

No. 427

**INDIA
and
CEYLON**

Agreement relating to air services (with annex and Exchange of Notes). Signed at New Delhi, on 21 December 1948

English official text communicated by the Secretary-General of the International Civil Aviation Organization. The registration took place on 13 April 1949.

**INDE
et
CEYLAN**

Accord relatif aux services aériens (avec annexe et échange de notes). Signé à New-Delhi, le 21 décembre 1948

Texte officiel anglais communiqué par le Secrétaire général de l'Organisation de l'aviation civile internationale. L'enregistrement a eu lieu le 13 avril 1949.

No. 427. AGREEMENT¹ BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF CEYLON RELATING TO AIR SERVICES. SIGNED AT NEW DELHI, ON 21 DECEMBER 1948

The Government of India and the Government of Ceylon,

Being parties to the Convention on International Civil Aviation (hereinafter referred to as the Convention) opened for signature at Chicago on the seventh day of December, 1947², and

Desiring to conclude an agreement, supplementary to the Convention for the operation of commercial air transport services between and beyond the territories of India and of Ceylon,

Agree as follows:

Article I

Each Contracting Party grants to the other Contracting Party the right to operate the air services specified in the Annex to this Agreement (hereinafter referred to as the "specified air services") on the routes specified in the said Annex (hereinafter referred to as the "specified air routes").

Article II

(A) Each of the specified air services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights under this Agreement are granted, on condition that:

- (1) The Contracting Party to whom the rights have been granted shall have designated one airline (hereinafter referred to as the "designated airline") for each specified air route.
- (2) The Contracting Party which grants the rights shall have given the appropriate operating permission to the airline pursuant to paragraph (C) of this Article which it shall do with the least possible delay.

¹ Came into force on 21 December 1948, as from the date of signature, in accordance with article XI.

² United Nations, *Treaty Series*, Volume 15, page 295, and Volume 26, page 420.

(B) Substantial ownership and effective control of the designated airline(s) of each Contracting Party shall be vested in that Party or its nationals.

(C) The designated airline may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfil the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operation of commercial air services.

(D) The operation of each of the specified air services shall be subject to the agreement of the Contracting Party concerned that the route organization available for civil aviation on the specified air route is adequate for the safe operation of air services.

Article III

A designated airline may, subject to the provisions of Article IV, carry across, set down and pick up in the territory of one Contracting Party traffic originating in or destined for the territory of the other Contracting Party or of a third country on the specified air route.

Article IV

In order to achieve and maintain equilibrium between the capacity of the specified air services and the requirements of the public for air transport on the specified air routes or sections thereof and in order to achieve and maintain proper relationship between the specified air services *inter se* and between these air services and other air services operating on the specified air route or sections thereof, the Contracting Parties agree as follows:

- (A) The airlines of each Contracting Party shall enjoy equal rights in the operation of air services for the carriage of traffic between the territories of the two Parties.
- (B) To the extent that the airlines of one of the Contracting Parties are temporarily unable to make use of the rights referred to in paragraph (A), the situation will be mutually examined by the two Parties for the purpose of aiding as soon as possible the airlines concerned increasingly to make their proper contribution to the services contemplated.

- (C) In the operation by the airlines of either Contracting Party of the specified air services the interests of the airlines of the other Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same route.
- (D) The air transport offered by the airlines of each Contracting Party on different sections of the specified air routes shall bear a close relationship to the needs of the public for air transport and to the traffic interests of the airlines concerned as provided in this Agreement.
- (E) The services provided by a designated airline under this Agreement shall retain as their primary objective the provision (along with the airlines of the other States concerned) of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic, and the right of the designated airline of either Party to embark and to disembark in the territory of the other Party international traffic destined for or coming from third countries on specified air routes shall be applied in accordance with the general principles of orderly development to which both Parties subscribe and shall be subject to the general principle that capacity shall be related:
- (1) to the requirements of traffic between the country of origin of the air service and destinations on the specified air routes,
 - (2) to the air transport needs of the area through which the airline passes, and
 - (3) to the adequacy of other air transport services established by airlines of the States concerned between their respective territories.

Article V

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

- (i) That it is justified by reason of economy of operation;

- (ii) that the aircraft used on the section more distant from the terminal in the territory of the former Contracting Party are smaller in capacity than those used on the nearer section;
- (iii) that the aircraft of smaller capacity shall operate only in connection with the aircraft of larger capacity and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity; and their capacity shall be determined with primary reference to this purpose;
- (iv) that there is an adequate volume of through traffic; and
- (v) that the provisions of Article IV of the present Agreement shall govern all arrangements made with regard to change of gauge.

Article VI

(A) Rates shall be fixed at reasonable levels, due regard being paid to all relevant factors, including costs of comparable economic operations, reasonable profit, differences of characteristics of service and the rates charged by other operators, if any, on the route.

(B) The rates to be charged by any of the airlines designated under this Agreement in respect of traffic between the territories of the two Parties shall be agreed in the first instance between the designated airlines in consultation with other airlines operating on the route or any section thereof. Any rates so agreed shall be subject to the approval of the aeronautical authorities of the Contracting Parties. In the event of disagreement between the airlines, the Contracting Parties themselves shall endeavour to reach agreement and shall take all necessary steps to give effect to such agreement. Should the Contracting Parties fail to agree, the dispute shall be dealt with in accordance with Article X. Pending the settlement of the dispute by agreement or until it is decided under Article X, the rates already established shall prevail.

(C) Pending the acceptance by both Parties of any recommendations which the International Civil Aviation Organization may make with regard to the regulations of rates for traffic other than that defined in paragraph (B) of this Article, the rates to be charged by an airline of one Contracting Party in

respect of traffic between the territory of the other Contracting Party and a third country shall be fixed on the basis of the principles set out in paragraph (A) of this Article and after taking into consideration the interests of the airlines of the other Party and shall not vary unduly in a discriminatory manner from the rates established by the airlines of the other Party operating air services on that part of the specified air routes concerned: Provided, however, that a designated airline shall not be required to charge rates higher than those established by any other airline operating on the specified air routes.

(D) If the International Civil Aviation Organization does not within a reasonable time, establish a means of determining rates for traffic defined in paragraph (C) of this Article in a manner acceptable to both Parties, they shall consult each other in accordance with Article X of this Agreement with a view to such modification of paragraph (C) of this Article as appears desirable.

Article VII

(A) The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party on request:—

- (i) such traffic statistics as may be appropriate for the purpose of reviewing the frequency and capacity of the agreed services,
- (ii) such periodical statements as may reasonably be required relating to the traffic carried by the designated airlines on services to, from or through the territories of that other Contracting Party including information concerning the origin and destination of such traffic, and
- (iii) such other information as may reasonably be required in respect of the specified air services.

(B) The designated airlines of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables and tariff schedules and particulars concerning the types of aircraft to be operated on the specified air services.

Article VIII

Each Contracting Party reserves the right to itself to withhold or revoke, or impose such appropriate conditions as it may deem necessary with respect

to an operating permission in case of failure by a designated airline of the other Party to comply with the laws and regulations of the former Party, or in case, in the judgment of the former Party, there is a failure to fulfil the conditions under which the rights are granted in accordance with this Agreement. Except in case of failure to comply with laws and regulations, such action shall be taken only after consultation between the Parties. In the event of action by one Party under this Article, the rights of the other Party under Article X shall not be prejudiced.

Article IX

(A) In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties will consult on request with a view to assuring the observance of the principles and the implementation of the provisions outlined in this Agreement.

(B) Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement which it may deem desirable. Such consultation shall begin within a period of sixty days from the date of the request. Any modification of this Agreement agreed to as result of such consultation shall come into effect when it has been confirmed by an exchange of diplomatic notes.

(C) When the procedure for consultation provided for in paragraph (B) of this Article has been initiated, either Contracting Party may at any time give notice to the other of its desire to terminate this Agreement as provided in paragraph (E) of this Article. Such notice shall be simultaneously communicated to the International Civil Aviation Organization.

(D) Pending consultation with the other Contracting Party in accordance with paragraph (B) of this Article, temporary changes made in emergency by either Contracting Party in the specified air routes, except those which change the points served by the designated airlines of one Contracting Party in the territory of the other Contracting Party, shall not be considered as modification of this Agreement. The aeronautical authorities or either Contracting Party may, therefore, proceed unilaterally to make such changes, provided, however, that notice of any such change shall be given without delay to the aeronautical authorities of the other Contracting Party.

(E) This Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate unless the notice is withdrawn by agreement before the expiration of this period. In the absence of acknowledgement of receipt by the other Contracting Party notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

Article X

(A) If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement or of its Annex, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.

(B) If the Contracting Parties fail to reach settlement by negotiation,

- (i) they may agree to refer the dispute for decision to an arbitral tribunal appointed by agreement between them or to some other person or body;
- (ii) if they do not so agree, or if having agreed to refer the dispute to an arbitral tribunal they cannot reach agreement as to its composition, either Contracting Party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organization.

(C) The Contracting Parties undertake to comply with any decision given under paragraph (B) of this Article.

(D) If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision given under paragraph (B) of this Article, the other Contracting Party may limit, withhold or revoke any rights which it has granted by virtue of the present Agreement and its Annex.

Article XI

This Agreement shall come into force on the day it is signed. The Agreement and all relative contracts shall be registered with the International Civil Aviation Organization.

Article XII

In the event of the conclusion of a multilateral convention or agreement concerning air transport to which both Contracting Parties adhere, this Agreement shall be modified to conform with the provisions of such convention or agreement.

Article XIII

(A) For the purpose of this Agreement the terms "territory", "air service" and "airline" shall have the meaning specified in the convention.

(B) The term "aeronautical authorities" shall mean in the case of India the Director-General of Civil Aviation in India, and in the case of Ceylon, the Director of Civil Aviation, Ceylon, and in both cases any person or body authorized to perform the functions presently exercised by the above-mentioned authorities.

(C) The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the "Agreement" shall include references to the Annex, except where otherwise expressly provided.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE this twenty-first day of December, 1948, in duplicate, at New Delhi, in the English language.

For the Government of India:

(Signed) R. A. KIDWAI
Minister for Communications

For the Government of Ceylon:

(Signed) M. W. H. DE SILVA
High Commissioner for Ceylon in India

ANNEX

An airline designated by the Government of India shall be entitled to operate air services in both directions on each of the routes specified in this paragraph and to land for traffic purposes in the territory of Ceylon at the points therein specified.

Routes:

- (1) Bombay to Colombo and, if desired, beyond.
- (2) Madras to Kankasanturai or Colombo and, if desired, beyond.
- (3) Trichinopoly to Kankasanturai or Colombo.
- (4) Trivandrum to Kankasanturai or Colombo.

2. An airline designated by the Government of Ceylon shall be entitled to operate air services in both directions on each of the routes specified in this paragraph and to land for traffic purposes in the territory of India at the points therein specified.

Routes:

- (1) Colombo and or Kankasanturai to Trichinopoly.
- (2) Colombo and or Kankasanturai to Madras.
- (3) Colombo and or Kankasanturai to Trivandrum.
- (4) Colombo-Trichinopoly or Madras-Bombay and beyond.

3. (a) Points of any of the specified routes may, at the option of the designated airline, be omitted on any or all flights.

(b) If, at any time, scheduled flights on any of the specified air services of one Contracting Party are operated so as to terminate in the territory of the other Contracting Party and not as part of a through air service extending beyond such territory, the latter party shall have the right to nominate the terminal point of such scheduled flights on the specified air route in its territory. The latter party shall give not less than six months notice to the other party if it decides to nominate a new terminal point for such scheduled flights.

EXCHANGE OF NOTES

I

New Delhi, 21st December, 1948

From: The High Commissioner for Ceylon, New Delhi

To: The Secretary to the Government of India, Ministry of E. A. & Commonwealth Relations, New Delhi

Sir,

I am directed to refer to the Agreement between the Government of India and the Government of Ceylon relating to air services which has been signed on behalf of both Governments today, and to say, with regard to the operation by the airline designated by the Government of Ceylon of air services on route No. (IV) mentioned in para. 2 of the Annex to the Agreement, that the understanding of the Government of Ceylon is as follows:

The service above-mentioned may be operated with Bombay as the terminal point in India so long as the total frequency of that service to Bombay and beyond does not exceed 7 services a week. In the event of the frequency exceeding 7 services a week, the service shall be operated as a through service terminating beyond Indian territory.

It is also understood that the operation of a regular air service to Trivandrum will not be possible until such time as the latter air field is equipped for operational use for regular international flights.

2. The Ceylon Government for its part would wish to state that the use of Kankasanturai air field by the designated carrier(s) of the Government of India will not be available until such time as adequate traffic handling facilities are established at that airport.

3. I am to request that you will be good enough to confirm your understanding of the matters as set out above.

Yours faithfully,

M. W. H. DE SILVA

II

New Delhi, 21st December 1948

From: The Additional Secretary to the Government of India in the Ministry of E.A. and Commonwealth Relations

To: His Excellency the High Commissioner for Ceylon, New Delhi

Sir,

I have the honour to acknowledge receipt of your letter of to-day's date reading as follows:

[See note I]

According to authorisation received, I have the honour to confirm that the Government of India agree to the understanding of the Government of Ceylon as set forth above and accept that your letter together with this reply should constitute an Exchange of Notes to be registered with the International Civil Aviation Organization.

Yours faithfully,

(Signed) xxx xxxx
Additional Secretary to the Government of India
Ministry of E.A. and Commonwealth Relations