No. 549

AUSTRALIA
and
PAKISTAN

Agreement relating to air services (with annex and exchange of notes). Signed at Karachi, on 3 June 1949

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

AUSTRALIE
et
PAKISTAN

Accord relatif aux services aériens (avec annexe et échange de notes). Signé à Karachi, le 3 juin 1949

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. 549. AGREEMENT[1] BETWEEN THE GOVERNMENT OF PAKISTAN AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA RELATING TO AIR SERVICES. SIGNED AT KARACHI, ON 3 JUNE 1949

The Government of Pakistan and the Government of the Commonwealth of Australia, hereinafter described as the Contracting Parties,

Being parties to the Convention on International Civil Aviation[2] 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 for the purpose of establishing and operating air services between 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").

(B) The designated airline or airlines of each Contracting Party shall have the right to use all airports, airways and other facilities provided by the other Contracting Party in its territory for use by international air services on the air routes specified in the Annex (hereinafter referred to as the "specified air routes"), provided that the right to pick up and discharge international traffic in passengers, cargo and mail will be limited to the points specified in the Annex and provided that the places of first landing and final departure shall be international airports of entry or departure.

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] Came into force on 3 June 1949, 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.

(1) the Contracting Party to whom the rights have been granted shall have designated an airline (hereinafter referred to as a "designated airline") for the specified air route.

(2) the Contracting Party which grants the rights shall have given the appropriate operating permission to the airline pursuant to paragraph (B) of this Article which it shall do with the least possible delay.

(B) The designated airline or airlines 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 such air service.

(C) 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 that portion of the specified air route which is within its territory is adequate for the safe operation of such air service.

Article III

A designated airline may, subject to the provisions of Article I and IV, carry across, set down and pick up in the territory of each 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

(A) The capacity to be operated between the territories of the two Contracting Parties for the carriage of traffic originating in the territory of each Contracting Party and destined for the territory of the other Contracting Party shall be shared half to the designated airline or airlines of each Contracting Party. The capacity so operated shall bear close relationship to such traffic.

(B) The designated airline or airlines of each Contracting Party may provide additional capacity for the carriage of fifth freedom traffic between the territory of the other Contracting Party and that of third countries, to the extent that the designated airline or airlines of such other Contracting Party is not able to handle such traffic. It is recognised that, as between the Contracting Parties, that Contracting Party to which such traffic is third and fourth freedom

traffic, has the primary right to the carriage of such traffic and shall be free to provide additional capacity for that purpose.

(C) The capacities to be provided by the designated airline or airlines of each Contracting Party for the traffic referred to in paragraph (A) and for fifth freedom traffic referred to in paragraph (B) of this Article shall be agreed, from time to time, between the aeronautical authorities of the Contracting Parties. The load factor to be used in determining the capacities to be operated by the designated airlines of the Contracting Parties shall from time to time be agreed between the designated airlines of the Contracting Parties subject to the approval of the aeronautical authorities of the Contracting Parties.

(D) In order to meet seasonal fluctuations or unexpected demands of a temporary character the designated airlines may agree between them such temporary increases in the agreed capacities as are necessary to meet the traffic need. Any such increases shall be reported forthwith to the aeronautical authorities of the Contracting Parties.

(E) Insofar as a designated airline of one Contracting Party is temporarily unable to operate its full share of the agreed capacity on any of the specified air routes, that airline may arrange with the designated airline of the other Contracting Party, under terms and conditions to be agreed between them and approved by the aeronautical authorities of the respective Contracting Parties, to operate its share of the capacity in full or in part. It shall be a condition of any such agreement that, if the designated airline of the first Contracting Party should, at any time, decide to commence to operate, or to increase the capacity of its services within the total capacity to which it is entitled, the designated airline of the other Contracting Party shall withdraw correspondingly some or all of the additional capacity which it may have been operating.

(F) Each of the designated airlines of the Contracting Parties shall be entitled also to provide capacity for the carriage of international traffic that is both originating in and destined for third countries along the specified air routes (which traffic is fifth freedom traffic to both Contracting Parties) in accordance with the general principles that the capacity provided for such traffic shall be related to:

(1) the air transport needs of the area after taking account of local and regional services operated by airlines of the other Contracting Party; and

(2) the economics of through airline operation insofar as the interests of such local and regional services are not adversely affected.

(G) The aeronautical authorities of each Contracting Party shall keep the aeronautical authorities of the other Contracting Party promptly informed of the capacity provided by its designated airline on each of the specified air routes, and, if so requested, shall consult with the aeronautical authorities of the other Contracting Party, to examine whether the capacity provided is in accordance with the general principles set out in this Article.

(H) Any dispute under this Article shall be dealt with in accordance with Article XI.

Article V

A designated airline of either Contracting Party may, for the purpose of economy of operation, make a change of gauge in the territory of the other Contracting Party, subject to the following conditions:

(1) that the aircraft used on the section more distant from the starting point of the service shall be smaller in capacity than those used on the near section,

(2) that such smaller aircraft shall be scheduled to provide a connecting service with the aircraft of larger capacity, and

(3) that such smaller aircraft shall be operated for the primary purpose of carrying passengers who have travelled, or are to travel, in the larger aircraft. The capacity of such smaller aircraft shall be determined with reference to the traffic that is to be transferred from, or to, the larger aircraft for onwards conveyance to its destination and with reference to the provisions of Article IV of this Agreement.

Article VI

(A) Rates to be charged for the carriage of passengers and cargo on any of the specified air services shall be fixed at reasonable levels, due regard being paid to all relevant factors, including economic operation, reasonable profit, differences of characteristics of service (including standards of speed and

accommodation) and the rates charged by other airlines on the route or any section thereof.

(B) The rates to be charged, in respect of each route and each section thereof, shall be agreed between the designated airlines which are concerned in the rates charged for such route or section, in consultation with other airlines operating on the same route or section, and shall have regard to any relevant rates adopted by the International Air Transport Association. Rates in respect of other traffic shall also be subject to the approval of the aeronautical authorities of both Contracting Parties except that the approval of the aeronautical authorities of a Contracting Party shall not be required in respect of rates for a route or section in which no designated airline of that Contracting Party is concerned.

(C) In the event of disagreement between the designated airlines concerned, or in case the aeronautical authorities do not approve the rates as required under paragraph (B) of this Article, the Contracting Parties shall endeavour to reach agreement between themselves, failing which, the dispute shall be dealt with in accordance with Article XI. Pending determination of the rates in accordance with this Article, the rates already in force shall prevail.

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 specified air routes, together with amendments, exemption orders and authorised service patterns.

(B) Each Contracting Party shall cause its designated airline or airlines to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies to time-tables, rate schedules and all other relevant information concerning the operation of the specified air services and copies 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 the specified air services showing the origin and destination of the traffic.

Article VIII

(A) In the application of its immigration, quarantine and similar regulations, each Contracting Party shall grant to the designated airline or airlines of the other Contracting Party treatment equal to that accorded to its own airline or airlines engaged in similar international air transport.

(B) Aircraft of the designated airline or airlines of each Contracting Party operating on the specified air routes shall be admitted temporarily free of duty into the territory of the other Contracting Party. Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board such an aircraft on arrival in the territory of the other Contracting Party and not unloaded in that territory shall be exempt from customs duty, inspection fees or similar duties and charges even though such supplies be used by such aircraft on flights in that territory. The goods so exempt shall not be unloaded except with the approval of the customs authorities of the other Contracting Party, and if unloaded, shall be kept under Customs supervision until required for use of the aircraft or re-exported.

(C) In the administration of customs, immigration, quarantine and similar regulations, both Contracting Parties will use their best endeavours to follow closely such standards and recommended practices relating to the facilitation of international air transport as are adopted by the Council of the International Civil Aviation Organisation. Moreover, the aeronautical authorities of the Contracting Parties shall as necessary consult regarding the administration of these regulations if, in the opinion of one of the Contracting Parties, such regulations impose an onerous burden on its designated airline in the operation of air services pursuant to this Agreement.

Article IX

(A) Each Contracting Party reserves the right to itself to withold or revoke, or impose such appropriate conditions as it may deem necessary with respect to an operating permission of a designated airline of the other Contracting Party:

(1) In case of failure by such designated airline to comply with the laws and regulations of the first Contracting Party, or

(2) In case, in the judgment of the first Contracting Party, there is a failure to fulfil the conditions under which the rights are granted to the other Contracting Party in accordance with this Agreement, or

(3) If the first Contracting Party is not satisfied that substantial ownership and effective control of such designated airline are vested in the other Contracting Party or its nationals.

(B) Such action shall be taken only after due notice has been given to the designated airline concerned and after opportunity has been given for consultation between the Contracting Parties. In the event of action by one Contracting Party under this Article, the rights of the other Contracting 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 contained 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 may be desirable. Such consultation shall begin within a period of sixty days from the date of the request. Any modification of this Agreement, agreed as a result of such consultation, shall come into effect when it has been confirmed by an exchange of diplomatic notes.

(C) Changes made by either Contracting Party in the intermediate stopping places on a specified air route authorised to its designated airlines except those which

(1) change the places served by a designated airline in the territory of the other Contracting Party, or

(2) result in the route ceasing to be reasonably direct,

shall not be considered as modifications of this Agreement and either Contracting Party may therefore make such changes; provided that notice of any such changes shall be given without delay to the aeronautical authorities of the other

Contracting Party. If the aeronautical authorities of such second Contracting Party find that the principles set forth in Article IV of this Agreement are thereby infringed, and such infringement affects the interests of any of their airlines because of the carriage by a designated airline of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the aeronautical authorities of the second Contracting Party may request consultation in accordance with the provisions of paragraph (A) of this Article.

(D) Either Contracting Party may at any time give notice to the other of its desire to terminate this Agreement and such notice shall be simultaneously communicated to the International Civil Aviation Organisation. 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 14 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,

(1) they may agree to refer the dispute for a decision to an arbitral tribunal or to some other person or body appointed by agreement between them; or

(2) 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, or, 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 (including any interim recommendation made) 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 XII

This Agreement shall come into force on the 3rd June, 1949. The Agreement shall be registered with the International Civil Aviation Organisation.

Article XIII

If a general multilateral air transport convention enters into force in relation to both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article XIV

(A) "An international airport of entry or departure" shall mean an airport designated by the appropriate Contracting Party as an airport of entry or departure for international air traffic where formalities relating to customs, immigration, public health and quarantine are carried out.

(B) For the purpose of this Agreement the terms "territory", "air service", and "airline" shall have the meaning specified in the Convention on International Civil Aviation.

(C) The term "aeronautical authorities" shall mean, in the case of Pakistan, the Director General of Civil Aviation, Pakistan, and in the case of Australia, the Director General of Civil Aviation, Australia, and in both cases any person or body authorised to perform the functions currently exercised by the above-mentioned authorities.

(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 plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE this third day of June 1949, in duplicate at Karachi in the English language.

For the Government of Pakistan:
(*Signed*) Mahmud HUSAIN
Maurice BANKS

For the Government of the Commonwealth of Australia:
(*Signed*) John OLDHAM
Edgar C. JOHNSTON

ANNEX

1. An airline designated by the Government of Pakistan shall be entitled to operate air services in both directions on each of the following routes:

(i) Karachi via points in India, Burma, Siam, Malayan Peninsula, Netherlands Indies to Darwin and Sydney, and

(ii) Karachi via points in India, Ceylon or East Pakistan, Burma, Siam, Malayan Peninsula, Netherlands Indies to Darwin and Sydney,

and shall also be entitled to pick up and discharge international traffic in passengers, cargo and mail at Darwin and Sydney.

2. An airline designated by the Government of the Commonwealth of Australia shall be entitled to operate air services in both directions on each of the following routes:

(i) Australia via Singapore and Calcutta to Karachi and, optionally, beyond via Basra, Cairo and Rome to United Kingdom and/or other terminal point in Western Europe, and

(ii) Australia via points in Netherlands Indies, Malayan Peninsula, Ceylon and India to Karachi and, optionally, beyond via Basra, Cairo and Rome to United Kingdom and/or other terminal point in Western Europe,

and shall also be entitled to pick up and discharge international traffic in passengers, cargo and mail at Karachi.

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

EXCHANGE OF NOTES

I

3rd June 1949

Sir,

I have the honour to refer to the Agreement between the Government of the Commonwealth of Australia and the Government of Pakistan relating to air services, which was signed on behalf of both Governments today, and to record hereunder the understanding of the Australian Government concerning the agreement reached on the question of traffic sharing.

The Government of the Commonwealth of Australia will, pursuant to the Agreement, designate Qantas Empire Airways Limited to operate air services between Australia and Pakistan and beyond to the United Kingdom, and further Qantas Empire Airways Limited has entered into a parallel partnership arrangement, not inconsistent with Chapter XVI of the Convention, with British Overseas Airways Corporation, with the consent and approval of the Governments of the Commonwealth of Australia and of the United Kingdom, under which arrangement the capacities and the revenues earned on the services of these two airlines between Australia and the United Kingdom are shared between such two airlines in agreed proportions. It has, therefore, been agreed between the representatives of the Australian and Pakistan Governments that nothing in the Agreement shall prevent Qantas Empire Airways Limited and British Overseas Airways Corporation (including their respective successors or assigns) from pooling and sharing the capacities which each of them individually is entitled or may become entitled to operate; provided that the aeronautical authorities of the Commonwealth of Australia shall be held accountable for the total capacity which Qantas Empire Airways Limited is entitled to operate under Article IV of the Agreement even if part of such capacity is operated by British Overseas Airways Corporation pursuant to the parallel partnership arrangement.

I am to request your confirmation of the arrangement recorded herein and to suggest that this Note and the reply thereto should constitute an Agreement between our two Governments.

(*Signed*) John OLDHAM
High Commissioner for Australia in Pakistan

(*Signed*) Edgar C. JOHNSTON
Assistant Director-General of Civil Aviation

Dr. Mahmud Husain
Deputy Minister for Defence
Government of Pakistan
Karachi

II

GOVT. OF PAKISTAN
MINISTRY OF DEFENCE
(AVIATION DIVISION)

Karachi, dated 3rd June 1949

Sir,

I have the honour to refer to your note of today's date on the subject of the Agreement between the Government of Pakistan and the Government of the Commonwealth of Australia relating to air services signed on behalf of both our Governments today, and to state, with regard to the agreement reached on the question of traffic sharing, that the understanding of the Government of Pakistan is as follows:

[*See note I*]

I have the honour to be, with the highest consideration, Sir, your obedient servant,

(*Signed*) Mahmud HUSAIN
Deputy Minister for Defence

(*Signed*) Maurice BANKS
Director General of Civil Aviation

To His Excellency
The High Commissioner for Australia in Pakistan
Karachi

No. 549