

**No. 2604**

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**CANADA  
and  
MEXICO**

**Exchange of notes (with annexed schedule) constituting an agreement for air services between and beyond their respective territories. Mexico, 27 July 1953**

*Official texts: English and Spanish.*

*Registered by the International Civil Aviation Organization on 30 June 1954.*

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**CANADA  
et  
MEXIQUE**

**Échange de notes (avec tableau annexé) constituant un accord relatif aux services aériens entre leurs territoires respectifs et au-delà. Mexico, 27 juillet 1953**

*Textes officiels anglais et espagnol.*

*Enregistré par l'Organisation de l'aviation civile internationale le 30 juin 1954.*

No. 2604. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF MEXICO FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES. MEXICO, 27 JULY 1953

I

CANADIAN EMBASSY

No. 42

Mexico, D.F., July 27th, 1953

Excellency :

I have the honour to refer to the recent discussions held in Mexico City between officials of our respective governments relating to the establishment of air services between Canada and Mexico.

Both our Governments being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944<sup>2</sup>; desiring to conclude an Agreement for the purpose of establishing air services between and beyond Mexican and Canadian territories, and considering that as a result of the above mentioned discussions a mutually satisfactory Agreement was reached, its terms in the English language are as follows :

*Article I*

For the purpose of this Agreement, unless the context otherwise requires ; —

(a) the term "the Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof :

(b) the term "aeronautical authorities" means, in the case of Mexico, Secretaría de Comunicaciones y Obras Públicas, Dirección de Aeronáutica Civil, and any person or body authorized to perform any functions presently exercised by the said Secretaría de Comunicaciones y Obras Públicas, Dirección de Aeronáutica Civil, or similar functions, and in the case of Canada, the Minister of Transport, the Air Transport Board and any person or body authorized to perform any functions presently exercised by the said Minister or Board or similar functions :

(c) the term "designated airline" means an airline which one contracting party shall have designated, by written notification to the other contracting party, in accordance

<sup>1</sup> Came into force on 27 July 1953, by the exchange of the said notes.

<sup>2</sup> United Nations, *Treaty Series*, Vol. 15, p. 295 ; Vol. 26, p. 420 ; Vol. 32, p. 402 ; Vol. 33, p. 352 ; Vol. 44, p. 346 ; Vol. 51, p. 336 ; Vol. 139, p. 469, and Vol. 178, p. 418.

with Article 3 of this Agreement, for the operation of agreed services on the routes specified in such notification :

(d) the term "change of gauge" means the operation of one of the agreed services by a designated airline in such a way that one section of the route is flown by aircraft different in capacity from those used on another section.

(e) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State ; and

(f) the term "air services", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention.

#### *Article II*

(1) Each contracting party grants to the other contracting party the rights specified in this Agreement for the purpose of establishing the air services to be operated by virtue of the said Agreement on the routes specified in the appropriate Section of the Schedule<sup>1</sup> thereto (hereinafter called "the agreed services" and "the specified routes").

(2) Subject to the provisions of this Agreement, the airlines designated by each contracting party shall enjoy, while operating an agreed service on a specified route, the following privileges : —

- (a) to fly without landing across the territory of the other contracting party ;
- (b) to make stops in the said territory for non-traffic purposes ; and
- (c) to make stops in the said territory at the points specified for that route in the Schedule to this Agreement for the purpose of putting down and taking on traffic in persons, goods and mails coming from or destined for other points so specified.

(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the airlines of one contracting party the privilege of taking up, in the territory of the other contracting party, persons, goods, or mails carried for hire or reward and destined for another point in the territory of that other contracting party.

#### *Article III*

(1) Each contracting party shall have the right to designate in writing to the other contracting party one or more airlines for the purpose of operating the agreed services on the specified routes.

(2) Each contracting party shall have the right by written notification to the other contracting party to withdraw the designation of an airline and to substitute the designation of another airline.

(3) On receipt of the designation, the other contracting party shall, subject to the provisions of paragraph (4) and (5) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorization.

(4) The aeronautical authorities of one contracting party may require an airline designated by the other contracting party to satisfy them that it is qualified to fulfil

<sup>1</sup> See p. 262 of this volume.

the conditions prescribed under the laws and regulations normally and reasonably applied by them in conformity with the provisions of the Convention to the operation of international commercial air services.

(5) Each contracting party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of Article II of this Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the contracting party designating the airline or in nationals of the contracting party designating the airline.

(6) Subject to the provisions of Article 7 of this Agreement, at any time after the provisions of paragraphs (1) and (3) of this Article have been complied with, an airline so designated and authorized may begin to operate the agreed services.

(7) Each contracting party shall have the right to suspend the exercise by an airline of the privileges specified in paragraph (2) of Article II of this Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where the airline fails to comply with the laws or regulations of the contracting party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in this Agreement; provided that, unless immediate suspension or imposition of conditions is essential to prevent further infringements of laws or regulations, this right shall be exercised only after consultation with the other contracting party.

#### *Article IV*

Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores introduced into the territory of one contracting party, or taken on board aircraft in that territory, by or on behalf of the other contracting party or its designated airline or airlines and intended solely for use by or in the aircraft of those airlines shall be accorded by the first contracting party, in respect of customs duties, inspection fees and other similar national or local duties and charges, treatment not less favourable than that accorded to similar supplies introduced into the said territory, or taken on board aircraft in that territory, and intended for use by or in the aircraft of a national airline of the first contracting party, or of the most favoured airline of any other State, engaged in international air services.

#### *Article V*

(1) There shall be fair and equal opportunity for the airlines of both contracting parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services, the airlines of each contracting party shall take into account the interests of the airlines of the other contracting party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) On any specified route the capacity, including frequency, provided by the designated airlines of one contracting party together with capacity, including frequency, provided by the designated airlines of the other contracting party shall be maintained

in reasonable relationship to the requirements of the public for air transport on that route.

(4) In the application of the principles stated in the preceding paragraphs of this Article :—

- (a) The agreed services provided by a designated airline shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and reasonably expected requirements of that airline for the carriage of traffic originating in or destined for the territory of the contracting party which has designated the airline.
- (b) The capacity provided under sub-paragraph (a) above may be augmented by supplementary capacity adequate for the carriage of international air traffic both originating at and destined for points on the specified routes in the territories of States other than that designating the airline. Such additional capacity shall be related to traffic demands of the areas through which the airline operates, after taking account of the air services so established by airlines of the other contracting party and of the States referred to above insofar as they are carrying international air traffic originating in or destined for their territories.

(5) Nothing in this Article shall prevent unfilled space in any aircraft operated in accordance with this Article from being used for the carriage of any international air traffic offered.

#### *Article VI*

A designated airline of one contracting party may make a change of gauge at a point in the territory of the other contracting party only on the following conditions :—

- (I) that it is justified by reason of economy of operation :
- (II) that the aircraft used on the section on which less traffic is carried by the airline to and from the territory of the first contracting party are smaller in capacity than those used on the other section :
- (III) that the aircraft of smaller capacity shall operate only in connection with the aircraft of larger capacity and shall be scheduled so to do ; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity ; and their capacity shall be determined with primary reference to this purpose ;
- (IV) that there is an adequate volume of through traffic ; and
- (V) that the provisions of article 5 of this Agreement shall govern all arrangements made with regard to change of gauge.

#### *Article VII*

(1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, characteristics of service (such as Standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be determined in accordance with the following provisions of this Article.

(2) The tariffs referred to in paragraph (1) of this article shall, if possible, be agreed in respect of each route between the designated airlines of the contracting parties, in accordance with other airlines operating over the whole or part of that route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both contracting parties.

(3) In the event of disagreement between the designated airlines concerning the tariffs, the aeronautical authorities of the contracting parties shall endeavour to determine them by agreement between themselves.

(4) A designated airline of either contracting party shall file with the aeronautical authorities of both contracting parties any tariff determined under paragraph (2) of this Article which it proposes to establish, at least thirty days before the date on which it proposes that the tariff shall come into effect ; provided that the aeronautical authorities of the contracting parties may in particular cases vary the period of thirty days.

(5) If the aeronautical authorities of one of the contracting parties are dissatisfied with a tariff filed in accordance with paragraph (4) of this Article they shall so notify in writing the aeronautical authorities of the other contracting party and any designated airline filing the tariff in dispute, within fifteen days of the date of filing or in particular cases within such other period as may be agreed by both authorities.

(6) After notification under paragraph (5) of this Article, the aeronautical authorities of both contracting parties shall endeavour to secure agreement on the tariff to be established.

(7) If the aeronautical authorities of the contracting parties cannot secure agreement, the dispute shall be settled in accordance with the provisions of Article X of this Agreement.

(8) If agreement has not been reached at the end of thirty (30) day period referred to in paragraph (4) above, a disputed tariff on the agreed services shall remain in suspension until the dispute shall have been settled.

(9) Nothing in this Article shall affect the right of either contracting party to disallow an offending tariff between a third country and point in the territory of the dissatisfied contracting party.

(10) If no notification is given under paragraph (5) of this Article, a tariff filed under paragraph (4) of this Article shall come into effect after the expiry of the period specified in paragraph (4) and shall remain in effect until :

(a) The expiry of any period for which the aeronautical authorities of either contracting party may have approved its effectiveness ; or

(b) a new or amended tariff shall have been established, in substitution therefore, in accordance with the provisions of this Article, whichever is the earlier.

(11) (a) A new or amended tariff in substitution for an established tariff may be filed by a designated airline at any time, and the provisions of this Article shall apply thereto as if it were a first tariff ; provided that the aeronautical authorities of the contracting parties may by agreement between them adopt procedures for the filing and establishment of amended tariffs within shorter periods than those specified in paragraphs (4) and (5) of this Article.

(b) The aeronautical authorities of one contracting party may, with the consent of the aeronautical authorities of the other contracting party, at any time require a designated airline to file a new or amended tariff, and the provisions of this Article shall apply thereto as if it were a first tariff.

#### *Article VIII*

The aeronautical authorities of either contracting party shall supply to the aeronautical authorities of the other contracting party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first contracting party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

#### *Article IX*

There shall be regular and frequent consultation between the aeronautical authorities of the contracting parties to ensure close collaboration in all matters affecting the fulfilment of this Agreement.

#### *Article X*

(1) If any dispute arises between the contracting parties relating to the interpretation or application of this Agreement, the contracting parties shall in the first place endeavour to settle it by negotiation between themselves.

(2) If the contracting parties fail to reach a settlement by negotiation, (a) it shall be submitted to a tribunal of three arbitrators, one to be named by each contracting party, and the third, who will act as Chairman of the tribunal, to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either contracting party. Each of the contracting parties shall designate an arbitrator within sixty days of the date of delivery by either party to the other party of a diplomatic note requesting arbitration of a dispute; and the third arbitrator shall be agreed upon within thirty days after such period of sixty days. If the third arbitrator is not agreed upon, within the time limitation indicated, the vacancy thereby created shall be filled by the appointment of a person, designated by the President of the Council of ICAO, from a panel or arbitral personnel maintained in accordance with the practice of ICAO. The contracting parties undertake to comply with any decision given under this Article. A moiety of the expenses of the arbitral tribunal shall be borne by each party.

(3) If and so long as either contracting party or a designated airline of either contracting party fails to comply with a decision given under paragraph (2) of this Article, the other contracting party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the contracting party in default or to the designated airline or airlines of that contracting party or to the designated airline in default.

#### *Article XI*

(1) If either of the contracting parties considers it desirable to modify any provision of this Agreement such modification, if agreed between the contracting parties, shall come into effect when confirmed by an Exchange of Notes.

(2) In the event of the conclusion of any general multilateral convention concerning air transport by which both contracting parties become bound, this Agreement shall be amended so as to conform with the provisions of such convention to the extent necessary to so conform.

#### Article XII

Either contracting party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. If such notice is given, this Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other contracting party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other contracting party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

#### Article XIII

This Agreement and any Exchange of Notes in accordance with Article XI shall be registered by either the Government of Canada or the Government of Mexico with the International Civil Aviation Organization.

### SCHEDULE

#### SECTION I

##### *Specified routes*

Routes to be operated in both directions by the designated airline or airlines of the Government of Mexico.

<i>Point of Departure</i>	<i>Intermediate points (any one or more of the following if desired)</i>	<i>Destination in Canadian Territory</i>	<i>Points beyond (any one or more of the following if desired)</i>
1. Mexico City	Points in the Western U.S.A. to be agreed on	Vancouver	Points beyond in the Northern Pacific area to be agreed
2. Mexico City	St. Louis, Missouri, or other points in the Eastern U.S.A. to be agreed. Toronto, Canada* (see note below)	Montreal	Points beyond to be agreed

\* NOTE — On Route 2 carriage of traffic to points beyond Montreal which may be agreed will not apply out of Toronto.



## SECTION II

*Specified routes*

Routes to be operated in both directions by the designated airline or airlines of the Government of Canada.

<i>Point of Departure</i>	<i>Intermediate points (any one or more of the following if desired)</i>	<i>Destination in Mexican Territory</i>	<i>Points beyond (any one or more of the following if desired)</i>
1. Vancouver	San Francisco or other points in the Western U.S.A. to be agreed.	Mexico City	Lima, Peru and Sao Paulo, Brazil or other points in South America to be agreed.
2. Montreal or Toronto	Tampa, or other points in the Eastern U.S.A. to be agreed. Monterrey, Mexico * (see note below)	Mexico City	Points in South America to be agreed.

\* NOTE — On Route 2 carriage of traffic to points beyond Mexico City which may be agreed will not apply out of Monterrey.

## SECTION III

It is understood that on any of the specified routes an airline designated by either country may serve any point on the reasonably direct line of flight in the territory of the Government designating such airline.

I have the honour to propose to Your Excellency, if the above mentioned stipulations are agreeable to your Government, that this Note and your reply will constitute an Agreement between the Government of Canada and the Government of Mexico for air services between and beyond their respective territories. The Agreement will come into force upon the date of your reply.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

(Signed) C. P. HÉBERT

His Excellency Lic. Luis Padilla Nervo  
Minister of External Relations  
Mexico, D.F.

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

Mexico, D. F., July 27, 1953

Sir :

I have the honour to acknowledge receipt of your Note No. 42 of the 27th instant in which reference is made to the discussions between officers of our Governments concerning the establishment of air services between Mexico and Canada.

Since the two countries are among the contracting parties of the International Civil Aviation Convention opened for signature at Chicago on December 7, 1944, and since both are desirous of concluding an Agreement for the establishment of air services between the territories of Mexico and Canada and beyond, I am pleased to see that our Representatives have reached a satisfactory agreement as a result of the discussions referred to, an English version of which you have had the kindness to transmit to me. The Spanish version reads as follows :

[See note I]

I am pleased to inform Your Excellency that the Government of Mexico accepts the proposal of your Government according to the terms of your Note No. 42 above transcribed and agrees to consider Your Excellency's Note and the present Note as an Agreement between the Government of the United States of Mexico and the Government of Canada for the operation of air services between their respective territories and beyond, which shall enter into force on this date.

I take this opportunity, etc.

(Signed) L. P. N.

Hon. Charles Pierre Hébert  
Ambassador Extraordinary and Plenipotentiary  
City

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<sup>1</sup> Translation communicated by the International Civil Aviation Organization.

<sup>2</sup> Traduction transmise par l'Organisation de l'aviation civile internationale.