Revisions to the Mexico-United States Air Transport Agreement, 1965-1970

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We discussed our bilateral air transport agreements or arrangements with 12 countries, with the objective of promoting tourism and business and cultural travel.1

Gustavo Díaz Ordaz
President of the United Mexican States

I. INTRODUCTION

BY THE EXCHANGE of diplomatic notes and a number of ancillary documents at Mexico City on 4 August 1965, delegations of Mexico and the United States concluded two months of intensive negotiation resulting in far-reaching changes in the pattern of air transport services between the two countries. The amendments agreed upon in the 1965 negotiations constitute revisions to the original definitive Air Transport Agreement of 15 August 1960.

II. SIGNIFICANCE OF THE REVISIONS

The changes agreed upon are significant for a number of reasons. As far as Mexico is concerned, they signal a departure from that country’s historical posture regarding protection of national carriers vis-à-vis foreign competition. In the case of the United States, the Agreement constitutes an exception, however temporary, to the Government’s enunciated policy on limitation of frequency or capacity in scheduled international air carrier operations. Other distinctive features of the revised Agreement are: (1) the five-year period of the extension to 30 June 1970; (2) provision for four of the five designated United States carriers2 and a second Mexican carrier3 to serve Acapulco internationally with through service; (3) inclusion in the Route Schedule of so-called “border services” to be performed by a United States carrier,4 and; (4) the addition of four more cities in the United States5 to be served by Mexican carriers. Assuming implementation of the “border services” by another airline in addition to

1 A.B., Hanover College; M.A., Indiana. Director General of Cia. Mexicana de Aviacion. Member of the Colombian Delegation to the Diplomatic Conference at The Hague on Revisions to the Warsaw Convention, 1951.
2 Annual State of the Nation Speech (Informe Anual del Presidente), Excelsior, Mexico City, 2 Sept. 1965, p. 21.
3 American Airlines, Braniff, Eastern Air Lines, and Western Air Lines. Of the five designated United States carriers, only Pan American did not gain authority to extend its operations into Acapulco.
4 Cia. Mexicana de Aviacion.
5 Diplomatic Note No. 213, 4 Aug. 1965, from the United States Ambassador to the Mexican Secretary of Foreign Relations. See Appendix III, para. 1, Routes K and L, infra.
6 Corpus Christi, Houston, Laredo, and Phoenix.
those already designated under the Agreement, there will be a total of eight air carriers (six United States and two Mexican) with operating authority to serve as many as thirty-two cities in the United States and Mexico—more than in the case of any other country with which Washington has reached formal agreement on air transport services.

III. EARLIER AGREEMENTS

A. The 1957 Memorandum Of Understanding

On 7 March 1957, Mexico signed the original "Memorandum of Understanding" constituting the "provisional arrangement" concerning scheduled commercial air services between the two countries. This ended years of resistance to repeated overtures by the United States Government to effect such an agreement. From the formal title given the document it might be adduced that little more than a modus operandi was involved. However, this was far from the case because the terms of this Memorandum of Understanding are essentially the same as those of the definitive agreement which succeeded it in 1960, and which, with the 1965 revisions, is still in effect. The two agreements contain the same number of articles and follow the same order as to content, with only minor alterations to the text. Though not fully recognized by the Mexican government, the 1957 Memorandum of Understanding was, for all practical purposes, a "Bermuda-type" agreement with conventional language on such important aspects as ownership and control, recognition of licenses, user charges and customs exemption on consumable supplies, origin and destination of traffic, rates, and other subjects. Only the form of the Agreement was unconventional. The route schedule appeared at the very beginning of the document below the title "Memorandum of Understanding" and was followed by an "Annex" containing the eighteen sections or articles which constitute the "provisional arrangement" in full. The Memorandum provided for parity of routes, with each country entitled to seven routes. Service to a total of thirteen cities was involved, nine in the United States and four in Mexico. With the implementation of the Memorandum of

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6 Chicago, Corpus Christi, Dallas, Detroit, Fort Worth, Harlingen/San Benito, Houston, Laredo, Los Angeles, Miami, Mission/McAllen/Edinburg, New Orleans, New York, Phoenix, San Antonio, San Diego, Tampa/St. Petersburg, Tucson, and Washington in the United States; Acapulco, Cozumel Islands, Guadalajara, Hermosillo, La Paz, Mazatlán, Merida, Mexico City, Monterrey, Puerto Vallarta, Tampico, Tijuana, and Veracruz in Mexico.
7 Cities so indicated may be served only as an intermediate point. The remainder may be served as either terminal or co-terminal.
9 Id. § VII.
10 Id. § IX.
11 Id. § XI.
13 Of the original thirteen cities, three have been deleted in subsequent revisions to the pact. These deletions were Brownsville, Texas, and Tampico and Tapachula in Mexico.
Understanding, a major expansion of scheduled air services between the two countries was underway. The effect of this original agreement was to exist until 30 June 1959, indicating some of the concern felt by the Mexican government with respect to possible effect on its own carriers. The operations of the American carriers to Mexico expanded much more rapidly than those of the Mexican airlines which, nonetheless, were obliged to take on heavy commitments for new equipment in order to compete in the expanded international services. The result was to bring about important and lasting changes in the structure of Mexico's airline industry. Aeronaves de Mexico, formerly a privately owned carrier, was taken over by the Mexican government in June 1959 when it was unable to meet financial obligations arising from the acquisition of new equipment for its Mexico City-New York service. Two years later, Guest Aerovías Mexico likewise succumbed and was absorbed by Aeronaves, which continues to be wholly owned by the Mexican government through its central credit institution, Nacional Financiera. Only Mexicana de Aviaci6n (CMA), affiliated with Pan American World Airways but primarily Mexican-owned and controlled, succeeded in remaining essentially a private carrier. However, in so doing, it accumulated losses between 1957 and 1963 equivalent to more than seventy-five percent of its total capital.

B. The Definitive Agreement Of 1960

The provisional arrangement established under the terms of the Memorandum of Understanding was to terminate on 30 June 1959. The arrangement also provided that at the request of either government prior to 30 May 1959, talks might be initiated to discuss the regulation of air services between the two countries after this initial period. At the time the talks took place in Mexico City, the new political administration of Mexico, under President Adolfo López Mateos, was only six months old. The Mexican airlines had by this time felt the full impact of the intensive competition from United States carriers and were in serious financial difficulties. A nation-wide pilots' strike at the beginning of the year on the issue of union recognition culminated in direct governmental intervention of the airlines. At the time of the negotiations on extension or renewal of the air agreement, the Mexican carriers involved were legally under the authority and control of government-appointed administrators. With this background, and following desultory and inconclusive negotiations, the parties decided just prior to the expiration of the original agreement to

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18 Nacional Financiera also owns 9% of the stock of Mexicana de Aviaci6n; the balance is in the hands of private investors.
19 It would be unfair to attribute all of the carriers' woes to the bilateral air arrangements. During this same period, the Mexican airlines were plagued by a series of labor disputes, including strikes and work stoppages, with adverse economic effects. As a result, several other Mexican airlines engaged exclusively in domestic service also went out of existence: Aerolíneas Mexicanas, Aerotransportes, Transportes Aéreos Mexicanos, Tigres Voladores, Trans Mar de Cortés, and Lineas Aéreas Unidas Mexicanas.

17 Spanish requisa, applied in this instance under Mex. Const., art. 89, pt. I, and of the Law of General Means of Communications, art. 112. Juridically the procedure is roughly equivalent to action taken from time to time in the United States under presidential emergency powers.
extend the terms of the Memorandum of Understanding for an additional year.

By 1960, the plight of the Mexican carriers had worsened. The jet age had arrived, and the American carriers were pressing hard for an agreement which would assure them the right to use their new aircraft with greatly increased capacity in service to Mexico City. The Mexican carriers, on the other hand, wanted some kind of reasonable limitation on frequencies and capacities to warrant the new and enlarged financial undertakings for their own jet equipment. A number of proposals intended to achieve this end were advanced in the course of negotiations in both Washington and Mexico City starting in June 1960. The Mexican proposals, following recommendations contained in a three-carrier memorandum submitted at the invitation of the government, embraced such ideas as a revision to the "exclusive track" system whereby a single carrier of one or the other country would operate without competition over the routes involved, pre-determination of frequency and capacity offerings by relating them to load factors, and absolute parity of carriers capacity in parallel competition on a quid pro quo basis. All such proposals were more or less categorically rejected by the United States negotiators as contrary to public policy or even beyond their authority due to statutory limitations. Negotiations were nonetheless protracted, and it became necessary to effect a forty-five-day extension of the original agreement. The first definitive Air Transport Agreement between Mexico and the United States was signed at Mexico City on 15 August 1960. Duration of this Agreement was to be three years from date of signature.

As noted above, the basic terms of the new Agreement did not vary in any substantial way from those of the original Memorandum of Understanding. The Route Schedule did undergo considerable alteration through deletion of certain services and the addition of others. In addition, the conventional form was followed in the 1960 Agreement with the Route Schedule annexed to the eighteen articles of the basic accord. The principal changes occurring to routes reserved to designated United States carriers were: (1) Brownsville, Tampico, and Tapachula were all dropped as intermediate points served optionally on Route "G," Houston-Mexico City and beyond; (2) the new Route "H," San Antonio-Mexico City, was added and the former city ceased to be a co-terminal with Dallas and Chicago; (3) the restricted cargo and mail-only route, Miami, Tampa/St. Petersburg-Merida, Cozumel and beyond, was added as Route "I," and (4) Route "J," Miami, Tampa-Merida, Mexico City, was added with the proviso that the intermediate stop in Merida would be obligatory in this case, an exception to the general practice making intermediate points optional.

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18 Recomendaciones al Gobierno Mexicano para las pláticas con el Gobierno Norteamericano sobre un Convenio Bilateral Aéreo (Recommendations to the Mexican Government in connection with talks with the United States Government regarding a Bilateral Air Treaty); Memorandum of Aeronaves de Mexico, S.A., Compañía Mexicana de Aviación, S. A., Guest Aerovias Mexico, S. A. de C. V., March 1960.

This condition continues to be an issue in discussions concerning the Agreement.

In the case of Mexican carriers, Route “B,” Mexico City-Chicago, was expanded to include Dallas and Ft. Worth as co-terminals; former Route “D” from Mexico City to New Orleans was substituted by a new route Mazatlán, Torreon, Monterrey-San Antonio, via intermediate points in Mexico; Monterrey was added as a co-terminal with Mexico City on Route “G” to San Antonio; and a new Route “H,” Hermosillo-Tucson, was added. Finally, as in the Memorandum of Understanding, a ninth route, designated “I,” was left pending, more or less with the idea of achieving route parity. However, as will be shown later on, this also became a source of difficulty in subsequent negotiations.

Most of the new services provided under the definitive Agreement were implemented within the ensuing twelve months. Braniff became the fifth United States carrier to serve Mexico as a result of the bilateral. Mexicana de Aviacion was required to surrender its Monterrey-San Antonio service in favor of the government-owned Aeronaves but acquired the right to serve Dallas as a result of this city’s being co-terminalled with Chicago. Again, a marked expansion occurred in the air services operating between the two countries, with Mexican carriers feeling the impact of the competition of the United States airlines which, at all stages of the Agreement, have provided about fifty per cent greater capacity. As a result, Mexico resisted United States efforts to effect still further capacity increases, through additional frequencies, as traffic rose steadily. Such resistance was especially evident in the case of the New York-Mexico City and Miami-Mexico City sectors and caused United States carriers to make repeated pleas in Washington for some kind of remedy.

Again, as in 1959, a more or less perfunctory one-year extension of the definitive Pact to 30 June 1964 was agreed to shortly before expiration of the original three-year period.

C. The “Gentlemen’s Agreement” Of 1964

The preceding was the situation which prevailed in mid-June 1964 when, with approximately sixty days of the renewal period remaining, a Mexican delegation composed of the Director of Civil Aeronautics, the Deputy Director, and the Chief of the Office of International Services in the Direccion visited Washington to discuss possible renewal. Little publicity was given this visit, and the Mexican carriers, which on previous occasions had been given an opportunity to express their views, were not consulted. It seems quite clear that the official United States representatives were not prepared for major negotiations with Mexico at the time, prob-

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80 This resulted from the assignment of Route “D” (Mazatlán, Torreon, Monterrey-San Antonio) to Aeronaves. However, on the suspension of service by Aeronaves on this route in August 1963, service was resumed by Mexicana.
81 This is the term applied by officials of both the Mexican and United States governments in referring to the general understandings reached as a result of the negotiations covered in this section. While the text of the “Gentlemen’s Agreement” has never been released, considerable information concerning the Agreement came to light when difficulties ensued in connection with enforcement of certain aspects of the agreement as will be seen in the course of this section.
ably expecting another routine renewal with complete formal discussions to be deferred for several months. Full information on this aspect of the negotiation is not available; however, the Mexicans went prepared to discuss matters of substance and particularly the definition of Route “I,” pending for nearly four years. The Mexican request for a Mexico City-Detroit route with beyond rights to Canada came as a surprise to the Americans who maintained that it had never been intended that Route “I” should be a major trunk route of such proportions. The Americans contended that the new service should be of a secondary nature, suggesting the possibility of a trans-border service. The discussions apparently concentrated almost entirely on the question of the additional route now requested by Mexico. Surprisingly, however, the United States delegation interjected the question of a possible “freeze” on capacity, frequency, and routes during the period of any extension, with the understanding that agreement in this respect would not apply to the new route. The aim of the proposed “freeze” was clearly to prevent the Mexican carriers from effecting any increases in capacity or frequency, so long as the Mexican government continued a priori to deny requests by United States carriers for similar increases. Such an arrangement would guarantee the preeminence of the American operators by retaining their wide margin over the capacity then offered by Mexican carriers.

Prior to the start of these negotiations, Cia. Mexicana de Aviacion had entered a formal application with the Civil Aeronautics Board for a foreign air carrier permit to operate from Cozumel Island to Miami. This application was based on authorization already granted by the Mexican authorities for the operation in question. Although the proceedings in the case were pending at the time, there is no indication that serious consideration was given by either party to designating Route “I” for this proposed service, especially in view of the Mexican government’s much greater interest in obtaining Detroit. In fact, the chief of the Mexican delegation is known to have insisted that an answer from the United States in this regard was essential to Mexico’s decision on whether to extend the Agreement or let it expire on 15 August. This was apparently sufficient to cause the United States to relent, and it was agreed that Route “I” should be Mexico City-Detroit, and that such route might continue on to a city in Canada without traffic rights between such city and Detroit. There was also a tacit understanding that the point served in Canada on this route would be Montreal and not Toronto, which had been strongly opposed by the United States in defense of its own carriers. After just four days of negotiation, memoranda were drawn up on 19 June covering the principal points of agreement, including the “freeze” proposed by the United States delegation. In all other respects the Agreement was to remain in effect for an additional period expiring 30 June 1965. As will be seen, the “freeze” agreement was to become a major point of difference and gave rise to many problems over the next several months.

Information regarding the extension appeared in a number of periodicals but no official information was conveyed to the Mexican carriers. Aeronaves de Mexico, however, did make application to the CAB for the Mexico City-Detroit and beyond route and was issued the corresponding foreign air carrier permit. Mexicana de Aviacion continued to await action on its pending Cozumel-Miami application which had not been covered by the Bilateral.

During 1964, air travel to Mexico reached unprecedented proportions so that during seasonal peak periods the existing capacity proved inadequate. This was especially so with respect to those services operating from the United States to a number of points along Mexico's Pacific coast, especially Mazatlan, Puerto Vallarta, and Guadalajara. Municipal authorities and civic organizations representing hotel operators and other tourist interests began clamoring for more service, especially to meet the heavy year-end demand. Mexicana de Aviación, which maintained service to these points, expressed its willingness to provide whatever additional service might be required by demand but at the same time requested an official clarification from the aeronautical authorities as to the possibility in this regard in view of the recent renewal of the air Agreement. On 3 August, the company received an official communication from the Dirección General de Aeronautica Civil stating "at no point does the renewal of the reference Treaty refer to a freezing of capacities nor much less frequencies," and indicating further that the company might proceed to establish new flights from Mexico City to Los Angeles with a stop in Puerto Vallarta, subject only to operational requirements. Based on this information, Mexicana immediately began planning a substantial increase in schedules to take effect before the end of the year. In order to do so, it was necessary for the carrier to purchase additional flight equipment as well as to hire several new crews and to undertake an intensive pilot training program. New schedules, representing an increase of approximately eighteen per cent in the volume of the carrier's domestic and international operations, were filed with the Mexican authorities. These were approved and put into effect on 15 December 1964. The major changes affecting operations to the United States were a reversion to daily jet service to Chicago rather than six flights weekly; substitution of Comet jet equipment operating five times weekly to Dallas rather than a daily DC-6; and, most importantly, the addition of a third daily flight to Los Angeles via Puerto Vallarta using piston equipment because of airport restrictions. This flight, which also served Guadalajara, operated non-stop between Puerto Vallarta and Los Angeles four times weekly and the other three times landed at Mazatlán as well. This was the service which proved to

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26 Oficio of Cia. Mexicana de Aviacion, ref. PVR/183, 15 July 1964 (formal memoranda).
28 Oficio of the Secretaria de Comunicaciones y Transportes, Dirección General de Aeronautica Civil, Exp. 334 (08)/10-375550, 30 July 1964 (formal memoranda).
be the major problem, since it did actually represent a substantial increase in the capacity offered by the Mexican carrier along the West Coast. However, it happened that about the same time Western Air Lines sought and was granted approval by the Mexican government to substitute Boeing jet equipment for the Electras used in the carrier's thrice weekly service from Los Angeles to Mexico City via San Diego; Western also operated eleven weekly non-stop services to Mexico City using Boeing 720s. This substitution of equipment in the flights operating via San Diego represented an increase of approximately ninety seats weekly in each direction, and, as a result, the total capacity offering of the two carriers was almost identical. This fact, however, did not avoid representations from Washington regarding alleged violation of the "gentlemen's agreement."

A new political administration had taken office on 1 December 1964 under President Gustavo Diaz Ordaz. A new Minister of Communications and a new Director of Civil Aeronautics had been named, and most of the other policy-level officials were likewise new appointees. Not having been in the previous administration, there seems to be no question that they were unaware of the so-called "gentlemen's agreement" and were taken by surprise at the situation with which they were suddenly confronted. The United States authorities, lacking any legal foundation for suspending the new flights, could only rely on trying to get the Mexican authorities to take such action, but they too were faced with a dilemma. All of this occurred at the peak season of the year, with hotels as well as airlines booked full. Any such suspension would certainly have met strong protest from several sectors, including state and local government officials. Perhaps worst of all, the politically strong and independent National Airline Pilots' Union (ASPA) would beyond any doubt have sought recourse through an *amparo*, an action somewhat similar to an injunction, invoked as a defense against acts of governmental authority. The officials concerned did not welcome the prospect of such developments and handled this very delicate situation tactfully and skillfully. The Secretary of Communications requested Mexicana to facilitate a solution by routing all of the new flights through Mazatlán thereby giving them the legal status of "extra sections," since this type of operation had been specifically exempted from the "freeze." Moreover, the Mexican government had been liberal in granting approval for numerous extra sections by United States carriers. While the United States carriers and certain governmental officials were possibly not altogether satisfied with this solution, it is clear that any other action to suspend or limit these controversial flights would have proved extremely inimical to Mexico's important tourist industry.

IV. Mexico's "Smokeless Industry"

The stage was now set for full, formal negotiations in advance of the 30 June 1965 expiration date set as part of the "gentlemen's agreement."

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27 Roughly 44%, from 1,204 seats to 1,736 weekly in each direction.
the year before. Air services between Mexico and the United States had been regulated by a formal bilateral pact or similar instrument for eight years. No changes of substance had occurred, but routes had been added and the total volume of scheduled operations between the two countries had been greatly expanded. Neither party, however, was completely satisfied with the manner in which the Agreement had been implemented. But before examining the progress and results of the 1965 negotiations, it is worth examining the tourist industry in the context of Mexico's national economy.

Employment in the tourist industry in Mexico approaches the 300,000 mark. In 1963, foreign visitors to Mexico numbered 1,080,766 of whom 910,000 were United States residents; in 1964, the number of foreign visitors reached 1,234,235 of whom 990,000 were residents of the United States. For the period 1960-1964, dollar expenditures of United States residents visiting Mexico were as follows:

<table>
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<th>Year</th>
<th>United States Dollars (Millions)</th>
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<tr>
<td>1960</td>
<td>$365</td>
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<tr>
<td>1961</td>
<td>370</td>
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<tr>
<td>1962</td>
<td>395</td>
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<tr>
<td>1963</td>
<td>448</td>
</tr>
<tr>
<td>1964</td>
<td>480</td>
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</tbody>
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The significance of these figures in the total economy of Mexico can be appreciated by the fact that income attributable to tourism represented 4.4% of the country's gross national product (GNP) in 1963. The foreign exchange generated from tourism was equivalent to 12.9% of the country's total investment in capital goods the same year. Generally, tourism can be considered to account for roughly 40% of the total foreign income derived by Mexico. Over the past decade the income from Mexico's tourist industry has recorded an average annual increase of 10%, about double the growth rate of most other major industries in the country and about double the rate of increase in the GNP for the same period.

From the foregoing it was clear that all of the many aspects of so important an industry would have a direct bearing on any full-scale discussions concerning the country's international air transport services. This proved to be the case. That this was fully appreciated by officials of the United States Government responsible for policy in the forthcoming negotiations is evidenced by the circulation of a document entitled "Tourism and the United States-Mexico Air Passenger Market" just shortly before the start of the negotiations. With authorship attributed to the CAB.

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28 Brochure of the Fondo Privado de fomento Turistico, A.C., (Private Fund for the Promotion of Tourism) (1961).
29 Ibid.
31 See note 28 supra.
32 Ibid.
33 Progreso 64/65, Visión Press, New York, p. 95.
34 The Chase Manhattan Bank, 2 Noticias Economicas Interamericanas 19 (June 1965).
and dated 9 April 1965, this study reached many key Mexican government officials at the very time that they were evaluating and determining their own policy orientation in advance of the new round of negotiations on extension of the Pact. The study cited the usual figures on number of foreign visitors' expenditures, volume of United States residents' travel to Mexico, and similar statistics. With respect to air travel, the study purports to show that between 1959 and 1963, volume had increased at a rate of only 6 per cent per annum whereas the rate for other modes of transport had been 10 per cent during this same period. It also contends that the United States air carriers were experiencing considerably higher than average load factors in their operations to Mexico and, therefore, so long as they continued to be subject to frequency restrictions, there was no incentive to undertake major promotions which they were otherwise prepared to do. In this regard, there were, in fact, concrete examples and commitments. Western Air Lines which, according to the survey, had spent $600,000 to "promote travel to Mexico" in 1964 would increase its expenditure to the level of $750,000 to $1 million. Without citing any specific figure, Pan American likewise offered to increase its advertising and promotional expenditure on behalf of Mexico by 50 per cent. The CAB study also pointed out that the British West Indies, the Bahamas, Guatemala, and the Dominican Republic had all outpaced Mexico in the growth of tourism in recent years. To summarize the theme of this interesting and undoubtedly effective monograph, air travel to Mexico had been deterred by artificial restraints which had in turn retarded the development of tourism, the bulk of which comes from the United States and constitutes an important "American contribution" to the Mexican economy. Finally, since the Mexican carriers had improved their participation in the total market to the extent that they now constituted a "strong competitive force," they should rely on promotion rather than "share."

From the course of the negotiations which followed, it will be seen that these arguments were of great influence, and the generous offers of the United States airlines to expand their promotional and advertising budgets in the interests of increased travel to Mexico proved highly convincing.

V. THE 1965 NEGOTIATIONS IN MEXICO CITY

Since the previous negotiations leading to the one-year extension to 30
June 1965, had taken place in Washington, it was arranged for the new round to be initiated in Mexico City with the possibility of subsequently transferring the site to Washington in case it became necessary to recess. Despite some brief recess, all of the negotiations were conducted in Mexico City and continued virtually without interruption from 25 May 1965 until signing of the final papers on 4 August 1965.

Accordingly, in the course of the negotiations it became necessary to arrange two interim extensions, the first of which was announced on 2 July for a period of fifteen days, or until 15 July. This indicated that the negotiators felt that final agreement could be reached within this additional period. However, on 16 July it was announced that a further three-week extension to 6 August had been agreed upon; according to the official communique "substantial agreement" had been reached with only final details to be resolved. As will be seen, most of this final period was devoted to involved discussions of frequency in which the various carrier representatives participated actively.

A. The Delegations

In contrast to most previous negotiations, the United States delegation on this occasion did not include any member of the Civil Aeronautics Board. Chief negotiator and head of the United States delegation was William E. Knight, Assistant Chief of the Aviation Negotiations Division under the State Department's Bureau of Economic Affairs. Also representing the State Department was Mr. James Ferretti, formerly attached to the Embassy of the United States in Mexico, and Mr. Joseph B. Kyle, Transportation and Communications Officer in the Embassy. The top Civil Aeronautics Board official on the delegation was Richard J. O'Melia, Associate Director of the Bureau of International Affairs, assisted by Mr. John Hoff of the Board's staff. While not a member of the delegation, Mr. James Landry was present as an observer on behalf of the Air Transport Association.

The Mexican delegation, which was much more numerous, included in addition to officials of the Secretaria de Comunicaciones y Transportes, officials of the Ministry of Foreign Relations, representatives of both of the country's leading air carriers (as official members of the delegation), a representative of the Mexican Pilots' Union, the Asociacion Sindical de Pilotos Aviadores, ASPA, and officials representing the two governmental agencies responsible for tourist promotion, the important Consejo Nacional de Turismo headed by former President Miguel Aleman, and the Tourist Department. Titular head of the delegation was Ing. Juan Manuel Ramirez Caraza, Undersecretary of Communications in the previous administration. Chief spokesman for the delegation, however, was Ing. Ramon Perez Morquecho, appointed to the post of Director General of Civil Aeronautics.

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43 In the 1960 negotiations, the United States delegation was headed by CAB Chairman Alan Boyd, now Under Secretary of Commerce and the Administration's ranking transportation official. Member Chan Gurney took an active part in the discussions leading to the 1964 "Gentlemen's Agreement."
nautics by the Minister of Communications shortly after taking office the preceding December. Aeronautical matters had traditionally been treated as an exclusive province of the Direccion General de Aeronautica Civil reporting directly to the Minister.

Despite such broad representation of interests, both public and private, in the official Mexican delegation, the top policy official throughout the negotiations was Ing. José Antonio Padilla Segura, Secretary of Communications. Where any critical decision was involved, the matter was referred to him. Having cabinet rank, he also had access to the President. This proved necessary on at least one occasion. It is also clear that President Díaz Ordaz was at all times informed of the progress of the negotiations.

B. The Agreement On Frequency Escalation

Insofar as the course of actual negotiations is concerned, because of their current nature it is impossible in most cases to document references. The writer has had access to most of the working papers developed during the negotiations, including the documents embodying formal proposals exchanged between the delegations. It was also necessary on a number of occasions, both during the negotiations and subsequently, for this writer to consult with one or more members of either the Mexican or United States delegations as well as with government officials of both countries, whether or not members of the delegations.

At the very outset of the negotiations, the American delegation took a strong stand on the matter of frequency and capacity, in effect saying that this was the central issue to be resolved, and furthermore that it was to be resolved in advance of any other question. Until a solution was reached with respect to the frequency-capacity issue, the United States delegation was not prepared to discuss any other phase of the Agreement. Clearly, this was to be the first order of business and unless settled to their satisfaction, it was indicated that they would return to Washington immediately.

It was obvious that this categorical statement by the United States delegation took the Mexicans by surprise. In fact, they had expected so important a question to be among the last on which agreement would be reached and had intended to proceed with discussion of an orderly agenda, laying aside temporarily any major question which presented a special problem or on which immediate agreement was impossible. The whole question was whether frequency and capacity were to continue to be determined a priori and in advance on the basis of previous experience of the carrier or whether, in accordance with the Bermuda principles of Article 10 of the Agreement, frequency and capacity would be subject only to a posteriori review, with carriers having the right to determine without restriction of any kind the volume of service to be offered. This latter, of course, was the position advocated by the Americans.

The Mexican representatives defended themselves as well as possible in the face of the strong position taken by the United States, but step-by-
step had to agree to a gradual transition from the prior system to the new unlimited situation upon which the United States Government was insisting. From this point, it developed that the new Agreement would run for a period of five years, to 30 June 1970, during which time frequencies of the carriers of both countries would be stepped up to levels to be agreed upon at different stages. The first period would run the initial eighteen months of the renewed Agreement to 31 December 1966. Similarly, the second period would be for eighteen months, or until 30 June 1968. This would take care of three years of the Agreement and during the final two-year period, 30 June 1968 to 30 June 1970, carriers would not be subject to any kind of restriction as to the frequencies and capacity they might operate but only to the a posteriori review provisions of the pact. It is especially interesting that the third and final period should commence shortly in advance of Mexico’s serving as host to the Olympics in 1968 when it is expected international air traffic will swell beyond all previous levels. It was also agreed to shorten the first period to calendar year 1966, with none of the new schedules or services to take effect before the end of 1965: In other words, the controversial “freeze” agreed to the year before would remain in effect for another six months, until 1 January 1966. With the periods of escalation thus defined, it was decided that the frequencies themselves should be postponed for later discussion and other aspects of the Agreement, primarily the Route Schedules for both countries were taken up.

C. Principal Route Schedule Changes

Having agreed to the escalation of frequencies in such a way that the Bermuda principles of the Agreement would be given full effect during the last two years of the five-year term, the Mexican delegation expected to obtain major concessions as to new routes. They expected to be able to extend Mexicana’s route beyond its present terminal of Los Angeles into San Francisco, or to acquire a new Mexico City-San Francisco route with “fifth freedom” rights beyond, and to acquire a new route from Mexico City to San Juan, Puerto Rico. They also expected that the United States route structure would remain substantially as in the existing schedule set up in the 1960 negotiations. They were therefore taken by surprise when informed by the United States delegation that it considered the two matters entirely unrelated, and that as a matter of policy, the United States is opposed to exchanging “principles for routes.” The United States position was that negotiations regarding routes were to be conducted without respect to any other features of the Agreement and that the fundamental criteria in defining the route schedules were to be economic. Having ceded initially in the face of the strong United States stand on frequencies, the Mexican delegation had no alternative but to continue with discussions of the routes to be operated by carriers of the two countries under the revised Agreement; in other words, the entire Route Schedule for both countries was up for review.
1. The "Open Door" at Acapulco

The leading tourist attraction and most important resort in Mexico is the Pacific port of Acapulco, about 250 air miles due south of Mexico City. For many years, Acapulco had been connected by air with Mexico City exclusively by Aeronaves de Mexico which, during peak seasons, had operated as many as twelve scheduled round trips daily. Even this frequency was insufficient to satisfy demand at certain times of the year. The fact that nearly all flights were conducted with piston equipment had placed the carrier in a vulnerable position, especially since the bulk of seasonal traffic converging on Acapulco came from the United States on United States carriers dependent on Aeronaves for connecting space in either direction. Even though Aeronaves had been successful on every previous occasion in resisting efforts of other airlines to gain access to the carrier's most important traffic generating point outside Mexico City, it was apparent that expanded traffic and the inconvenience to the public in transferring en route between point of origin or destination in the United States and Acapulco warranted direct flights, i.e., either non-stop or through flights without change of aircraft in Mexico City. It was not surprising, therefore, that demands for direct access to Acapulco by United States carriers constituted a priority in the list of changes sought by the American delegation. Their strongest support came from the official representatives of Mexico's tourist industry who were members of the Mexican delegation. Aside from Aeronaves as the affected carrier, the strongest opposition came from the Airline Pilots' Union (ASPA) which felt that the operation of United States carriers into Acapulco would be the beginning of a trend which would eventually make deep inroads into many of the country's domestic services, displacing national airlines and bringing about a reduction in pilot force or, at least, giving rise to conflicts with management over this sensitive issue. After much discussion within the Mexican delegation itself, a settlement was reached which satisfied the United States aspirations virtually in full. Four United States carriers were to be granted the right to establish direct flights between their northern terminals and Acapulco, in addition to which Mexicana de Aviación would also be authorized to operate through flights between Acapulco and the United States terminal of Chicago. As compensation, Aeronaves received authority to operate non-stop between Acapulco and Los Angeles.44

In the case of Chicago, the Mexican carrier enjoys exclusive non-stop authority to Acapulco but may also serve the southern terminus via the co-terminal Mexico City. On the other hand, United States carriers may operate either non-stop or via Mexico City to Acapulco from New York, Los Angeles, Dallas, and San Antonio. While Aeronaves de Mexico may

44 Services to be operated by United States carriers include: New York - Mexico City, Acapulco; Chicago, Dallas, Fort Worth - Mexico City, Acapulco; San Antonio - Mexico City, Acapulco; Los Angeles - Mexico City, Acapulco. By Mexican carriers: Acapulco, Mexico City - Washington, New York and beyond to Europe; Acapulco, Mexico City - Chicago; Acapulco, La Paz - Los Angeles. Certain restrictions in operating authority are involved. See Appendix III for complete definition of the routes.
operate non-stop between Acapulco and Los Angeles, flights may not be operated via Mexico City.

Based on the foregoing, and following Mexico's long-established restrictive policy with respect to flights by foreign carriers into Acapulco, it would appear that the American carriers obtained a clear advantage over the Mexican airlines as a result of the country's new "open door" policy.45

2. Other Route Changes

With respect to the new Route Schedule for United States carriers, there were in reality no other changes of consequence, the major innovation being the addition of Acapulco as a co-terminal with Mexico City on flights from the five major United States terminal points as explained above. Such changes as did occur mainly involved questions of language or conformed to actual operating practice or permitted more flexibility. These are indicated by the following:

(1) Washington was eliminated from Route "A" as a co-terminal with New York to become a co-terminal with New Orleans (Route "B"). Inasmuch as flights can still originate in New York, touch down at the terminal of Washington and then proceed non-stop to Mexico City, by-passing the co-terminal of New Orleans, the carrier's operating authority is unchanged.

(2) Where, in the case of New Orleans-Merida, Miami-Merida, and Houston-Mexico City, the language of the previous Agreement had added "and beyond to Guatemala and beyond," this was changed to read "and beyond to Central America and Panama and beyond."46

(3) A uniform change, applying to routes operated by carriers of both countries, was the elimination of the language "via intermediate points," which appears in the 1960 Agreement in the definition of United States Routes "B," "C," and "G" and Mexican Routes "B," "C," "D," "F," and "H." The intermediate points which may be served within the country of respective carriers are now stipulated. Thus, in the case of Western Air Lines' Los Angeles-Mexico City, Acapulco service, the intermediate point which may be served optionally is San Diego. In reality, certain of Western's services were already operating via San Diego. A similar change involved various other routes of both countries without altering the operating pattern of carriers in effect at the time.

(4) The "border services," added as Routes "K" and "L" to be operated by a United States carrier, are not considered major modifications to the Agreement; while expanding the Route Schedule, the effect of these new services, measured in ton-miles, is negligible in relation to the total volume of service operated between the two countries as a product of the bilateral.

Of the ten routes available to United States carriers by virtue of the

45 For an idea as to how this advantage works out on a numerical basis see V-D, infra.
46 Route "H," Mexico City-Houston, is, however subject to the proviso that the carrier may not operate non-stop between Mexico City and Panama.
1960 Agreement, only one, Route "J," was to remain unchanged; all of the other original nine routes underwent modification, although in some cases the change involved was little more than a matter of form. Not only did the Miami, Tampa-Mérida, Mexico City route description remain identical to the earlier Agreement, but the stipulation making an intermediate stop at Mérida mandatory despite the co-terminal status of this point was maintained. This was a most sensitive subject during the negotiations and will be referred to again in comments on the "Florida Sector."

Alterations to the route structure of the Mexican carriers were more extensive but taken altogether do not match the importance of the Acapulco rights assured for four United States carriers. The following changes emerged:

(1) Co-terminalling of Acapulco with Mexico City on Route "A" to Washington and/or New York and beyond. This is of no immediate importance to the carriers designated for this route (Aeronaves de Mexico) inasmuch as several months earlier the company had scheduled its Mexico City-New York daily service so that the flights actually originated in Acapulco. The CAB, of course, has no jurisdiction over points served within the territory of the carrier beyond the terminal. However, the revised route description will permit Aeronaves to operate nonstop from Acapulco to either Washington or New York or both.

(2) Similar co-terminalling occurred in the case of Mexicana's Chicago service, Route "B." The same comments as above apply, since authorization from the Mexican authorities alone would suffice to allow the airline to originate and terminate flights in Acapulco provided they are conducted via the terminal point of Mexico City. Due to the limitation imposed on the United States carrier on this route which is required to operate all flights to Acapulco via Mexico City, Mexicana's authority to operate nonstop between Chicago and the southernmost terminus is exclusive.

(3) On Route "C," San Antonio, Dallas, and Fort Worth were co-terminalled, whereas Dallas and Fort Worth had been co-terminalled with Chicago in the previous Agreement. The intermediate points which may be served within Mexico on this route are described as "Monterrey or Guadalajara," which means that only one of these cities may be included on any given service. In fact, there was much opposition by the American delegation to the inclusion of Guadalajara on this route. Agreement in this respect came shortly before signing of the new pact and, as will be seen, resulted from the discussions on frequency.

(4) By co-terminalling Acapulco with La Paz in Route "E," it becomes possible for the designated carrier, Aeronaves, to operate non-stop between Acapulco and the United States terminal of Los Angeles. However, the designated United States carrier enjoys the same right plus the ability to route flights via Mexico City.

(5) Route "G," Mexico City-Detroit, constitutes an interesting case
in that the American opposition to having this flight proceed to any point in Canada other than Montreal, as previously noted, was withdrawn. The Route Schedule carries a notation to the effect that “This route may be operated beyond Detroit to any point or points in Canada,” of course, without traffic rights between Detroit and points served in Canada.

(6) A new route, “H,” was added with terminals at Guadalajara and Houston and involving no intermediate points. This route presumably is intended for Aeronaves de Mexico which suspended operation on Route “D” (Mazatlán, Torreón, Monterrey-San Antonio) of the previous Agreement more than two years earlier. Former route “D” was accordingly omitted in the revised Schedule.

(7) Another new route, Monterrey-Laredo, Corpus Christi, designated “I,” was the final point on which agreement was reached in negotiations concerning the Route Schedules for the two countries. The American delegation had originally agreed to a Monterrey-Laredo route in exchange for the “border services” agreed upon for the United States carriers but had consistently opposed service to Corpus Christi, either as co-terminal with Laredo or, as requested by the Mexican delegation, with San Antonio and Dallas. The “eleventh hour” addition of Corpus Christi was again related to the question of frequencies, as in the case of Guadalajara on Route “C.”

(8) Phoenix was substituted for Tucson as a terminal on the route from Hermosillo, Mexico (“J”), but Tucson may be served optionally as an intermediate stop.

(9) In the case of all routes, the same as for United States carriers, intermediate stops are “pin-pointed.” For instance, on Mexicana’s route between Mexico City and Los Angeles, stops may be made only in Guadalajara, Puerto Vallarta, and Mazatlán. While these were the only points being served by the carrier on this route (“D”) at the time of negotiation, the airline had previously operated flights to Los Angeles via such intermediate points as Hermosillo, Mexicali, and Tijuana as permitted by the “open language” of the 1960 Agreement on the subject of intermediates.

The above, in substance, constitute the revisions to the route structure available to carriers under the Agreement. As a part of the general understandings reached, however, it was agreed that Mexicana’s application to operate from the Island of Cozumel to Miami, submitted to the CAB on 10 June 1964, would be granted but that this would remain outside the bilateral Agreement as such. This particular case confronted the CAB with a dilemma when the application was presented through normal diplomatic channels. The dilemma stemmed from the fact that the existence of a formal treaty or Air Transport Agreement, such as the 15 August 1960 Agreement between Mexico and the United States, does not

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47 See discussion in sub-para. (1) supra.
48 The island of Cozumel, forming part of Mexico’s Territory of Quintana Roo, is in the Caribbean, 180 miles due east of Merida, Yucatan, and 565 miles southwest of Miami. Separated from the Mexican mainland by a narrow channel, Cozumel has a population of about 3,000, a number of hotels, and is a popular resort with Mexicans and an increasingly large number of Americans.
49 See note 22 supra.
constitute an impediment for a carrier to make application for a route other than those provided for in the agreement, so long as the application is properly presented. At the time of the negotiations on the bilateral, all procedural steps in Docket No. 15372, up to and including the Examiner's Report, had been completed. Furthermore, the Examiner's Report, submitted 14 January 1965, had recommended granting Mexicana's petition. Therefore, the final decision of the Board and presidential approval were the only steps pending. Since the Mexican authorities did not feel that the service in question was so important as to warrant its incorporation in the Route Schedule, in return for which the United States would probably exact a quid pro quo, it was decided to cover the question of Mexicana's proposed Cozumel-Miami operation by a side letter. As originally drafted, this letter stated, "The United States will grant to Mexico a route from Cozumel to Miami outside the air transport agreement."\textsuperscript{5}\textsuperscript{6} In its final form, the letter states, "The United States Government will make every effort to approve the application of CMA for a permit covering scheduled services between Cozumel and Miami."\textsuperscript{7}\textsuperscript{8} The main reason for this change in wording, according to the American delegation, was their inability to make an unqualified commitment to grant the route sought because of the requirement of White House approval. In the event of approval,\textsuperscript{9}\textsuperscript{10} and if the competent United States authority should certificate a United States carrier for service from New Orleans to Cozumel, Mexico, is committed to grant the necessary permit, incorporating in it such conditions or limitations as may be imposed by the United States in connection with the Mexican carrier's operation. This latter condition is due to the fact that during the hearings on Mexicana's application, an impressive list of restrictions was introduced by means of a stipulation entered into with Pan American World Airways, the only airline opposing the application.

It has already been noted that the first interim extension for the purpose of continuing negotiations was for fifteen days from 30 June. Announcement of the extension appeared in Mexico City dailies on Friday, 2 July. Over this weekend, coinciding with the Fourth of July holiday, most of the members of the United States delegation, who had already been in Mexico for six weeks, returned to Washington. On the resumption of negotiation in Mexico on 7 July, a change in attitude was clearly apparent. Prior to the announcement regarding the extension, the Secretary of Communications is known to have informed the Mexican delegation that an agreement was to be reached under any circumstances. It would appear that word to this effect had reached the American negotiators and, furthermore, that this accounted for their stiffened attitude upon returning from Washington. On Saturday, 10 July, a considerable amount

\textsuperscript{5} Doc. No. 32, Proposed by United States Delegation, 12 July 1961 (working paper).
\textsuperscript{6} Letter from United States Ambassador Fulton Freeman to His Excellency José Antonio Padilla Segura (Mexican Secretary of Communication and Transport), 4 Aug. 1961.
\textsuperscript{7} By Application of Compania de Aviacion, S.A. for Air Carrier Permit, CAB Docket No. 15372, CAB Order No. E-22947 (1 Nov. 1965) (approved by the President 27 Nov. 1965), Cia. Mexicana was issued a Foreign Air Carrier Permit to operate "between the terminal point Cozumel, Mexico, and the terminal point Miami, Florida."
of negotiation was conducted directly between the Secretary and Ambassador Freeman and by the time the second extension was announced substantial agreement had been reached on all matters affecting routes. The “Florida sector,” however, constitutes an exception and accordingly is dealt with separately.

3. The Florida Sector

While the question of Mexicana’s Cozumel-Miami service might be considered as falling within the “Florida Sector,” there are two other important subjects with respect to which the parties have reserved the right to further negotiation.

Elsewhere, mention is made that in the United States Route Schedule only Route "J" remained unchanged, and that the Americans were unsuccessful in their strong bid to get the Mexicans to withdraw the condition making a stop in Merida obligatory on Pan American’s service from Miami and Tampa to Mexico City. When this route was included in the 1960 Route Schedule, the carrier had accepted the condition of the Merida stop without protest. Subsequently, various efforts had been made to have the condition waived. The chief obstacle, of course, was the advantage to the Mexican carrier operating non-stop Miami-Mexico City. Aeronaves de Mexico had fallen heir to the Guest Aerovias’ concession for this route and naturally resisted the idea of Pan American’s also acquiring non-stop authority. After failing in a final attempt to remove the condition, and relying on strongly worded instructions from Washington, the American delegation stated that the United States Government had considered that the condition making the Merida stop mandatory would continue to be a “sore spot” in the relations between the two countries; and the American delegation therefore reserved the right to further discussion on this particular question at an early date.

The second question involved in the “Florida Sector” is one of service between Mexico and Puerto Rico. The original route proposals made by Mexico included service extending from Mexico City and Merida, through Jamaica and on to San Juan, Puerto Rico, including rights to Fifth Freedom traffic between the latter two points. It is significant that the original route proposals submitted by the United States delegation did not provide for any similar service by an American carrier. However, before reaching agreement on a number of other questions involving routes of both countries, the United States delegation proposed that an American carrier should also be allowed to provide service over such a route. When this idea was rejected by Mexico, the United States proposed that the service be included in the Route Schedule of each country but with the additional understanding that service by the United States designated carrier would not be initiated during the first three years of the Agreement. The Mexican reaction to this suggestion was that it put all the burden of initiating the service and establishing the necessary facilities, along with active promotion and sales effort, on their own carrier. The result of this burden

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38 See discussion at V-C-2 supra.
would be that the Mexican carrier would require some two to three years to reach a break-even basis, following which an American carrier would find no economic problem in the operation of the same route. In the final analysis, it proved impossible to reach an agreement on the subject of Mexico-Puerto Rico service, but it is the intent of both parties that further talks should be held at an early date.

Substantial agreement having been reached on most route matters, the parties then agreed that the two important questions involved in the "Florida Sector" should be placed in abeyance for discussion at a later date. There then remained the matter of frequencies which, as agreed almost at the outset, were to be escalated during the first three years of the revised Agreement.

D. Frequency Negotiations

Representatives of the carriers participated actively in the involved negotiations on frequency. This was necessary because the United States delegation could not officially enter into these negotiations on behalf of the carriers.

The American carriers, which heretofore had felt that they had been unduly restricted in their operations, looked upon this as an opportunity to obtain approval for maximum increases in frequency or capacity, in some instances far beyond what they might have reasonably expected to require for anticipated increases in traffic volume. Certain carriers asked as much as three times the frequencies they previously had, even though the first stage was to be effective only throughout calendar 1966. They would be afforded an opportunity to present their case well in advance of expiry of this initial period for still further increases based on actual operating experience.

As a part of the frequency negotiations, American Airlines was authorized to operate up to ten flights weekly between Chicago, Mexico City, and Acapulco and seven flights weekly between Dallas, Fort Worth-Mexico City, Acapulco as well as seven weekly non-stops between Dallas, Fort Worth-Acapulco. American felt that this was inadequate insofar as service between Dallas and Mexico City was concerned and requested that as many as five of their Chicago-Mexico City-Acapulco flights weekly be permitted to stop in Dallas to augment that frequency. Mexico instead granted permission for two of American’s seven weekly Dallas-Acapulco non-stops to serve Mexico City as intermediate. In return, the Mexican government was able to bring about the reinstatement of Guadalajara as an intermediate along with Monterrey on Mexicana’s Mexico City-San Antonio, Dallas service as noted earlier. American persisted in its demand for still further increased capacity between Dallas and Mexico City and was finally allowed to operate up to three of the ten weekly Chicago-Mexico City, Acapulco flights via Dallas. The effect of this was to permit a further increase in the carrier’s capacity between Dallas and Acapulco, initially set at seven flights weekly. However, this grant enabled Mexico to extract a reciprocal concession consisting of the addition of Corpus
Christi as a co-terminal with Laredo on the route from Monterrey. This addition had encountered strong resistance from the American delegation.

One United States carrier, not satisfied with an 85% capacity increase granted in the case of one of its services for the coming year, stated that it was no longer bound by its offer to spend "well in excess of $1 million" in promoting its services to Mexico during this period and within ten days filed an application\(^\text{1}\) with the CAB to provide direct service between Mexico and Hawaii as an extension of its existing Mexico City service and further to provide service between the Mexican capital, New Zealand, and Australia and beyond to Hong Kong.

Regardless of the feelings of any one carrier with respect to the approval for increased frequencies, the fact is that taken all together the concessions made by Mexico represent a significant expansion of capacity available between the two countries. When negotiations were commenced, the combined carrier volume operating weekly between Mexico and the United States amounted to 15,600 seats in each direction. Of this total capacity, United States carriers provided 62% of the seats available and Mexican carriers 38%. If, during 1966, all carriers, both Mexican and United States, should operate the maximum capacity permissible, availability would expand by 64% for a total of 25,850 seats in each direction. In this case the distribution between airlines of the United States and Mexico would be 58% and 52% respectively. However, this is considered entirely hypothetical, as it is highly unlikely that all the carriers will be capable of expanding their volume of services up to the newly authorized levels or that such would even be warranted on the basis of traffic demand.

The case of Acapulco is even more striking. Here, if all services were expanded up to the approved levels, there would be a total of 109 international flights weekly, roughly fifteen a day versus one a day at the time of the Agreement, providing more than 17,000 seats in and out of the Pacific port. Of these flights, 78 could be operated by United States carriers and 31 by Mexican carriers. However, due to the smaller capacity of some aircraft used in Mexican operations, 78% of the overall capacity would be generated by the American air carriers. It is just as unlikely, however, that the United States carriers will find traffic developing so rapidly as to require anything approaching this volume of service.

\textbf{VI. Conclusions}

The sheer volume of air traffic moving between Mexico and the United States, the number of routes and points served, as well as the number of carriers subject to the terms of the Air Transport Agreement make any conclusions which may be drawn especially significant. While Mexico has denied any hegemony over other countries of Latin America, any number of criteria clearly indicate that the country enjoys tremendous prestige and does occupy a position of leadership in this sensitive area of the world. In addition to its important trade with the United States, the

bulk of Mexico's trade is conducted with countries whose air communications and formal treaty relations with the United States are of prime importance: Germany, Great Britain, Japan, Canada, Italy, and France. Therefore, the agreements reached at Mexico City last year cannot be taken as operating in vacuo.

A. Tourism—A Dominant Force

The clearest single conclusion to be drawn from the 1965 revisions to the Mexico-United States bilateral air Agreement is that tourism is emerging as the dominant force. On matters affecting routes, services, frequencies, and especially the “opening” of Acapulco, the issues were resolved primarily on the basis of tourism. Whenever discussions occurred within the Mexican delegation or when necessary to consult higher government authority, the interests of tourism received unqualified backing from the Tourist Department and the National Tourist Council. Generally their views were sanctioned by other governmental agencies including the Secretaria de Comunicaciones, the D. A. C., and the Foreign Ministry. Where opposed to the overriding interest of tourism, neither the national airlines nor the otherwise influential Pilots’ union were able to enforce their views despite the ultimate effect of the decisions on their own organizations or economy. In fact, the Mexican government appears to recognize that it may now have to resort to subsidy in support of its national carriers in competition with other airlines in international services. Such subsidy would seem warranted, especially in view of revenue accruing to the government through income generated directly and indirectly by the liberalized tourist policy.

Due to the prevailing state of euphoria with respect to the new services to Acapulco around the end of the year, it is likely that the previous ratio of supply to demand may be reversed to an extent where carrier capacity will exceed available traffic by a considerable margin. Furthermore, unless the United States carriers actually operate up to the level of frequencies negotiated during the first period of the Agreement, they are certain to encounter greater resistance and more difficulty in obtaining authorization for further expansion of frequency or capacity. The carriers certainly will seek further expansion for the 1 January 1967-30 June 1968 term.

B. Principles Versus Objectives

In commenting on the significance of the revisions at the outset, it was noted that by agreeing to a pre-determination of frequency and capacity on all but non-competitive services, the United States delegation actually departed from the country’s traditional stand on this subject, even though such departure was for a stipulated period of time. This is not to imply that the delegation acted outside its authority or that the policy officials having ultimate responsibility were unaware of what was going on in Mexico City. On the contrary, they were seeking to obtain the best possible solution under the circumstances to what had been a chronic problem. See text accompanying notes 2-6 supra.
both under the Memorandum of Understanding and the later Air Transport Agreement; namely, Mexico's reluctance, wherever an alteration of frequency or capacity was involved, to full application of the Bermuda principles of the pact through the process of a priori review in passing on carrier applications. The Mexican government is now formally committed to abandon this practice within three years of the current Agreement and must automatically approve any and all requests by carriers for new frequencies or capacity provided they fall within the negotiated limits. It is difficult to conceive that after the five-year term of the new Agreement, Mexico could succeed in re-establishing the authority which the Ley de Vias Generales de Comunicacion expressly confers on its public officials in the areas of air carriers' schedules, volume of service, competition, and similar matters. In other words, it is now fair to state that the official policy of the Mexican government in this regard has undergone a fundamental change, at least insofar as the country's treaty relationship with the United States is concerned. It remains to be seen whether such policy change extends to air agreements which Mexico may, in the future, negotiate or renegotiate with other countries. Based on the outcome of negotiations with Italy, Guatemala, Great Britain, Canada, Belgium, and Brazil, up to the end of 1965, there is no indication that Mexican policy vis-à-vis these countries has been modified. The United States, nevertheless, by a temporary relaxation of its own policy, has achieved an important long-range objective in its relations with Mexico—an objective certain to be of significance to both countries.

C. Foreign Air Carrier Proceedings

Experience in the processing of section 402 applications of both Aerovias de Mexico and Mexicana de Aviacion to conform to the terms of the revised Agreement definitely establishes the need for expedited proceedings where a formal, inter-governmental, treaty-level agreement is involved. The Federal Aviation Act of 1958 as revised makes no provision for such expedited action, and foreign carriers must go through the time-consuming, costly, and sometimes onerous procedural steps required to obtain a section 402 permit. This is especially true where, as in the case

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56 Mexico's Law of General Means of Communications is the organic statute governing all transportation and communications services in the country. Diario Oficial, 19 Feb. 1940. The Law is currently undergoing revision which may be complete by the end of 1966.


58 As part of the direct testimony submitted at the hearing on the Application of Cia. Mexicana de Aviacion for Amendment of its Foreign Air Carrier Permit, CAB Docket No. 16162 (10 Dec. 1965), the applicant stated:

[E]very effort has been made to comply with the requirements fixed by Bureau counsel for evidence regarding the Company's nationality, ownership, qualifications, physical properties, indebtedness, commercial agreements, present and future intentions with respect to operations both within and without the purview of the bilateral agreement between the two countries, and many other matters. . . . While reiterating that all evidence which it has been possible and practical to obtain has been presented, it is submitted that any information omitted is unnecessary, irrelevant, or would be redundant and is not essential to reaching a decision on the application; that its preparation would be onerous, costly, time-consuming, and, as stated, in some cases impossible, and finally that the extent and detail of the evidence requested is contrary to the spirit and intent of the formal agreements reached between the Governments of Mexico and the United States over four months ago.
of the two carriers mentioned, operations to the United States were already being conducted under a foreign air carrier permit and the changes or additions sought in effect constitute amendments to such permit pursuant to inter-governmental agreement. Procedural delays inherent in section 402 proceedings can place foreign carriers at a competitive disadvantage and bestow an unfair advantage on United States carriers in certain instances, as did occur in the case of the Acapulco routing. The CAB, by the simple expedient of an Exemption Order, authorized American, Braniff, Eastern, and Western to extend their operations to Acapulco.59 The Mexican government granted permits to each of these carriers to initiate service to Acapulco in advance of the 1 January 1966 implementation date. Both Braniff and Western initiated flights to Acapulco in early December before hearings had been held on the applications of either Aeronaves or Mexicana for amendment of their own permits, although these applications had been filed the preceding September. In both cases, Bureau Counsel called upon the carriers to produce voluminous evidence regarding their finances, operations, and related matters, most of which were already a matter of record. Mexicana, which had intended to inaugurate service to Corpus Christi on 2 January, was obliged to defer the start of service until 16 January.60 Such delays are inimical to the good relations which should prevail as a consequence of treaty arrangements and are sometimes a source of embarrassment to United States diplomatic representatives dealing with local officials.

D. Foreign Carrier Schedule Filing

Section 405(b) of the Federal Aviation Act and related Parts 231 and 234 of the Board's Economic Regulations requiring the filing of all schedules and changes thereto are applicable only to domestic carriers.61 As a matter of practicality, most foreign air carriers regularly file schedules and changes of schedule with the Board. Though there is no statutory

59 Application of Eastern Air Lines, Inc. for Exemption Order, CAB Docket Nos. 16403, 16420, 16432 and 16446, CAB Order No. E-22698 (28 Sept. 1965), issued pursuant to § 416(b) of the Federal Aviation Act of 1958, states:

Carrier planning for the winter season must be completed promptly. These circumstances have combined to prevent the Board and the carriers from completing the certification process in time to provide to the public air service benefits that both the United States and Mexican Governments manifestly wished to confer. To enforce § 401 of the act so as to require the carriers to await Board action on their applications for certificate authority would be an undue burden upon them due to the unusual circumstances of time and season affecting their operations, and would not be in the public interest as evidenced by the Air Transport Agreement between the United States and Mexico.

The § 416(b) provisions apply only to United States carriers and are not available to foreign carriers.

60 Application of Compania Mexicana De Aviacion, S.A. for Amendment to Foreign Air Carrier Permit, CAB Docket No. 16562, CAB Order No. E-23140 (4 Jan. 1966) approving Mexicana's application in CAB Docket No. 16562, received Presidential approval on 19 Jan. 1966. Due to this continued delay, Mexicana was obliged to further defer the initiation of service over this route until 15 February 1966.

obligation to do so, many foreign carriers are under the impression that
schedules must be filed with the Board. Failure to extend this particular
provision of section 405 to foreign as well as domestic air carriers is a
curious omission, especially since virtually every other country in the
world maintains a routine requirement for schedule filing by all carriers.
Such a requirement would have served to avoid all the furor which resulted
from Mexicana's augmented schedule of flights to the United States at the
end of 1964 in alleged,a violation of the "Gentlemen's Agreement." The
United States authorities were not even aware of the increase in schedules
until the new flights were already operating; faced with what amounted
to a fait accompli, they lacked legal authority to curtail the schedules and
had to rely on diplomatic measures which ultimately proved futile.

To summarize, it does not appear that a requirement for schedule filing
by foreign carriers with the CAB could in any sense be construed as un-
reasonable or burdensome. Certainly, foreign carriers, obliged in nearly
all cases by their own governments to file schedules, would not object to
such a requirement.

For the reasons enumerated at the beginning of this article, the Agree-
ment signed in Mexico City on 4 August 1965 has resulted in significant
and lasting changes in the structure of regular air services between Mexico
and the United States. These changes go far beyond the recital in the
Route Annex of services authorized for designated carriers of each country.
In the case of the United States, benefits resulting from revision of the
Air Transport Agreement consist primarily of greatly liberalized fre-
quencies and capacity for carriers of that country, with assurance of full
application of the pact's Bermuda principles by mid-1968. For Mexico,
the principal beneficiary would seem to be the tourist industry, the
importance of which has already been discussed and which should in turn
benefit those other sectors of the national economy of which it is an
integral component.

62 See text following note call 27 supra.
APPENDIX I
Routes per the Original "Memorandum of Understanding,"
Dated 7 March 1957

1. The aeronautical authorities of the Government of Mexico shall grant permits to airlines designated by the Government of the United States of America to operate air services on the air routes specified below, via intermediate points, in both directions, and to make regular stops at the points listed in this paragraph:
   B. Chicago, Dallas, San Antonio-Mexico City, via intermediate points in the United States.
   C. Los Angeles-Mexico City, via intermediate points in the United States.
   D. New Orleans-Mexico City.
   E. New Orleans-Merida and beyond, to Guatemala and beyond.
   F. Miami-Merida and beyond, to Guatemala and beyond.
   G. Houston, Brownsville-Tampico, Mexico City, Tapachula and beyond, to Guatemala and beyond.

The aeronautical authorities of the Government of the United States of America shall grant permits to airlines designated by the Government of Mexico to operate air services on each one of the air routes specified below, via intermediate points, in both directions, and to make scheduled stops at the points listed in this paragraph:
   A. Mexico City-Washington, New York.
   B. Mexico City-Chicago, via intermediate points in Mexico.
   C. Mexico City-Los Angeles, via intermediate points in Mexico.
   D. Mexico City-New Orleans, via intermediate points in Mexico.
   E. Mexico City-Miami and beyond, via intermediate points in Mexico.
   F. Mexico City-San Antonio, via intermediate points in Mexico.
   G. (Pending).  

2. Both Parties agree not to designate, for the present, more than one airline for each route.

3. An airline designated by either country may, at its discretion, omit stops on any of the routes specified on any or all flights.

APPENDIX II
Routes per the Definitive "Air Transport Agreement,"
Dated 15 August 1960

1. An airline or airlines designated by the Government of the United States of America shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled stops in Mexico at the points specified in this paragraph:
   B. Chicago, Dallas, Fort Worth-Mexico City, via intermediate points in the United States.
   C. Los Angeles-Mexico City, via intermediate points in the United States.
   D. New Orleans-Mexico City.
   E. New Orleans-Merida and beyond to Guatemala and beyond.
   F. Miami-Merida and beyond to Guatemala and beyond.

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By an exchange of Notes signed at Washington, 24 Feb. and 28 July 1958, it was agreed that this route should be La Paz, Baja California-Los Angeles, via intermediate points in Mexico.
G. Houston-Mexico City and beyond to Guatemala and beyond, via intermediate points in the United States.
H. San Antonio-Mexico City.
I. Miami, Tampa/St. Petersburg-Merida and Cozumel and beyond (cargo and mail only).
J. Miami, Tampa-Merida, Mexico City.

2. An airline or airlines designated by the Government of the United Mexican States shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled stops in the United States of America at the points specified in this paragraph:
B. Mexico City-Dallas, Fort Worth, Chicago, via intermediate points in Mexico.
C. Mexico City-Los Angeles, via intermediate points in Mexico.
D. Mazatlan, Torreon, Monterrey-San Antonio, via intermediate points in Mexico.
E. Mexico City-Miami and beyond.
F. La Paz, Baja California-Los Angeles, via intermediate points in Mexico.
G. Mexico City, Monterrey-San Antonio.
H. Hermosillo-Tucson, via intermediate points in Mexico.
I. (Pending).60

3. Points on any of the specified routes may at the option of the designated airlines be omitted on any or all flights with the exception of United States Route J, on which the designated airline is required to make an intermediate stop at Merida.

APPENDIX III

Routes per the 4 August 1965 Amendments to the Air Transport Agreement of 1960, to be operated during the period 1 January 1966 to 30 June 197067

1. An airline or airlines designated by the Government of the United States of America shall be entitled to operate air services on each of the air routes specified, in both directions, and to make scheduled stops in Mexico at the points specified in this paragraph:
A. New York-Mexico City, Acapulco.9
C. Chicago, Dallas, Fort Worth-Mexico City, Acapulco via San Antonio without the right to operate:
   (1) Non stop Chicago-Acapulco.
   (2) San Antonio-Acapulco (non stop or via Mexico City).
D. San Antonio-Mexico City, Acapulco.
E. Los Angeles-Mexico City, Acapulco via San Diego without the right to operate non stop San Diego-Acapulco.
F. New Orleans-Mérida and beyond to Central America and Panama and beyond.
G. Miami-Merida and beyond to Central America and Panama and beyond.
H. Houston-Mexico City and beyond to points in Central America and beyond, except that the carrier shall not provide non stop service between Mexico City and Panama.
I. Miami, Tampa/St. Petersburg-Merida, Cozumel and beyond (cargo and mail only).

* Non stop New York-Acapulco operation will be deferred until 1 July 1966.

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60 As part of the “Gentlemen’s Agreement” of 18 June 1960, this route was defined as “Mexico City-Detroit,” with the additional understanding that such service might extend beyond Detroit into Canada without traffic rights.
67 Diplomatic Note No. 213, 4 Aug. 1965, from the United States Ambassador to the Mexican Secretary of Foreign Relations.
J. Miami, Tampa-Merida, Mexico City.
K. Mission/McAllen/Edinburg-Monterrey.
L. Harlingen/San Benito-Veracruz via Tampico.

2. An airline or airlines designated by the Government of the United Mexican States shall be entitled to operate air services on each of the air routes specified, in both directions, and to make scheduled stops in the United States of America at the points specified in this paragraph:
   A. Acapulco, Mexico City-Washington, New York and beyond New York to Europe.
   B. Acapulco, Mexico City-Chicago.
   C. Mexico City-San Antonio, Dallas, Fort Worth via Monterrey or Guadalajara.
   D. Mexico City-Los Angeles via Guadalajara, Puerto Vallarta, Mazatlán.
   E. Acapulco, La Paz-Los Angeles via Tijuana.
   F. Mexico City-Miami and beyond.
   G. Mexico City-Detroit.**
   H. Guadalajara-Houston.
   I. Monterrey-Laredo, Corpus Christi.
   J. Hermosillo-Phoenix via Tucson.

** This route may be operated beyond Detroit to any point or points in Canada without traffic rights between Detroit and such point or points in Canada.

3. Points on any of the specified routes may at the option of the designated airlines be omitted on any or all flights with the exception of United States Route J, on which the designated airline is required to make an intermediate stop in Merida.

4. It is recognized that neither party will impose any unilateral restrictions on an airline or airlines of the other party with respect to capacity, frequencies, or type of aircraft employed over any route specified in the schedule annexed to this agreement.