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THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decision
in El Al Israel Airlines Limited

Richard Darman's office has asked for comments by close of business June 15 on the above-referenced CAB decision, which was submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in this case, by July 8).

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since this order involves a foreign carrier, the proposed letter from the President to the CAB Chairman prepared by OMB does not include the standard sentence designed to preserve availability of judicial review.

This order expands El Al's authority, permitting it to add Chicago, Miami, Boston, and Los Angeles to its routes, and to add Montreal as an intermediary point and Mexico City as a beyond point. OMB describes this order as "a routine, noncontroversial matter."

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in El Al Israel Airlines Limited

Our office has reviewed the above-referenced CAB decision and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 6/12/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 12, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in El Al Israel Airlines Limited

Our office has reviewed the above-referenced CAB decision and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 6/12/84

cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ **O - OUTGOING**☐ **H - INTERNAL**☐ **I - INCOMING**Date Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: Richard Daman☐ **MI Mail Report**

User Codes: (A) _____ (B) _____ (C) _____

Subject: CAB decision re: EL AL Israel Airlines
Limited**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>CU Hall</u>	ORIGINATOR	<u>84 10 6 108</u>		<u>1 1</u>
<u>CUAT 18</u>	Referral Note: <u>D</u>	<u>84 06 108</u>		<u>5 84 06 115</u>
	Referral Note:			<u>COB</u>
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			
		<u>1 1</u>		<u>1 1</u>
	Referral Note:			

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

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Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/8/84 ACTION/CONCURRENCE/COMMENT DUE BY: 6/15/84

SUBJECT: CAB DECISION RE EL AL ISRAEL AIRLINES LIMITED

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	McMANUS	☐	☐
MEESE	☐	☐	MURPHY	☐	☐
BAKER	☐	☐	OGLESBY	☐	☐
DEAVER	☐	☐	ROGERS	☐	☐
STOCKMAN	☐	☐	SPEAKES	☐	☐
DARMAN	☐ P	☒ SS	SVAHN	☒	☐
FELDSTEIN	☐	☐	VERSTANDIG	☐	☐
FIELDING	☒	☐	WHITTLESEY	☐	☐
FULLER	☐	☐		☐	☐
HERRINGTON	☐	☐		☐	☐
HICKEY	☐	☐		☐	☐
McFARLANE	☐	☐		☐	☐

REMARKS:

May we have your comments by close of business Friday, June 15.
Thank you.

RESPONSE:

1984 JUN -8 PM 4: 38

Richard G. Darman
Assistant to the President
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUN 8 1984

ACTION

MEMORANDUM FOR: ASSISTANT TO THE PRESIDENT
AND DEPUTY TO THE CHIEF OF STAFF

SUBJECT: Civil Aeronautics Board Decision:

El Al Israel Airlines Limited
Dockets 34507, 40541, and 41676
Date due: July 8, 1984

Attached is a memorandum for the President about the above international aviation case. The interested executive agencies have reviewed the Board's decision and have no objection to the proposed order.

This is a routine, noncontroversial matter. No foreign policy or national defense reasons for disapproving the Board's order have been identified. I recommend that the President sign the attached letter to the Chairman which indicates that he does not intend to disapprove the Board's order within the 60 days allowed by statute. Otherwise, the Board's order becomes final on the 61st day.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

Memorandum to the President
CAB letter of transmittal
CAB order
Letter to the Chairman



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUN 8 1984

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:

El Al Israel Airlines Limited
Dockets 34507, 40541, and 41676
Date due: July 8, 1984

The Civil Aeronautics Board proposes to take the following action with regard to the above international air case:

- Amend the foreign air carrier permit held by El Al Israel Airlines Limited so as to conform with operating privileges provided in the 1978 protocol between the United States and Israel. This action will allow El Al to add: Chicago, Miami, Boston, and Los Angeles as coterminal points; Montreal as an intermediate point; and Mexico City as a beyond point. The amended permit also allows expanded charter operations.

The Departments of State, Defense, Justice, and Transportation and the National Security Council have not identified any foreign policy or national defense reasons for disapproving the Board's order in whole or in part.

The Office of Management and Budget recommends that you approve the Board's decision by signing the attached letter to the Chairman which indicates that you do not intend to disapprove the Board's order within the 60 days allowed by statute for your review.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

CAB letter of transmittal
CAB order
Letter to the Chairman

Options and Implementation Actions:

- () 1) Approve the Board's order (DOS, DOD, DOJ, DOT, NSC, OMB).
 - Sign the attached letter to the Chairman.
- () 2) Disapprove the Board's order.
 - Implementation materials to be prepared.
- () 3) See me.

THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

I have reviewed the order proposed by the Civil Aeronautics Board in the following case:

El Al Israel Airlines Limited
Dockets 34507, 40541, and 41676

I have decided not to disapprove the Board's order.

Sincerely,

The Honorable Dan McKinnon
Chairman
Civil Aeronautics Board
Washington, D.C. 20428

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 4th day of May, 1984

Applications of :
EL AL ISRAEL AIRLINES LIMITED : Dockets 34507
for amendment of its foreign air carrier : 40541
permit under section 402 of the Federal : 41676
Aviation Act of 1958, as amended :

ORDER

By Order 84-3-91, adopted March 21, 1984, we directed all interested persons to show cause why the Board should not, subject to the disapproval of the President, amend the foreign air carrier permit held by El Al Israel Airlines Limited so as to conform with operating privileges provided in the 1978 Protocol between the United States and Israel.

On April 9, 1984, Transamerica Airlines, Inc. filed comments to our show cause order. Transamerica states that it does not object to issuance of the proposed amended permit to El Al, provided that the Government of Israel is willing to issue a similar, indefinite license to Transamerica. Therefore, Transamerica requests that we confirm, through official channels, that Transamerica will receive from Israel an indefinite license before taking final action on El Al's amended permit.

On April 16, 1984, El Al responded to Transamerica's comments stating that it knows of no impediment to the issuance of an indefinite Israeli license to Transamerica, if the carrier is qualified and otherwise entitled to one.

On April 18, 1984, officials of the American Embassy in Tel Aviv advised us that they had discussed Transamerica's concerns with officials of the Israeli Ministry of Transport. The Israeli officials stated unequivocally that Transamerica would receive authority for an indefinite permit, if El Al is so authorized.

In view of these assurances, we believe Transamerica's concerns have been appropriately resolved, and, therefore, we will make final our tentative findings and conclusions of Order 84-3-91.

ACCORDINGLY,

1. We make final our tentative findings and conclusions set forth in Order 84-3-91;
2. We amend the foreign air carrier permit held by El Al Israel Airlines Limited in the form attached;

3. The Secretary of the Board shall sign the permit on our behalf and shall affix the seal of the Board; and

4. Unless disapproved by the President of the United States under section 801(a) of the Act, this order and the permit attached shall become effective on the 61st day after its submission to the President, 1/ or upon the date of receipt of advice from the President that he does not intend to disapprove the Board's order under that section, whichever is earlier.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Secretary

(SEAL)

All Members concurred.

1/ This order was submitted to the President on MAY 9 1984
The 61st day is JUL 9 1984

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER
(as amended)

EL AL ISRAEL AIRLINES LIMITED

is authorized, subject to the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Board, to engage in foreign air transportation:

- A. Between a terminal point or points in Israel; intermediate points in Cyprus, Turkey, Greece, Italy, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, The Netherlands, United Kingdom of Great Britain and Northern Ireland, Ireland, and Montreal, Canada (without traffic rights between Montreal and points in the United States); and the coterminal points New York, New York; Chicago, Illinois; Boston, Massachusetts; Miami, Florida; and Los Angeles, California; and beyond one U.S. point selected by Israel to Mexico City, Mexico (without traffic rights between the selected U.S. point and Mexico City).
- B. Between a point or points in Israel and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers.
- C. Between a point or points in the United States and any point or points not in Israel or the United States.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions, and limitations attached, and to the following:

- 1. The exercise of the authority granted by paragraph A shall be limited to scheduled foreign air transportation of persons, property and mail.
- 2. The exercise of authority granted by paragraphs B and C shall be limited to charter transportation of persons and their accompanying baggage, and property.
- 3. The holder may serve Mexico City from any point specified in paragraph A, but such service shall be conducted from only one U.S. point at any given time. The holder shall provide the Board with 30 days' notice of the U.S. point from which it will be conducting such service.

4. The authority of the holder pursuant to paragraph B to perform charters which originate in Israel is subject to the rules, regulations and licenses issued by the government and aeronautical authorities of Israel.
5. The authority of the holder pursuant to paragraph B to perform charters which originate in the United States is subject to applicable Board regulations, except where waivers of these regulations have been explicitly granted by the Board.
6. The authority of the holder pursuant to paragraph B to perform charters which originate in the United States and terminate at points beyond Israel is limited to charters which stop over in Israel for at least two consecutive nights. All traffic originating in the United States and stopping over in Israel for less than two consecutive nights shall be carried pursuant to paragraph C of this permit.
7. Charter air transportation authorized by paragraph C is subject to the Board's regulations governing such charters.
8. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective to which the United States and Israel are or shall become parties.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on . Unless otherwise terminated at an earlier date under the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of Israel (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Israel in lieu of the holder; or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States of America and the Government of Israel dated June 15, 1950 as amended by the Protocol dated August 16, 1978 (or in the event of the termination or expiration of any part of the Air Transport Agreement, the authority granted by this permit shall cease to the extent of such termination or expiration). However, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation authorized becomes subject to any treaty, convention, or agreement to which the United States and Israel are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on May 4, 1984.

PHYLLIS T. KAYLOR

Secretary

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

(1) The privileges granted by this permit are subject to the conditions that the foreign air carrier complies with the requirements contained in 14 CFR 203 regarding waiver of Warsaw Convention liability limits and defenses.

(2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205.

(3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

(5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service.

(6) Except as specifically authorized by the Board, all flights to/from the United States (or its territories or possessions) must originate or terminate in the holder's homeland.

(7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Board.

(8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

* * * *

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.



Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 21st day of March, 1984

-----	:	
Applications of	:	
	:	
EL AL ISRAEL AIRLINES LIMITED	:	Dockets 34507
	:	40541
for amendment of its foreign air carrier	:	41676
permit under section 402 of the Federal	:	
Aviation Act of 1958, as amended	:	

ERRATUM

We inadvertently omitted the U.S. coterminal point of Miami, Florida, from paragraph A of El Al's specimen permit. Paragraph A should read as follows:

- A. Between a terminal point or points in Israel; intermediate points in Cyprus, Turkey, Greece, Italy, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, The Netherlands, United Kingdom of Great Britain and Northern Ireland, Ireland, and Montreal, Canada (without traffic rights between Montreal and points in the United States); and the coterminal points New York, New York; Chicago, Illinois; Boston, Massachusetts; Miami, Florida; and Los Angeles, California; and beyond one U.S. point selected by Israel to Mexico City, Mexico (without traffic rights between the selected U.S. point and Mexico City).

A corrected copy of the specimen permit is attached.

Dated: April 2, 1984

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CORRECTED
SPECIMEN PERMIT
Order 84-3-91

PERMIT TO FOREIGN AIR CARRIER
(as amended)

EL AL ISRAEL AIRLINES LIMITED

is authorized, subject to the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Board, to engage in foreign air transportation:

- A. Between a terminal point or points in Israel; intermediate points in Cyprus, Turkey, Greece, Italy, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, The Netherlands, United Kingdom of Great Britain and Northern Ireland, Ireland, and Montreal, Canada (without traffic rights between Montreal and points in the United States); and the coterminal points New York, New York; Chicago, Illinois; Boston, Massachusetts; Miami, Florida; and Los Angeles, California; and beyond one U.S. point selected by Israel to Mexico City, Mexico (without traffic rights between the selected U.S. point and Mexico City).
- B. Between a point or points in Israel and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers.
- C. Between a point or points in the United States and any point or points not in Israel or the United States.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions, and limitations attached, and to the following:

- 1. The exercise of the authority granted by paragraph A shall be limited to scheduled foreign air transportation of persons, property and mail.
- 2. The exercise of authority granted by paragraphs B and C shall be limited to charter transportation of persons and their accompanying baggage, and property.
- 3. The holder may serve Mexico City from any point specified in paragraph A, but such service shall be conducted from only one U.S. point at any given time. The holder shall provide the Board with 30 days' notice of the U.S. point from which it will be conducting such service.

4. The authority of the holder pursuant to paragraph B to perform charters which originate in Israel is subject to the rules, regulations and licenses issued by the government and aeronautical authorities of Israel.
5. The authority of the holder pursuant to paragraph B to perform charters which originate in the United States is subject to applicable Board regulations, except where waivers of these regulations have been explicitly granted by the Board.
6. The authority of the holder pursuant to paragraph B to perform charters which originate in the United States and terminate at points beyond Israel is limited to charters which stop over in Israel for at least two consecutive nights. All traffic originating in the United States and stopping over in Israel for less than two consecutive nights shall be carried pursuant to paragraph C of this permit.
7. Charter air transportation authorized by paragraph C is subject to the Board's regulations governing such charters.
8. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective to which the United States and Israel are or shall become parties.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on _____ . Unless otherwise terminated at an earlier date under the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of Israel (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Israel in lieu of the holder; or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States of America and the Government of Israel dated June 15, 1950 as amended by the Protocol dated August 16, 1978 (or in the event of the termination or expiration of any part of the Air Transport Agreement, the authority granted by this permit shall cease to the extent of such termination or expiration). However, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation authorized becomes subject to any treaty, convention, or agreement to which the United States and Israel are or shall become parties.

- 3 -

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on .

PHYLLIS T. KAYLOR

Secretary

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

(1) The privileges granted by this permit are subject to the conditions that the foreign air carrier complies with the requirements contained in 14 CFR 203 regarding waiver of Warsaw Convention liability limits and defenses.

(2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205.

(3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

(5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service.

(6) Except as specifically authorized by the Board, all flights to/from the United States (or its territories or possessions) must originate or terminate in the holder's homeland.

(7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Board.

(8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

* * * *



UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Order 84-3-91

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 21st day of March, 1984

Applications of

EL AL ISRAEL AIRLINES LIMITED

for amendment of its foreign air carrier
permit under section 402 of the Federal
Aviation Act of 1958, as amended

Dockets 34507
40541
41676

STATEMENT OF TENTATIVE FINDINGS AND CONCLUSIONS
AND ORDER TO SHOW CAUSE

Summary

By this order, we are consolidating three permit amendment applications of El Al Israel Airlines Limited (El Al) into one show-cause proceeding. ^{1/} We tentatively find and conclude that El Al's permit should be amended in accordance with the rights explicitly provided for in the 1978 Protocol between the United States and Israel. Specifically, we tentatively find and conclude that El Al's permit should be amended to add: Chicago, Miami, Boston, and Los Angeles as coterminal points; Montreal as an intermediate point (without traffic rights between Montreal and one specified U.S. point); and Mexico City as a beyond point (without traffic rights between U.S. points and Mexico City). Also, our tentative decision would allow El Al to perform U.S.-third country charters which stop over two nights in Israel, as provided for in the Protocol, and would delete from El Al's current permit the authority to serve the intermediate points Iceland, Greenland, the Azores, and the Provinces of Newfoundland and Quebec.

^{1/} In the case of the application filed in Docket 34507, we already issued a show-cause order (see Order 79-3-20, March 1, 1979). On May 8, 1980, we sent to the President a draft final order in that docket that would have granted permit authority to El Al. Under section 801(a) of the Act, our draft order would have become effective on July 8, 1980, unless disapproved by the President. However, on May 21, 1980, we requested that the President return our draft order for further consideration, and by Order 80-5-151, we deferred all procedural steps in Docket 34507 until further Board order. The problems which led to that action have been resolved. By this order, we are resuming procedural steps in Docket 34507. However, because our tentative findings and conclusions reached five years ago are now stale and because the carrier has, in the meantime, filed additional permit amendment applications, we have decided to conduct a new, consolidated show-cause proceeding. In this proceeding, we have considered the issues and comments raised in the past show-cause proceeding, to the extent they are still relevant.

Background

El Al holds a foreign air carrier permit which authorizes: (a) foreign air transportation of persons, property and mail between a terminal point or points in Israel, intermediate points in Cyprus, Turkey, Greece, Italy, Switzerland, Austria, Germany, France, Luxembourg, Belgium, Netherlands, United Kingdom of Great Britain and Northern Ireland, Ireland, Iceland, Greenland, the Azores, and the Provinces of Newfoundland and Quebec, Canada, and the terminal point New York, New York; and (b) the performance of charter flights in accordance with Part 212 of the Board's rules. 2/

Air services between the United States and Israel are governed by the 1978 Protocol which substantially amended the U.S.-Israel Air Transport Agreement of 1950. The Protocol provides that Israel's designated carrier(s) is entitled to operate air services on the following route:

Israel via points in Cyprus, Turkey, Greece, Romania, Italy, Spain, Portugal, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, Netherlands, United Kingdom, Eire, and Montreal to New York and four additional points in the United States to be selected by Israel and notified to the United States, and beyond (a) one specified U.S. point to Mexico City, and (b) any specified U.S. points to South America and Asia, without traffic rights between Montreal and U.S. points or between U.S. points and points beyond the United States. 3/

In addition, the Protocol permits designated carriers of each country to conduct charters between the United States and Israel (Third and Fourth Freedom) without limitation, subject to country-of-origin rules. Further, the Protocol provides for limited third-country charter operations, i.e., charters to or from third countries that stop over in the carrier's homeland for at least two consecutive nights. Fifth Freedom charters are not covered by the Protocol, although the applicant can request statements of authorization under Part 212 to operate such charters.

As noted above, El Al's permit has not been amended to conform with the rights contained in the Protocol. We have conferred scheduled service rights in the Protocol by exemption. 4/

2/ See Order E-24750, effective February 13, 1967.

3/ On January 9, 1979, Israel formally notified the United States of its selection of Chicago, Illinois, and Miami, Florida, as two of the four additional U.S. points. Later, on November 20, 1981, Israel selected Boston, Massachusetts, as its third point, and on May 5, 1982, Los Angeles, California, was selected as the fourth point. In these notifications, Israel designated El Al to serve these points.

4/ See Order 79-3-135, which conferred the Protocol rights to Chicago, Miami and Mexico City, expiring 90 days after final Board action in Docket 34507; in Order 82-6-126 we authorized El Al's exemption authority to Boston, expiring 90 days after final Board action in Docket 40541; by Order 83-8-14 we authorized the Protocol rights to Montreal, expiring July 7, 1984; and in Order 84-2-46 El Al's exemption authority to serve Los Angeles was extended until December 17, 1984, or 90 days after we submit an order to the President with respect to El Al's application in Docket 41676, whichever occurs first.

Applications 5/

Docket 34507, filed January 17, 1979

In this application, El Al seeks amendment of its permit to add Miami, Florida, and Chicago, Illinois, as additional U.S. coterminal points, as well as Mexico City as a beyond point--to be served beyond one selected U.S. coterminal point (without traffic rights between the U.S. point and Mexico City). In addition, El Al requests a waiver of the Board's rules (Part 312) regarding the filing of an environmental evaluation. 6/ Also, by letter dated January 30, 1979, El Al requests that certain standard conditions not be imposed in its amended permit.

No answers to this application were filed, and on March 1, 1979, we adopted Order 79-3-2 proposing to issue an amended permit. Several objections were filed. (As discussed below, all of the issues raised by the objections have become moot.) 7/

Docket 40541, filed March 18, 1982

El Al requests that its permit be amended to add Boston, Massachusetts, as a U.S. coterminal point.

No answers to the application have been filed.

Docket 41676, filed August 31, 1983

By this application, El Al seeks amendment of its permit to add Los Angeles, California, as a U.S. coterminal point.

No answers to the application have been filed.

5/ On February 22, 1984, El Al filed a motion in each of the dockets cited, requesting that the Board, by April 7, 1984, submit an order to the President amending El Al's permit as requested. Since we are handling the applications through show-cause procedures, the April 7th target date El Al seeks cannot be met. Therefore, we will deny the motion. However, absent objections to this show-cause order, an order amending El Al's permit could be submitted to the President by mid-April.

6/ Since the Board's rules do not require the preparation of an environmental evaluation for the operations El Al proposes, we will dismiss El Al's waiver request as moot.

7/ Departments of State (DOS) and Transportation (DOT), the National Air Carrier Association (NACA), and El Al all questioned the scope of charter authority, which is discussed infra. at 6. El Al further requested we clarify its Mexico City authority; see note 10 on page 5. The applicant also asked again that we not impose certain standard permit conditions. However, in El Al's most recently filed application (Docket 41676), the carrier states that it will accept the Board's standard foreign air carrier permit conditions (see Exhibits 8 and 13 of Docket 41676). Consequently, we conclude that the objections El Al raised in Docket 34507 regarding these permit conditions are moot. The attached specimen permit includes our standard permit conditions.

Ownership and Control

The Government of Israel owns more than of 99.9 percent of El Al's stock. The Board of Directors and management group of the applicant are Israeli citizens. In addition, control of El Al lies with the Israeli Government's Official Receiver (Mr. Amram Blum) as Provisional Liquidator of El Al. Mr. Blum, an Israeli citizen, has all of the powers of El Al's Board of Directors. An Israel court order made El Al subject to the authority of an Official Receiver in December 1982, during a period of cessation of operations by El Al due to labor disputes. Resolution of the labor disputes permitted resumption of service by El Al in January 1983. However, the Official Receiver still holds his appointment, and El Al's affairs continue to be managed by El Al's officers on the same basis as before the appointment of the Official Receiver, but subject to the overall authority of the Official Receiver as Provisional Liquidator. El Al's corporate and legal status was not affected by the appointment of an Official Receiver.

El Al entirely owns several Israeli companies--Katit, Ltd., which operates El Al employees' restaurant at Ben Gurion Airport; Teshet Ltd., a company engaged primarily in hotel management and aircraft catering, which holds a 50 percent interest in Maman Cargo Terminal, Ben Gurion Airport Ltd.; and El Al Charter Services Ltd., an Israeli charter airline. Also, El Al owns 50 percent of an Israeli travel agency, Israel Airtours Ltd., and 20 percent of International Hotels Kenya.

Fitness of the Applicant

El Al has conducted operations between the United States and Israel for more than 30 years under permit authority issued by the Board. 8/ The last time the Board found El Al fit was in 1967 after a full oral evidentiary hearing (Order E-24750, served February 14, 1967). We have no reason to doubt the continuing validity of these findings.

El Al holds a license from its government to conduct operations to the United States (see Exhibit 14, Docket 41676). As of March 31, 1982, El Al's balance sheet shows total assets of \$344 million, of which \$91 million are current assets. El Al had total liabilities of \$504 million, (which includes long-term debts of \$139 million) and a negative stockholders' equity of \$160 million. The carrier experienced a loss of almost \$33 million for the 12 months ended March 31, 1982. El Al advises that the Government of Israel has issued guaranties to Israeli banks for the establishment of credit lines in favor of El Al in amounts satisfactory to assure the uninterrupted operation of El Al, and further that a large portion of El Al's debts are long-term loans secured by government guaranty. In view of these guaranties, El Al appears to have adequate financial resources to be deemed fit.

8/ El Al's first permit was issued by Order E-4341, effective June 22, 1950, in the name El-Al Israel National Airlines Company, Ltd. By Order E-5707, September 14, 1951, El Al's permit was reissued in the company's new corporate name, El Al Israel Airlines Limited.

El Al's fleet consists of 20 aircraft: 8 B-707's; 8 B-747's; 2 B-737's; and 2 B-767's. The B-737 and B-767 aircraft are owned directly by the Government of Israel. El Al states that it will perform the maintenance on its aircraft in accordance with ICAO requirements either at its maintenance base in Tel Aviv or New York. At Los Angeles, required maintenance will be performed by a U.S. carrier having B-747 facilities and necessary FAA approvals.

Further, El Al states that it has had no safety or tariff violations in the past five years; that its operating authority has not been revoked, suspended, cancelled, or otherwise terminated; and that it has not been refused insurance in the past three years.

El Al's liability insurance coverage complies with Part 205 of our rules, as evidenced by its certificate of insurance (CAB Form 205-A) on file here. By letter dated December 8, 1983, the FAA advised us that El Al conducts its operations into the United States in accordance with Part 129 of the Federal Aviation Regulations and that it knows of no reason why we should act unfavorably on the amendment applications. 9/

The Route Description

The attached specimen permit would amend the route description in El Al's current permit in several ways. First, the specimen permit adds the U.S. coterminal points Chicago, Miami, Boston and Los Angeles, and the blind-sector rights to Mexico City. 10/ Second, the specimen permit includes Montreal, Canada, as an intermediate point, but without traffic rights between Montreal and the United States, as provided for in the Protocol. El Al now is serving Miami via Montreal, by exemption. 11/

9/ See the correspondence section of Docket 41676.

10/ As El Al requested in its objection to our previous Order to Show Cause 79-3-2, the attached specimen permit clarifies that the blind-sector rights to Mexico City may be operated over any of the U.S. points to which El Al holds route authority, provided that such service is conducted over only one U.S. point at any given time.

11/ See Orders 83-8-14 and 83-10-120. El Al states, in Docket 41676, that it provides Israel-Miami service, via New York. This service is operated with a stopover at Montreal; the Montreal-Miami leg is operated by Nordair under a wet-lease arrangement approved by the Board.

Last, the route description in the specimen permit does not contain certain broadly defined intermediate points (Iceland, Greenland, the Azores, and the Provinces of Newfoundland and Quebec), which appear in El Al's current permit. These points were included in El Al's permit many years ago as a technical necessity, for enroute fuel stops. The points are no longer needed for that purpose, and, except for Montreal, El Al no longer serves them. Moreover, the points were not negotiated into the route schedule that the 1978 Protocol amended "in its entirety." El Al may, of course, request exemption authority should it wish to serve any of the deleted intermediate points.

Charter Authority

Under the attached specimen permit, El Al may continue to perform Third and Fourth Freedom charters, without limitations and subject only to country-of-origin rules. The specimen permit would specifically convey authority to El Al for certain beyond-homeland charter operations, i.e., charters to third countries that stop over in the carrier's homeland for at least two consecutive nights. This charter authority is provided for in the 1978 Protocol, and, therefore, no prior approval requirement has been imposed. Fifth Freedom charters are not covered by the Protocol, and, therefore, would be subject to prior approval under Part 212 of our rules. 12/

Public Interest Considerations

El Al relies on the 1978 Protocol between the United States and Israel as the basis for the grant of the requested authority. El Al has been designated by its government to operate the services provided for in the Protocol. 13/

Tentative Findings and Conclusions

In view of the foregoing and all the facts of record, we tentatively find and conclude that:

1. El Al Israel Airlines Limited is qualified and has been designated by the Government of Israel to perform the air services described in the attached specimen permit;

2. El Al Israel Airlines Limited is fit, willing, and able properly to perform the foreign air transportation described in the attached specimen permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;

3. The foreign air carrier permit issued to El Al Israel Airlines Limited, by Order E-24750, should be amended in the specimen form attached;

12/ In our previous Order to Show Cause 79-3-2, several issues were raised concerning prior approval of Fifth Freedom charters outside the Protocol, and what rules would apply to such charters. These issues now are moot, since Part 212 has been substantially revised, and since El Al's request for blanket Fifth Freedom authority was considered in another proceeding (see Order 82-1-82, January 19, 1982).

13/ See footnote 3, supra.

4. The public interest requires that the exercise of the privileges granted by the amended permit shall be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, and to such other reasonable terms, conditions and limitations required by the public interest as we may prescribe;

5. El Al Israel Airlines Limited is substantially owned and effectively controlled by the Government of Israel;

6. Amendment of El Al Israel Airlines Limited's foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations;

7. Except to the extent granted, the applications of El Al Israel Airlines Limited in Dockets 34507, 40541 and 41676 should be denied; and

8. The public interest does not require an oral evidentiary hearing on the applications.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not (1) make final our tentative findings and conclusions, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, issue an amended foreign air carrier permit to El Al Israel Airlines Limited in the specimen form attached;

2. Any interested persons objecting to the issuance of an order making final our tentative findings and conclusions and issuing the attached specimen permit shall, no later than April 9, 1984, file with us and serve on the persons named in paragraph 7, a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence expected to be relied upon in support of the objections. An oral evidentiary hearing or discovery procedures may be requested. The objector should state in detail why such a hearing or discovery is considered necessary and what material issues of decisional fact he would expect to establish through such hearing or discovery which cannot be established in written pleadings. The objector should consider whether discovery procedures alone would suffice to resolve material issues of decisional fact; if so, the type of procedure should be specified (see Part 302, Rules 19 and 20); if not, the reasons why not should be explained. If objections are filed, answers may be filed, but no later than April 16, 1984;

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action, except that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order, if we determine that there are no factual issues presented that warrant the holding of an oral evidentiary hearing or the institution of discovery procedures; 14/

14/ Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which (1) shall make final our tentative findings and conclusions set forth in this order, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, shall issue an amended foreign air carrier permit to the applicant in the specimen form attached;

5. We dismiss as moot El Al's request for a waiver of the requirements of Part 312 of our Procedural Regulations;

6. To the extent not granted by this order, we deny El Al's motion for expedited action on its applications; and

7. We shall serve this order on El Al Israel Airlines Limited, the Ambassador of Israel in Washington, D.C., and the U.S. Departments of State and Transportation.

A summary of this order will be published in the Federal Register.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Secretary

(SEAL)

All Members concurred.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER
(as amended)

EL AL ISRAEL AIRLINES LIMITED

is authorized, subject to the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Board, to engage in foreign air transportation:

- A. Between a terminal point or points in Israel; intermediate points in Cyprus, Turkey, Greece, Italy, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, The Netherlands, United Kingdom of Great Britain and Northern Ireland, Ireland, and Montreal, Canada (without traffic rights between Montreal and points in the United States); and the coterminal points New York, New York; Chicago, Illinois; Boston, Massachusetts; and Los Angeles, California; and beyond one U.S. point selected by Israel to Mexico City, Mexico (without traffic rights between the selected U.S. point and Mexico City).
- B. Between a point or points in Israel and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers.
- C. Between a point or points in the United States and any point or points not in Israel or the United States.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions, and limitations attached, and to the following:

- 1. The exercise of the authority granted by paragraph A shall be limited to scheduled foreign air transportation of persons, property and mail.
- 2. The exercise of authority granted by paragraphs B and C shall be limited to charter transportation of persons and their accompanying baggage, and property.
- 3. The holder may serve Mexico City from any point specified in paragraph A, but such service shall be conducted from only one U.S. point at any given time. The holder shall provide the Board with 30 days' notice of the U.S. point from which it will be conducting such service.

4. The authority of the holder pursuant to paragraph B to perform charters which originate in Israel is subject to the rules, regulations and licenses issued by the government and aeronautical authorities of Israel.
5. The authority of the holder pursuant to paragraph B to perform charters which originate in the United States is subject to applicable Board regulations, except where waivers of these regulations have been explicitly granted by the Board.
6. The authority of the holder pursuant to paragraph B to perform charters which originate in the United States and terminate at points beyond Israel is limited to charters which stop over in Israel for at least two consecutive nights. All traffic originating in the United States and stopping over in Israel for less than two consecutive nights shall be carried pursuant to paragraph C of this permit.
7. Charter air transportation authorized by paragraph C is subject to the Board's regulations governing such charters.
8. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective to which the United States and Israel are or shall become parties.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on _____. Unless otherwise terminated at an earlier date under the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of Israel (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Israel in lieu of the holder; or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States of America and the Government of Israel dated June 15, 1950 as amended by the Protocol dated August 16, 1978 (or in the event of the termination or expiration of any part of the Air Transport Agreement, the authority granted by this permit shall cease to the extent of such termination or expiration). However, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation authorized becomes subject to any treaty, convention, or agreement to which the United States and Israel are or shall become parties.

- 3 -

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on

PHYLLIS T. KAYLOR

Secretary

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

(1) The privileges granted by this permit are subject to the conditions that the foreign air carrier complies with the requirements contained in 14 CFR 203 regarding waiver of Warsaw Convention liability limits and defenses.

(2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205.

(3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

(5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service.

(6) Except as specifically authorized by the Board, all flights to/from the United States (or its territories or possessions) must originate or terminate in the holder's homeland.

(7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Board.

(8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

* * * *

THE WHITE HOUSE

WASHINGTON

June 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Korean Airlines' Refusal to Sign a
Purchase Order With McDonnell Douglas
for 6 MD-80s Unless Given Route Rights

Dan McKinnon, Chairman of the Civil Aeronautics Board, has sent identical letters to Mr. Baker and Mr. Deaver, concerning a pending dispute involving Korean Air Lines (KAL). According to McKinnon, the Carter Administration foolishly agreed in 1980 to give KAL route rights to Oakland and Chicago in exchange for a Korean agreement to provide certain cargo facilities by March 1981. Korea has not yet built the facilities, and the United States -- or at least some elements in the Government -- are attempting to rescind the route commitment. KAL, in response, has threatened not to purchase six aircraft it has ordered from McDonnell Douglas unless it gets the routes in question.

In his letter and accompanying briefing paper, McKinnon contends that aircraft sales should never be allowed to be a factor in route cases, and that the United States should avail itself of the opportunity -- presented by Korea's default on the 1980 agreement -- to get out from under a misguided "give away" of valuable routes to KAL. He indicates that this is the position of the CAB, Defense, Transportation, and the Economic Bureau at State, as well as, not surprisingly, KAL's competitors (Flying Tigers and Northwest). McDonnell Douglas, USTR, and the East Asian Bureau at State support KAL.

I contacted Matt Scocozza, Assistant Secretary of Transportation for Policy, for more information on the dispute. Scocozza is heading up the Administration handling of the matter. Scocozza noted that McKinnon's views were widely known to those reviewing the dispute. He recommended that the White House simply thank McKinnon for sharing those views, refer the letters to Transportation, and not otherwise become involved. According to Scocozza, further negotiations with the Koreans are scheduled for September. The matter is not at this point -- and may never be -- a section 801 case submitted for formal Presidential review.

I agree with Scocozza's recommendation. It is somewhat unusual for the head of an independent regulatory agency to send a letter to Presidential aides on a pending matter. I do not consider it necessarily improper, however, since the resolution of the dispute with the Koreans involves executive branch actions and is only partly under the jurisdiction of the CAB. I have attached a draft letter from you to McKinnon, thanking him for his views and advising him that we have referred his correspondence to Transportation. Memoranda to Scocozza, Baker, and Deaver are also attached.

Attachments

THE WHITE HOUSE

WASHINGTON

June 21, 1984

Dear Chairman McKinnon:

Your recent letters to Messrs. Baker and Deaver concerning the pending dispute between the United States and Korea over air route rights have been referred to me for consideration and direct reply. In those letters and accompanying briefing papers you outlined the facts surrounding the dispute and the various arguments on both sides.

We appreciate having the benefit of your informed views on this matter, and I have taken the liberty of sharing them with the Department of Transportation, which, as you know, is deeply involved in the pending dispute. Once again, thank you for advising us of your concerns in this area.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

The Honorable Dan McKinnon
Chairman
Civil Aeronautics Board
Washington, D.C. 20428

FFF:JGR:aea 6/21/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR MICHAEL K. DEEVER
ASSISTANT TO THE PRESIDENT
DEPUTY CHIEF OF STAFF

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Civil Aeronautics Board
Chairman Dan McKinnon on Korean Route Dispute

Attached for your information is a copy of my reply to the letter Chairman Dan McKinnon of the Civil Aeronautics Board wrote you, concerning the pending dispute between the United States and Korea over air route rights. Also attached is a copy of my memorandum to the Department of Transportation, referring McKinnon's letter.

Attachment

cc: Craig L. Fuller
Assistant to the President
for Cabinet Affairs

FFF:JGR:aea 6/15/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR JAMES W. CICCONI
SPECIAL ASSISTANT TO THE PRESIDENT
SPECIAL ASSISTANT TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Civil Aeronautics Board
Chairman Dan McKinnon on Korean Route Dispute

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Attachment

cc: Craig L. Fuller
Assistant to the President
for Cabinet Affairs

FFF:JGR:aea 6/15/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR MATT SCOCOZZA
ASSISTANT SECRETARY OF TRANSPORTATION
FOR POLICY

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Civil Aeronautics Board
Chairman Dan McKinnon on Korean Route Dispute

Attached for your information is correspondence from Chairman Dan McKinnon of the Civil Aeronautics Board, concerning a pending dispute between the United States and Korea over air route rights. The correspondence is submitted for whatever review and consideration you deem appropriate. I have written Chairman McKinnon thanking him for his letters, and advising him that I have shared them with the Department of Transportation.

Many thanks.

Attachment

FFF:JGR:aea 5/15/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

MEMORANDUM FOR MICHAEL K. DEEVER
ASSISTANT TO THE PRESIDENT
DEPUTY CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Correspondence from Civil Aeronautics Board
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Attachment

cc: Craig L. Fuller
Assistant to the President
for Cabinet Affairs

FFF:JGR:aea 6/15/84

bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

June 15, 1984

Dear Chairman McKinnon:

Your recent letters to Messrs. Baker and Deaver concerning the pending dispute between the United States and Korea over air route rights have been referred to me for consideration and direct reply. In those letters and accompanying briefing papers you outlined the facts surrounding the dispute and the various arguments on both sides.

We appreciate having the benefit of your informed views on this matter, and will certainly accord them every appropriate consideration. I have taken the liberty of sharing your views with the Department of Transportation, which, as you know, is deeply involved in the pending dispute. Once again, thank you for advising us of your concerns in this area.

Sincerely,

Fred F. Fielding
Counsel to the President

The Honorable Dan McKinnon
Chairman
Civil Aeronautics Board
Washington, D.C. 20428

FFF:JGR:aea 6/15/84
bcc: FFFfielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

CA005

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1Name of Correspondent: Don McKinnon☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Korean Airlines' Refusal to sign a
purchase order with Mc Donnell
Douglas for 6 MD-80's unless they
get Route Rights

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CU Holland</u>		ORIGINATOR	<u>84/05/23</u> ^{WS}			<u>1/1</u>
<u>CU AT 18</u>		Referral Note: <u>D</u>	<u>84/05/24</u> ^{WS}		<u>S</u>	<u>84/06/08</u>
		Referral Note: _____	<u>1/1</u>			<u>1/1</u>
		Referral Note: _____	<u>1/1</u>			<u>1/1</u>
		Referral Note: _____	<u>1/1</u>			<u>1/1</u>
		Referral Note: _____	<u>1/1</u>			<u>1/1</u>

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.

Send all routing updates to Central Reference (Room 75, OEOB).

Always return completed correspondence record to Central Files.

Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE

WASHINGTON

May 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JAMES W. CICCONI *JW*
SUBJECT: Letter from CAB Chairman

Attached is a letter from Dan McKinnon, Chairman of the Civil Aeronautics Board.

Could the Counsel's Office please respond directly to Mr. McKinnon, on JAB's behalf?

Thanks.

cc: Craig Fuller



THE CHAIRMAN
OF THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C. 20428

May 18, 1984

Cicconi
JAS ASKS THAT YOU
P/S. handle
5/21

Dear Jim:

This is to alert you to an issue which will most likely become a high level political problem.

228564 Cu

Korean Airlines has refused to sign a purchase order with McDonnell Douglas for six MD-80's unless they get the route rights as mentioned in the enclosed briefing paper.

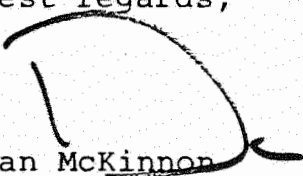
This trade off of aircraft sales for route rights would set a dangerous precedent which every country in the world would utilize to the detriment of U.S. commercial aviation. It should never be done.

extortion!

As you'll read, the issues go even deeper -- the Carter Administration made a very bad deal. This Administration must not give in to Korea's threat, and since they were first to refuse to fulfill a commitment, it gives the United States a way to get out of it.

I just want to bring this to your attention, as you'll probably be hearing more about it.

Best regards,


Dan McKinnon

Honorable James A. Baker III
Chief of Staff and
Assistant to the President
The White House
Washington, D. C. 20500

Enclosure

U.S. AVIATION SITUATION WITH KOREA AND
IMPENDING CRISIS

PROBLEM:

Korea wants route rights to Oakland, Chicago and beyond one point to Europe contained in a 1980 MOU in which Korea was to provide certain cargo facilities by March 1981. Korea has never provided the required facilities.

FORMER POLICY:

Under the Carter Administration, the idea in aviation bilaterals was to give away valuable route rights into the U.S. to create competition. There was no concern where competition came from or the cost to the U.S. for that competition -- just a frantic effort to create competition with the belief the consumer was the winner.

Result was entry of many foreign carriers who were more than willing to take advantage of this new generous U.S. policy. Net result was to dilute U.S. carriers' traffic by many foreign carriers and countries who provided little passenger or cargo traffic. Basically, many were poachers and drained away revenues from our carriers. The also kept restrictive rules in place that made true competition in their countries difficult for our carriers so they had their cake and ate it too.

It was this policy that promised Korea hundreds of millions of dollars of valuable aviation route rights for a \$4.5 million cargo hangar -- due to be built by March 1981. The Koreans never built it.

This competition's only result was to dilute U.S. carriers' earnings and, since all foreign countries closely control prices, the consumers gained nothing in pricing but only more carrier options for travel.

FACTS:

In April 1983, Flying Tiger wrote a letter to the State Department ostensibly withdrawing its objections to the implementation of the rights granted to Korea under the 1980 MOU. KAL demanded that FTL write the letter before KAL would complete a 5-million dollar transaction, involving the purchase of cargo facility space at New York from Tigers. Tigers was in dire economic straits at the time and wrote the letter as demanded.

GATT agreement says signatories agree to avoid attaching inducements of any kind to the sale or purchases of civil aircraft.

POLITICAL PRESSURES:

Favoring Korea-ROK government will request U.S. to honor its commitment and state ROK is now ready to honor the requirement to build the hangar. ROK will say U.S. never renegs on agreements. In addition, they will say Flying Tigers didn't properly follow through on exercise of their rights to build the hangar. (not so)

McDonnell Douglas will say order by Korean Airlines (KAL) for 6 to 9 MD-80s worth about \$300 million is being cancelled in retaliation if KAL does not get the route rights. "What's one more airline flying into CHI?" they say. Those aircraft purchases are mainly to replace aging domestic planes and at the present time only McDonnell Douglas or Boeing can provide the aircraft.

(To support a \$300 million aircraft purchase, an airline needs to gain revenues of roughly one-half of aircraft cost (\$150 million) per year. Since aviation between the U.S. and the ROK is not growing at that rate, revenues must come out of another carrier's income--mostly U.S. carriers--since all competitive conditions affecting our carriers is tightly controlled in Korea. Currently, Korea has about 80% of the market.

STR will say MD-80 sale will help balance of payment. Lost sales is threatened to go to Airbus.

East Asian Bureau (State) will say its important to give KAL rights to show friendship to Korea. This division of State told ROK we'll let them have rights. (No prior clearance with any other government agencies involved.)

Opposing Korea --

Flying Tigers will say why should they be penalized and finance U.S. policy to help ROK through added competition, especially through CHI which is their hub. They have lost millions in recent years and these rights threaten their very existence. They are angry over original MOU which was forced on our carriers by Carter Administration. Their retort to "What's one more carrier in CHI?" is "What's a couple more Airbus aircraft?"

Northwest Airlines will point out ROK and KAL for years have ignored bilateral requirements to allow operating conditions that allow for fair

competition in Korea. (They have pages of complaints -- small individually -- but added up virtually gut their Korean operation compared to KAL). NW hangar facilities are 4th rate and ROK has done nothing to alleviate their cargo handling problems, as was required by the bilateral to be done in 1981.

Department of Defense -- Sec. Weinberger has written Sec. Schultz that FTL serves CRAF program with 17 747s and the U.S. should make no agreement that could weaken that reserve defense lift capability.

CAB -- feels window of opportunity for Korea to exercise rights closed. It closed in 1981. CAB feels no rights should be granted to KAL for CHI or beyonds. The original deal was heavily imbalanced in favor of ROK. Today's U.S. aviation policy is being closely watched by other countries to see if we mean business when we say there are no more giveaways (Carter era) and all bilaterals must be balanced. Are we requiring countries to live up to agreements or always caving? Chairman Dan McKinnon says this is an example of a case the U.S. needs to be tough on. If we want to help ROK, all taxpayers should pay the costs -- not FTL and NW.

Economic Bureau (State) -- This is not a balanced agreement. ROK did not honor the original terms, so there is no obligation for U.S. to honor our end of the deal.

DOT -- this deal is not healthy for U.S. aviation interests. Trade and aviation issues should not be mixed. The bilateral is inoperative since ROK did not live up to the terms of the deal back in 1981.

CURRENT SITUATION:

Negotiations with ROK took place April 2-3. U.S. Delegation said don't build hangar in reliance on 1980 MOU -- means no route rights to CHI and beyonds. ROK upset but aware they stiffed U.S. since 1981. Renewed negotiation scheduled this June. Now all parties conducting intense lobbying effort in USA. Pro U.S. parties say don't give CHI and beyonds. Pro ROK saying give ROK a second chance to fulfill terms of the original Carter deal.

RECOMMENDATION: Stick to tough U.S. aviation policy. If we don't on this clear-cut issue -- U.S. credibility and

that of this Administration is meaningless with all foreign countries. The Reagan Administration supposedly brought in tough people to say no to giveaways. If we give in on the Korean situation, we will be no different than the Carter Administration, and all tough talk on a reversal of U.S. aviation policy that it now must be balanced will have no worldwide credibility.

Unfortunately, this is a decision that can't be compromised. Either KAL is allowed into CHI or not. Delay is not a compromise -- because the damage done to U.S. carriers will still be done.

Prepared by:

Dan McKinnon
Chairman, Civil Aeronautics Board

April 24, 1984

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
received (YY/MM/DD)

NAME OF CORRESPONDENT:

Don Mc Kinnon☒ DC Mail Report

User Codes: (A) _____

(B) _____

(C) _____

SUBJECT:

*Working refusal of
Krean letter to sign a
purchase order w/ Mc Kinnell
Baege*

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)

Action
CodeTracking
Date
YY/MM/DDType
of
Response

Code

Completion
Date
YY/MM/DD*DCS/H*

ORIGINATOR

*84/105/22**584/105/22**✓ CA FULL*

Referral Note:

*84/105/22**84/05/23**✓ CU Fielding*

Referral Note:

*84/105/23**84/105/23*

Referral Note:

*1/1**1/1*

Referral Note:

*1/1**1/1*

ACTION CODES:

A - Appropriate Action

C - Comment/Recommendation

D - Draft Response

F - Furnish Fact Sheet to be

I - Info Copy Only/No Action Necessary

R - Direct Reply w/Copy

S - For Signature

X - Interim Reply

DISPOSITION CODES:

A - Answered

B - Non-Special Referral

C - Completed

S - Suspended

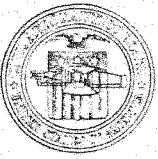
FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer

Code = "A"

Completion Date = Date of Outgoing

COMMENTS:



THE CHAIRMAN
OF THE
CIVIL AERONAUTICS BOARD

WASHINGTON, D. C. 20428

May 21, 1984

*But
pls get
me a draft
response*

227873

Dear Mike:

This is to alert you to an issue which will most likely become a high level political problem.

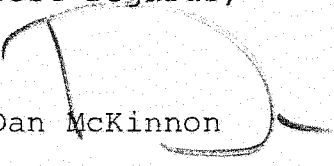
Korean Airlines has refused to sign a purchase order with McDonnell Douglas for six MD-80s unless they get the route rights as mentioned in the enclosed briefing paper.

This trade off of aircraft sales for route rights would set a dangerous precedent which every country in the world would utilize to the detriment of U.S. commercial aviation. It should never be done.

As you'll read, the issues go even deeper -- the Carter Administration made a very bad deal. This Administration must not give in to Korea's threat, and since they were first to refuse to fulfill a commitment, it gives the United States a way to get out of it.

I just want to bring this to your attention, as you'll probably be hearing more about it.

Best regards,


Dan McKinnon

Honorable Michael K. Deaver
Deputy Chief of Staff and
Assistant to the President
The White House
Washington, D. C. 20500

Enclosure