

No. 3932

**UNITED STATES OF AMERICA
and
INDIA**

Air Transport Agreement (with Schedule and exchange of notes). Signed at New Delhi, on 3 February 1956

Official texts of the Agreement and Schedule: English and Hindi.

Official text of the exchange of notes: English.

Registered by the United States of America on 12 July 1957.

**ÉTATS-UNIS D'AMÉRIQUE
et
INDE**

Accord (avec annexe et échange de notes) relatif aux transports aériens. Signé à New-Delhi, le 3 février 1956

Textes officiels de l'Accord et de l'annexe: anglais et hindoustani.

Texte officiel de l'échange de notes: anglais.

Enregistré par les États-Unis d'Amérique le 12 juillet 1957.

No. 3932. AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF INDIA. SIGNED AT NEW DELHI, ON 3 FEBRUARY 1956

The Government of the United States of America and the Government of India, hereinafter described as the contracting parties, being parties to the Convention on International Civil Aviation opened for signature at Chicago on December, 7, 1944,² and, desiring to establish the reciprocal operation of air transport services between their two countries as contemplated by the Convention have accordingly appointed plenipotentiaries who, being duly authorized, have agreed as follows :

Article I

For the purposes of the present Agreement :

(A) The term "aeronautical authorities" shall mean in the case of the United States of America, the Civil Aeronautics Board and any person or agency authorized to perform the functions exercised at the present time by the Civil Aeronautics Board and, in the case of India, the Director General of Civil Aviation and any person or agency authorized to perform the functions exercised at present by the said Director General of Civil Aviation.

(B) The term "designated airline" shall mean an airline that one contracting party has notified the other contracting party, in writing, to be the airline which will operate a specific route or routes listed in the Schedule³ of this Agreement.

(C) The term "territory" in relation to a State shall mean the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State.

(D) The term "air service" shall mean any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

(E) The term "international air service" shall mean an air service which passes through the air space over the territory of more than one State.

¹ Came into force on 3 February 1956, the date of signature, in accordance with article 17.

² United Nations, *Treaty Series*, Vol. 15, p. 295; Vol. 26, p. 420; Vol. 32, p. 402; Vol. 33, p. 352; Vol. 44, p. 346; Vol. 51, p. 336; Vol. 139, p. 469; Vol. 178, p. 420; Vol. 199, p. 362, and Vol. 252, p. 410.

³ See p. 102 of this volume.

(F) The term "stop for non-traffic purposes" shall mean a landing for any purpose other than taking on or discharging passengers, cargo or mail.

Article 2

Each contracting party grants to the other contracting party rights necessary for the conduct of air services by the designated airlines, as follows : the rights of transit, of stops for non-traffic purposes, and of commercial entry and departure for international traffic in passengers, cargo and mail at the points in its territory named on each of the routes specified in the appropriate paragraph of the Schedule annexed to the present Agreement.

Article 3

Air service on a specified route may be inaugurated by an airline or airlines of one contracting party at any time after that contracting party has designated such airline or airlines for that route and the other contracting party has given the appropriate operating permission. Such other party shall, subject to Article 4, be bound to give this permission provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that party, under the laws and regulations normally applied by these authorities, before being permitted to engage in the operations contemplated by this Agreement.

Article 4

Each contracting party reserves the right to withhold or revoke the operating permission provided for in Article 3 of this Agreement from an airline designated by the other contracting party in the event that it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other contracting party, or in case of failure by such airline to comply with the laws and regulations referred to in Articles 11 and 13 of the Convention on International Civil Aviation, or in case of the failure of the airline or the government designating it otherwise to perform its obligations hereunder, or to fulfil the conditions under which the rights are granted in accordance with this Agreement.

Article 5

In order to prevent discriminatory practices and to assure equality of treatment, both contracting parties agree that :

(a) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities

under its control. Each of the contracting parties agrees, however, that these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(b) In respect of customs duties, inspection fees and similar charges on supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft of the designated airlines of one contracting party in the territory of the other contracting party and intended solely for use by or in such aircraft and remaining on board on departure from the last airport of call in that territory the designated airlines of the first contracting party shall be accorded treatment not less favourable than that granted by the second contracting party to the airlines of the most favoured nation or to its national airlines engaged in international air services: 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.

Article 6

There shall be a fair and equal opportunity for the airlines of each contracting party to operate on any route covered by this Agreement.

Article 7

In the operation by the airlines of either contracting party of the international air services described in this Agreement, the interest of the airlines of the other contracting party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

Article 8

The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

It is the understanding of both contracting parties that services provided by a designated airline under the present Agreement shall retain as their primary objective the provision 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. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point

or points on the routes specified in this Agreement shall be applied in accordance with the general principles of orderly development to which both contracting parties subscribe and shall be subject to the general principle that capacity should be related :

(a) to traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

(b) to the requirements of through airline operation; and,

(c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

Article 9

In a spirit of close collaboration, the contracting parties will, in accordance with Article 12, consult from time to time, or at the request of one of the parties, to determine the extent to which the provisions of this Agreement, particularly Articles 6, 7 and 8 are promoting the orderly and economic development of air transportation by the designated airlines of the two contracting parties. The procedures which may be agreed to from time to time by the contracting parties and which may be expressed in an exchange of diplomatic notes or otherwise shall govern the operation of the provisions of this Agreement.

Article 10

(A) The designated airline or airlines of each contracting party shall supply to the aeronautical authorities of the other contracting party, at least thirty days in advance, copies of time tables, including any modifications thereof, and all other similar relevant information concerning the operation of their air services under this Agreement.

(B) Each contracting party shall, upon request, cause to be provided to the other contracting party such statistical reports relating to the traffic carried by its designated airline or airlines to, from and over the territory of the other contracting party as may reasonably be required from time to time to carry out in an orderly manner the purposes of this Agreement.

Article 11

Rates to be charged by the airline or airlines of either contracting party for transportation from the territory of one contracting party to a point or points in the territory of the other contracting party referred to in the annexed Schedule shall be reasonable, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as

well as the characteristics of each service, and shall be determined in accordance with the following paragraphs :

(A) The rates to be charged by the airlines of either contracting party between points in the territory of the United States and points in the territory of India referred to in the annexed Schedule, shall, consistent with the provisions of the present Agreement, be subject to the approval of the contracting parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal powers.

(B) Any rate proposed by an airline of either contracting party shall be filed with both contracting parties at least thirty (30) days before the proposed date of introduction ; provided that this period of thirty (30) days may be reduced in particular cases if so agreed by the contracting parties.

(C) During any period for which the Civil Aeronautics Board of the United States has approved the traffic conference procedures of the International Air Transport Association (hereinafter called IATA), any rate agreements concluded through these procedures and involving United States airlines will be subject to approval of the Board. Rate agreements concluded through this machinery may also be required to be subject to the approval of the Government of India pursuant to the principles enunciated above.

(D) The contracting parties agree that the procedure described in paragraphs (E), (F) and (G) of this Article shall apply :

1. If, during the period of the approval by both contracting parties of the IATA traffic conference procedure, either, any specific rate agreement is not approved within a reasonable time by either contracting party, or, a conference of IATA is unable to agree on a rate, or
2. At any time no IATA procedure is applicable, or
3. If either contracting party at any time withdraws or fails to renew its approval of that part of the IATA traffic conference procedure relevant to this Article.

(E) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services, the contracting parties will consult in accordance with Article 12 for the purpose of amending this Article to provide for the handling of rate matters under such circumstances.

(F) Prior to the time when such power may be conferred upon the aeronautical authorities of the United States, if one of the contracting parties is dissatisfied with any rate proposed by the airline or airlines of either contracting party to a point or points in the territory of the other contracting party, it shall so notify the other prior to the expiry of the first fifteen (15) of the thirty (30) day period referred to in paragraph (B) above, and the contracting parties shall endeavour to reach agreement on the appropriate rate.

In the event that such agreement is reached, each contracting party will use its best efforts to cause such agreed rate to be put into effect by its airline or airlines.

It is recognised that if no such agreement can be reached prior to the expiry of such thirty (30) days, the contracting party raising the objection to the rate may take such steps as it may consider necessary to keep the existing rate in effect and to prevent the inauguration or continuation of the service in question at the rate complained of.

(G) When in any case under paragraphs (E) or (F) of this Article the two contracting parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one contracting party concerning the proposed rate or an existing rate of the airline or airlines of the other contracting party, upon the request of either, the terms of Article 13 of this Agreement shall apply.

Article 12

Consultation between the competent authorities of both contracting parties may be requested at any time by either contracting party for the purpose of discussing the interpretation, application, or amendment of the Agreement or Schedule. Such consultation shall begin within a period of sixty (60) days from the date of the receipt of the request by the Ministry of External Affairs of the Government of India or the Department of State of the United States of America as the case may be. Should agreement be reached on amendment of the Agreement or its route Schedule, such amendment will come into effect upon confirmation by an exchange of diplomatic notes.

Article 13

Except as otherwise provided in this Agreement, any dispute between the contracting parties relative to the interpretation or application of this Agreement which cannot be settled through consultation shall be submitted for an advisory report to a tribunal of three arbitrators, one to be named by each contracting party, and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either contracting party. Each of the contracting parties shall designate an arbitrator within two months

of the date of delivery by either party to the other party of a diplomatic note requesting arbitration of a dispute; and the third arbitrator shall be agreed upon within one month after such period of two months.

If either of the contracting parties fails to designate its own arbitrator within two months, or if the third arbitrator is not agreed upon within the time limit indicated, either party may request the President of the International Court of Justice to make the necessary appointment or appointments by choosing the arbitrator or arbitrators.

The contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. A moiety of the expenses of the arbitral tribunal shall be borne by each party.

Article 14

This agreement, all amendments thereto, and contracts connected therewith shall be registered with the International Civil Aviation Organization.

Article 15

If a general multilateral air transport convention accepted by both contracting parties enters into force, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article 16

Either of the contracting parties may at any time notify the other of its intention to terminate the present Agreement. Such a notice shall be sent simultaneously to the International Civil Aviation Organization. In the event such communication is made, this Agreement shall terminate one year after the date of its receipt, unless by agreement between the contracting parties the notice of intention to terminate is withdrawn before the expiration of that time. If the other contracting party fails to acknowledge receipt, notice shall be deemed as having been received fourteen days after its receipt by the International Civil Aviation Organization.

Article 17

This Agreement will come into force on the day it is signed. The Agreement shall be in the English and Hindi languages. In case of any divergence of interpretation, the English text shall prevail.

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

DONE in duplicate at New Delhi, this 3rd day of February, 1956.

For the Government of United States of America :
Livingston SATTERTHWAITE

[SEAL]

For the Government of India :
Jagjivan RAM

[SEAL]

SCHEDULE

1. An airline or airlines designated by the Government of India shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph :

Route 1. From India via points in Asia, Africa, Europe, U.K., Ireland, Canada to New York; and beyond to points on Route 2 or to such points as may be mutually agreed upon at a later date.

Route 2. From India via points in Asia, the Philippines, Japan, Canada to San Francisco or Los Angeles and beyond, to points on Route 1 or to such points as may be mutually agreed upon at a later date.

2. An airline or airlines designated by the Government of the United States shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled landings in India at the points specified in this paragraph :

Route 1. From the United States via points in Canada, Ireland, U.K., Europe and Asia to Delhi/Calcutta and beyond to points in Burma, Thailand and beyond to the United States over the various routes.

Route 2. From the United States via points in Canada, Ireland, U.K., Europe, Africa and Asia to Bombay/Calcutta and beyond to points in Ceylon, Burma, Thailand and beyond to the United States over the various routes.

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

(B) Not more than one traffic stop shall be made by a designated airline of either country on any flight transiting the territory of the other country.

(C) 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.

(D) Changes made by either contracting party in points on its routes described in the Schedule except changes in points in the territory of the other contracting party, shall not require amendment of the Schedule. The aeronautical authorities of either contracting party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change is given without delay to the aeronautical authorities of the other contracting party.

EXCHANGE OF NOTES

I

*The American Chargé d'Affaires ad interim to the Director, American Division,
Ministry of External Affairs of India*

New Delhi, India, February 3, 1956

Dear Miss Naidu,

I have the honour to refer to the Air Transport Agreement signed today¹ between the Government of the United States of America and the Government of India and to say that the understanding of the Government of the United States of America with regard to the procedures agreed between the contracting parties in pursuance of Article 9 of the Agreement is as follows :

During the discussions between the Delegation of India and the Delegation of the United States which led to the conclusion of the Air Transport Agreement between the two countries, there was an extensive exploration of the air transport problems of the two countries. Important features of these problems were noted to be great geographic distances separating the two countries and the fact that no air services are operated by an Indian carrier to the United States. The Delegation of India presented to the United States Delegation its continued apprehensions with respect to the inauguration of such air services between the United States and India as might result in an undue effect upon the development of the international and regional services of the Indian airlines. The United States Delegation noted the concern of the Delegation of India and expressed confidence that by reason of the unique characteristics of the service between India and the United States, practical arrangements as described below could be made to give additional assurance to the Government of India that its interests in the orderly develop-

¹ See p. 88 of this volume.

ment of air transportation would be safeguarded. As an indication of these unique characteristics, mention was made of the complexity of adding new schedules over the 9,000 mile distance between the two countries and other elements of traffic and operations over the routes involved.

2. It was noted by both Delegations that under the temporary authorizations previously issued by the Government of India the level of service was at present two round trips per week for each of the two United States airlines serving India—Trans World Airlines and Pan American World Airways—and that upon the coming into force of the Agreement, the services under the operating permission would continue at that level until increased in accordance with the procedures set forth hereafter. The Indian Delegation stated that the Government of India would issue appropriate operating permits. It was agreed that if, while this Agreement is in force, at any time the Government of India designate an airline or airlines, such designated airline or airlines will be granted full operating permission pursuant to Article 3 of this Agreement.

3. The United States Delegation pointed out that under Article 12, the air services under the Agreement could be considered by the two nations at any time, and in order to facilitate such consideration, the United States Government would notify the Government of India through diplomatic channels of any new schedule proposed by one of its carriers to serve India at least 90 days before the effective date of the new schedule. The United States Delegation stated that while the United States might notify the Government of India more than 90 days in advance, the 90-day period would be a minimum. The possibility, however, of sudden and unexpected traffic demands justifying an increase in frequency on less than 90 days notice was recognized; and the parties expressed the belief that in such an event they would be able through diplomatic channels to evolve a procedure which would deal adequately with the situation as it then exists.

4. Both Delegations noted the importance to the public and the carriers of having certainty as to the availability of services. To this end they agreed that any request for intergovernmental consideration of the proposed additional schedule should be made within 30 days of the date upon which the notification was received by the Government of India, and that any consultations should be started within 30 days of that request and completed as soon as possible thereafter. The Delegations agreed that at the consultations, in addition to all other matters to be brought forward by India and the United States, the parties would have relevant traffic statistics available. It was further agreed that such consultations would be held in India.

5. (A) Both Delegations recognized that if the consultations did not result in agreed conclusions, and if the notice of the increase is not withdrawn, the Government of India might withhold or modify or revoke the operating permission with respect to the increase in frequency which had been the subject of consultations.

(B) Furthermore, it was agreed that if an increase in frequency is established on the basis of estimates of anticipated traffic and subsequently in consultation asked for by the Government of India and held in accordance with Article 12 of the Agreement, it is determined that such estimates have not been substantially fulfilled within a reasonable time, then such increase would be withdrawn. It was recognized that an appropriate length of time would be allowed during which the airline, which made the increase

in frequency, would seek to realize the anticipated traffic for which the increase in frequency was provided. It was likewise recognized that should consultations under this paragraph not result in agreed conclusions, the Government of India might modify or revoke the operating permission with respect to the increase in frequency which had been the subject of consultation.

(C) It was also agreed that action to withhold or modify or revoke an operating permission as provided for in paragraphs (A) and (B) above would not be subject to arbitration in accordance with Article 13 of the Agreement.

6. The Delegation of India referred to its unique geographical position which results in making India an airline crossroads with a large number of the world's airlines carrying traffic to and through India, and pointed out the difficult competitive position in which the Indian airlines are presently placed, particularly in relation to the movement of their own third and fourth freedom traffic. Along the same line the Indian Delegation referred specifically to the operations of United States airlines, and pointed out the relatively low level of third and fourth freedom traffic and the relatively high level of fifth freedom traffic being carried by them. The Indian Delegation expressed its concern that the operations of foreign carriers result in impairing the economic development of Indian airlines. The United States Delegation recognized the unique position in which India is placed, as well as the concern expressed by the Indian Delegation as to the development of their air services.

7. The United States Delegation pointed out the high level of Indo-United States traffic and the substantial annual growth which is occurring, but indicated the difficulties with which their international airlines are faced in serving this traffic. In addition, the United States Delegation referred to the level of operations by the United States carriers on the long routes from the United States to India, and pointed out that by reason of this level of service, the United States airlines are losing the patronage of the public desiring service between India and the United States who are turning to the more frequent services offered by competing foreign carriers. It was the opinion of the United States Delegation that this traffic whether moving wholly by foreign carriers, or partially by foreign and partially by United States carriers, should receive consideration in assessing capacity. It was further observed that under all of these circumstances, particularly as they relate to routes of this length, the level of third and fourth freedom traffic is necessarily relatively low as the ends of the routes are approached, and correspondingly if an airline is to operate economically, the fifth freedom traffic must be relatively high. The Indian Delegation noted these difficulties.

8. The two Delegations discussed the application of Articles 6, 7, and 8 and reached the general conclusion that at present in the unique circumstances prevailing between India and the United States, in a consultation to consider a proposed increase in the capacity offered by United States airlines, both Governments would bear in mind the reciprocal objectives of assuring the orderly and economic development of both the Indian and United States airlines and make special application as follows :

- (1) Any increase in frequency for a United States airline will be required to be justified primarily for the provision of capacity needed on account of the increase in the

amount of the traffic originating in the United States and destined for India and vice versa which is carried by that airline or which that airline can reasonably establish as its anticipate needs for the carriage of the traffic originating in the United States and destined for India and vice versa;

- (2) In addition it was agreed that due consideration, which would vary with the facts in appropriate cases but which would not be taken to justify an amount of traffic between India and third countries which is excessive, would be given to:
 - (a) factors affecting the requirements of through airline operations including the effect which the growth of traffic to other points along the routes specified in the Agreement may have on the capacity offered in the United States-India market,
 - (b) the size of the United States-India air traffic market, its rate of growth, and the needs of the public for direct, as well as connecting services, and
 - (c) the total traffic between India and the United States carried by airlines foreign to both countries, and by other means; and
- (3) Appropriate provision will be made for the carriage of such transit traffic as is disclosed by the trends of such traffic actually carried or which could be reasonably carried on flights making traffic stops in India, but the increase in capacity provided for such traffic will not be utilized for an amount of traffic between India and third countries and vice versa which is unreasonable.

9. By reason of the extensive discussions between the two Governments concerning the capacity to be provided by United States airlines and the complexity of the capacity problems presented by operations over the routes concerned, both Delegations recognized the necessity of having available accurate and more complete statistical data on the movement of traffic.

- (1) Accordingly, the United States Delegation agreed that the United States Government would transmit to the Government of India statistical reports giving by alternate months the following data:
 - (a) True origin and destination of all traffic embarked or disembarked in India by the United States airlines, classified as to passengers, cargo and mail, and the points of embarkation and disembarkation of this traffic by such airlines. If such traffic originates in or is destined for a third country, the traffic will be broken down so as to show that which is competitive with the Indian airlines and that which is not.
 - (b) All transit traffic on United States airlines carried on flights making traffic stops in India.
- (2) The Indian Delegation agreed that the Government of India, would upon request, transmit to the United States Government similar statistical reports giving for alternative months the traffic carried by its airlines to, from and across United States territory.
- (3) In addition, both countries agreed to work closely together in developing more adequate information as to the nature and growth of traffic between their territories.

10. It was agreed by both Delegations that the nature of air transportation, its expected rapid development, and the somewhat differing philosophies held by India and the United States with regard to achieving this development, make it essential that the arrangements discussed herein be subject to consultation at any time by the two countries in order to make certain that they provide a continuously satisfactory method of dealing with the subject matters described above.

11. If at any time agreement is not reached in consultation under the foregoing provisions of this note, either contracting party may notify the other of its intention to terminate the said provisions; and, in that event the said provisions shall terminate at the expiration of ninety days after the date of receipt of such notice; provided, however, that in such event, while each of the parties retains its freedom of action to terminate the Agreement in accordance with Article 16 thereof, both parties shall refrain from making any changes in the arrangements prevailing on the date of termination of the provisions of this note, until either (1) such arrangements are modified by mutual agreement between the Parties or (2) the Agreement is terminated in accordance with Article 16 thereof.

12. Both Delegations noted their understanding that their Governments would be guided by the general conclusions set forth above.

I have the honour to request you kindly to confirm that this is also the understanding of the Government of India.

Sincerely yours,

Frederic P. BARTLETT
Chargé d'Affaires ad interim

Miss Leilamani Naidu, I.F.S.,
Director, American Division
Ministry of External Affairs
Government of India
New Delhi

II

*The Director, American Division, Ministry of External Affairs of India to the
American Chargé d'Affaires ad interim*

MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI

February 3, 1956

Dear Mr. Bartlett,

I have the honour to acknowledge the receipt of your letter dated the 3rd February 1956, stating that, with reference to the Air Transport Agreement signed today between the Government of India and the Government of the

United States of America, the understanding of the Government of the United States of America with regard to the procedures agreed between the contracting parties in pursuance of Article 9 of the Agreement is as follows :

[*See note I*]

2. I have the honour to confirm that the above represents also the understanding of the Government of India.

Yours sincerely,

Leilamani NAIDU
Director
American Division

Mr. Frederic P. Bartlett
Chargé d'Affaires ad interim
Embassy of the United States of America
New Delhi