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File Folder

JGR/CIVIL AVIATION BOARD DECISIONS (9 OF 16)

FOIA

F05-139/01

Box Number

COOK

16RW

| DOC NO | Doc Type | Document Description | No of Pages | Doc Date | Restrictions | |
|--------|----------|--|-------------|------------------------|--------------|-----|
| 1 | SUMMARY | SUMMARY OF APPLICATION FOR MINERVE (OPEN IN WHOLE) | 1 | 8/ IND 1983 | B4 | 492 |
| 2 | SUMMARY | SUMMARY OF APPLICATION FOR TRANS-MEDITERRANEAN AIRWAYS (OPEN IN WHOLE) | 2 | 11/8/1983 | B4 | 493 |

COPY - Reagan Presidential Record

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

November 1, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decision in
Minerve, Compagnie Francaise de Transports
Aeriens, S.A.

Richard Darman's office has asked for comments by close of business Friday, November 4 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 November 7).

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 omits the standard sentence designed to preserve availability of judicial review.

This order authorizes Minerve to engage in charger service between the United States and France, including Corsica.

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

Attachment

THE WHITE HOUSE

WASHINGTON

November 1, 1983

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
Minerve, Compagnie Francaise de Transports
Aeriens, S.A.

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 11/1/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

November 1, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

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COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision in
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Aeriens, S.A.

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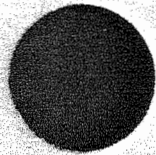
We also have no legal objection to OMB's recommendation that the President not disapprove this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 11/1/83

cc: FFFielding/JGRoberts/Subj/Chron

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1



Name of Correspondent: Richard G. DARMAN

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: CAB Decision: Minerve, Compagnie Francaise de Transports Aeriens, SA.

| ROUTE TO: Office/Agency (Staff Name) | ACTION Action Code | Tracking Date YY/MM/DD | DISPOSITION | |
|---|-----------------------|---------------------------|------------------|-----------------------------|
| | | | Type of Response | Completion Date YY/MM/DD |
| <u>CWHOLL</u> | ORIGINATOR | <u>8311101</u> | | <u>1 1</u> |
| <u>WATIB</u> | <u>D</u> | <u>8311101</u> | <u>S</u> | <u>8311101</u> |
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- 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: _____

Keep this worksheet attached to the original incoming letter.
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Always return completed correspondence record to Central Files.
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WHITE HOUSE STAFFING MEMORANDUM

DATE: 10/31/83 ACTION/CONCURRENCE/COMMENT DUE BY: c.o.b. Friday, 11/4/83

SUBJECT: CAB Decision: Minerve, Compagnie Francaise de Transports Aeriens, S.A.

| | ACTION FYI | | | ACTION FYI | |
|----------------|---------------------------------------|-----------------------------|------------|-------------------------------------|--------------------------|
| VICE PRESIDENT | <input type="checkbox"/> | <input type="checkbox"/> | HICKEY | <input type="checkbox"/> | <input type="checkbox"/> |
| MEESE | <input type="checkbox"/> | <input type="checkbox"/> | JENKINS | <input type="checkbox"/> | <input type="checkbox"/> |
| BAKER | <input type="checkbox"/> | <input type="checkbox"/> | McFARLANE | <input type="checkbox"/> | <input type="checkbox"/> |
| DEAVER | <input type="checkbox"/> | <input type="checkbox"/> | McMANUS | <input type="checkbox"/> | <input type="checkbox"/> |
| STOCKMAN | <input type="checkbox"/> | <input type="checkbox"/> | MURPHY | <input type="checkbox"/> | <input type="checkbox"/> |
| DARMAN | <input checked="" type="checkbox"/> P | <input type="checkbox"/> SS | ROGERS | <input type="checkbox"/> | <input type="checkbox"/> |
| DUBERSTEIN | <input type="checkbox"/> | <input type="checkbox"/> | SPEAKES | <input type="checkbox"/> | <input type="checkbox"/> |
| FELDSTEIN | <input type="checkbox"/> | <input type="checkbox"/> | SVAHN | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| FIELDING | <input checked="" type="checkbox"/> | <input type="checkbox"/> | VERSTANDIG | <input type="checkbox"/> | <input type="checkbox"/> |
| FULLER | <input type="checkbox"/> | <input type="checkbox"/> | WHITTLESEY | <input type="checkbox"/> | <input type="checkbox"/> |
| GERGEN | <input type="checkbox"/> | <input type="checkbox"/> | _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| HERRINGTON | <input type="checkbox"/> | <input type="checkbox"/> | _____ | <input type="checkbox"/> | <input type="checkbox"/> |

REMARKS:

Please provide comments/recommendations by c.o.b. Friday, November 4.
Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

October 31, 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:

Minerve, Compagnie Francaise
de Transports Aeriens, S.A. .
Docket 41025
Date due: November 7, 1983

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

- Issue an initial foreign air carrier permit to Minerve, Compagnie Francaise de transports Aeriens, S.A., for a period of five years, authorizing it to engage in charter foreign air transportation of persons and property between any point or points in France and Corsica and any point or points in the United States.

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.

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.



FOR OFFICIAL USE ONLY
THE CHAIRMAN
OF THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C. 20428

B-11

SEP 8 1985

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I transmit the Board's proposed order on the application of Minerve, Compagnie Francaise de Transports Aeriens, S.A., Docket 41025, for your consideration under section 801(a) of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978. The order will issue a permit to the applicant and adopt the Board's tentative decision in its Order to Show Cause 83-8-43 (enclosed) unless you disapprove it within 60 days of this transmittal.

If you should decide earlier that you will not disapprove, please advise me to that effect; this will allow the earlier issuance of the authority.

We are submitting the proposed decision to you before publication under the provisions of section 801(a) of the Federal Aviation Act of 1958. In accordance with Executive Order 11920, however, we plan to release all unclassified portions of the decision on or after the sixth day following this transmittal unless notified by your Assistant for National Security Affairs.

Respectfully yours,


Dan McKinnon

Enclosures

FOR OFFICIAL USE ONLY

THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

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

Minerve, Compagnie Francaise
de Transports Aeriens, S.A.
Docket 41025

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 7th day of September, 1983

Application of :
 :
 MINERVE, COMPAGNIE FRANCAISE : Docket 41025
 DE TRANSPORTS AERIENS, S.A. :
 :
 for a foreign air carrier permit :
 pursuant to section 402 of the Federal :
 Aviation Act of 1958, as amended :

ORDER

By Order 83-8-43, adopted August 10, 1983, the Board directed interested persons to show cause why the Board should not, subject to the disapproval of the President, issue an initial foreign air carrier permit to Minerve, Compagnie Francaise de Transports Aeriens, S.A., for a period of five years, authorizing it to engage in charter foreign air transportation of persons and property, as follows:

Between any point or points in France and Corsica
and any point or points in the United States.

The order directed persons objecting to the Board's tentative findings and conclusions set forth in that order, or to the issuance of the proposed foreign air carrier permit, to file their objections within 21 days. In addition, the order provided that in the event no objections were filed, all further procedural steps would be deemed waived, and the Secretary would enter an order which (1) would make final the Board's tentative findings and conclusions, and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, would issue a foreign air carrier permit to Minerve in the specimen form attached.

No objections to Order 83-8-43 have been filed.

ACCORDINGLY,

1. We make final our tentative findings and conclusions set forth in Order 83-8-43;

2. We are issuing a foreign air carrier permit in the form attached to Minerve, Compagnie Francaise de Transports Aeriens, S.A.;

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 SEP 8 1983
The 61st day is 8 NOV 1983

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

PERMIT TO FOREIGN AIR CARRIER

MINERVE, COMPAGNIE FRANCAISE DE TRANSPORTS AERIENS, S.A.

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

Between any point or points in France and Corsica and any point or points in the United States.

The holder may engage in other charter flights in foreign air transportation subject to the Board's regulations governing charters.

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

1. In the event any practice develops which the Board regards inimical to fair competition, the holder and the Board will consult and will use their best efforts to agree upon modifications satisfactory to the Board and the holder.
2. 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 during the period the permit remains in effect, to which the United States and France shall be parties.
3. The Board, by order or regulation, with or without hearing, may require advance approval of individual charter trips conducted under the authority granted by this permit, if it finds that such action is required in the public interest.

This permit shall be effective on _____, and shall terminate five years thereafter, except that it shall be subject to termination at any time if the authority to conduct flight operations to and from France and/or Corsica granted by the Government of France is cancelled or restricted.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on September 7, 1983.

PHYLLIS T. KAYLOR

Secretary

(SEAL)

ATTACHMENT

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 holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.
- (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 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 10th day of August, 1983

| | | |
|----------------------------------|---|--------------|
| Application of | : | |
| | : | |
| MINERVE, COMPAGNIE FRANCAISE | : | Docket 41025 |
| DE TRANSPORTS AERIENS, S.A. | : | |
| | : | |
| for a foreign air carrier permit | : | |
| pursuant to section 402 of the | : | |
| Federal Aviation Act of 1958, as | : | |
| amended | : | |
| | : | |

STATEMENT OF TENTATIVE FINDINGS AND CONCLUSIONS
AND ORDER TO SHOW CAUSE

By application filed October 5, 1982, 1/ and noticed in the Federal Register (47 FR 46348, October 18, 1982), Minerve, Compagnie Francaise de Transports Aeriens, S.A., a French charter carrier, requests an initial foreign air carrier permit to engage in charter foreign air transportation of persons and property between "Metropolitan France" 2/ and New York, New York, Miami, Florida, and New Orleans, Louisiana. 3/ On June 22, 1983,

1/ The application received on that date was incomplete, and by Order 82-10-68 we deferred further processing of the application until the missing evidence required under Part 211 of our Economic Regulations was furnished. We reserved the right to reject the application if Minerve had not furnished the missing evidence by December 27, 1982. We received most, but not all, of the missing evidence in a supplement to the application on December 22, 1982. On December 23, 1982, the attorney for Minerve requested an extension until January 20, 1983, to complete the application. Such request was granted on December 27, 1982, and further evidence was furnished on January 20, 1983, at which time the application was complete.

2/ In its supplement to the application, filed on December 22, 1982, Minerve clarified "Metropolitan France" to mean France plus Corsica.

3/ By Order 83-2-7 in Docket 41041, we granted Minerve an exemption authorizing charters of persons and property between Metropolitan France and New York, Miami and New Orleans. This authority will expire in one year from the date of issue (February 2, 1983) or ninety days after the Board submits an order to the President with respect to its decision in this docket, whichever occurs first.

Ownership and Control

Minerve was incorporated on August 8, 1975, under the laws of France. The company states that it is privately owned and that all of its stock is held by French citizens. The holder of the largest number of shares (31 percent of the total) is Mr. Rene Ferdinand Meyer, a French citizen and the president and general manager of the carrier. The applicant states that all of its officers, directors, and key management personnel are French citizens, and none holds any stock or other interest in any U.S. or foreign air carrier or in any person engaged in the business of aeronautics.

Operating History

Since 1975, Minerve has operated passenger charters, primarily from France to the Mediterranean Basin area, the French West Indies, Peru, and Kenya. Traffic has increased at an average annual rate of 47 percent from 50,000 passengers in 1976 to 345,000 in 1981. The number of employees has increased from 16 to 150. The carrier started with one Caravelle in 1976 and acquired one more in each of the next three years. It added a Super Caravelle in 1980, a DC-8 in 1981, and another in 1982. (Revised Exhibit 15)

Financial and Operating Fitness

Minerve's current license was issued by the Government of France on December 29, 1982, and authorizes it to operate international passenger, freight, and courier charter services utilizing its current equipment within Europe and the Mediterranean Basin area as well as Dakar, Senegal; Mombassa, Kenya; Asuncion, Paraguay; and Lima, Peru. Minerve is further licensed to conduct charter operations from the French West Indies and Europe (except France) to the United States and other named countries, as well as between France and Corsica and the United States and to certain other non-U.S. points. Minerve is licensed to operate charter mail and cargo services on a worldwide basis. The license also permits certain other operations using small aircraft. (Revised Exhibit 9)

No French governmental assistance has been received or expected (page 2 of application). The carrier had assets of \$3.44 million at the end of 1980 and \$5.13 million at the end of 1981. The stockholders' equity was valued at \$152,000 at the end of 1980 and \$233,000 at the end of 1981. Minerve sustained an operating loss of \$70,000 for calendar year 1980 but achieved an operating profit of \$103,000 for 1981. (Exhibit 14)

During the last three years, Minerve has never been refused insurance or had it involuntarily cancelled, nor has it been refused debt financing, defaulted on any transportation commitments, or failed to meet any current financial obligations. During the last five years, Minerve has had no

Grant of this authority will make possible new United States-France charter services and add competition in the market.

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

1. It is in the public interest to issue a foreign air carrier permit to Minerve, Compagnie Francaise de Transports Aeriens, S.A. in the specimen form attached, authorizing charter transportation of persons and property between any point or points in France and Corsica and any point or points in the United States;

2. The public interest requires that the exercise of the privileges granted by the 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 as we may prescribe;

3. Minerve is fit, willing, and able properly to perform the transportation described in the specimen permit and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and to our rules, regulations, and requirements;

4. Minerve is substantially owned and effectively controlled by citizens of France;

5. The public interest does not require an oral evidentiary hearing on the application;

6. The proposed issuance of Minerve'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 the Board's Regulations; 8/ and

7. Except to the extent granted, the application of Minerve in Docket 41025 should be denied.

8/ Our tentative finding is based on the fact that issuance of the proposed permit will not result in a near-term annual increase in fuel consumption in excess of 10 million gallons.

7. We shall serve a copy of this order upon Minerve, Compagnie Francaise de Transports Aeriens, S.A.; Dade County, Florida and the Greater Miami Traffic Association; Transamerica Airlines, Inc.; the Ambassador of France in Washington, D.C.; and the U.S. Departments of State and Transportation.

We shall publish a summary of this order in the Federal Register.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Secretary

(SEAL)

All Members concurred.

SUMMARY OF APPLICATION

Homeland Country: France

Reciprocity And Comity As Basis For Authority Sought: Yes -- Adequate comity and reciprocity exist.

Holds Government License For Authority Sought: Exhibit 9

Operating History: Charter passenger operations since 1976 from France to the Mediterranean Basin area, the French West Indies, Peru, and Kenya

Aircraft (All Owned): 2 DC-8-53, 4 Caravelle SE 210 VI, 1 Caravelle SE 210 X 133 ("Super Caravelle")

Aircraft Maintenance Performed By: Aeronavali in Venice and Cargolux in Luxembourg for checks over 500 hours; Minerve in Toulouse, France for checks 500 hours or less

| Financial Indicators--As Of: | <u>Dec. 31, 1980</u> (000) | <u>Dec. 31, 1981</u> (000) |
|---------------------------------------|-------------------------------|-------------------------------|
| Total Assets | \$ 3,438 | \$ 5,128 |
| Total Liabilities | 3,286 | 4,895 |
| Owners' Equity | 152 | 233 |
| Operating Profit (Loss) 12-mos. ended | (70) | 103 |

Majority Ownership And Effective Control By Nationals Of: France

Insurance Coverage: Meets requirements

Insurance Refused Or Involuntarily Canceled During Last 3 Years: No

Refused Debt Financing Last 3 Years: No

Defaulted On Transportation Commitments Last 3 Years: No

Failed To Meet Current Financial Obligations Last 3 Years: No

Safety Or Traffic Violations During Last 5 Years: No

Subscribes To Standard Permit Conditions Regarding Insurance And Annex 6 Of Chicago Convention And C.A.B. Agreement 18900: Yes

Near-term Annual Fuel Consumption Exceeds 10 Million Gallons: No

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

PERMIT TO FOREIGN AIR CARRIER

MINERVE, COMPAGNIE FRANCAISE DE TRANSPORTS AERIENS, S.A.

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

Between any point or points in France and Corsica and any point or points in the United States.

The holder may engage in other charter flights in foreign air transportation subject to the Board's regulations governing charters.

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

1. In the event any practice develops which the Board regards inimical to fair competition, the holder and the Board will consult and will use their best efforts to agree upon modifications satisfactory to the Board and the holder.
2. 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 during the period the permit remains in effect, to which the United States and France shall be parties.
3. The Board, by order or regulation, with or without hearing, may require advance approval of individual charter trips conducted under the authority granted by this permit, if it finds that such action is required in the public interest.

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 holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(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 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

December 23, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decisions in
Aeroperu; Aeronaves del Peru; Compania
de Aviacion "Faucett"

Richard Darman's office has asked for comments by January 5 on the above-referenced CAB decisions, which were 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 these cases, by January 22, 1984).

The orders here have 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 these orders involve foreign carriers, the proposed letter from the President to the CAB Chairman prepared by OMB omits the standard sentence designed to preserve availability of judicial review.

These orders deny all pending applications by Peruvian carriers, in response to Peru's recent renunciation of the U.S.-Peru Air Transport Services Agreement. The Board hopes to use these orders as a bargaining chip in negotiations with Peru scheduled for January 1984.

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

Attachment

THE WHITE HOUSE

WASHINGTON

December 23, 1983

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 Decisions in
Aeroperu; Aeronaves del Peru; Compania
de Aviacion "Faucett"

Our office has reviewed the above-referenced CAB decisions 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 these orders or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 12/23/83

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

December 23, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions in
Aeroperu; Aeronaves del Peru; Compania
de Aviacion "Faucett"

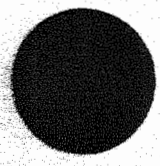
Our office has reviewed the above-referenced CAB decisions and related materials, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

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

FFF:JGR:aea 12/23/83
cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1



Name of Correspondent: Richard G. DARMAN

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: CAB Decision re: Aeroperu ; Aeronaues del Peru ; Compania de Aviacion "Faucett"

| 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>CVHOLL</u> | ORIGINATOR | <u>831222</u> | | <u>1 1</u> |
| <u>CVAT18</u> | Referral Note: <u>D</u> | <u>831222</u> | <u>S</u> | <u>840105</u> |
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| | Referral Note: | <u>1 1</u> | | <u>1 1</u> |
| | Referral Note: | <u>1 1</u> | | <u>1 1</u> |
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|--|---|---|
| <p>ACTION CODES:</p> <ul style="list-style-type: none"> A - Appropriate Action C - Comment/Recommendation D - Draft Response F - Furnish Fact Sheet to be used as Enclosure | <ul style="list-style-type: none"> I - Info Copy Only/No Action Necessary R - Direct Reply w/Copy S - For Signature X - Interim Reply | <p>DISPOSITION CODES:</p> <ul style="list-style-type: none"> 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: _____

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.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12/22/83 ACTION/CONCURRENCE/COMMENT DUE BY: 1/5/84

SUBJECT: CAB DECISION RE: AEROPERU; AERONAVES DEL PERU; COMPANIA DE AVIACION
"FAUCETT"

| | ACTION FYI | | | ACTION FYI | |
|----------------|-------------------------------------|-----------------------------|------------|-------------------------------------|--------------------------|
| VICE PRESIDENT | <input type="checkbox"/> | <input type="checkbox"/> | JENKINS | <input type="checkbox"/> | <input type="checkbox"/> |
| MEESE | <input type="checkbox"/> | <input type="checkbox"/> | McFARLANE | <input type="checkbox"/> | <input type="checkbox"/> |
| BAKER | <input type="checkbox"/> | <input type="checkbox"/> | McMANUS | <input type="checkbox"/> | <input type="checkbox"/> |
| DEAVER | <input type="checkbox"/> | <input type="checkbox"/> | MURPHY | <input type="checkbox"/> | <input type="checkbox"/> |
| STOCKMAN | <input type="checkbox"/> | <input type="checkbox"/> | OGLESBY | <input type="checkbox"/> | <input type="checkbox"/> |
| DARMAN | <input type="checkbox"/> P | <input type="checkbox"/> SS | ROGERS | <input type="checkbox"/> | <input type="checkbox"/> |
| FELDSTEIN | <input type="checkbox"/> | <input type="checkbox"/> | SPEAKES | <input type="checkbox"/> | <input type="checkbox"/> |
| FIELDING | <input checked="" type="checkbox"/> | <input type="checkbox"/> | SVAHN | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| FULLER | <input type="checkbox"/> | <input type="checkbox"/> | VERSTANDIG | <input type="checkbox"/> | <input type="checkbox"/> |
| GERGEN | <input type="checkbox"/> | <input type="checkbox"/> | WHITTLESEY | <input type="checkbox"/> | <input type="checkbox"/> |
| HERRINGTON | <input type="checkbox"/> | <input type="checkbox"/> | _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| HICKEY | <input type="checkbox"/> | <input type="checkbox"/> | _____ | <input type="checkbox"/> | <input type="checkbox"/> |

REMARKS:

May we have your comments on the attached by Thursday, January 5.
Thank you.

RESPONSE:

1983 DEC 22 AM 11: 28

Richard G. Darman
Assistant to the President
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 21 1983

ACTION

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

SUBJECT: Civil Aeronautics Board Decisions

AeroPeru (Empresa de
Transportes Aereo del Peru)
Dockets 32945, 33546, 34168
Date due: January 22, 1984

Aeronaves del Peru, S.A.
Docket 26637
Date due: January 22, 1984

Aeronaves del Peru, S.A.
Docket 40850
Date due: January 22, 1984

Compania de Aviacion "Faucett,"
S.A.
Dockets 35755, 32089
Date due: January 22, 1984

You will find attached a memorandum for the President about the above international aviation cases. The interested executive agencies have reviewed the Board's decisions and have no objection to the proposed orders.

These are routine, noncontroversial matters. No foreign policy or national defense reasons for disapproving the Board's orders 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 orders within the 60 days allowed by statute. Otherwise, the Board's orders become final on the 61st day.

You should also be aware that the Board has requested that the President review these cases on an expedited basis. The Board hopes to use the decisions as a bargaining tool in air transport negotiations with Peru, scheduled for January 1984.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

Memorandum to the President
CAB letters of transmittal
CAB orders
Letter to the Chairman



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 21 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions:

| | |
|--|----------------------------|
| AeroPeru (Empresa de Transportes Aereo del Peru) | Aeronaves del Peru, S.A. |
| Dockets 32945, 33546, 34168 | Docket 26637 |
| Date due: January 22, 1984 | Date due: January 22, 1984 |

| | |
|----------------------------|--------------------------------------|
| Aeronaves del Peru, S.A. | Compania de Aviacion "Faucett," S.A. |
| Docket 40850 | Dockets 35755, 32089 |
| Date due: January 22, 1984 | Date due: January 22, 1984 |

The Civil Aeronautics Board proposes to take the following actions with regard to the above international air cases:

- Deny all pending permit renewal or amendment applications of AeroPeru, Aeronaves del Peru, S.A., and Compania de Aviacion "Faucett," S.A. The Board's action is a measured response to Peru's renunciation of the U.S.-Peru Air Transport Services Agreement. The Board believes that this action will aid the United States in negotiations with Peru, scheduled for January 1984, over a new agreement.

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 orders in whole or in part.

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

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

CAB letters of transmittal
CAB orders
Letter to the Chairman

Options and Implementation Actions:

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

THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

I have reviewed the orders proposed by the Civil Aeronautics Board in the following cases:

AeroPeru (Empresa de
Transportes Aereo del Peru)
Dockets 32945, 33546, 34168

Aeronaves del Peru, S.A.
Docket 26637

Aeronaves del Peru, S.A.
Docket 40850

Compania de Aviacion "Faucett,"
S.A.
Dockets 35755, 32089

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

Sincerely,

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

FOR OFFICIAL USE ONLY

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 23rd day of November, 1983

Applications of :
: :
AEROPERU (EMPRESA DE : Dockets 32945
TRANSPORTES AEREO DEL PERU) : 33546
: 34168
: :
for renewal and amendment of its foreign :
air carrier permit pursuant to :
section 402 of the Federal Aviation :
Act of 1958, as amended :
----- :
----- :
Application of :
: :
AERONAVES DEL PERU, S.A. : Docket 26637
: :
for amendment and renewal of its :
foreign air carrier permit pursuant to :
section 402 of the Federal Aviation Act :
of 1958, as amended :
----- :
----- :
Application of :
: :
AERONAVES DEL PERU, S.A. : Docket 40850
: :
for a foreign air carrier :
permit pursuant to section :
402 of the Federal Aviation :
Act of 1958, as amended :
----- :
----- :
Applications of :
: :
COMPANIA DE AVIACION "FAUCETT," S.A. : Dockets 35755
: 32089
: :
for amendment and renewal of its foreign :
air carrier permit pursuant to section :
402 of the Federal Aviation Act of 1958, :
as amended :

FOR OFFICIAL USE ONLY

FINAL ORDER

Introduction

By Order 83-11-56, we tentatively decided to deny all pending permit renewal or amendment applications of AeroPeru (Empresa de Transportes Aereo del Peru), Aeronaves del Peru, S.A., and Compania de Aviacion "Faucett," S.A. We directed all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions, and allowed such persons until 12:00 noon November 18, 1983, to file comments in response to our show-cause order.

Aeronaves and Faucett filed responses to our order. Aeronaves urges the Board to defer consideration of the applications until the conclusion of negotiations between the United States and Peru. The carrier suggests that our proposed action is inconsistent with the public interest because it may impede the resumption of normal aviation relations between the United States and Peru.

Faucett requests that instead of denying its applications, the Board suspend action on them, or alternatively, dismiss them without prejudice to their reinstatement at such time as a new air transport agreement between the United States and Peru becomes effective. In support of its request, Faucett states that denial of its applications presumes a finding by the Board that grant of each application would be inconsistent with the public interest. Faucett asserts that there is no record upon which such a finding could be made and that the Board's decision in Order 83-11-49 to allow Faucett and the other Peruvian carriers to continue their existing service under temporary exemption authority supports the conclusion that at least that service remains in the public interest. Although Faucett concedes that the lack of an underlying bilateral treaty removes all basis for granting the pending applications, it asserts, on the other hand, that the lack of a treaty does not require the denial of those applications.

Decision

We have decided to make final our tentative findings and conclusions and to issue an order denying the pending permit applications of AeroPeru, Aeronaves and Faucett.

Aeronaves' and Faucett's permit authority were based on the terms of the U.S.-Peru Air Transport Services Agreement. That authority terminated automatically upon termination of the Agreement on November 11, 1983. Thus, the Peruvian carriers' pending permit applications request renewal and amendment of permit authority which no longer exists. As Faucett itself recognizes, no basis exists for granting these pending applications. Under these circumstances, preservation of the applications would serve no purpose, and denial is in order.

Moreover, we indicated clearly in Order 83-11-49 that because of Peru's renunciation of the Agreement, it was consistent with the public interest to consider all Peruvian carrier requests for operating authority de novo, based on principles of comity and reciprocity. We also indicated that it was consistent with the public interest to transform the regime of U.S.-Peru aviation relations into one where all Peruvian carriers would hold new temporary authorizations. Nothing in the pleadings causes us to alter our tentative findings and conclusions. Against this background, denial of pending permit applications is fully consistent with the public interest.

ACCORDINGLY,

1. We make final our tentative findings and conclusions in Order 83-11-56;

2. We deny AeroPeru's applications in Dockets 32945, 33546 and 34168; Aeronaves' applications in Dockets 26637 and 40850; and Faucett's applications in Dockets 26637, 32089 and 35755;

3. Unless disapproved by the President of the United States under section 801(a) of the Act, this order shall become effective on the 61st day after its submission to the President 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; ^{1/} and

4. We will serve this order upon AeroPeru (Empresa de Transportes Aereo del Peru), Aeronaves del Peru, S.A., Compania de Aviacion "Faucett," S.A., Challenge Air Transport, Inc., Eastern Air Lines, Inc., the Ambassador of Peru in Washington, D.C., and the United States Departments of State and Transportation.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

All Members concurred.

1/ This letter was submitted to the President on NOV 23 1983
The 61st day is JAN 23 1984

THE WHITE HOUSE

WASHINGTON

December 27, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decision in
Trans-Mediterranean Airways

Richard Darman's office has asked for comments by December 27 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 January 9, 1984).

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 omits the standard sentence designed to preserve availability of judicial review.

This order authorizes service by the named carrier between Lebanon and New York, with seven intermediate points in Europe. OMB describes the order as a "routine, noncontroversial matter."

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

Attachment

THE WHITE HOUSE

WASHINGTON

December 27, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING ¹⁵
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision in
Trans-Mediterranean Airways

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 12/27/83
cc: FFFielding/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- D - OUTGOING
- H - INTERNAL
- I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Richard G. DARMAN

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: CAB Decision re: Trans-Mediterranean Airway

| ROUTE TO: | ACTION | DISPOSITION |
|----------------------------|----------------------------|--|
| Office/Agency (Staff Name) | Action Code | Tracking Date YY/MM/DD |
| <u>CWOLL</u> | ORIGINATOR | <u>83, 12, 23</u> |
| <u>CWATIB</u> | Referral Note: <u>D</u> | Type of Response: _____ Code: <u>S</u> Completion Date: <u>83, 12, 27</u> |
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| _____ | Referral Note: _____ | Tracking Date: <u>1 1</u> |

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|---|---|
| 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: _____


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.

TR

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12/22/83 ACTION/CONCURRENCE/COMMENT DUE BY: 12/27/83

SUBJECT: CAB DECISION RE TRANS-MEDITERRANEAN AIRWAYS

| | ACTION FYI | | | ACTION FYI | |
|--|-------------------------------------|-----------------------------|------------|-------------------------------------|--------------------------|
| VICE PRESIDENT | <input type="checkbox"/> | <input type="checkbox"/> | JENKINS | <input type="checkbox"/> | <input type="checkbox"/> |
| MEESE | <input type="checkbox"/> | <input type="checkbox"/> | McFARLANE | <input type="checkbox"/> | <input type="checkbox"/> |
| BAKER | <input type="checkbox"/> | <input type="checkbox"/> | McMANUS | <input type="checkbox"/> | <input type="checkbox"/> |
| DEAVER | <input type="checkbox"/> | <input type="checkbox"/> | MURPHY | <input type="checkbox"/> | <input type="checkbox"/> |
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| DARMAN | <input type="checkbox"/> P | <input type="checkbox"/> SS | ROGERS | <input type="checkbox"/> | <input type="checkbox"/> |
| FELDSTEIN | <input type="checkbox"/> | <input type="checkbox"/> | SPEAKES | <input type="checkbox"/> | <input type="checkbox"/> |
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| HICKEY | <input type="checkbox"/> | <input type="checkbox"/> | _____ | <input type="checkbox"/> | <input type="checkbox"/> |

REMARKS:

May we have your comments on the attached by December 27. Thank you.

RESPONSE:

12-23-83

Richard G. Darman
Assistant to the President
Ext. 2702



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 22 1983

ACTION

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

SUBJECT: Civil Aeronautics Board Decision:

Trans-Mediterranean Airways, S.A.L.
Docket 41488
Date due: January 9, 1984

You will find attached 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

DEC 22 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:

Trans-Mediterranean Airways, S.A.L.
Docket 41488
Date due: January 9, 1983

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

- Amend and renew the foreign air carrier permit of Trans-Mediterranean Airways, S.A.L., to authorize scheduled and charter air service of property and mail between a point or points in Lebanon, seven intermediate points in Western Europe, and the terminal point of New York, New York.

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:

Trans-Mediterranean Airways, S.A.L.
Docket 41488

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

Sincerely,

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



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 22 1983

ACTION

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

SUBJECT: Civil Aeronautics Board Decision:

Trans-Mediterranean Airways, S.A.L.
Docket 41488
Date due: January 9, 1984

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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

DEC 22 1983

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:

Trans-Mediterranean Airways, S.A.L.
Docket 41488
Date due: January 9, 1983

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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:

Trans-Mediterranean Airways, S.A.L.
Docket 41488

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

Sincerely,

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

FOR OFFICIAL USE ONLY

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 8th day of November, 1983

Application of :
 :
TRANS-MEDITERRANEAN AIRWAYS, S.A.L. : Docket 41488
 :
for amendment and renewal of its foreign :
air carrier permit under section 402 of the :
Federal Aviation Act of 1958, as amended :

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Background

Trans-Mediterranean Airways, S.A.L., (TMA), a Lebanese carrier, currently holds a three-year foreign air carrier permit, by Order 80-5-147 effective May 21, 1980. The permit authorizes TMA to conduct scheduled Lebanon-New York City service, carrying property and mail, via seven European intermediate points, 1/ and to operate cargo charters under our charter regulations. 2/

TMA's permit contains, among others, the following three terms, conditions, and limitations: (1) TMA shall not operate more than seven scheduled flights per week in each direction; (2) the volume of TMA's cargo loaded or unloaded at New York, which is destined for and coming from third countries, shall bear a "reasonable relationship" to the volume of its New York-Lebanon cargo--any cargo which, within ten days, will be transported to, or has been transported from, a point beyond Lebanon in TMA aircraft, is considered to be destined for or coming from a third country (the "ten-day" restriction); and (3) TMA shall not grant a boarding or delivery priority or preference to the Arabian-American Oil Company (ARAMCO) or its affiliates, unless such service is available to all shippers at the same rate or charge, and shall cancel any existing contract provision with ARAMCO or its affiliates, which is not available on equal terms to all shippers (the "ARAMCO" restriction).

1/ The seven intermediates are Basel, Switzerland; Amsterdam, Netherlands; Copenhagen, Denmark; Stockholm, Sweden; Frankfurt, Germany; Paris, France; London, England. However, the permit precludes TMA from picking up or discharging at New York property or mail destined for or originating at Frankfurt, Paris, or London.

2/ In its instant permit application, TMA relies on the automatic-extension provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by Part 377 of our regulations, to keep the authority in effect pending final disposition of the application.

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TMA is designated by its government under the United States-Lebanon Air Transport Services Agreement, which entered into force September 1, 1972, to conduct scheduled all-cargo services between the two countries via the seven named European intermediate points. ^{3/} The route schedule of the 1972 Agreement expired by its terms on May 27, 1976. It was extended through December 31, 1976 by agreement between the two governments. An Exchange of Notes signed in October 1977 provided continued authority for TMA's operations and for the resumption of Pan American's Beirut service on the basis of comity and reciprocity. Two recent Exchange of Notes again provide definitive route rights for the carriers of both countries. The Exchange of Notes dated December 22, 1982, provides routes for airlines of the United States and for another Lebanese carrier, Middle East Airlines. The Exchange dated April 29, 1983, provides TMA's all-cargo route rights.

Under the April 29 Exchange of Notes, TMA is entitled to conduct scheduled all-cargo Lebanon-New York service, via the intermediate points Basel, Amsterdam, Copenhagen, Stockholm, Frankfurt, Paris, and London, without traffic rights between New York and the intermediate points Paris, London, and Frankfurt, at a frequency of four round-trip flights per week with narrow-body aircraft or equivalent capacity.

Application

By application filed May 16, 1983, and notice of which was placed in the Federal Register (48 FR 23876, May 27, 1983), TMA requests that we renew its foreign air carrier permit for a three-year period, and amend it in accordance with the Exchange of Notes dated April 29, 1983. TMA also requests that we remove from its permit the ten-day and ARAMCO conditions.

In support of its overall application, TMA asserts (Attachment A is a summary of the application) that it is a carrier of Lebanon, privately owned and controlled by nationals of Lebanon; that it is financially and operationally qualified to conduct the scheduled and charter cargo operations it proposes; ^{4/} that it is licensed by its government to do so;

^{3/} The 1972 Agreement superseded the 1946 United States-Lebanon Air Transport Services Agreement.

^{4/} TMA states that the Port Authority of New York and New Jersey enacted noise-abatement regulations, which will not permit the use of Boeing 707 equipment at its airports. TMA's fleet consists solely of B-707's. By letter dated August 16, 1983, TMA states that in June 1983 the United States District Court for the Southern District of New York found the restriction to be invalid and issued a preliminary injunction against the Port Authority, that the Port Authority has appealed the District Court's decision to the United States Court of Appeals, and that the appeal is pending. TMA asserts that, regardless of the outcome of the appeal, it has the means to conduct New York service via its block-space arrangement with Middle East Airlines S.A.L., approved for a one-year period by Order 83-7-72.

that it is designated by its government to conduct the scheduled cargo services provided for in the April 29 Exchange of Notes; 5/ and that adequate comity and reciprocity with Lebanon underlie its request to operate cargo charter flights to the United States.

In support of its request to have the ten-day condition removed from its permit, TMA argues that it was instituted in the absence of an effective route schedule specified in the Agreement and is no longer relevant because the April 29 Exchange of Notes prescribes the limitations on the level of TMA's operations. Further, TMA asserts, without elaboration, that the ARAMCO condition has not been relevant for a number of years.

No answers to the application have been filed.

Decision

We have thoroughly reviewed the record, including the application, and have decided to grant the application using the simplified Subpart Q procedures. 6/ The public was informed of TMA's application by notices in the Federal Register and our weekly list of applications filed, describing the authority sought and giving interested persons an opportunity to submit evidence and objections to the award of the authority. These notices provided the required notice and filing opportunities. Simplified procedures are appropriate in this case because there are no material determinative issues of fact requiring other procedures.

We have decided to amend and renew TMA's foreign air carrier permit for a three-year period to authorize the carrier to conduct scheduled service, carrying property and mail, between Lebanon and New York City, via the seven named European intermediate points, and to operate cargo charter flights in foreign air transportation, under our regulations governing charters. 7/ Based on TMA's submissions and other facts of record, we find and conclude that the applicant is substantially owned and effectively controlled by nationals of Lebanon, and that it is fit, willing, and able to perform properly the scheduled and charter foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements. In this regard, no party has challenged TMA's ownership and control by homeland nationals,

5/ See section 402(b) of the Federal Aviation Act of 1958, as amended; 49 U.S.C. 1372(b).

6/ 14 CFR 302.1701 et seq. Under Rule 29(b) we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision, after provision of an opportunity for interested parties to submit evidence and to object to grant of authority under section 402 of the Act.

7/ Although the Agreement and the exchanges of notes do not provide for charter operations, we are granting TMA the underlying charter authority on the basis of comity and reciprocity.

its financial and operational fitness, 8/ or the adequacy of the carrier's compliance disposition. Moreover, TMA's scheduled authority is provided by a recent Exchange of Notes between the United States and Lebanon, and the airline is licensed by its government to conduct the scheduled and charter operations it requests.

We further find and conclude that adequate comity and reciprocity with Lebanon underlies TMA's request to conduct cargo charter flights to and from the United States, and is sufficient to warrant issuing a permit for a three-year term.

We are not persuaded, however, that either the ten-day or the ARAMCO condition should be removed from TMA's permit. See conditions 4 and 5, respectively, in the attached permit.

Concerning retention of the ten-day condition, we believe that the volume of TMA's New York City cargo (cargo loaded or unloaded at New York), which is destined for or coming from third countries (Fifth including Sixth Freedom traffic), should continue to bear a reasonable relationship to the volume of TMA's Third and Fourth Freedom Lebanon-New York cargo. TMA's New York cargo, which, within ten days, TMA will transport to or has carried from, points beyond Lebanon, still should be considered as third-country carriage for the purposes of the condition. The basis for the ten-day condition was thoroughly considered in 1977 and 1978, 9/ and we do not view TMA's route rights being delineated under the April 1983 Exchange of Notes as obviating the need for the ten-day condition.

Further, we continue to believe that TMA should not grant contractual, boarding, or delivery-priority preferences to ARAMCO or its affiliates. This too is a longstanding condition, imposed after formal hearing and thorough Board deliberation. TMA has offered no basis other than an unsubstantiated claim to justify its removal. Thus, we find that the reasons for applying the condition remain sound. Therefore, we find and conclude that retaining both conditions is consistent with the public interest.

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

1. The applicant is qualified and has been designated by its government to perform the air services described in the attached foreign air carrier permit;
2. The applicant is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and our rules, regulations and requirements;

8/ By letter dated June 20, 1983, the Acting Manager, Air Transportation Division, Office of Flight Operations, advised us that TMA conducts its operations in accordance with Part 129 of the FAA's Federal Aviation Regulations, and that he sees no reason why we should act unfavorably on the application.

9/ See p.25 of the Recommended Decision of Administrative Law Judge Kane, served April 11, 1977, in Docket 30255; Order 78-5-67 (76 C.A.B. 698); and Order 78-9-62, denying TMA's petition for reconsideration, requesting that the ten-day condition be deleted from its permit.

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

4. The applicant is substantially owned and effectively controlled by nationals of its homeland country;

5. Issuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of our Regulations; 10/ and

6. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We amend and reissue, in the form attached, the foreign air carrier permit issued to the applicant by Order 80-5-147, to authorize, among other things, scheduled and charter air service of property and mail between the United States and Lebanon;

2. We deny, except to the extent granted, the application and other requests for relief in this Docket;

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

4. Unless disapproved by the President of the United States under section 801(a) of the Act, this order with the attached permit shall become effective on the 61st day after its submission to the President, 11/ 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; and

5. We shall serve this order on the applicant, the Ambassador of Lebanon in Washington, D.C., the Federal Aviation Administration (AFO-220), and the Departments of State and Transportation.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Secretary

(SEAL)

All Members concurred.

10/ Our finding is based upon the fact that amendment and renewal of the applicant's permit will not result in a near-term annual increase in fuel consumption in excess of 10 million gallons.

11/ This order was submitted to the President on **NOV 10 1983**

The 61st day is **JAN 10 1984**

SUMMARY OF APPLICATION

Homeland Country: Lebanon

Current Permit Issued By: Order 80-5-147, permit effective May 21, 1980

Evidence Incorporated By Reference From: Dockets 22901, 30255, and 35516

Bases For Authority Sought: TMA is designated by its government under the United States-Lebanon Air Transport Services Agreement, to conduct scheduled all-cargo services between the two countries via various intermediate points. The scheduled cargo authority that TMA requests is provided for the applicant by the Exchange of Notes between the two governments, dated April 29, 1983. The charter authority TMA requests is not provided for by agreement; however, adequate comity and reciprocity underlie that portion of the request.

Holds Government License For Authority Sought: Yes, see Docket 22901

Operating History: TMA received its initial foreign air carrier permit in 1971 and has conducted all-cargo operations to and from the United States since that time. (Also, see Docket 35516.)

Aircraft Owned: Eight Boeing 707-320C's

Aircraft Maintenance Performed By: TMA in Lebanon

| Financial Indicators (As Of): | <u>Dec. 31, 1981</u> | <u>Dec. 31, 1982</u> |
|-----------------------------------|----------------------|----------------------|
| | (Millions) | (Millions) |
| Total Assets | \$ 89.1 | \$ 73.5 |
| Total Liabilities | 60.1 | 53.2 |
| Owners' Equity | 29.0 | 20.4 |
| Operating (Loss)--12 months ended | (2.1) | (15.1) |

Majority Ownership By Nationals Of: Lebanon

Effective Control By Nationals Of: Lebanon

Insurance Coverage: Yes

Insurance Refused Or Involuntarily Canceled During Last 3 Years: No

Refused Debt Financing Last 3 Years: No

Defaulted On Transportation Commitments Last 3 Years: No

Failed To Meet Current Financial Obligations Last 3 Years: No

Safety Violations During Last 5 Years: No

Tariff Violations During Last 5 Years: No

Subscribes To Standard Permit Conditions Regarding Insurance And Annex 6 Of Chicago Convention And C.A.B. Agreement 18900: Yes

Near-term Annual Fuel Consumption Exceeds 10 Million Gallons: No

Other: TMA states that it holds 5,922 shares of common stock in Braniff International Corp., 1,002 shares of common stock in Tiger International Inc., and debentures of \$40,000 in Tiger International 1995. Further, TMA states that none of its stock has been given or pledged to borrow funds or purchase aircraft.

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

PERMIT TO FOREIGN AIR CARRIER
(as amended and renewed)

TRANS-MEDITERRANEAN AIRWAYS, S.A.L.

is authorized, subject to the following provisions, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation of property and mail, as follows:

Between a point or points in Lebanon; the intermediate points Basel, Switzerland; Amsterdam, Netherlands; Copenhagen, Denmark; Stockholm, Sweden; Frankfurt, Germany; Paris, France; London, England; and the terminal point New York, New York.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by the Board's Regulations governing charters.

This permit shall be subject to the following terms, conditions, and limitations:

1. All scheduled flights serving New York shall originate or terminate in Lebanon.
2. The holder shall not pick up or discharge at New York property or mail destined for or originating at Frankfurt, Paris, or London.
3. Except as the Board may otherwise provide, with or without hearing, by prior authorization, the holder shall not operate more than four scheduled flights per week in each direction, with narrow body aircraft or equivalent capacity.
4. The holder shall strive to comply with the condition that the volume of New York cargo (i.e., loaded or unloaded at New York) transported by the holder which is destined for and coming from third countries shall bear a reasonable relationship to the volume of New York cargo which is destined for and coming from Lebanon. Any cargo which, within a period of 10 days, will be transported to, or has been transported from, a point beyond Lebanon in an aircraft of the holder, shall be considered to be destined for or to be coming from a third country.

5. The holder shall not grant a boarding or delivery priority or preference to the Arabian-American Oil Company (ARAMCO) or its affiliates unless such service is available to all shippers at the same rate or charge and, shall cancel any existing contract provision with ARAMCO or its affiliates which is not available on equal terms to all shippers.
6. In the event any practice develops which the Board regards as inimical to fair competition, the holder and the Board will consult, and will use their best efforts to agree upon modifications which are satisfactory to the Board and the holder.
7. 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 during the period this permit remains in effect, to which the United States and Lebanon are or shall become parties.

This permit shall be effective on _____, and shall terminate three years later on _____. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement which shall have the effect of eliminating the bilaterally authorized service authorized by this permit from the service which may be operated by airlines designated or authorized by the Government of Lebanon (or in the event of the elimination of any part of the authorized service, 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 or authorized by the Government of Lebanon in lieu of the holder; or (3) upon the termination or expiration of the Exchange of Notes, dated April 29, 1983, between the Government of the United States and the Government of Lebanon (or in the event of the termination, expiration, or amendment of any part of the Exchange of Notes, the authority granted by this permit shall cease to the extent of such termination, expiration, or amendment). However, clause (3) of this paragraph shall not apply if the operation of the authorized foreign air transportation becomes the subject of any treaty, convention, or agreement to which the United States of America and Lebanon are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on November 8, 1983.

PHYLLIS T. KAYLOR

Secretary

(SEAL)

ATTACHMENT

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 condition that the foreign air carrier complies with the requirements of 14 CFR 203, concerning 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 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.

* * * *