

## INTERNATIONAL ECONOMIC REGULATION OF AIR TRANSPORT II

A. J. THOMAS, JR.

### BILATERAL AIR TRANSPORT AGREEMENTS

Since there has been failure to adopt a multilateral treaty providing for the exchange of international routes and air services by the members of the community of nations, the bilateral agreement between the governments of two states has been resorted to in order to gain transit rights and rights to operate air transport services by the airline companies of one state into the territory of the other state. These bilateral agreements have been of either a general or specific nature although the vast majority have fallen into the latter category.<sup>110</sup> A general agreement sets forth no conditions to be followed, but merely grants to the commercial air carriers of each country concerned a mutual freedom to establish and operate international air transport services. For example, the United States-Colombian Agreement of 1929<sup>111</sup> permitted air transport operations of the United States to fly and land along both coasts of Colombia, while Colombian air services were granted such rights along the coasts of the United States and in the Canal Zone. The specific agreement grants the privilege to air carriers of each contracting nation to operate into the territory of the other, but, in addition, sets forth conditions and restrictions to be obeyed in the operation of such international air services. Route designations to be followed to and from each country are generally outlined. In the more recent agreements the point of departure in a contracting state, intermediate points, destination in the territory of the other contracting state, and points beyond are all specified with exactness.<sup>112</sup> At times, however, the air stops have not been described in such detail, but it has only been stated in the agreement that a reasonably direct route should

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110. See LISSITZYN, *op. cit. supra* note 19, at 379; TOMBS, *op. cit. supra* note 2, at 113.

111. State Dept. Press Release, Feb. 23, 1929, see Lissitzyn, *id.* at 388.

112. See, for example, the elaborate routing schedule in the Bermuda Agreement signed between the United States and Great Britain, *Treaties & Other International Act Series* 1507 (Dep't of State 1926).

be followed between the two states.<sup>113</sup> Some countries have required any route agreement signed to contain conditions accruing to their own advantage as in the case of Ireland. This nation requires that any carrier operating on an international trunk route through its territory shall make Shannon airport its first and last European port of call.<sup>114</sup> In most instances in connection with routing arrangements reciprocal concessions or substantially reciprocal concessions are made by the contracting states. One type of agreement is that wherein strictly reciprocal rights are granted on a designated route between the two states.<sup>115</sup> For example state A and state B might agree that authorized air carriers of each state should be accorded rights of transit, non-traffic stop, as well as the right to pick up and discharge traffic on a route between city X in A and city Y in B; in both directions. A nation like the United States with air carriers operating to the far corners of the globe would find such an agreement of little value, but requires an agreement which not only permits it to operate to a point or points within one nation but also to points beyond, along the international trunk routes which its airlines traverse. Therefore, a second type of air transport agreement has emerged wherein each state grants to the air carriers of the other authority to conduct air transport operations within its territory which is a part of a trunk operation beyond its boundaries. The United States—Peruvian Agreement<sup>116</sup> exemplifies this type of agreement. There it is provided:

Airlines of the United States of America, designated in conformity with the present agreement, are accorded rights of transit and of nontraffic stop in and through the territory of the Republic of Peru as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Lima, Talara, Chiclayo and Arequipa on the following routes via intermediate points in both directions: The United States and/or the Canal Zone to Talara, Chiclayo, Lima and Arequipa; and beyond Peru to points in Chile and Bolivia or beyond.

Airlines of the Republic of Peru, designated in conformity

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113. Interim Agreement Between the United States and Treaties and Other International Acts Series 1576 (Dep't of State 1945).

114. Agreement Between the United States and Ireland, Executive Agreement Series 460 (Dep't of State 1945).

115. See TOMBS, *op. cit. supra* note 2, at 113.

116. Agreement Between the United States and Peru, Treaties & Other International Acts Series 1587 (Dep't of State 1946).

with the present agreement, are accorded rights of transit and of nontraffic stop in and through the territory of the United States of America and in and through the Canal Zone as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Washington, D. C., New York, N. Y., and the Canal Zone on the following route via intermediate points in both directions: From Peru via the Canal Zone and Havana, Cuba, to Washington, D. C., and New York, N. Y.; and beyond the United States to Montreal, Canada.<sup>117</sup>

Again a nation may grant to the air carriers of one nation the privilege to operate an air service to and beyond its territory on a route while the airlines of the first nation may be extended the privilege to fly to the other nation but not beyond its territory. The United States Agreement with Switzerland<sup>118</sup> so provides. It reads:

Airlines of the United States of America . . . are accorded rights of transit and non-traffic stop in Swiss territory, as well as the right to pick up and to discharge international traffic in passengers, cargo and mail at Geneva (or other suitable airport) on the following route: The United States, over a North Atlantic route to Ireland and thence to Paris and Switzerland, and beyond to Italy, Greece, and the Near and Middle East, via intermediate points; in both directions. Airlines of Switzerland authorized under the present agreement are accorded rights of transit and non-traffic stop in the territory of the United States of America, as well as the right to pick up and discharge international traffic in passengers, cargo and mail at New York, on the following route: Switzerland, via intermediate points (non traffic stops) to New York; in both directions.<sup>119</sup>

As to the privileges of operations over the route by the air carriers, these, too, are of a substantially reciprocal nature, although the agreement may provide for all five freedoms of the air on the international route, or only a portion of them. Again certain points on a route may be designated as non-traffic stops only, while others may be designated open to all five freedoms. Traffic limitations may be established in the agreement specifying the number of frequencies to be operated or capacity allowable. Provisions requiring sufficient traffic stops in order to offer reasonable commercial services for traffic to and from a con-

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117. *Id.* at 7.

118. See note 113 *supra*.

119. *Id.* at 5.

tracting country may be inserted, as well as provisions with respect to tariffs, reservations of cabotage,<sup>120</sup> and the like.

By 1940 the United States was a party to a number of bilateral air transport agreements with other nations,<sup>121</sup> but many of our operating rights along international routes were not acquired by government to government bargaining, but rather because of negotiations by an airline company itself with a foreign government through whose territory the operation was to be conducted. In the pioneering days of international air transport, Pan American Airways was encouraged by the United States Government to negotiate agreements with various countries.<sup>122</sup> By this process Pan American obtained operating rights in Latin America, in the Pacific areas, in Africa, and in Europe. This type of direct negotiation for air transport privileges by the air carrier concerned with a foreign nation had one advantage in that the negotiating air carrier's government under the terms of such agreement was usually not bound to grant reciprocal privileges or rights to the air carriers of the granting nation, although this was not always the case, for some such private agreements entered into were contingent upon a grant of reciprocal rights by the government of the negotiating company.

Disadvantageously, these private negotiations often led to a virtual monopoly in the negotiating carrier since other flag carriers of the same country as the negotiating carrier were generally precluded from operating into the granting nation.<sup>123</sup>

The pioneering days have passed, and exchanges of rights are now, for the most part, entered into by diplomatic bargaining between the two governments concerned. Such a procedure does away with any question of the monopolistic appropriation of a route by one carrier of a state, for when a government secures operating rights it does so in general terms so that it is permitted to apportion the privilege to operate into the foreign nation to the carrier or carriers it may desire to designate. The majority of the European nations have required that route and operating right applications be made to them through proper diplomatic channels at government level. The United States

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120. Section 6 c of the Air Commerce Act of 1926 bars foreign air carriers from sabotage.

121. See LISSITZYN, *op. cit. supra* note 19, at 387-395. They were made with Colombia, Great Britain, France and Canada.

122. Ryan, *supra* note 78, at 447; Rhyne, *supra* note 6, at 298.

123. LISSITZYN, *op. cit. supra* note 19, at 386.

changed its policy as of 1943 and requires the State Department to secure commercial rights of air transport in general terms. Its reasons were as follows:

1. The desire to avoid a confusing and perhaps embarrassing situation resulting from several carriers competing with each other in negotiations with foreign governments or foreign carriers.

2. The desirability of avoiding a situation whereby a carrier which has successfully concluded such foreign negotiations, was later denied a certificate by the Civil Aeronautics Board on the grounds that convenience and necessity did not justify the operation contemplated.

3. The desire to avoid the possibility of any exclusive arrangements being negotiated by an individual carrier which would be designed to restrict the power of selection, of the operating carrier by the C.A.B. In the interest of equity to all U.S. air carriers, the Board could not be influenced in the final selection of a carrier by consideration of special or private arrangements previously concluded by that carrier on its own initiative.<sup>124</sup>

The system of unregulated bilateralism existing between the two World Wars was far from satisfactory. International air services on promising international routes were prevented simply because one nation lying athwart the route would not permit a right of transit over its territory. Too, bilateral bargaining based on diplomatic issues brings about discriminations. A granting state might discriminate in permitting operations by the carriers of one state and refusing to permit operations by the carriers of other states. Operating rights might be granted to more than one state, but the granting state might open certain routes and airports to some states and not to others, or place conditions such as rate control or schedule restrictions on some and not on others.<sup>125</sup> The Chicago Conference attempted to deal with discrimination. Of course the Air Transit Agreement which has been adopted rather widely precludes the blocking of air transit on international routes between nations adhering thereto.<sup>126</sup> In the field of bilateral agreements, the Chicago Convention requires registration of such agreements which at least

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124. C.A.B. Memorandum dated Dec. 2, 1943, to all holders of and applicants for certificates of public convenience and necessity. Also see Rhyne, *supra* note 6, at 299.

125. See Little, *supra* note 98, at 36-39; Ryan, *supra* note 78, at 447-448.

126. Air Transit Agreement, *supra* note 12.

has the advantage of making such agreements public and thus permits each state knowledge of terms granted to other states.<sup>127</sup> Since it was recognized that some nations would not grant air transit rights, and a great many more would not grant trade rights, Resolution VIII of the Chicago Conference encouraged the following of a standard form agreement by nations granting transit and commercial rights bilaterally. In setting forth this recommended form, those participating in the Conference hoped a degree of discrimination could be ended and a measure of uniformity in agreements between nations as to the operations of air services to and through national territory attained.<sup>128</sup>

A. *The Standard Form Agreement.* In two recommendatory paragraphs the Civil Aviation Conference stated that nations should not in any bilateral agreement grant "exclusive rights of transit, non-traffic stop, and commercial entry to any other State or airline."<sup>129</sup> Moreover it was recommended that exclusive and discriminating agreements by one state against the airlines of another should not be made, and those in existence should be terminated as soon as feasible. The clauses set forth in the form were to become standard clauses to be incorporated in agreements to the extent applicable, although deviations in language in particular cases would be permitted and additional consistent clauses allowed. The Standard Form Agreement contains ten clauses. The form requires operating rights granted in bilateral agreements to be set out in an annex. It was stated:

An annex will include a description of the routes and of the rights granted whether of transit only, of non-traffic stops or of commercial entry as the case may be, and the conditions incidental to the granting of the rights. Where rights of non-traffic stop or commercial rights are granted, the Annex will include a designation of the ports of call at which stops can be made, or at which commercial rights for the embarkation and disembarkation of passengers, cargo and mail are authorized, and a statement of the contracting parties to whom the respective rights are granted.<sup>130</sup>

Insertion of clauses is called for as to the placing in operation of air services granted by the contracting parties, and for con-

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127. Art. 83 of the Chicago Convention, *supra* note 12.

128. Little, *supra* note 98, at 38; Ryan, *supra* note 78, at 451.

129. Standard Form of Agreement for Provisional Air Routes, International Civil Aviation Conference, *supra* note 12.

130. *Id.* at 40, note.

tinuation of previous operating agreements between contracting states and non-contracting states. Clause 4 seeks to prevent discriminatory practices with respect to charges for airports and facilities, the fees and duties charged for the introduction of fuel, lubricating oils and spare parts into the territory of contracting states. Certificates of airworthiness, competency and licenses of one contracting state are to be recognized as valid by another. Certain laws and regulations of contracting states are to be complied with. As to aircraft of contracting parties such laws and regulations are to be applied without distinction as to nationality. Conditions under which an operating agreement may be revoked or withheld are set forth; and terms dealing with registration of the agreement with ICAO, arbitration provisions if desired, and the duration of the agreement are included.

After the Chicago Conference the United States signed several bilateral agreements with other nations generally following these standard clauses. A number of these agreements contained reciprocal grants of all five freedoms of the air. It should be noted that the Standard Form Agreement pertains only to the bare essentials of agreement. It contains no clauses directed to such basic economic problems as rate regulation or limitations on frequency or capacity. In 1946 a changed United States policy concerning international air transport became evident. In that year a bilateral agreement, the Bermuda Agreement,<sup>131</sup> was negotiated, and in addition the United States announced its withdrawal from the Chicago Air Transport Agreement.<sup>132</sup> These two steps were indicative of a changed United States viewpoint. Apparently former opposition to international air transport economic controls was relaxed.

B. *The Bermuda Agreement.* The Bermuda Agreement is a bilateral agreement signed by the United States and Great Britain authorizing reciprocal air transport privileges into each of the contracting parties' territories and incorporating therein certain economic controls governing the air transport operations between the two nations. The terms of the agreement go beyond the scope of the Chicago Standard Form Bilateral Agreement

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131. Air Services Agreement between the United States of America and the United Kingdom of Great Britain and Northern Ireland, Treaties and Other International Acts Series 1507 (Dep't of State 1946).

132. See note 47, *supra*.

and are inconsistent with previous United States air transport policy. At the Chicago Conference the United States called for the widest possible freedom for international air transport operations and firmly opposed economic regulation. The Bermuda plan incorporates provisions not only exchanging routes and privileges, but also with respect to rate regulation and capacity. The Agreement also represents a changed policy for Great Britain for that nation abandoned former insistence on direct international control of economic factors.<sup>133</sup> The agreement is of import for since its acceptance other bilateral agreements have used it for a model.

1. *Exchange of Routes and Privileges.* Under the Chicago Air Transit Agreement, accepted by both the United States and Great Britain, airlines of either nation were permitted to fly through the airspace of the other over routes to be specified, and to land at specified airports in the territory of the other for non-traffic purposes only.<sup>134</sup> Inasmuch as Great Britain refused to accept the Chicago Air Transport Agreement, there was no general grant of the privilege to pick up and discharge passengers and cargo by United States air transport companies in Great Britain or by British airlines in the United States. By the terms of the Bermuda plan each nation granted to the other privileges of trade; that is, the privilege ". . . of commercial entry and departure for international traffic in passengers, cargo and mail. . ." <sup>135</sup> Thus all five freedoms of the air became operative as between the two nations, although in the case of commercial privileges certain limitations were indicated.

As contrasted with the Chicago Air Transport Agreement, which provided for commercial privileges on a reasonably direct route out from and back to the homeland, permitted the designation by a state of the route to be followed, and airports to be used in that state's territory, the Bermuda plan in an elaborate route chart provides for specific definite international routes and airports for commercial air transport services of the airlines of the two nations, and such trading privileges are valid only at points named and on routes indicated. The point of departure,

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133. Ryan, *supra* note 78, at 455; Cooper, *supra* note 52, at 1209; Cooper, *The Bermuda Plan: World Pattern for Air Transport*, 25 FOREIGN AFFAIRS 59 (1946).

134. Air Transit Agreement, art. 1, *supra* note 12.

135. Bermuda Agreement, *supra* note 131, Annex I.



all intermediate points, the destination in the territory of the authorizing states and points to be served on the route beyond are set out. The air carriers of each nation are granted routes across the territory of the other, with the privilege to stop for international traffic purposes at designated points within either nation. For example, a British carrier may depart from London on a route across the Atlantic to New York, proceed to San Francisco and then via Honolulu, Midway, Wake, Guam, or Manila, to Singapore or Hongkong. Again a British plane may depart from London, fly via intermediate points to New York, then proceed onward to New Orleans and Mexico City. To give a reciprocal example, American carriers may fly from points in the United States named, via intermediate points to London or Prestwick, and then proceed to several designated northern European cities; or on another route, after reaching London, the United States carrier may fly on to central European cities, to Near Eastern points, and India. The agreement then signifies that at designated points in United States territory, a British carrier may pick up international traffic bound to its own territory, or discharge international traffic from its own territory, as well as pick up or discharge international traffic to or from other nations on the route. In turn the United States carriers can exercise trading privileges of commercial entry and departure in international traffic at the designated points in the territory of Great Britain. Thus British carriers may compete not only with American international air transport operations, but also with internal American airlines companies, for a British carrier may pick up and discharge international traffic on one route, for example, at New York, at San Francisco and at American Pacific points such as Honolulu, and carry that traffic on to Singapore or Hongkong.<sup>136</sup>

2. *Rates.* In the international air transport field where subsidies do away in part with economic principles of supply and demand which would tend to bring about fair rates, there has been fear of the establishment of destructive rates having no relation to costs of operations. Hence demand has been made for some control other than unilateral national control of international rates. At Bermuda the United States acceded to a measure

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136. Cooper, *The Bermuda Plan: World Pattern for Air Transport*, *supra* note 133, at 63-64.

of international regulation in its agreement with Britain. It was there stated:

. . . . the two Governments desire to foster and encourage the widest distribution of the benefits of air travel for the general good of mankind at the cheapest rates consistent with sound economic principles.<sup>137</sup>

These sound rates were said to be rates "fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit and the rates charged by any other carriers."<sup>138</sup> The rates to be charged by the carriers of the contracting parties operating between points in the United States and Britain were made subject to the approval of the two nations within their constitutional powers and obligations, thus either party to the agreement may disapprove any rate proposed by the other's carriers.

The provisions of the Civil Aeronautics Act of 1938 do not give authority to the Civil Aeronautics Board to fix rates of United States carriers operating in foreign commerce. Therefore, a compromise solution had to be found in order to control such rates. The Board does have the power to approve or disapprove rate agreements when United States carriers enter into such agreement with each other or with foreign air carriers.<sup>139</sup> The Civil Aeronautics Board announced that it would approve the rate conference machinery of the International Air Transport Association for one year, thus making any rate agreement concluded through this association involving United States air carriers subject to the Board's approval.<sup>140</sup> The International Air Transport Association is an organization composed of the majority of the important air transport concerns of the world including American. The Board, by an indirect method, asserted authority over American international carriers by approving or disapproving the rate making machinery or IATA of which its carriers are members. Thus, the initial rate making function was left to IATA.<sup>141</sup> However, the participators in the Bermuda Conference foresaw the possibility that the two countries might

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137. Bermuda Agreement, *supra* note 131 at 18.

138. *Id.*, Annex II, Paragraph (h), p. 9.

139. CIVIL AERONAUTICS ACT OF 1938, § 412 (a).

140. Bermuda Agreement, *supra* note 131, Annex II, Paragraph (b), p. 7.

141. See Cooper, *The Bermuda Plan*, *supra* note 133 at 64-66; Gazdik, *Rate-Making and the IATA Traffic Conferences*, 16 J. AIR L. 298 (1949).

be unable to reach rate agreement through IATA. Too, there was the possibility that IATA machinery might not be applicable. To take care of such contingencies it was therefore provided that when one of the contracting parties is dissatisfied with a proposed new rate, the parties shall seek to reach an agreement. If such agreement is reached, each contracting party will use its best efforts to cause the agreed rate to be accepted by its carrier or carriers. If no agreement is reached, the objecting party "may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of."<sup>142</sup>

A substitute procedure was also set forth in case IATA machinery could not settle the disagreement. This procedure could only be utilized after the Civil Aeronautics Board obtained the power to fix rates,<sup>143</sup> and it was stated in the agreement that efforts would be made by United States authorities to secure legislation empowering the Board to fix rates. So after the Board obtains rate fixing powers, if an air carrier of a contracting party proposes an uneconomic rate, the aeronautical authorities of the country of that carrier shall prevent it. However, if a new rate becomes effective and the other contracting party is dissatisfied, then the contracting parties shall seek to agree on an appropriate rate. If agreement is reached each party "will exercise its statutory powers to give effect to such agreement."<sup>144</sup> If no agreement is reached the rate "may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute. . ."<sup>145</sup>

In regard to settlement of disputes as to proposed or existing rates, provision is made that, after a reasonable time and consultation, either contracting party may request both to submit the question to the International Civil Aviation Organization for an advisory report.<sup>146</sup> Thus, it is thought to have ICAO adjudge these disputes between the two nations, although without precedent it is hard to say just how binding an advisory report

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142. Bermuda Agreement, *supra* note 131, Annex II, Paragraph (f), p. 9.

143. The Civil Aeronautics Board has requested power from Congress to fix rates for air carriers in foreign commerce. See Annual Report C.A.B. 1948, 13; Annual Report C.A.B. 1947, 12; Annual Report C.A.B. 1946, 12.

144. Bermuda Agreement, *supra* note 131, Annex II, Paragraph (e), p. 8.

145. *Ibid.*

146. *Id.*, paragraph (g), p. 9.

might be on the two parties concerned. In any event international rate control machinery has been promulgated to protect against ruinous rate wars, and the United States has recognized that an international authority might be empowered to fix rates in case of disagreement—a broad concession in view of its unbending policy at the Chicago conference.<sup>147</sup>

3. *Capacity.* The Bermuda plan envisages no specific limitation or designations of frequencies or capacity. Each nation is free to decide in the first instance the capacity or number of frequencies which will be operated. However, certain principles are stated which apparently will provide eventual restrictions on fifth-freedom traffic. After recognizing that the primary objective of capacity provided shall be “to take care of” traffic demands between the home country of an air carrier and the country of ultimate destination of the traffic (third and fourth-freedom traffic), the Final Act declares:

The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the Annex to the Agreement shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

- (a) to traffic requirements between the country of origin and the countries of destination;
- (b) to the requirements of through airline operation;
- and
- (c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.<sup>148</sup>

Moreover, it is stated:

That, in the operation by the air carriers of either Government of the trunk services described in the Annex to the Agreement, the interest of the air carriers of the other Government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.<sup>149</sup>

Hereby fifth-freedom traffic is to be limited at some future time when there arises a necessity for airlines of one nation operating on a trunk line to consider airlines of the other coun-

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147. Cooper, *The Bermuda Plan*, *supra* note 133 at 65.

148. Bermuda Agreement, *supra* note 131, at 19.

149. *Id.* at 18.

try, so as not to affect unduly the latter's services on the same route; and further, fifth-freedom traffic will "depend upon the" requirements of "through" airline operation and upon the traffic requirements of areas concerned after due consideration of the effects upon local and regional services. Therefore, some restrictions upon capacity which may be operated will be forthcoming after a reasonable period is given to develop traffic, since, if the air transport operations become in the opinion of either nation "inconsistent" with the traffic principles set out in the Final Act, such operations may become the subject of an advisory opinion by ICAO. This would be true for it is provided that disputes may be placed before ICAO for an advisory opinion, and any dispute as to frequencies and capacity of operations could thus be submitted for determination as to the measure of compliance with the standards laid down.<sup>150</sup> However, it must be emphasized that such an opinion is advisory only by the terms of the Bermuda plan and no means for enforcement are included.<sup>151</sup>

## VI. CONCLUSION

International air transport is an instrument endowed with the public interest of nations and, as such, is subject to all the stresses and strains of national and international rivalries. Too, it must, if at all possible, rise and prosper within the periphery of legal rules national and international with which mankind binds it. On an international scale, the most restrictive legal rule upon international air transport is the doctrine of airspace sovereignty, and to date it stands rock-like, unimpaired. Why, it may be asked have the nations adhered so firmly to the principle of sovereignty over the airspace? Simply because the instrument, air transportation, is endowed with political, economic and mili-

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150. *Id.*, art. 9, p. 4; as to frequency and capacity see Cooper, *Bermuda Plan*, *supra* note 133, at 66-71.

151. It may be noted that the Bermuda Agreement and other bilateral agreements concluded as executive agreements have been attacked on the ground that such agreements should have been concluded as treaties, and thus since they were not, abridge the United States Constitution. See Cooper, *Bermuda Plan*, *supra* note 133, at 70-71 and Wiprud, *Some Aspects of Public International Air Law*, 13 GEO. WASH. L. REV. 247, at 264 *et seq.* (1945). The President's Air Policy Commission recommended, however, that executive agreements are better than treaties in gathering international air transport rights, inasmuch as the considerable delay experienced in submission of a treaty for ratification would prohibit immediate inauguration of services as well as timely amendments caused by changing conditions. SURVIVAL IN THE AIR AGE, 119-120 (1948).

tary elements. If the three can be separated, it appears that the economic element supports the concept most firmly inasmuch as many nations have seen fit to sign the Air Transit Agreement which permits flying through superjacent airspace of states and landing for non-traffic purposes. On the other hand, there was little acceptance of the five freedoms agreement, which would have permitted trading; that is, the right to take on and discharge passengers and cargo. It would seem that the sovereignty doctrine is based primarily upon economic considerations, each nation desiring the right to control the trading privileges which foreign flag air transport will possess within its territory, to place thereon a handicap similar to a tariff in order to protect its own air transport operations if necessary. Whether this theory is good or bad depends upon whether one is or is not a believer in free trade. This same theory has made a resort to a multilateral grant of complete air transport privileges untenable, and has left the world in a state of bilateral bargaining over the exchange of operating rights. It is significant however that the debate has narrowed. The real problem today as to a multilateral grant of privileges is the fifth-freedom traffic, and whether economic regulation in the form of capacity control is to be provided with respect thereto. As stated there has been considerable agreement accepting the principle of transit rights for non-traffic purposes, and the third and fourth-freedoms have in large measure been recognized as fundamental. But multilateral accord is prevented due to the fifth-freedom controversy. The conflict has resolved itself into one between states possessing long range air transport operations requiring fifth-freedom privileges from many states to conduct their through operations, and those possessing local or regional international airlines who desire protection from the long range carriers. Thus for the most part the issue is now one as to the restriction that will be placed upon trunk line operations in the carriage of fifth-freedom traffic in order to protect the regional airlines of the nations along the route. To date general terms of assent have not been found, although the signing of the Bermuda Agreement by two great powers, Britain and the United States, and the emulation of this type of bilateral agreement by other nations is a hopeful sign that some accord for a multilateral agreement concerning air transport operating privileges will be forthcoming. The Bermuda

Agreement with its reciprocal grant of transit and trading privileges along specific routes with provisions for ultimate capacity control, rate regulatory principles, and provision for the settlement of disputes might well become a basis for multilateral agreement at least between nations falling within the sphere of western influence; although with the present world situation divided between competing camps it is doubtful if much accord can be reached with Russia or her satellites.

Finally it must be again stressed that the present system of bilateralism is far from satisfactory. The grant or non-grant by a nation of operating privileges to the air carriers of another based upon bargaining or other considerations leads to international rivalries and tensions. Ultimately world air transport should be placed under the control of some international body with economic regulatory authority over the granting of operating rights, rates and unfair practices or nations and international airlines companies. Only in such manner can controversy and apprehension be removed from this instrument of the public welfare. It is submitted that such a scheme is near short of impossible in the world of 1950. Possibly such control must await a world government, but at most it cannot come about until a world organization comes into being with greater strength than that existing today.

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## CONTRIBUTORS TO THIS ISSUE

**MAX RADIN**—A.B. 1899, College of City of New York; Ph.D. 1909, Columbia; LL.B. 1902, New York University; LL.D. 1948, Whitman College, Washington. Practiced in New York City 1902-12. Professor of Law in University of California 1919-48; Stanford Law School, summer, 1931; Northwestern University, summer, 1936. Storrs Lecturer, Yale Law School, 1940. Hillman Lecturer, Pacific University, 1946. Visiting Professor, Columbia Law School, 1947. Author of: Handbook of Roman Law; Handbook of Anglo-American Legal History; The Lawful Pursuit of Gain; The Law and Mr. Smith; Manners and Morals of Business; Law as Logic and Experience; The Day of Reckoning. Published articles in American, English and Continental periodicals on law, history and philology. Professor at the Princeton Institute for Advanced Study from 1948 until his death.

**HARRY P. WARNER**—Attorney, Washington, D. C.; Associated with firm of Segal, Smith & Hennessey, Washington, D. C.; Author of Radio and Television Law; Contributor to many legal periodicals.

**A. J. THOMAS, JR.**—Assistant Professor of Law, Southern Methodist University School of Law; B.S. 1939, Agricultural and Mechanical College of Texas; LL.B. 1943, University of Texas; LL.M. 1947, University of Michigan; Member of the Texas Bar; Three years with United States Foreign Service as American Vice Consul.