his vote been essential for approval. It seems accurate to say that without such approval, the securing of any sort of adequate Bermuda Agreement would have been in great jeopardy.<sup>22/</sup>

The British also relaxed on forbidding the carriage of fill-up foreign traffic in exchange for a broad statement of principles to the effect that the capacity provided on a long route would be geared basically to that needed to accommodate the home traffic of the carrier operating the route, after taking into account the need for fill-up traffic in developing long routes and the effect of the operations on local carriers in the region through which the long route passed.

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<sup>21/</sup> Department of State Bulletin of September 29, 1946, p. 577. Walstrom, op. cit.

<sup>22/</sup> The CAB also agreed to seek legislation from Congress authorizing the CAB to fix international rates and fares. (This it unsuccessfully did for many years. Only recently has some power in this area been given to the CAB, but the exercise thereof is in effect subject to Presidential veto.) There were also elaborate and complicated inter-governmental conferences agreed to in case IATA could not agree (unanimously) on rates and fares.

The agreement on the exchange of routes is reflected in a map appearing at the end of this paper as Attachment 2. At that time the United Kingdom controlled 11 strategic points on the international routes desired by the United States. Because of the limited range of aircraft then available, these 11 points were very important. As will be apparent, the United States obtained the basic route authority it desired from the United Kingdom. Other route authority called for by Attachment 1 did not involve the United Kingdom and is therefore not shown on this map.

Although the foregoing summary statement of solutions reached in order to achieve an agreement may be oversimplified, nevertheless the Bermuda Agreement illustrates how two tenaciously held opposing views can be accommodated. The art of successful international dealings is best served when closed doors are opened and "irreconcilable" positions are made tolerable in some mutual accommodation. In any event, the steady and rapid development of networks of air transport route systems around the world, heavily patronized by the public, speak well for the workability of the agreement in action.

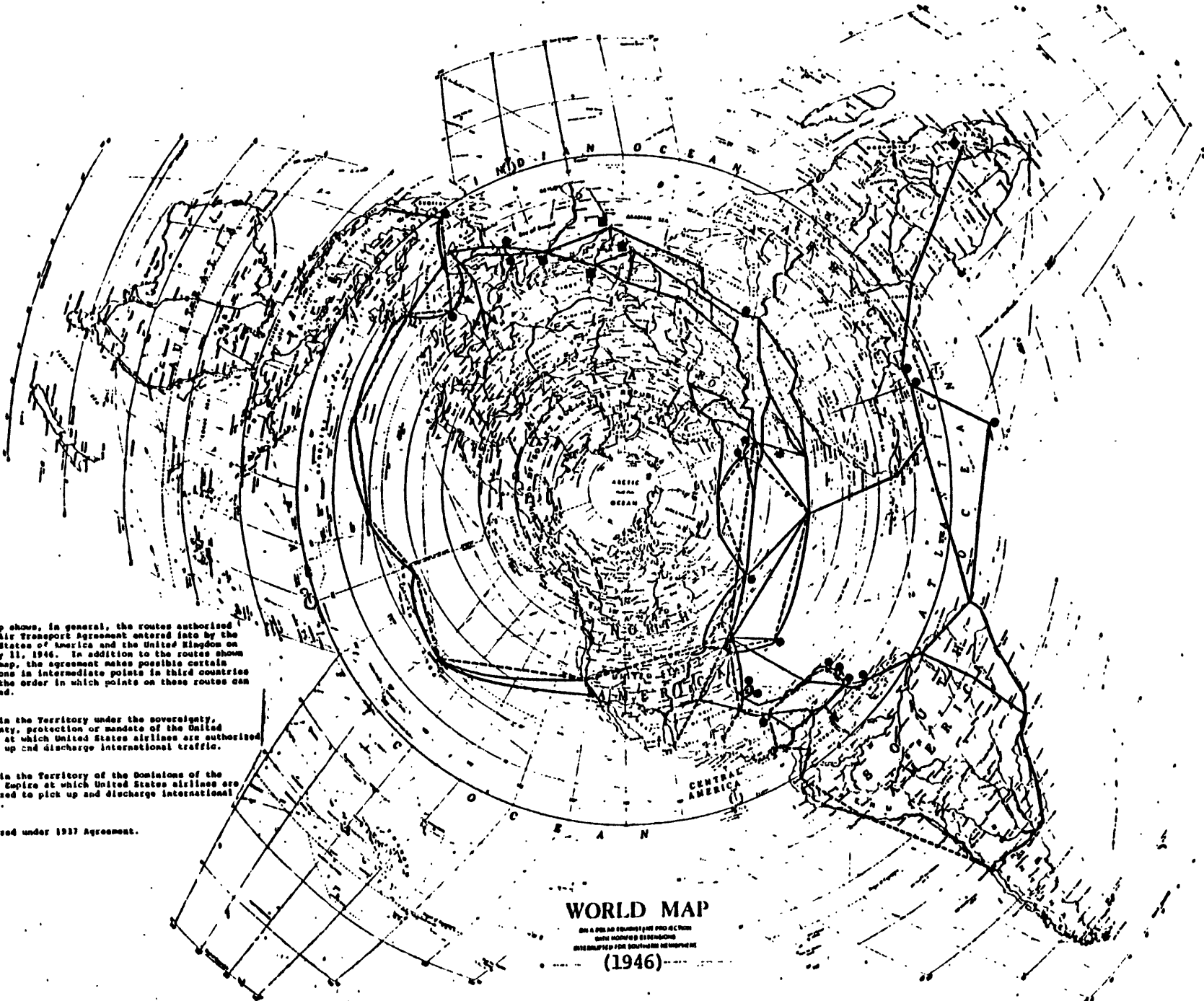
## VII. EPILOGUE

Mankind is, in some respects, like a missile with multiple missions. Some have a good "guidance system" (conscience); some do not -- are not even aware of its lack. Hitler used air power to blitz his way craftily to international power and treachery. By way of contrast, the victorious WW II allies used air power in its broadest sense to advance international commerce, culture, education, and the general welfare. The effects upon our civilization have been profound. Technological developments in other fields have made their impacts, too, but none surpass air power in its penetrating changes in modern life and thinking.

Unlike the boundaries of the sea by the shorelines, the "ocean of air" laps at the borders of every state, city, town, and home throughout the World. Ocean barriers have become relatively meaningless. We are each other's neighbor, wherever on earth or sea we may be. We are not yet fully aware of the implications of this profound change in our relationships.

The Chicago Conference (which organized the World for the rapid development of the civil part of air power internationally) contributed much to the success of the metamorphosis of international air transport following WW II; and to changing our World in most important ways. But we must wait for future historians to evaluate the impact of such changes. I hope and believe that such evaluation will be decidedly positive.





- This map shows, in general, the routes authorized by the Air Transport Agreement entered into by the United States of America and the United Kingdom on February 11, 1946. In addition to the routes shown on the map, the agreement makes possible certain variations in intermediate points in third countries and in the order in which points on these routes can be served.
  
- Points in the Territory under the sovereignty, suzerainty, protection or mandate of the United Kingdom at which United States airlines are authorized to pick up and discharge international traffic.
  
- Points in the Territory of the Dominions of the British Empire at which United States airlines are authorized to pick up and discharge international traffic.
  
- Authorized under 1937 Agreement.

**WORLD MAP**  
ON A POLAR PROJECTION  
BASED UPON THE 1946 AGREEMENT  
**(1946)**