No. 552

INDIA
and
AUSTRALIA

Agreement relating to air services (with annex and exchange of notes). Signed at New Delhi, on 11 July 1949

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

INDE
et
AUSTRALIE

Accord relatif aux services aériens (avec annexe et échange de notes). Signé à New-Delhi, le 11 juillet 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. 552. AGREEMENT[1] BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA RELATING TO AIR SERVICES. SIGNED AT NEW DELHI, ON 11 JULY 1949

The Government of India and the Government of the Commonwealth of Australia,

Desiring to conclude an agreement for the operation of air services,

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 an airline (hereinafter referred to as the "designated airline") for the specified air route concerned, and

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

(B) A 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 international air services.

[1] Came into force on 11 July 1949, in accordance with article XII.

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

Article III

The designated airlines of each Contracting Party operating the specified air services may, subject to the provisions of Article IV, set down or pick up in the territory of the other Contracting Party, at the points specified in the Annex, international traffic originating in or destined for the territory of the former Contracting Party or of a third country on the specified air route concerned.

Article IV

(A) The aeronautical authorities of the Contracting Parties shall jointly determine in respect of an agreed period the total capacity required for the carriage, at a reasonable load factor, of all traffic, that is to say passengers, cargo and mail, which may reasonably be expected to originate in the territory of each Contracting Party and to be disembarked in the territory of the other Contracting Party on the specified air services to be operated during that period on each of the specified air routes.

(B) Subject to the provisions of paragraph (C) of this Article each Contracting Party shall have the right to authorise its designated airlines to make available for the carriage of the traffic specified in paragraph (A) of this Article whether on services terminating in or on services passing through the territory of the other Contracting Party half the capacity for the specified air services determined in accordance with the provisions of the said paragraph (A).

(C) (i) If the designated airlines of either Contracting Party are not able or willing to provide the whole of the capacity to which that Contracting Party is entitled in accordance with paragraph (B) of this Article, the aeronautical authorities of the Contracting Parties shall authorise the designated airlines of the other Contracting Party to provide additional capacity equal to the difference between the capacity actually provided by the designated airlines of the first Contracting Party and the capacity to which that Contracting Party is entitled under the said paragraph (B) (hereinafter referred to as "the deficient capacity").

(ii) If the designated airlines of one Contracting Party which have been providing less than the capacity to which that Contracting Party is entitled become able and willing to provide the whole or part of the deficient capacity, they may serve a notice of not less than four months to this effect on the aeronautical authorities of both Contracting Parties and also on the airlines which have been providing the additional capacity. In such event, and unless both the said aeronautical authorities direct within 30 days of the receipt of the notice that the notice shall not take effect, the latter airlines shall on or before the expiry of the said notice accordingly withdraw the whole or part of the additional capacity which they had been providing and the former airlines shall then provide the deficient capacity or part thereof, as the case may be.

(D) The designated airlines of either Contracting Party may set down and pick up in the territory of the other Contracting Party traffic coming from or destined for third countries on any specified air route, only in accordance with the following provisions:

(i) If such third country is situated between the territories of the Contracting Parties, any part of the capacity provided by those airlines in accordance with the provisions of paragraphs (A), (B) and (C) of this Article may be used for this purpose.

(ii) If such third country is situated beyond the territory of the other Contracting Party, the capacity that may be used for this purpose shall be such as shall be agreed between the aeronautical authorities of both the Contracting Parties as being unlikely to prejudice unduly, during an agreed period, the interests of the airlines of the other Contracting Party operating between the latter's territory and the third country concerned.

(E) 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 either of whom may disapprove such increases. Upon such disapproval such increases shall cease to operate.

(F) (i) In this Article, "agreed period" means the first six months from the date this Agreement comes into force and, thereafter, every succeeding period of six months unless otherwise agreed between the aeronautical authorities.

(ii) The capacity to be provided shall be discussed in the first instance between the designated airlines of the Contracting Parties and, if possible, agreed between them. The aeronautical authorities of both Contracting Parties shall have the right to be represented at these discussions.

(iii) Any agreement so reached between the designated airlines of the Contracting Parties shall be subject to the approval of the aeronautical authorities of the Contracting Parties. Such approval by the aeronautical authorities shall constitute an agreement as required by paragraphs (A), (C) and (D) of this Article.

(iv) If the aeronautical authorities of the Contracting Parties fail to agree on any matter on which their agreement is required under the provisions of this Article the Contracting Parties themselves shall endeavour to reach agreement thereon. If the Contracting Parties fail to reach such agreement the provisions of Article XI of this Agreement shall apply.

(v) Pending the completion of any review of capacity in accordance with the provisions of this Article the designated airlines of the Contracting Parties shall be entitled to continue to make available the capacities provided on their existing air services.

Article V

The designated airlines of each Contracting Party may make a change of gauge at a point in the territory of the other Contracting Party 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 be scheduled to connect with the aircraft of larger capacity and shall arrive at the point of change for the primary purpose of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity; and

(iv) that the provisions of Article IV shall govern all arrangements made with regard to change of gauge.

Article VI

(A) The tariffs 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 economical operation, reasonable profit, difference of characteristics of service (including standards of speed and accommodation) and the tariffs charged by other airlines on the route or section thereof concerned.

(B) The tariffs in respect of each route and each section thereof shall be agreed between the designated airlines concerned 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. The tariffs so agreed shall 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 necessary in respect of tariffs for a route or section in which no designated airline of that Contracting Party is concerned. In the event of disagreement between the designated airlines concerned or in case the aeronautical authorities do not approve the tariffs as required under this paragraph, 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 tariffs in accordance with this Article, the tariffs already in force shall prevail.

(C) Nothing in this Article shall be deemed to prevent either Contracting Party, in agreement with the other Contracting Party, from bringing into force tariffs fixed in accordance with practice recommended from time to time by the International Civil Aviation Organisation.

Article VII

(A) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and remaining on board on departure from the last airport of call in that territory shall be accorded, with respect to customs duty, inspection fees or similar charges, treatment not less favourable than that granted by the second Contracting Party to its national airlines engaged in international public transport: Provided that neither Contracting Party shall be obliged to grant to the designated airlines of the other Contracting Party exemption or remission of customs duty, inspection

fees or similar charges unless such other Contracting Party grants exemption or remission of such charges to the designated airlines of the first Contracting Party.

(B) If, in the opinion of the aeronautical authorities of one of the Contracting Parties, the administration of regulations relating to customs, immigration, quarantine and similar matters in the territory of the other Contracting Party imposes an onerous burden on its designated airlines in the operation of the air services pursuant to this Agreement, the aeronautical authorities of such other Contracting Party shall, upon request, enter into consultation to examine the situation.

Article VIII

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

(i) information concerning the authorisations extended to its designated airlines to operate the specified air services;

(ii) such traffic statistics as may be appropriate for the purpose of reviewing the capacity of the specified air services;

(iii) such periodical statements as may reasonably be required relating to the traffic carried by the designated airlines on the specified air services including information concerning the origin and destination of such traffic; and

(iv) such other information in respect of the operation of the specified air services as may be required to enable the aeronautical authorities to satisfy themselves that the requirements of this Agreement are being duly observed.

(B) Each Contracting Party shall cause its designated airlines to 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 IX

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

(i) 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,

(ii) such designated airline fails to comply with the laws and regulations of the first Contracting Party, or

(iii) in the judgement 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.

(B) Except in the case of failure to comply with laws and regulations, 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 assuring 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 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 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 the specified air routes 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) Whether or not 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 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 such 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 Organisation.

Article XI

(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 a settlement by negotiation,

(i) they may agree to refer the dispute for decision to an arbitral tribunal or some other person or body appointed by agreement between them; 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 established within the International Civil Aviation Organisation, or, if there be no such tribunal, 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 the requirements of paragraph (C) 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 eleventh day of July One thousand nine hundred and forty-nine.

Article XIII

In the event of the coming into force of a multilateral agreement concerning international air transport to which both Contracting Parties adhere, this Agreement shall be modified to conform with the provisions of such multilateral agreement.

Article XIV

To the extent to which they are applicable to the air services established under the present Agreement, the provisions of the Convention shall remain in force in their present form between the Contracting Parties for the duration of the Agreement, as if they were an integral part of the Agreement, unless both Contracting Parties ratify any amendment to the Convention which shall have duly come into force in which case the Convention as amended shall remain in force for the duration of the present Agreement.

Article XV

(A) For the purpose of this Agreement the terms "territory", "air service" and "airline" shall have the meanings specified in the Convention on International Civil Aviation opened for signature on the seventh day of December, 1944,[1] in this Agreement referred to as "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 the Commonwealth of Australia, the Director General of Civil Aviation, Australia, and in both cases any person or body authorised to perform the functions exercised by the above-mentioned authorities.

(C) The term "capacity" in relation to a specified air service means the extent of accommodation provided and permitted under this Agreement for the carriage of passengers, cargo and mails on the route or section of a route concerned, during an agreed period.

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

(D) The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the "Agreement" shall include reference 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 eleventh day of July 1949 in duplicate at New Delhi in the English language.

For the Government of India:
(*Signed*) Jawaharlal NEHRU

For the Government of the Commonwealth of Australia:
(*Signed*) H. R. GOLLAN
(*Signed*) E. C. JOHNSTON

ANNEX

Section I

The airlines designated by the Government of India shall be entitled to operate air services in both directions on the routes specified in this Section and to land for traffic purposes in the territory of the Commonwealth of Australia at each of the points specified.

Route 1. India, a point in Pakistan, a point in Burma, a point in Siam, Penang, Singapore, a point in Netherlands East Indies, a point in Indonesia, Darwin to Sydney.

Route 2. India, a point in Pakistan, a point in Burma, a point in Siam, Penang, Singapore, a point in Netherlands East Indies, a point in Indonesia, Darwin, a point in the East coast of Australia to be agreed between the aeronautical authorities of the Contracting Parties, to Fiji.

Section II

The airlines designated by the Government of the Commonwealth of Australia shall be entitled to operate air services in both directions on the routes specified in this Section and to land for traffic purposes in the territory of India at each of the points specified.

Route 1. Australia via Singapore to Calcutta and optionally beyond via Delhi, Karachi, Basra, Cairo and Rome to the United Kingdom and/or other point in Western Europe.

Route 2. Australia via points in Netherlands East Indies, Malayan Peninsula and Ceylon to Bombay and beyond via Karachi, Basra, Cairo and Rome to the United Kingdom and/or other point in Western Europe.

Section III

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

(B) Services on route 2 specified in Section II above shall not terminate in India. If, on any of the other routes, 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.

Section IV

No specified air service shall be operated unless the starting point or the terminal point of the service lies within the territory of the Contracting Party designating the airline.

EXCHANGE OF NOTES

I

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS

New Delhi, the 11th July, 1949

From Shri V. K. R. Menon, Secretary to the Government of India
To His Excellency the High Commissioner for Australia, New Delhi

Sir,

I have the honour to refer to the Agreement between the Government of the Commonwealth of Australia and the Government of India relating to air services, which was signed on behalf of both Governments to-day, and to record hereunder the understanding of the Government of India concerning the following matters:

(*a*) That for the purpose of clause (ii) of paragraph (D) of Article IV of the Agreement the interests of the airlines of the Contracting Party

beyond whose territory the services are operated by the designated airlines of the other Contracting Party shall be deemed not to be unduly prejudiced if the capacity permitted to the latter airlines does not exceed ten per cent of that which would be required for the carriage of the total air traffic between that territory and the third country concerned.

(*b*) That notwithstanding the provisions of Articles III and IV of the Agreement the designated airlines of Australia will not, except with the specific authorisation of the aeronautical authorities of India, embark in India traffic destined for Karachi nor disembark in India traffic originating in Karachi. Correspondingly, notwithstanding the provisions of paragraph (C) of Article X of the Agreement no stopping place between Australia and Fiji will be introduced on Route No. 2 (as referred to in Section I of the Annex) without the specific authorisation of the aeronautical authorities of Australia.

(*c*) That the Agreement shall not be so construed as to prevent the airlines designated by the Government of India from operating the specified air services, if they so desire, at a frequency of at least once each week in each direction or at such other frequencies as those airlines may decide, using the Skymaster or other type of aircraft, provided that the said airlines comply with the terms of the Agreement and in particular with Article IV thereof. Correspondingly, the airlines designated by the Government of Australia may, if they so desire, operate the specified air services at such frequencies in each direction as they may decide, using the Constellation or other type of aircraft, provided that the said airlines comply with the terms of the Agreement and in particular with Article IV thereof.

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

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

(*Signed*) V. K. R. MENON
Secretary to the Government of India

II

OFFICE OF THE HIGH COMMISSIONER
FOR THE COMMONWEALTH OF AUSTRALIA IN INDIA

AUSTRALIA OFFICE
CONNAUGHT PLACE
NEW DELHI

11th July, 1949

Sir,

I have the honour to refer to your Note of today's date, reading as follows:

[*See note I*]

2. I am pleased to confirm the understandings as stated above and to acknowledge that your Note and this reply shall constitute an agreement between our two Governments.

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

(*Signed*) H. R. GOLLAN
High Commissioner for Australia in India

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

The Secretary to the Government of India
Ministry of Communications
(Through the Ministry of External Affairs)
New Delhi, India

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