



Diplomacy and Drama: The Making of the Chicago Convention

By Jeffrey N. Shane

On December 7, 1944, exactly three years to the day after Pearl Harbor and six months and a day after the Normandy invasion, with war still raging in Europe and the Pacific, delegates from 52 countries signed a new Convention on International Civil Aviation (Chicago Convention).¹ They had been gathered for more than a month in Chicago at the invitation of President Franklin Delano Roosevelt.

The importance of the Chicago Convention to the steady growth of aviation and the remarkable safety record it has achieved are widely acknowledged today. Less understood is what a miracle of diplomacy was achieved during that month at the Stevens Hotel—today’s Hilton Chicago. For the delegates, far more than the future of airline services was at stake; they saw the effort to organize a successful framework for international civil aviation as a proxy for the world’s ability to forge global arrangements conducive to an enduring peace.

The proceedings were characterized by prescience and vision, tension and suspicion, soaring rhetoric, backroom haggling, and even gallantry. They almost affected a U.S. presidential election.

The Beginnings

The concept of an international conference on post-war aviation emerged from some visionary thinking in Washington, London, and Ottawa beginning in 1943. It was already assumed that the war would end in victory for the Allies and that international air commerce, severely compromised since 1940, would become an essential contributor to post-war recovery.

In Washington, because the undersecretary of state, Edward Stettinius, was the brother-in-law of Juan Trippe, the storied head of Pan American World Airways, responsibility for aviation matters had been delegated to the assistant secretary of state for Latin American affairs, Adolf A. Berle (pronounced “BUR-lee”).² Berle, a brilliant lawyer and economist, had been a Columbia Law School faculty member since 1927³ and an original member of FDR’s “brain trust.” He was still an important presidential advisor.

U.S. aviation policy had become domestically controversial during the war—a contest between diametrically opposed visions. At the most radically reformist end of the spectrum was a future imagined by vice president Henry Wallace, among others, who wanted to take international air commerce out of the hands of private companies and vest it in government-owned international operating and regulatory

institutions. Newly elected congresswoman Clare Boothe Luce of Connecticut said in her maiden speech in February 1942, “[M]uch of what Mr. Wallace calls his global thinking is, no matter how you slice it, globaloney.” She became instantly famous.⁴

At the other end was Pan Am CEO Trippe and his many champions in Congress. Pan Am had long been America’s “chosen instrument” on international routes, and Trippe saw no reason to depart from that choice. He was unapologetically in favor of continued U.S. (i.e., Pan Am) domination of the global skies. It was essential, Trippe wrote to the Civil Aeronautics Board (CAB) in 1942, “that we should seek landing rights without offering them, . . . find plausible reasons to deny most requests [for landing rights] and keep our concessions to a minimum.”⁵

The effectiveness of Pan Am’s advocacy was waning, however, both at the White House and even at the CAB. “[T]here was a well-established conviction in Washington,” historian Alan Dobson has written, “that economic friction in the inter-war period had been a major cause of war and could very well be a causal factor in starting future ones.”⁶ FDR had become particularly sensitized to the likely consequences of exploiting U.S. economic advantages too aggressively. He thus supported far more freedom for international air commerce than had existed in the past—an idea that L. Welch Pogue, the CAB chairman, had been espousing since 1942—as well as an end to Pan Am’s virtual monopoly on international routes. The airlines of all nations, FDR believed, should be encouraged to become robust participants in the post-war aviation marketplace. His ideas guided U.S. communications with other governments.

In London, meanwhile, members of Winston Churchill’s government were also thinking about the future of civil aviation. They worried, however, that the U.S., with its huge capacity to build transport category aircraft—Britain had focused its wartime manufacturing on fighters and bombers⁷—would quickly dominate the world’s air routes. As early as 1941, an internal U.K. government report on the future of international aviation had said: “The choice before the world lies between Americanization and internationalization. If this is correct, it is difficult to doubt that it is under the latter system that British interests will best be served.”⁸ “Internationalization,” in the parlance of the day, meant comprehensive economic regulation by an international body.

While the U.S. would have most of the airplanes, however, a great many international destinations were within the British Commonwealth. Britain knew it would have a lot to say about the future of aviation, as long as Commonwealth members understood the importance of alignment.⁹

Canada understood the gap that separated U.S. and U.K. thinking on post-war aviation. A loyal Commonwealth country, Canada was also wary of putting too much ideological distance between itself and its large neighbor to the south. It thus found itself in the role of mediator between Britain and the U.S.

It wasn't always easy. Lester Pearson, later to become one of Canada's greatest prime ministers, was in 1943 second in command at the Canadian Embassy in Washington. He explained Canada's delicate position to Churchill during a meeting there at which plans to seek a Commonwealth-wide aviation policy were discussed. Pearson later described Churchill's reaction:

The Great Man faced me squarely, waved his cigar at me, and told me that he knew our worries in this regard, but he must emphasize that there was going to be a family discussion of this matter within the Commonwealth before we talked outside, whether we wished to attend or not. . . . With an admonitory final wagging of the cigar in my direction, the Prime Minister left.¹⁰

Berle at the State Department and CAB chairman Pogue emerged as the leading proponents of FDR's vision. They were a kind of "odd couple." Berle was short in stature, abrasive, and reportedly difficult to work with.¹¹ He came to aviation policy from the top down—based on his free trade convictions and his commitment to delivering on the president's liberal expectations. Pogue was tall, bright, and gregarious. He had developed his ideas about aviation policy inductively during his years at the CAB, working his way up in just a few years from assistant general counsel to chairman. He had long supported creating more opportunities for the growth of international aviation but was deeply skeptical of FDR's multilateral aspirations.¹² He believed that the attractiveness of the American market provided leverage that should not be squandered in the quest for a multilateral agreement on traffic rights likely to be accompanied by unwelcome restrictions on U.S. airline operations.

Tactical differences aside, Pogue and Berle agreed that the extreme nationalist views of Trippe and others were a dangerous anachronism; their radical insistence on maintaining U.S. predominance would merely lead to

more international friction. Berle reported to Secretary of State Cordell Hull in April 1943 that this idea—"that Americans could go anywhere and sell anything; but that other countries must be excluded not only from the American market but from any market in which the United States can gain dominance"¹³—had stirred up serious concerns overseas. The U.S., he said, needed to promote "a generalized settlement of the problems of air navigation rights on an equitable basis."¹⁴

A series of exchanges took place between the U.S. and the U.K. throughout 1944, with Berle leading the discussions for the U.S. and Lord Beaverbrook, the Canadian who became a British newspaper tycoon and whom Churchill had put in charge of aviation affairs, representing the U.K. Canada was kept informed of the discussions and produced a draft international aviation treaty in March 1944. It was reportedly the first formal effort to capture the "four freedoms": the rights of transit, to make technical stops, to carry traffic from the airline's home country to another country, and to bring traffic back from another country to the airline's home country.¹⁵

While little progress was made in bridging the U.S. and U.K. positions—the U.S. wanted "freedom in the air" while the U.K. wanted "order in the air"¹⁶—a consensus gradually formed around the need for an international conference. At the U.K.'s suggestion, the U.S. sent invitations on September 11, 1944, to 54 governments, not including Germany and Japan. The invitation letter, from President Roosevelt himself, said that the gathering would "make arrangements for the immediate establishment of provisional world air routes and services" and "set up an interim council to collect, record, and study data concerning international aviation and to make recommendations for its improvement." The delegates were also invited to "discuss the principles and methods to be followed in the adopting of a new aviation convention."¹⁷

With the exception of the Soviet Union and Saudi Arabia, every government that received an invitation sent a delegation to Chicago.

The Chicago Conference

The conference opened on November 1, 1944, with 700 delegates sitting in the ornate ballroom of the Stevens Hotel.¹⁸ Berle served as head of the U.S. delegation and was joined by Pogue, CAB vice chairman Edward Warner, New York mayor Fiorello LaGuardia, Admiral Richard E. Byrd, and four members of Congress.

Berle had also been designated by FDR as temporary chairman of the conference. He began by reading a message from Roosevelt that left the delegates in no doubt about the importance of their mission. The world had come together, Roosevelt said, "to write a new chapter in the fundamental law of the air." Large areas of Europe and the Pacific, "closed for four black years," would soon be reopened to commerce. "Air transport," Roosevelt said, "will be the first available means by which we can

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start to heal the wounds of war, and put the world once more on a peacetime basis.” He continued:

You will recall that after the First World War, a conference was held and a convention adopted designed to open Europe to air traffic; but under the arrangements then made, years of discussion were needed before the routes could actually be flown. . . . We do not need to make that mistake again. I hope you will not dally with the thought of creating great blocs of closed air, thereby tracing in the sky the conditions of future wars.¹⁹

After reading the president’s statement, Berle offered similarly lofty remarks of his own. “The air has been used as an instrument of terrible aggression,” he said. “It is now being made a highway of liberation. It is our opportunity hereafter to make it a servant of peoples.”²⁰

Soaring rhetoric was clearly the order of the day. No statement at the conference was more powerful or affecting, however, than that of Max Hymans, the chief French delegate. France had been liberated from Nazi occupation only three months earlier. Hymans had been a member of the French resistance but was now director of air transport in the provisional government led by Charles de Gaulle. He would later become the president of Air France. Speaking in French, Hymans said:

I feel that I am expressing the sentiment of all nations which have been or are still occupied by the enemy, isolated from the world, subjected to moral and material asphyxiation, by declaring that the maximum development of air transport appears to them to be one of the indispensable manifestations of the freedom which has been recovered or which is ardently awaited.²¹

Following opening statements from other delegations, rules of the conference were adopted, committees were formed, and the first plenary session was adjourned to the playing of “The Star-Spangled Banner.”

Berle was elected permanent chairman of the conference on the second day. His first order of business was to deliver a statement of the U.S. position. The U.S., he said, hoped the conference would address itself to three major items: routes, rules of the air, and institutional arrangements. On routes, the U.S. sought a multilateral agreement that would establish market access for the airlines of all countries that were prepared to make that market access available to others. On the rules of navigation, Berle expressed the hope that “the customs affecting friendly intercourse in the air between nations” could be “embodied in a document which will set out in these respects the fundamental law of the air.”²² As to the last issue—the need for a new international organization—Berle

explained that there was little controversy over the importance of vesting in a world body the ability to prescribe global technical standards. Aircraft needed to be able to land anywhere in the world and yet “be able to recognize established and uniform signals and to proceed securely according to settled practice.”²³ But that was as far as the U.S. was prepared to go in delegating authority to an international body. “Some brave spirits,” he noted, “have proposed that like powers be granted to an international body in the economic and commercial fields as well.”²⁴ The U.S. would not agree to the establishment of such an agency.²⁵

At the end of his remarks, Berle invited the British delegation to address the delegates. Because Lord Beaverbrook had chosen to remain in London, leadership of the British delegation to Chicago had been assigned to Lord Swinton (Philip Cunliffe-Lister), Britain’s recently appointed air minister. As secretary of state for air from 1935 to 1938, it was said that he “more than any other ensured that the RAF was prepared for the exigencies of war.”²⁶

Although it was reported that Berle and Lord Swinton had taken an instant dislike to each other,²⁷ the delegates could not have detected any enmity from Lord Swinton’s remarks. He began by expressing gratitude to the U.S. for having convened the conference, noting that the sheer number of states attending had wholly confirmed its pivotal importance:

In these years of war, looking at the vast destruction which air forces have wrought and the ever increasing range and potentiality of aircraft, it is natural that many [delegates] should be more impressed by the menace of the air than by its power for good. They feel, and indeed they feel rightly, that the whole future of security is bound up with the air.²⁸

Lord Swinton then spoke of a “white paper” that the British government had issued just prior to the conference “after much thought and consultation.” It described “general principles and the system which they believe will effectively and fairly combine national aspirations with international cooperation.” “Every nation, which aspires to be in the air,” he said, “will wish to have, and indeed will insist on it, in addition to its own internal traffic, a fair share of its external air traffic as well.” Then there was “the question of frequencies, i.e., how many services ought we to have on a particular route.” It had been suggested, Lord Swinton said, that the number of services should be fixed in relation to the amount of traffic. “I think that is a good formula,” he said, “provided we don’t apply it too rigidly.” “And then,” he continued, “there is the share each country should have in the services to be operated, that is to say its national quota.”

Any arrangement, he said, “should be both fair and practical.” The white paper suggested “a basic distribution in proportion to the traffic . . . embarked in the respective countries.” Finally, he said, there was the question of rates. “That is not so simple,” he conceded, “but it is very important if we are to avoid waste and to get rid of subsidies. We have suggested that minimum rates should be settled in relation to standards of speed and accommodation.”

Having summarized the white paper’s ideas, Lord Swinton went on to pour cold water on the possibility of negotiating a treaty “round this table.” The best that might be hoped for in Chicago, he said, was an agreed set of principles. The delegates might then set up “a representative body to follow up our work and give them their directions.” Because it would take a long time for any new treaty to come into force, governments would have to pursue bilateral agreements guided by the agreed principles and by the interim international authority that would be established.²⁹

Berle next called on Canada. The Canadian delegation was led by Clarence D. Howe, an American-born Canadian who ultimately counted among his achievements in government the founding of the Canadian Broadcasting Corporation, Trans-Canada Air Lines (predecessor to Air Canada), and the Department of Transport.³⁰ At the time of the conference, he was Canada’s minister of reconstruction.

Howe reminded the delegates that Canada had produced a draft international air convention the previous March that had been the subject of widespread discussion and broad agreement, including with other countries. He outlined its principal elements. Canada, he said, proposed the establishment of an international air authority. It also proposed that all nations should grant the “four freedoms” described in the draft treaty to all airlines “whose operations have been authorized by the authority.” The rest of Howe’s remarks made clear that the international authority contemplated in the draft convention would function as a powerful global regulator, controlling which routes would be flown, which airlines would fly them, how many times a week they would fly, and the fares they would charge. Addressing the U.S. proposal, he said, “We think that it is unrealistic to talk in terms of a multilateral grant of freedom of air transport . . . unless those grants of air freedom are accompanied by the establishment of an effective international authority, with power, in the ultimate resort, to regulate frequencies and to fix rates. Without an effective international regulatory authority, mere freedoms of the air would lead either to unbridled competition, or to the domination of the airways of the world by a few.”³¹

The next significant contribution to the conference came from the New Zealand minister of industries, commerce, supply, and munitions, Daniel G. Sullivan.

After reminding the delegates of their solemn responsibilities to prevent the world from descending into chaos yet again, he got right to the point:

I suggest to you that this is . . . not a time for half measures; this is no time for national or commercial rivalries; this is no time for tinkering or patchwork; and it is for this reason that we in New Zealand are convinced that there is only one proper and lasting solution of the problem in front of us, and that is international ownership and operation of air transport services on international trunk routes.

This single global airline, Sullivan explained, should be owned and controlled internationally “by a body attached to the United Nations organization, which is, we trust, shortly to be established.” The new carrier “will serve all nations and should therefore be owned and operated by all nations.” If the world is to entrust the prevention of war to the UN, Sullivan said, “why should we hesitate to empower an international organization to own and operate air-transport services on international trunk routes?”³²

It was late in the afternoon of the second day of the conference by the time Sullivan ended his remarks. One assumes that Berle must have regarded the New Zealand proposal as daft, but as conference chairman it was not his role to react from the dais. Instead, he used the moment to offer a gracious and heartfelt tribute to New Zealand: “I permit myself,” he said, “to recall that in the struggle now pending, New Zealand has sacrificed more of her sons in proportion to her population in the cause of liberty than any other nation in the world.”³³ With that, he called a recess to the meeting, asking the delegates to return after dinner.

The meeting reconvened at 9:15 p.m. Of the countries called on to speak that evening, only Australia offered an affirmative position on the future structure of international aviation. Presented by Arthur S. Drakeford, minister for civil aviation, the statement offered strong support for the global, internationally owned airline proposed earlier by New Zealand.

There would be no more plenary meetings until December 5. The battle lines had been drawn, however. The work of the conference now transitioned into the elaborate committee structure established on the first day.

Doing the Work

Four principal committees had been established with responsibility for drafting the language of a multilateral convention (Committee I), prescribing technical standards (Committee II), defining “provisional air routes” (Committee III), and establishing an “interim council” that would oversee the conduct of international aviation pending the ratification of the final

convention (Committee IV).

The major proposals presented during the second day of the conference—all controversial—were the province of Committee I. After several days of deliberation, it became clear that agreement was beyond reach.

Curiously, while the Commonwealth countries treated the U.S. proposal as nothing more than a formula for U.S. dominance, FDR's domestic political opponents sharply criticized it as a dangerous giveaway. It should not have been surprising. The U.S. presidential election of 1944 was to be held on November 7, just six days into the conference. FDR was running for an unprecedented fourth term against Republican governor Thomas E. Dewey of New York. The right-leaning *Chicago Tribune*, perhaps seeing an opportunity to boost the governor's prospects, reported on the liberal U.S. position in a November 4 story headlined "Sellout of U.S. Air Rights at Parley Feared." An exercise in hyperbole, the story began: "Consternation and amazement at the American position in international air transport as stated by Adolf A. Berle and fear that the international civil aviation conference in Chicago would result in a complete sellout of American overseas aviation and peril to the military security of the United States were expressed [in Washington] today."³⁴ Berle refused to dignify the report with a response, other to issue a brief written statement: "I don't have to inform you gentlemen that there is a national election on and a campaign incident thereto, and that a certain local newspaper has taken a very vivid interest therein."³⁵

The *Chicago Tribune* needn't have worried. Nobody at the conference was buying whatever the U.S. was accused of selling. In actual fact, none of the major proposals presented during the first two days appeared to be attracting any groundswell of support within Committee I.

On November 12, worried that the conference would end with no agreement whatsoever, Berle began a week of private consultations with his British and Canadian counterparts. Dubbed the "ABC talks" (America-Britain-Canada), they were an effort to bridge the differences between the U.S. and the Commonwealth countries on the multilateral commercial agreement that had been FDR's most important objective in convening the Chicago conference.³⁶

Despite some early attempts at compromise, the effort was unavailing. The U.K. sought to move away from insisting on a global regulatory body but only if the multilateral exchange of landing rights was accompanied by rules on traffic and capacity that the U.S. would not accept.³⁷ The most significant differences related to traffic permitted on so-called "fifth freedom" flights—an airline's ability to fly to another country, pick up traffic there, and carry it to a third country.

In an effort to break the logjam, Roosevelt wired Churchill on November 21 saying, "The conference is at

an impasse because of a square issue between our people and yours. . . . The limitations now proposed [by the U.K.] would, I fear, place a dead hand on the use of the great air trade routes. You don't want that anymore than I do."³⁸ Churchill was unwavering; he instructed the U.K. delegation to allow the conference to finalize the "technical arrangements" but nothing more.³⁹

In a last-ditch effort, Roosevelt communicated again with Churchill, even invoking an upcoming congressional vote on lend-lease. FDR warned that Congress "will not be in a generous mood if it and the people feel that the United Kingdom has not agreed to a generally beneficial air agreement. They will wonder about the chances of our two countries, let alone any others, working together to keep the peace if we cannot even get together on an aviation agreement."⁴⁰ FDR's pleas fell on deaf ears. The ABC talks broke up with "an apparent agreement to disagree."⁴¹

The New Zealand-Australia proposal that future international air service should be provided exclusively by a single, internationally owned, global airline—also discussed within Committee I—met with adamant U.S. opposition from the start. Writing later on the occasion of the Chicago Convention's 50th anniversary, Pogue explained that while the inefficiency of government administration was seen as a major problem with the proposal, the biggest issue was the proposal to staff the global airline with nationals of all owning governments. "It would be as confusing," Pogue wrote, "as was the biblical Tower of Babel."⁴² Diversity and inclusion were apparently not deemed imperatives in 1944.⁴³

Outcomes

While the backroom negotiations on the larger issues of market access and international regulation floundered, the four committees, and a large array of subcommittees, labored on with far more success. By the time Berle reconvened the conference at its third plenary meeting on December 5, they had quietly produced nothing less than the essential foundation for the future of international aviation.

The most important product of their work, of course, was the Chicago Convention itself. It represented, quite simply, a complete modernization of the basic public international law of aviation.⁴⁴

The International Air Services Transit Agreement⁴⁵ was a second major achievement, enabling states to transcend at last the mercantilist exploitation of national airspace and thus facilitating far more rapid development of air commerce. As Pogue later wrote: "The narrow, rigid, and severely limiting application of the doctrine of the sovereignty over the airspace above each nation's territory had paralyzed the early development of this remarkable new service for trade and travel."⁴⁶ That paralysis was largely overcome at Chicago.

Committee II, covering technical standards and

procedures, had established 10 subcommittees that somehow produced in a few short weeks drafts of technical annexes to the Chicago Convention, filling 188 pages of the printed proceedings of the conference. They covered communications, airworthiness, air traffic control, licensing, and other essential requirements. It was another remarkable achievement.

An interim agreement established a Provisional International Civil Aviation Organization (PICAO) pending the coming into force of the permanent Chicago Convention and the establishment of the permanent ICAO. On the day before the conference was to close, however, the delegates conducted an election of the 21-member Interim Council of the PICAO that produced an unexpected 11th-hour crisis.

India, despite its population of 400 million and strategic location, had not won a seat. The omission meant that the U.K. might have to withdraw its support for the agreements achieved at the conference, thereby calling into question the support of all other Commonwealth members. Understanding the magnitude of the problem, the chief delegate of Norway, Ambassador Wilhelm Morgenstjerne, immediately asked unanimous consent to permit India to replace Norway on the Council.

The conference was still reeling from the stunning magnanimity of Norway's gesture when the chief delegate of Cuba, commercial attaché Felipe Pazos, asked for the floor. He said he had learned of Norway's intentions only 10 minutes earlier and had not had time to consult his government, but he would nevertheless offer Cuba's seat to India and ask that Norway's membership be restored. The Cuban offer was accepted. The work of the Chicago conference was thus saved by what may have been one of the most consummate demonstrations of gallantry in the annals of multilateral diplomacy.⁴⁷

Berle concluded the proceedings with characteristic eloquence and justifiable pride. "History," he said, "will approach the work of the conference with respect. It has achieved a notable victory for civilization. It has put an end to the era of anarchy in the air." The work done in Chicago, he said, had established "a foundation for freedom under law in air transport."⁴⁸

Epilogue

Franklin Roosevelt's health had begun to deteriorate even before his reelection. He died a scant five months after the Chicago conference ended, believing it had been a failure.⁴⁹ It had not achieved the multilateral commercial agreement that he believed was essential to avoiding the mistakes of the past.

It should not have been a surprise. Indeed, bilateralism remains the defining feature of international aviation to this day.⁵⁰ In 1977, however, President Jimmy Carter instructed his aviation negotiators to use the bilateral process in a different way: "[T]rade

opportunities," he admonished, "rather than restrictions."⁵¹ Fifteen years later, going well beyond the Carter instruction, the U.S. announced its interest in negotiating aviation agreements in keeping with a new "open skies" template that effectively abolished all constraints on commercial airline operations in the affected markets.⁵² More than 125 U.S. open skies agreements later, it may well be said that the U.S. has been working to achieve, bilaterally over time, what FDR sought to achieve multilaterally and all at once—a global aviation system characterized by "freedom of the air."

There is no need today, therefore, to lament the failure of the Chicago conference to adopt a multilateral commercial agreement. On the other hand, the dramatic growth of international aviation and its astonishing safety record are a lasting tribute to the prescience, wisdom, and diligence of the delegates. They somehow were able to see beyond the terrible fog of war and understand the contribution that civil aviation would make to peace and prosperity in the years ahead.

The introduction to the printed proceedings of the Chicago conference, published four years later, had it right: "[I]t can safely be said that the International Civil Aviation Conference at Chicago was one of the most successful, productive, and influential international conferences ever held."

Endnotes

1. Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295, <https://www.icao.int/publications/pages/doc7300.aspx>.

2. L. Welch Pogue, *The International Civil Aviation Conference (1944) and Its Sequel the Anglo-American Bermuda Air Transport Agreement (1946)*, 19 ANNALS AIR & SPACE L. 1, 7 (1994).

3. Berle remained on the Columbia Law School faculty through 1964, the year in which the author took his course on the law of corporations.

4. ALAN DOBSON, A HISTORY OF INTERNATIONAL CIVIL AVIATION: FROM ITS ORIGINS THROUGH TRANSFORMATIVE EVOLUTION 42 (2017) [hereinafter DOBSON, HISTORY OF INTERNATIONAL CIVIL AVIATION].

5. *Id.*

6. ALAN P. DOBSON, FDR AND CIVIL AVIATION: FLYING STRONG, FLYING FREE 143 (2011) [hereinafter DOBSON, FDR AND CIVIL AVIATION].

7. The division of labor was agreed upon in 1942 pursuant to the "Littleton Agreement." See Pogue, *supra* note 2, at 13 (quoting ALAN P. DOBSON, PEACEFUL AIR WARFARE: THE UNITED STATES, BRITAIN, AND THE POLITICS OF INTERNATIONAL AVIATION 128–29 (1991) [hereinafter DOBSON, PEACEFUL AIR WARFARE]).

8. DOBSON: HISTORY OF INTERNATIONAL CIVIL AVIATION, *supra* note 4, at 41 (quoting *Internationalization of Civil Aviation after the War: The Finlay Report* (1942)). For consistency, American spellings have been substituted for British spellings where they appear in quotations.

9. DOBSON, FDR AND CIVIL AVIATION, *supra* note 6, at 146; ANTHONY SAMPSON, EMPIRES OF THE SKY: THE POLITICS, CONTESTS,

AND CARTELS OF WORLD AIRLINES 80 (1984).

10. JORDAN A. SCHWARZ, LIBERAL: ADOLF A. BERLE AND THE VISION OF AN AMERICAN ERA 222 (1987), *quoted in* James Loos, A History of ICAO 5 (1998) (unpublished paper).

11. Pogue, *supra* note 2, at 7.

12. In a 2000 interview, Pogue remarked: “Well, the trouble with Roosevelt on aviation was he just didn’t know what he was doing.” DOBSON, HISTORY OF INTERNATIONAL CIVIL AVIATION, *supra* note 4, at 3, 44–46.

13. DOBSON, FDR AND CIVIL AVIATION, *supra* note 6, at 160–61.

14. *Id.*

15. Paul T. David, *A Review of the Work at the Chicago Conference (from a Secretariat Point of View)*, 19 ANNALS AIR & SPACE L. 55, 64–65 (1994).

16. BIN CHENG, THE LAW OF INTERNATIONAL AIR TRANSPORT 19 (1962).

17. U.S. GOV’T PRINTING OFFICE, PROCEEDINGS OF THE INTERNATIONAL CIVIL AVIATION CONFERENCE, CHICAGO, ILLINOIS, NOVEMBER 1–DECEMBER 7, 1944, at 11–13 (1948) [hereinafter PROCEEDINGS].

18. David, *supra* note 15, at 60.

19. PROCEEDINGS, *supra* note 17, at 42–43.

20. *Id.*

21. *Id.* at 81.

22. *Id.* at 58.

23. *Id.* at 59.

24. *Id.* at 60.

25. *Id.* at 61.

26. Pogue, *supra* note 2, at 9.

27. *Id.* (quoting DOBSON, PEACEFUL AIR WARFARE, *supra* note 7, at 163–64).

28. PROCEEDINGS, *supra* note 17, at 63.

29. *Id.* at 64–67.

30. Pogue, *supra* note 2, at 10.

31. PROCEEDINGS, *supra* note 17, at 67–74.

32. *Id.* at 79.

33. *Id.* at 80.

34. *Sellout of U.S. Air Rights at Parlay Feared—Threat to Military Security Foreseen*, CHI. TRIB., NOV. 4, 1944, at 1.

35. Frank Hughes, *Berle Refuses to Make Reply on Air Sellout—Gives Election as Excuse for Ignoring Charges*, CHI. TRIB., NOV. 5, 1944, at 3.

36. Loos, *supra* note 10, at 7.

37. DOBSON, HISTORY OF INTERNATIONAL CIVIL AVIATION, *supra*

note 4, at 46–48.

38. SAMPSON, *supra* note 9, at 85–86; Loos, *supra* note 10, at 7.

39. Loos, *supra* note 10, at 7.

40. *Id.* at 8.

41. David, *supra* note 15, at 78

42. Pogue, *supra* note 2, at 22.

43. Churchill expressed similarly inhospitable thoughts about the human side of internationalization, even to the point of criticizing ideas emanating from his own government: “If by this [internationalization of air transport] is meant a kind of Volapuk Esperanto cosmopolitan organization managed and staffed by committees of all peoples great and small with pilots of every country from Peru to China (especially China), flying every kind of machine in every direction, many people will feel that this is at present an unattainable ideal.” DOBSON, FDR AND CIVIL AVIATION, *supra* note 6, at 145.

44. PROCEEDINGS, *supra* note 17, at 3.

45. Dec. 7, 1944, 59 Stat. 1693, E.A.S. No. 487, <https://www.loc.gov/law/help/us-treaties/bevans/must000003-0916.pdf>.

46. Pogue, *supra* note 2, at 39.

47. David, *supra* note 15, at 93; Pogue, *supra* note 2, at 34–35.

48. PROCEEDINGS, *supra* note 17, at 109.

49. David, *supra* note 15, at 94.

50. There were three further attempts to craft a multilateral commercial agreement under the auspices of the PICA0 over the next three years; all failed. Virginia Little, *Control of International Air Transport*, 3 INT’L ORG. 29, 35–36 (1949), <https://www.jstor.org/stable/2703909>. No subsequent effort to achieve a global agreement on commercial aviation rights has attracted more than a handful of adherents. *See, e.g.*, Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT), *opened for signature* May 1, 2001, 2215 U.N.T.S. 33 (entered into force Dec. 21, 2001) (seven signatories); IATA Agenda for Freedom (2008), <https://www.iata.org/policy/Pages/agenda-freedom.aspx> (11 signatories).

51. INT’L ECON. POLICY ASS’N, AVIATION SERVICES IN AMERICA’S INTERNATIONAL TRADE: A REVIEW UNDER OPEN SKIES 16 (1981).

52. *In re* Defining “Open Skies,” DOT Order No. 92-8-13 (Aug. 5, 1992) (Docket No. 48130).