

No. 543

**INDIA
and
SWEDEN**

Agreement relating to air services (with annex and exchange of notes). Signed at New Delhi, on 21 May 1948

English official text communicated by the Secretary-General of the International Civil Aviation Organization. The registration took place on 7 September 1949.

**INDE
et
SUEDE**

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

Texte officiel anglais communiqué par le Secrétaire général de l'Organisation de l'aviation civile internationale. L'enregistrement a eu lieu le 7 septembre 1949

No. 543. AGREEMENT¹ BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF SWEDEN RELATING TO AIR SERVICES. SIGNED AT NEW DELHI, ON 21 MAY 1948

The Government of India and the Government of Sweden, hereinafter described as the Contracting Parties,

Being parties to the Convention on International Civil Aviation² (hereinafter referred to as the Convention) and the International Air Services Transit Agreement, both opened for signature at Chicago on the 7th day of December 1944,

And desiring to conclude an agreement, supplemental to the Convention and the said International Air Services Transit Agreement, for the purpose of establishing and operating air services between and beyond their respective territories,

Agree as follows:

Article I

(A) 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") and to carry traffic to, from and in transit over, its territory as provided in this Agreement.

(B) The airlines designated as provided in Article II hereof shall have the right to use

- (i) for traffic purposes, airports provided for public use at the points specified in the Annex to this Agreement and ancillary services provided for public use on the air routes specified in the said Annex (hereinafter referred to as "the specified air routes") and
- (ii) for non-traffic purposes, all airports and ancillary services provided for public use on the specified air routes:

¹ Came into force on 21 May 1948, as from the date of signature, in accordance with Article XII.

² United Nations, *Treaty Series*, Volume 15, page 295; Volume 26, page 420; Volume 32, page 402, and Volume 33, page 352.

Provided that in either case, the places of first landing and final departure shall be customs aerodromes.

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:

- (i) the Contracting Party to whom the rights have been granted shall have designated an airline or airlines hereinafter referred to as the "designated airline(s)" for each specified air route and
- (ii) the Contracting Party which grants the rights shall have given the appropriate operating permission to the airline(s) pursuant to paragraph (C) of this Article which it shall do with the least possible delay.

(B) Substantial ownership and effective control of a designated airline of each Contracting Party shall be vested in that Party or its nationals. If the right to operate on an air route specified in the Annex to this Agreement is granted, under an Agreement or Agreements similar to the present one, to the Governments of other countries, the Government of Sweden may designate, in respect of that route, any such joint operating organisation or agency as is constituted in accordance with the provisions of Chapter XVI of the Convention and as comprises airlines of which the substantial ownership and effective control are vested in the Governments or nationals of Sweden and of such other countries.

(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 organisation 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 routes or sections thereof, the Contracting Parties agree as follows:

(A) The airlines of each Contracting Party shall enjoy equal rights for 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. Nevertheless to the extent, and during the period, that the designated airlines of one Contracting Party do not offer the capacity which they are entitled to provide under this Article, the designated airlines of the other Contracting Party may, with the consent of the former Party, offer capacity beyond that which they would be entitled to provide under this Article. Further, as, from time to time, the designated airlines of the former Party commence to operate, or increase the frequency of their services, on the routes concerned (within the maximum capacity permitted to them under this Article), the designated airlines of the latter shall, correspondingly, withdraw the additional capacity which they were providing and make all other necessary adjustments in relation to the operation of their services.

(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 either 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 countries of ultimate destination of the traffic, and the right of the designated airlines 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

When for the purpose of economy of onward carriage of through traffic, different aircraft are used on different sections of a specified air route with the point of change in the territory of one of the Contracting Parties, such change of aircraft shall not affect the provisions of this Agreement relating to the capacity of the air service and the carriage of traffic. In such cases the second aircraft shall be scheduled to provide a connecting service with the first aircraft, and shall normally await its arrival.

Article VI

(A) Rates shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as costs of comparable economic operations, reasonable profits, 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 routes or any section thereof, and shall have regard to relevant rates adopted by the International Air Transport Association. 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 will 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 XI. Pending the settlement of the dispute by Agreement or until it is decided under Article XI the rates already established shall prevail.

(C) Pending the acceptance by both Parties of any recommendations which the International Civil Aviation Organisation may make with regard to the regulation 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 route 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 Organisation 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 both Contracting Parties shall exchange information as promptly as possible concerning the authorisations extended to their respective designated airlines to render service to, through and from the territory of the other Contracting Party. This will include copies of current certificates and authorisations for service on the specified air routes, together with amendments, exemption orders and authorised service patterns.

(B) Each Contracting Party, shall cause its designated airlines to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables, tariff schedules and all other relevant information concerning the operation of the specified air services and of all modifications thereof.

(C) Each Contracting Party shall cause its designated airlines to provide to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried on their air services to, from or over, the territory of the other Contracting Party showing the origin and destination of the traffic.

Article VIII

(A) Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of one Contracting Party, by, or on behalf of, the other Contracting Party or its designated airlines and intended solely for use by the latter's aircraft shall be accorded, with respect to customs duties, inspection fees or other charges imposed by the former Contracting Party, treatment not less favourable than that granted to its national airlines engaged in international public transport or to the airlines of the most-favoured nation.

(B) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of the designated airlines of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory. Goods so exempted may only be unloaded with the approval of the customs authorities of the other Contracting Party. These goods, which are to be re-exported, shall be kept until re-exportation in bond under customs supervision.

Article IX

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 a case of failure to comply with the 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 XI shall not be prejudiced.

Article X

(A) In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties will consult regularly with a view to ensuring 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 a 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 Organisation set up by the Convention.

(D) Changes made by either Contracting Party of points served by its designated airlines on a specified air route other than inclusion of

- (i) a new point in the territory of the other Contracting Party, or
- (ii) a point in the territory of a third party served by an airline of the other Contracting Party,

shall not be considered as modifications of this Agreement and may be made unilaterally by the aeronautical authorities of either Contracting Party: Provided, however, that notice of any 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 notice to terminate, unless the notice is withdrawn by Agreement before the expiration of this period. In the absence of acknowledgment 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 Organisation.

Article XI

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

(B) If the Contracting Parties fail to reach a 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;

or

(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 Organisation if there is no such tribunal, to the Council of the said Organisation, or failing that to the International Court of Justice.

(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.

Article XII

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 Organisation.

Article XIII

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 XIV

(A) For the purpose of this Agreement the terms "territory", "Air service", and "airline" shall have the meanings 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 Sweden, the Royal Board of Civil Aviation, and in both cases any person or body authorised to perform the functions presently exercised by the above-mentioned authorities.

(C) "Capacity" shall mean "pay-load" of an aircraft expressed in "ton-kilometers" offered on the route concerned during a specified period of time.

(D) 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 May 1948 in duplicate in the English language.

For the Government of India:

Jawaharlal NEHRU

Minister for External Affairs

Rafi Ahmed KIDWAI

Minister for Communications

For the Government of Sweden:

C. A. M. HALLENBORG

Consul General for Sweden in India

ANNEX

1. An airline designated by the Government of Sweden shall be entitled to operate air services on the route specified, and to make scheduled landings in India at the points specified, in this paragraph.

ROUTE

Sweden, points in Europe, points in the Near East, the Middle East, Iran and Pakistan to Delhi and Calcutta and thence to points in Burma and Siam, and beyond, via intermediate points on both directions.

2. An airline designated by the Government of India shall be entitled to operate air services on a route to, from and across Sweden to be mutually agreed at a later date.

3. Points on any of the specified routes may, at the option of the designated airline, be omitted on any or all flight(s) provided that, in exceptional circumstances, the State flown over may require landing at a point within its territory.

4. Air services on the route specified in paragraph 1 shall not be operated except as through air services terminating, in either direction, at a point beyond India.

EXCHANGE OF NOTES

I

GOVERNMENT OF INDIA

MINISTRY OF EXTERNAL AFFAIRS AND COMMONWEALTH RELATIONS

New Delhi, the 21st May, 1948

Sir,

I have the honour to refer to the air transport agreement signed today between the Government of India and the Government of Sweden. Article III of the Agreement permits the airline designated by either Contracting Party to carry, *inter alia*, fifth freedom traffic to, from and across the territory of the other Party. It is the understanding of the Government of India that, with a view to minimise competition between the airlines designated by the Contracting Parties, the Government of Sweden will, in deciding the points for service by its designated airline on the route allotted to it under paragraph 1 of the Annex to the Agreement after taking into account all relevant factors endeavour to avoid the adoption, as halts for traffic purposes, of Geneva and Cairo, being

points which will be served by an Indian airline, namely Air-India International Limited on its India-London Service.

2. I have the honour to request that you will kindly confirm that the understanding of the Government of Sweden is the same, in respect of the above-mentioned matter as that of the Government of India and to suggest that this letter together with your reply, should constitute an Exchange of Notes to be registered with the International Civil Aviation Organisation.

I have the honour to be, Sir, your most obedient servant,

(Signed) K. P. S. MENON
Secretary to the Government of India
Ministry of External Affairs
and Commonwealth Relations

C. A. M. Hallenborg, Esquire
Consul General for Sweden in India
Bombay

II

ROYAL SWEDISH CONSULATE GENERAL

New Delhi, the 21st May, 1948

Sir,

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

[See note I]

According to authorisation received, I have the honour to confirm that the Government of Sweden agree to the understanding of the Government of India 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 Organisation.

I have the honour to be, Sir, your most obedient servant,

(*Signed*) C. A. M. HALLENBORG
Consul General for Sweden

K. P. S. Menon, Esquire, C.I.E., I.C.S.
Secretary to the Government of India
in the Ministry of External Affairs
New Delhi
