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AVIATION

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UNITED STATES-CUBA HIJACKING AGREEMENT

The United States and Cuba reached an understanding on February 15, 1973 on the subject of hijacking. In the absence of diplomatic relations the format used in 1965 for the Freedom Airlift Program, with the Swiss acting as intermediaries, was used by the parties.

The text of the Agreement entitled "Memorandum of Understanding on Hijacking of Aircraft and Vessels and Other Offenses" follows:

The Government of the United States of America and the Government of the Republic of Cuba, on the bases of equality and strict reciprocity, agree:

FIRST: Any person who hereafter seizes, removes, appropriates or diverts from its normal route or activities an aircraft or vessel registered under the laws of one of the parties and brings it to the territory of the other party shall be considered to have committed an offense and therefore shall either be returned to the party of registry of the aircraft or vessel to be tried by the courts of that party in conformity with its laws or be brought before the courts of the party whose territory he reached for trial in conformity with its laws for the offense punishable by the most severe penalty according to the circumstances and the seriousness of the acts to which this Article refers. In addition, the party whose territory is reached by the aircraft or vessel shall take all necessary steps to facilitate without delay the continuation of the journey of the passengers

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and crew innocent of the hijacking of the aircraft or vessel in question, with their belongings, as well as the journey of the aircraft or vessel itself with all goods carried with it, including any funds obtained by extortion or other illegal means, or the return of the foregoing to the territory of the first party; likewise, it shall take all steps to protect the physical integrity of the aircraft or vessel and all goods, carried with it, including any funds obtained by extortion or other illegal means, and the physical integrity of the passengers and crew innocent of the hijacking, and their belongings, while they are in its territory as a consequence of and in connection with the acts to which this Article refers.

In the event that the offenses referred to above are not punishable under the laws existing in the country to which the persons committing them arrived, the party in question shall be obligated, except in the case of minor offenses, to return the persons who have committed such acts, in accordance with the applicable legal procedures, to the territory of the other party to be tried by its courts in conformity with its laws.

SECOND: Each party shall try with a view to severe punishment in accordance with its laws any person who, within its territory, hereafter conspires to promote, or promotes, or prepares, or directs, or forms part of an expedition which from its territory or any other place carries out acts of violence or depredation against aircraft or vessels or any kind or registration coming from or going to the territory of the other party or who, within its territory, hereafter conspires to promote, or promotes, or prepares, or directs, or forms part of an expedition which from its territory or any other place carries out such acts or other similar unlawful acts in the territory of the other party.

THIRD: Each party shall apply strictly its own laws to any national of the other party who, coming from the territory of the other party, enters its territory, violating its laws as well as national and international requirements pertaining to immigration, health, customs and the like.

FOURTH: The party in whose territory the perpetrators of the acts described in Article FIRST arrive may take into consideration any extenuating or mitigating circumstances in

those cases in which the persons responsible for the acts were being sought for strictly political reasons and were in real and imminent danger of death without a viable alternative for leaving the country, provided there was no financial extortion or physical injury to the members of the crew, passengers, or other persons in connection with the hijacking.

FINAL PROVISIONS: This Agreement may be amended or expanded by decision of the parties.

This agreement shall be in force for five years and may be renewed for an equal term by express decision of the parties.

Either party may inform the other of its decision to terminate this Agreement at any time while it is in force by written denunciation submitted six months in advance.

This Agreement shall enter into force on the date agreed by the parties.

Done in English and Spanish texts, which are equally authentic.

The United States-Cuban accord was the subject of a hearing before the Subcommittee on Inter-American Affairs of the Committee on Foreign Affairs of the House of Representatives on February 20, 1973.

CUBAN AIRLIFT

On March 22, 1973, the Cuban government informed the U. S. State Department that the list of those qualified to leave the country was running out and only ten more flights were required to exhaust the list. April 6, 1973 marked the end of the Airlift Program which began in 1965.

FOREIGN CARRIERS' ON-ROUTE CHARTERS

A unanimous CAB decision requiring foreign carriers to obtain prior Board approval for on-route charters, if their governments restrict U. S. carriers' operations, has been approved by President Nixon. The Board said the action would "place the U. S. government on a parity with other governments in relation to the control of on-route charters." Most foreign countries exercise advance approval powers which the Board

said imposes a "real burden on the (U. S.) carriers and has adverse consequences for them as well as for travel agents and the ultimate charterers."

The Board added that the restrictive policies of several foreign nations "fully justify the Board in equipping itself with the tools to combat such restrictions as may be unwarranted."

Specifically, the Board cited Israel's total ban on charters; bans on inclusive tour charters and split charters by six European nations plus Japan, Australia, Bermuda and Brazil; volume, price and other charter restrictions by nine European nations plus Australia, Bermuda, Mexico, Japan and Tahiti; first-refusal restrictions by Ireland, Mexico, Brazil, Venezuela, Canada, Australia and Ethiopia; and the imposition of a charter ban as a bilateral negotiation tactic by Belgium and Japan.

The decision revises the Board's economic regulations to provide that foreign carriers will remain entirely free to conduct on-route charters without prior Board approval unless the Board affirmatively invokes the new rule. However, once the rule is imposed, the foreign carrier must apply for a "statement of authorization" before it performs any on-route charter. Whether the applicant's government grants similar privileges to U. S. carriers will be a primary factor in the Board's approval of such applications. No change will be made in present procedures applicable to off-route charters.

The Board stressed its intent to use the new authority only as necessary to deter and retaliate against unwarranted restrictions of foreign governments, and emphasized that the rules are not a departure from the CAB's traditional liberal charter policy. The new regulations provide for a ten-day period in which the President may stay or disapprove the Board's actions on any prior approval application. Such additional protection, said the Board, should negate any possibility that foreign governments will use the new regulations as the basis for further restrictive actions against U. S. charter operations.

USER CHARGES

An historically little known item of airline expenses — user charges — is skyrocketing. Included under this heading are, landing fees, traffic control and en route navigation charges, fuel through-put charges and head taxes which are paid by the airlines. The increase recently has been

in excess of 15% per year for U. S. flag international operations. U. S. carriers paid \$82 million in user charges in 1969 and \$125 million in 1972.

Looking at landing fees extreme variations exist, for example: a B-707 landing at Detroit costs \$20, at Lisbon it is \$230, New York is \$340 and the charge at Prestwick is \$808. The average landing fee for a 747 in the United States is \$250, at foreign airports the average is \$1,120. There is growing concern about the impact of these charges on airline economics and on international balance of payments.

In order to provide specific recommendations for standardization and equity in the area of international user charges, ICAO, in 1956 and 1958, held conferences on charges for airports and enroute facilities and services respectively. Again in 1967 another ICAO conference on airport and enroute charges was held, and that conference developed the current ICAO publication entitled "Statements by the Council to Contracting States on Charges for Airports and Route Air Navigation Facilities." Once again the international user charge situation, and particularly the ICAO document just referred to, were reviewed at a conference completed in Montreal on February 23, 1973.

At the heart of the matter is the fact that foreign user charges cannot be negotiated, and United States airlines have no leverage on foreign governments. Although U. S. diplomatic efforts in several instances have produced limited results (particularly by bilateral agreements), it appears that other means of solving the international user charge problem must be found.

AIR SPACE LIMITS

The United States on March 21, 1973 protested what it claimed was an unprovoked attack by Libyan Mirage jet fighters on an American C-130 aircraft over international waters. The United States had previously informed Libya that it could not recognize its claim to restrict aircraft within 100 miles of Tripoli, the Libyan capital, since it would restrict air space extending over international waters.

PRECLEARANCES

U. S. Customs and Treasury officials are attempting to stop preclearances, in effect some twenty years, under the premise that a halt

to the preclearance program will aid in the fight against the introduction of narcotics into the United States. Preclearance allows returning U. S. travelers to undergo processing at certain foreign airports rather than upon arrival in the United States.

One of the primary complaints of Customs is that preclearance is an ineffective screening device forcing U. S. employees to work in foreign airports without the authority for successful processing. It has been suggested that if Canada, Bermuda and the Bahamas will grant U.S. agents the right to make arrests on their soil, some of the problems could be eliminated.

There is much controversy over the issue, partially because of a lack of conclusive evidence to support Customs charges and the potential inconvenience to airline passengers.

Congress is scheduled to make a final decision on the matter prior to June 30, 1973.

SUPERSONIC TRANSPORT

The Joint Subcommittee on Priorities released a report, "Federal Transportation Policy," which states, "no action to finance civil aircraft development in general through public loans or guarantees should be permitted to become a disguised authorization for the SST." It further states that without delay, the Federal Aviation Authority should prohibit sonic booms by civil aircraft over U.S. territory; supersonic airlines should be required to meet the noise and emission standards now imposed on subsonic planes. The Chairman of the Subcommittee implied he will try to kill \$28 million of the \$42 million NASA Research & Development budget request. The FAA has since moved to ban supersonic flights over the U.S. by civilian aircraft.

TRANSPORTATION SUBSIDIES

The Joint Economic Committee, composed of House and Senate members of the U.S. Congress, has released five studies, part of a report entitled: "The Economics of Federal Subsidy Program — Part 6: Transportation Subsidies," covering all modes of transportation, calls for an end to many of the transportation subsidies, and proposes measures to restore competition and improved service in the transport industries.

The studies recommend dismantling the Interstate Commerce Commission, eliminating Government regulation of truck and rail rate structures, and cutting off subsidies to the maritime freight industry. One study attacks the program of subsidy to small "feeder" airlines, which failed to provide quality service to communities and has encouraged the unnecessary purchase of fancy large aircraft, creating "junior trunk lines" which aspire to serve large cities thus causing subsidy costs to double. It suggests direct Federal Government contracts with air taxis to insure service to small towns. Another study criticizes the general aviation subsidy and calls for increases in airway and airport charges to insure that non-commercial aircraft pay their fair share. The study said that the taxpayers contribute \$3,500 per aircraft per year, with 98% of that going to noncommercial aircraft.

HEAD TAXES

Legislation approved by the House Commerce Committee on April 11, 1973 would, among other things, bar local-level head taxes on airline passengers. The legislation contains several features in conflict with a similar measure passed by the Senate in February. Both bills would, in effect, overturn a Supreme Court ruling on head taxes.

MUTUAL AID PACT

The retention of provisions existing between a number of major trunk carriers whereby certain percentages of revenues are returned to the struck carrier by other mutual aid pact carriers was approved by the CAB. Meanwhile, legislation has been introduced to outlaw such pacts under H.R. 3282.

The CAB in its majority opinion in part stated, ". . . the Mutual Aid Agreement is an effort on the part of the carriers collectively to strengthen the bargaining position of the individual carrier. We conclude that it is not contrary to the public interest for the carriers to do so, in the form and to the extent provided in the Agreement now before us. As we have found, the Agreement does not so alter the bargaining balance as to lift from the carriers heavy economic incentives to settle work disputes and hence does not remove the pressures essential for collective bargaining in good faith. At the same time, the Agreement does afford the carriers a greater measure of influence over labor costs

than they would have without the Agreement. Since labor accounts for nearly half of all airline costs and since increases in labor costs ultimately are reflected in higher fares and rates to the traveling and shipping public, additional restraints consistent with collective bargaining are, in our opinion, not contrary to the public interest”