

No. 4042

**UNITED STATES OF AMERICA
and
MEXICO**

**Exchange of notes (with Memorandum of Understanding
and annex) constituting a provisional arrangement
relating to air transport services. Mexico, 7 March 1957**

Official texts: English and Spanish.

Registered by the United States of America on 25 October 1957.

**ÉTATS-UNIS D'AMÉRIQUE
et
MEXIQUE**

**Échange de notes (avec Mémorandum d'accord et annexe)
constituant un accord provisoire relatif aux transports
aériens. Mexico, 7 mars 1957**

Textes officiels anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 25 octobre 1957.

No. 4042. EXCHANGE OF NOTES CONSTITUTING A PROVISIONAL ARRANGEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND MEXICO RELATING TO AIR TRANSPORT SERVICES. MEXICO, 7 MARCH 1957

I

The Mexican Secretary of Foreign Relations to the American Ambassador

[SPANISH TEXT — TEXTE ESPAGNOL]

SECRETARÍA DE RELACIONES EXTERIORES
ESTADOS UNIDOS MEXICANOS
MÉXICO

501404

México, D. F., a 7 de marzo de 1957

Señor Embajador :

Tengo el honor de manifestar a Vuestra Excelencia que el Gobierno de México, en el deseo de contribuir al mejoramiento de los transportes aéreos entre nuestros dos países, está dispuesto a celebrar un arreglo provisional sobre aviación civil con el Gobierno de los Estados Unidos de América, en los términos del Memorándum de Entendimiento y su Anexo, que acompaño a la presente nota.

Si, como tengo entendido, el Gobierno de los Estados Unidos de América está anuente también a concluir tal arreglo sobre las mismas bases, la presente nota y la nota de respuesta de Vuestra Excelencia por la que tenga a bien comunicarme que su Gobierno acepta el Memorándum de Entendimiento y su Anexo arriba mencionados, constituirán un arreglo provisional sobre aviación civil entre los dos Gobiernos.

Aprovecho esta oportunidad para reiterar a Vuestra Excelencia las seguridades de mi más alta consideración.

L. P. N.

Anexos.

Excelentísimo Señor Francis White
Embajador Extraordinario y Plenipotenciario
de los Estados Unidos de América
Ciudad

¹ Came into force on 5 June 1957, ninety days after the date of the exchange of notes, in accordance with paragraph 5 of the memorandum of understanding.

[TRANSLATION — TRADUCTION]

MINISTRY OF FOREIGN RELATIONS
UNITED MEXICAN STATES
MEXICO

Mexico, D. F., 7 March 1957

501404

[See note II]

L. P. N.

Enclosures.

His Excellency Francis White
Ambassador Extraordinary and Plenipotentiary
of the United States of America
City

II

The American Ambassador to the Mexican Secretary of Foreign Relations

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

No. 942

Mexico, D. F., March 7, 1957

Excellency :

I have the honor to acknowledge the receipt of Your Excellency's note no. 501404 of today's date, together with the attached Memorandum of Understanding and Annex, which read in translation as follows :

"Mr. Ambassador :

"I have the honor to advise Your Excellency that the Government of Mexico, in a desire to contribute to the improvement of air transport between our two countries, is prepared to execute a provisional arrangement regarding civil aviation with the Government of the United States of America in the terms of the Memorandum of Understanding and its Annex which I attach to the present note.

"If, as I understand is the case, the Government of the United States of America is also willing to conclude such an arrangement on this basis, the present note and the note in reply from Your Excellency communicating your Government's acceptance of the Memorandum of Understanding and its Annex above mentioned, shall constitute a provisional arrangement regarding civil aviation between the two Governments.

"I take this occasion to renew to Your Excellency the assurances of my highest consideration.

“ MEMORANDUM OF UNDERSTANDING

“ 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 :

- “ A. New York, Washington–Mexico City.
- “ 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 regular 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.

“ 4. The aeronautical operations of the designated lines shall be governed by the principles set forth in the Annex to the present Memorandum of Understanding.

“ 5. The present Provisional Arrangement shall enter into force ninety days after the date of the exchange of notes.

“ 6. The Arrangement shall terminate June 30, 1959.

“ 7. Upon request of either Government, prior to May 30, 1959, talks may be initiated to reach an agreement concerning a system to regulate air transport subsequent to June 30, 1959, between the two countries.

“ ANNEX

“ I

“ (A) The term “ aeronautical authorities ” means, in the case of the United States of America, the Civil Aeronautics Board or any person or agency authorized to perform the functions exercised at the present time by the Civil Aeronautics Board; and, in the case of the United Mexican States, the Ministry of Communications and Public Works or any person or agency authorized to perform the functions exercised at present by the said Ministry of Communications and Public Works.

“ (B) The term “ designated airline ” means an airline that one Party has notified to the other Party, in writing, to be the airline which will operate a specific route or routes listed in the Memorandum of Understanding.

“ (C) The term “ territory ” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, mandate or trusteeship of that State.

“ (D) The term “ air service ” means scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

“ (E) The term “ international air service ” means an air service which flies over the territory of more than one State.

“ (F) The term “ stop for non-traffic purposes ” means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

“ II

“ Each Party grants to the other Party rights necessary for the conduct of air services by the designated airlines, as follows: the rights of transit, of stops for non-traffic purposes, and of commercial entry and departure for international traffic in passengers, cargo, and mail at the points in its territory named on each of the routes specified in the Memorandum of Understanding. The fact that such rights may not be exercised immediately shall not preclude the subsequent inauguration of air services by the airlines of the Party to whom such rights are granted over the routes specified in the Memorandum of Understanding.

“ III

“ Air service on a specified route may be inaugurated immediately or at a later date at the option of the Party to whom the rights are granted, by an airline or airlines of such Party, at any time after that Party has designated such airline or airlines for the route and the other Party has given the appropriate operating permission. Such other Party shall, subject to Section IV, be bound to give this permission provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that Party, under the laws and regulations normally applied by these authorities, before being permitted to engage in the operations contemplated by the Memorandum of Understanding and this Annex.

“ IV

“ Each Party reserves the right to withhold or revoke the operating permission provided for in Section III of this Annex from an airline designated by the other Party in the event that it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other Party or in case of failure by such airline to comply with the laws and regulations referred to in Section V of the present Annex, or in case of the failure of the airline or the Government designating it to fulfill the conditions under which the rights are granted in accordance with the Provisional Arrangement.

“ V

“ (A) The laws and regulations of one Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline or airlines designated by the other Party and shall be complied with by such aircraft upon entering or departing from and while within the territory of the first Party.

“ (B) The laws and regulations of one Party relating to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo of the other Party upon entrance into or departure from, and while within the territory of the first Party.

“ VI

“ Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party, and still in force, shall be recognized as valid by the other Party for the purpose of operating the routes and services provided for in the Memorandum of Understanding and in the present Annex, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation.¹ Each Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another State.

“ VII

“ In order to prevent discriminatory practices and to assure equality of treatment, both Parties agree further to observe the following principles :

“ (a) Each of the Parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control. Each of the Parties agrees, however, that these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

¹ 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; Vol. 178, p. 420; Vol. 199, p. 362, and Vol. 252, p. 410.

“(b) Fuel, lubricating oils, consumable technical supplies, spare parts, regular equipment, and stores introduced into the territory of one Party by the other Party or its nationals, and intended solely for use by aircraft of such Party shall be exempt on a basis of reciprocity from customs duties, inspection fees and other national duties or charges.

“(c) Fuel, lubricating oils, other consumable technical supplies, spare parts, regular equipment, and stores retained on board aircraft of the airlines of one Party authorized to operate the routes and services provided for in the Memorandum of Understanding and in this Annex shall, upon arriving in or leaving the territory of the other Party, be exempt on a basis of reciprocity from customs duties, inspection fees and other national duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

“(d) Fuel, lubricating oils, other consumable technical supplies, spare parts, regular equipment, and stores taken on board aircraft of the airlines of one Party in the territory of the other and used in international services shall be exempt on a basis of reciprocity from customs duties, excise taxes, inspection fees and other national duties or charges.

“ VIII

“ There shall be a fair and equal opportunity for the airlines of each Party to operate on the routes listed in the Memorandum of Understanding.

“ IX

“ In the operation by the airlines of either Party of the trunk services described in the Memorandum of Understanding the interest of the airlines of the other Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes.

“ X

“ The services made available to the public by the airlines operating under the Provisional Arrangement shall bear a close relationship to the requirements of the public for such services.

“ It is understood that services provided by a designated airline under the Memorandum of Understanding and the present Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the countries of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the Memorandum of Understanding shall be applied in accordance with the general principles of orderly development to which both Parties subscribe and shall be subject to the general principle that capacity should be related :

“(a) to traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

“(b) to the requirements of through airline operation; and,

“(c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

“ Both Parties agree to recognize that the fifth freedom traffic is complementary to the traffic requirements on the routes between the territories of the Parties, and at the same time is subsidiary in relation to the traffic requirements of the third and fourth freedoms between the territory of the other Party and a country on the route.

“ In this connection both Parties recognize that the development of local and regional services is a legitimate right of each of their countries. They agree therefore to consult periodically on the manner in which the standards mentioned in this section are being complied with by their respective airlines, in order to assure that their respective interests in the local and regional services as well as through services are not being prejudiced.

“ Every change of gauge justifiable for reasons of economy of operation, shall be permitted at any stop on the designated routes. Nevertheless, no change of gauge may be made in the territory of one or the other Party when it modifies the characteristics of the operation of a through airline service or if it is incompatible with the principles enunciated in the present Annex.

“ When one of the Parties after a period of observation of not less than ninety days considers that an increase in capacity or frequency offered by an airline of the other Party is unjustified or prejudicial to the services of its respective airline it shall notify the other Party of its objection to the end that consultation be initiated between the appropriate aeronautical authorities and decision on the objection be made by mutual agreement within a period which may not be more than ninety days beginning on the date of such notification. For this purpose the operating companies shall supply all traffic statistics that may be necessary and required of them.

“ XI

“ Rates to be charged on the routes provided for in the Memorandum of Understanding shall be reasonable, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service, and shall be determined in accordance with the following paragraphs :

“ (A) The rates to be charged by the airlines of either Party between points in the territory of the United States of America and points in the territory of the United Mexican States referred to in the Memorandum of Understanding shall, consistent with the provisions of the present Annex, be subject to the approval of the aeronautical authorities of the Parties, who shall act in accordance with their obligations under the Provisional Arrangement, within the limits of their legal powers.

“ (B) Any rate proposed by an airline of either Party shall be filed with the aeronautical authorities of both Parties at least thirty (30) days before the proposed date of introduction; provided that this period of thirty (30) days may be reduced in particular cases if so agreed by the aeronautical authorities of both Parties.

“ (C) During any period for which the Civil Aeronautics Board of the United States of America has approved the traffic conference procedures of the International Air Transport Association (hereinafter called IATA), any rate agreements concluded through these procedures and involving United States airlines will be subject to approval of the Board. Likewise, agreements concluded through this machinery may also be required

to be subject to the approval of the aeronautical authorities of the United Mexican States pursuant to the principles enunciated in paragraph (A) above.

“(D) The procedure described in paragraphs (E), (F) and (G) of this section shall apply :

“ 1. If, during the period of the approval by both Parties of the IATA traffic conference procedure, either, any specific rate agreement is not approved within a reasonable time by either Party, or, a conference of IATA is unable to agree on a rate, or

“ 2. At any time no IATA procedure is applicable, or

“ 3. If either Party at any time withdraws or fails to renew its approval of that part of the IATA traffic conference procedure relevant to this section.

“(E) In the event that power is conferred by law upon the aeronautical authorities of the United States of America to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States of America, each of the Parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its airlines for services from the territory of one Party to a point or points in the territory of the other Party from becoming effective, if in the judgment of the aeronautical authorities of the Party whose airline or airlines is or are proposing such rate, that rate is unfair or uneconomic. If one of the Parties on receipt of the notification referred to in paragraph (B) above is dissatisfied with the rate proposed by the airline or airlines of the other Party, it shall so notify the other Party prior to the expiry of the first fifteen (15) of the thirty (30) days referred to, and the Parties shall endeavor to reach agreement on the appropriate rate.

“ In the event that such agreement is reached, each Party will exercise its best efforts to put such rate into effect as regards its airline or airlines.

“ If agreement has not been reached at the end of the thirty (30) day period referred to in paragraph (B) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (G) below.

“(F) Prior to the time when such power may be conferred upon the aeronautical authorities of the United States of America, if one of the Parties is dissatisfied with any rate proposed by the airline or airlines of either Party for services from the territory of one Party to a point or points in the territory of the other Party, it shall so notify the other Party prior to the expiry of the first fifteen (15) of the thirty (30) day period referred to in paragraph (B) above, and the Parties shall endeavor to reach agreement on the appropriate rate.

“ In the event that such agreement is reached, each Party will use its best efforts to cause such agreed rate to be put into effect by its airline or airlines.

“ If no agreement can be reached prior to the expiry of such thirty (30) days, the Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

“(G) When in any case under paragraphs (E) or (F) of this section the aeronautical authorities of the two Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Party concerning a proposed rate or an existing rate of the airline or airlines of the other Party, upon the request of either, the terms of Section XIII of this Annex shall apply.

“ XII

“ Consultation between the competent authorities of both Parties may be requested at any time by either Party for the purpose of discussing the interpretation, application, or amendment of the Provisional Arrangement or route schedule (point 1 of the Memorandum of Understanding). Such consultation shall begin within a period of sixty (60) days from the date of the receipt of the request by the Department of State of the United States of America or the Ministry of Foreign Relations of the United Mexican States as the case may be. Should agreement be reached on amendment of the Provisional Arrangement or schedule of routes such amendment will come into effect upon confirmation by a further exchange of diplomatic notes.

“ XIII

“ Except as otherwise provided, any dispute between the Parties relative to the interpretation or application of the Provisional Arrangement which cannot be settled through consultation shall be submitted for an advisory report to a tribunal of three arbitrators, one to be named by each Party, and the third to be agreed upon by the two arbitrators so chosen, provided that such a third arbitrator shall not be a national of either Party. Each of the Parties shall designate an arbitrator within two months 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 one month after such period of two months.

“ If either of the Parties fails to designate its own arbitrator within two months, or if the third arbitrator is not agreed upon within the time limit indicated, either Party may request the President of the International Court of Justice to make the necessary appointment or appointments by choosing the arbitrator or arbitrators.

“ The Parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. A moiety of the expenses of the arbitral tribunal shall be borne by each Party.

“ XIV

“ The Provisional Arrangement, all amendments thereto, and contracts connected therewith shall be registered with the International Civil Aviation Organization.

“ XV

“ If a general multilateral air transport convention accepted by both Parties enters into force, the Provisional Arrangement shall be amended so as to conform with the provisions of such convention.

“ XVI

“ Either of the two Parties may at any time notify the other Party of its intention to terminate the Provisional Arrangement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. In case such notification should be given, the Arrangement would terminate six months after the date on which the notice of termination may have been received, unless the communication under reference is annulled before the end of this period by agreement between both Parties. Should the other Party not acknowledge receipt it shall be considered that the notification was received by it 14 days subsequent to the date on which it is received by the International Civil Aviation Organization.

“ XVII

“ Upon entry into effect of the Provisional Arrangement the aeronautical authorities of the two Parties must communicate to each other as soon as possible the information relating to authorizations given to the airline or airlines designated by them to operate the routes mentioned in the Memorandum of Understanding.

“ XVIII

“ The aeronautical authorities of both Parties shall respectively advise each other eight days before the actual placing in operation of their respective permits the following data : schedules, frequencies, tariffs and types of aircraft normally utilized in their services. Any modification of the data under reference shall similarly be communicated.”

In reply, I have the honor to advise Your Excellency that the Government of the United States of America is prepared to conclude a provisional arrangement on the basis proposed in Your Excellency's note, Memorandum of Understanding and Annex under reference, and accepts your proposal to regard that note, the Memorandum of Understanding and Annex and the present reply as constituting a provisional arrangement regarding civil aviation between our two Governments.

Please accept, Excellency, the renewed assurances of my highest consideration.

Francis WHITE

His Excellency Sr. Lic. Luis Padilla Nervo
Secretary of Foreign Relations
Mexico, D. F.
