No. 14221

SPAIN
and
CHILE

Agreement relating to commercial air transport (with memorandum of understanding). Signed at Santiago on 17 December 1974

Authentic text: Spanish.

Registered by Spain on 21 August 1975.

ESPAGNE
et
CHILI

Accord relatif aux transports aériens commerciaux (avec mémorandum d'accord). Signé à Santiago le 17 décembre 1974

Texte authentique : espagnol.

Enregistré par l'Espagne le 21 août 1975.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF CHILE AND THE GOVERNMENT OF SPAIN RELATING TO COMMERCIAL AIR TRANSPORT

The Government of Chile and the Government of Spain, desiring to develop and strengthen relations between the two countries in the field of air transport, have decided to conclude the following Agreement:

Article 1. 1. For the purposes of interpreting and applying this Agreement and its annex, and unless otherwise provided in the text of the Agreement:

(*a*) The term "aeronautical authorities" shall mean, in the case of Chile, the Civil Aviation Board, and in the case of Spain, the Ministry of Air, Under-Secretariat of Civil Aviation, or, in either case, any institution or person legally authorized to assume the functions exercised by the authorities;

(*b*) The term "designated airline" shall mean an airline designated by either Contracting Party, in accordance with the provisions of article 3, for the purpose of operating international air services on the routes specified in the annex to this Agreement;

(*c*) The terms "territory", "air service", "international air service" and "stop for non-traffic purposes" shall have the same meaning as in articles 2 and 96 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944;[2]

(*d*) The term "specified routes" shall mean established routes or routes established in the annex to this Agreement;

(*e*) The term "agreed services" shall mean such international air services as may be established on the specified routes in accordance with the provisions of this Agreement.

2. The annex to this Agreement shall be considered an integral part thereof and any reference to the Agreement shall be understood to include the annex, unless expressly provided to the contrary.

Article 2. 1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing international air services between their respective territories on the routes specified in the annex to this Agreement.

2. The airlines designated by each Contracting Party shall, while operating the agreed services on the specified routes, enjoy the following rights:

(*a*) the right to fly without landing across the territory of the other Contracting Party;

(*b*) the right to make stops in the said territory for non-traffic purposes;

[1] Applied provisionally from 17 December 1974, the date of signature, and came into force definitively on 16 June 1975, the date by which the Parties notified each other of the completion of their respective legal formalities, in accordance with article 15.

[2] United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; and vol. 958, p. 217.

(*c*) the right to make stops in the said territory for the purpose of setting down and picking up international air traffic in passengers, mail and cargo originating in or destined for the other Contracting Party;

(*d*) the right to make stops in the said territory for the purpose of setting down and picking up international air traffic in passengers, mail and cargo originating in or destined for another State, in accordance with the provisions of the annex to this Agreement.

3. Nothing in this Agreement shall be interpreted as conferring on the airline designated by one Contracting Party the right to engage in cabotage within the territory of the other Contracting Party.

Article 3. 1. Each Contracting Party shall have the right to inform the other Contracting Party in writing, through the diplomatic channel, of the airline which is to operate the agreed services on the specified routes.

2. On receiving notice of such designation, the other Contracting Party shall without delay, subject to the provisions of paragraphs 3 and 4 of this article, grant the appropriate operating permit to the designated airline.

3. The aeronautical authority of one Contracting Party may require the airline designated by the other Contracting Party to show proof that it is able to comply with the laws, regulations and provisions of the former which, in accordance with the provisions of the Convention on International Civil Aviation (Chicago, 1944), regulate the operation of international air services.

4. Each Contracting Party shall have the right to withhold the operating permit referred to in paragraph 2 of this article or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in this Agreement, if the said Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in its nationals.

5. When an airline has been thus designated and authorized, it may commence operation of the agreed services at any time.

6. Each of the Contracting Parties shall have the right to replace one designated airline by another, in the manner indicated in paragraph 1 of this article. The new designated airline shall enjoy the same rights and shall have the same obligations as the airline which it replaces.

Article 4. 1. Each Contracting Party reserves the right to revoke an operating permit granted to the airline designated by the other Contracting Party, or to suspend the exercise by such airline of the rights specified in this Agreement, or to impose such conditions as it may deem necessary in respect of the exercise of those rights, if:

(*a*) it is not satisfied that substantial ownership or effective control of such airline is vested in the Contracting Party designating the airline or in its nationals, or

(*b*) the airline has not complied with the laws or regulations of the Contracting Party granting those rights, or

(*c*) the airline fails to operate the agreed services in accordance with the conditions prescribed in this Agreement.

2. Unless revocation or suspension or immediate imposition of the conditions mentioned in paragraph 1 of this article is necessary to prevent further infringements of the laws or regulations, this right shall be exercised only after consultation with the other Contracting Party.

Article 5. 1. Aircraft used in international traffic by the designated airline of one Contracting Party and their regular equipment, supplies of fuel and lubricants and aircraft stores (including food, beverages and tobacco) shall be exempt from all customs duties, inspection fees and other charges levied in respect of entry into the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft until it leaves the said territory.

2. The following shall likewise be exempt from the same duties and charges, excluding fees levied in consideration of services rendered:

(*a*) aircraft stores taken on board in the territory of one Contracting Party within limits fixed by the authorities of the said Contracting Party and intended for use on board aircraft of the other Contracting Party operating agreed services;

(*b*) spare parts introduced into the territory of one Contracting Party for the maintenance or repair of aircraft used by the designated airline of the other Contracting Party in operating agreed services;

(*c*) fuel and lubricants intended for aircraft used by the designated airline of the other Contracting Party in operating agreed services, even though such supplies be consumed during that part of the flight which takes place over the territory of the Contracting Party in which they were taken on board.

3. The stores referred to in subparagraphs (*a*), (*b*) and (*c*) above may be required to be kept under customs supervision or control.

4. Regular equipment, supplies and stores on board the aircraft of one Contracting Party may not be unloaded in the territory of the other Contracting Party save with the consent of the customs authorities of that territory. When so unloaded, they may be placed under the supervision of the said authorities until they leave the said territory or are otherwise disposed of in a duly authorized manner.

Article 6. Passengers, baggage and cargo in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar charges.

Article 7. 1. The agreed services shall have as their primary objective the provision of capacity adequate to meet traffic demands to and from the country of the airline designated in respect of the routes specified in the annex to this Agreement.

2. On common routes, the designated airlines shall take their mutual interests into account so as not to affect unduly their respective services.

3. The right to pick up and set down in the respective territories of the Contracting Parties international traffic destined for or coming from third countries, in accordance with the provisions of article 2 (*d*) and the annex to this Agreement, shall be exercised in accordance with the general principles of orderly development of international air traffic to which both Contracting Parties subscribe and in such a manner that capacity shall be related to:

(*a*) the traffic demand to and from the country designating the airline, and

(*b*) the requirements of economic operation of the designated airlines.

Article 8. 1. The tariffs charged by the designated airline of one of the Contracting Parties for carriage to or from the territory of the other Contracting Party shall be fixed at reasonable levels, due regard being paid to all relevant factors, in particular cost of operation, reasonable profit and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be fixed by agreement between the designated airlines of the two Contracting Parties, after consultation with other airlines operating over all or part of the same route; where possible, the rate-fixing machinery of the International Air Transport Association (IATA) shall be used.

3. The tariffs so fixed shall be submitted for approval to the aeronautical authorities of the Contracting Parties not less than thirty days before the date laid down for their entry into force; in special cases this time-limit may be reduced, subject to the agreement of the said authorities.

4. If for any reason a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this article, or if a tariff is not approved by the aeronautical authority of one of the Contracting Parties within the time-limit specified in paragraph 3 of this article, the aeronautical authorities of both Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the aeronautical authorities cannot agree on the approval of any tariff, the dispute shall be settled in accordance with the provisions of article 10 of this Agreement.

6. Subject to the provisions of paragraph 3 of this article, no tariff shall enter into force if the aeronautical authority of either Contracting Party has not approved it.

7. The tariffs established in accordance with the provisions of this Agreement shall remain in force until new tariffs have been fixed in accordance with the provisions of this article.

Article 9. 1. The aeronautical authorities of the Contracting Parties shall, at the request of either such authority, consult together in a spirit of close cooperation with a view to ensuring compliance with the principles and the provisions set forth in this Agreement and shall exchange such information as may be necessary for that purpose.

2. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Parties shall in the first place endeavour to settle it through direct consultations between their aeronautical authorities. In the event that such consulations fail to produce a solution, the Contracting Parties shall endeavour to settle the dispute through the diplomatic channel.

3. If the Contracting Parties fail to reach a solution on the basis of the procedures described in the preceding paragraph, they may, at the request of either Contracting Party, refer the dispute for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third, who shall act as President of the Arbitral Tribunal, to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other, through the diplomatic channel, of a note requesting arbitration of the dispute, and the third arbitrator shall be appointed within a further period of sixty days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or the third arbitrator has not been appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint the arbitrator or arbitrators who have not been duly appointed. In the case, the third arbitrator shall be a national of a third State and shall act as President of the Arbitral Tribunal.

4. The Contracting Parties undertake to comply with any decision given under paragraph 3 of this article.

Article 10. 1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement or its annex, it may request consultations between aeronautical authorities of the two Contracting Parties.

2. Modifications to the Agreement itself shall enter into force on the date of an exchange of diplomatic notes in which the two Governments inform each other that the modifications have been approved in accordance with their respective constitutional provisions.

3. Modifications to the annex shall be made by direct agreement between the aeronautical authorities of the Contracting Parties; they shall be confirmed by an exchange of diplomatic notes and shall enter into force on the date of the exchange of notes.

Article 11. Any consultations between the aeronautical authorities may take place either orally or by correspondence and shall, unless otherwise agreed, begin within a period of sixty days from the date on which the request for consultations is received.

Article 12. The provisions of any multilateral agreement that is binding on both Contracting Parties shall prevail over the provisions of this Agreement, which, without prejudice to the foregoing, shall be amended so as to be in harmony with any such multilateral agreement.

Article 13. Either Contracting Party may at any time give notice to the other Contracting Party of its decision to denounce this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. If such notice is given, the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by mutual agreement before the expiry of that period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the date of its receipt by the International Civil Aviation Organization.

Article 14. This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 15. This Agreement shall be applied provisionally as from the day on which it is signed, in accordance with the respective legal and administrative powers of the Parties, and shall enter into force definitively as soon as each has notified the other that it has completed the formalities prescribed by its own laws.

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

DONE in two copies in the Spanish language at Santiago on 17 December nineteen hundred and seventy-four.

For the Government of Chile:
[PATRICIO CARVAJAL]

For the Government of Spain:
[LUIS GARCÍA LLERA]

MEMORANDUM OF UNDERSTANDING

At Santiago, on 17 December 1974, the aeronautical authorities of Chile and Spain, represented respectively by Colonel Ernesto Miranda Díaz (retired), Director-General of Civil Aeronautics and Vice-Chairman of the Civil Aviation Board, and His Excellency Mr. Luis García de Llera y Rodríguez, Ambassador of Spain, have agreed as follows:

I. In pursuance of the provisions of paragraph 1 of the annex to the Commercial Air Transport Agreement concluded between the Governments of Chile and Spain on this same date, the aeronautical authorities of the two Parties have, by mutual agreement, determined as follows the intermediate points and points beyond on the routes specified in paragraph 1 of the above-mentioned annex:

A. SPANISH ROUTES:

(1) *South Atlantic Route*: From points in Spain via a point in West Africa, Rio de Janeiro, São Paulo, Montevideo, Buenos Aires and Asunción to Santiago de Chile and points beyond in the Pacific Ocean;

(2) *Middle Atlantic Route*: From points in Spain via San Juan de Puerto Rico, a point in Venezuela, a point in Colombia, Panama, Quito or Guayaquil, Lima and La Paz, to Santiago de Chile and points beyond in the Pacific Ocean.

B. CHILEAN ROUTES:

(1) *South Atlantic Route*: From points in Chile via Buenos Aires, Rio de Janeiro and a point on the West coast of Africa between Nigeria and Mauritania both countries (inclusive) to Madrid and beyond to Paris, Frankfurt and two of the following points: a point in Switzerland, Rome, Amsterdam and London;

(2) *Middle Atlantic Route*: From points in Chile via La Paz, Lima, Quito or Guayaquil, a point in Colombia, Panama, a point in Venezuela and San Juan de Puerto Rico to Madrid and beyond to Paris, Frankfurt and two of the following points: a point in Switzerland, Rome, Amsterdam and London.

II. The airline designated by Spain must operate the section of the route São Paulo-Santiago with at least such intermediate stops as it currently services. However, if for any reason the Spanish airline ceases to provide service to Montevideo, it may then operate one-stop service on that section.

III. The airline designated by Chile shall not exercise traffic rights between San Juan de Puerto Rico and Madrid.

IV. (*a*) The airline designated by Chile shall not exercise passenger and cargo traffic rights between Venezuela and Spain exceeding in economic value those exercised by the airline designated by Spain between Panama and Santiago and between Guayaquil and Santiago.

(*b*) If the airline designated by Spain does not operate or ceases to operate service between Panama and Santiago and between Guayaquil and Santiago, the airline designated by Chile shall have, with respect to passengers, a traffic quota between Venezuela and Spain of five passengers per flight in each direction and a proportion of the total volume of cargo between Venezuela and Spain corresponding to the ratio between the aforementioned passenger quota and the total volume of passengers between Venezuela and Spain. These quotas may be accumulated over periods of one month.

(*c*) If the airline designated by Spain operates only one of the sections Panama-Santiago and Guayaquil-Santiago, the airline designated by Chile shall have a traffic quota for the Venezuela-Spain section as provided in subparagraph (*a*) of this paragraph IV in respect of the section operated by the Spanish airline and

one half of the quota indicated in subparagraph (*b*) of this paragraph IV in respect of the section not operated by the Spanish airline.

V. The capacity which the agreed air services may offer on the specified routes shall be determined by agreement between the aeronautical authorities of both Contracting Parties.

VI. In accordance with the provisions of paragraph V above, the aeronautical authorities agree that the airline designated by each Contracting Party may operate each of the specified routes on its route schedule with a frequency of two flights per week in each direction using aircraft of any capacity, but with offer limited, in respect of Santiago for the Spanish airline and of Madrid for the Chilean airline, to 150 seats as regards passengers and, as regards cargo and baggage, to the amount which can be transported in the normal hold of a Douglas DC-8/52 or a similar aircraft, provided the cargo is not in containers.

VII. As long as the airline designated by Chile does not operate the Middle Atlantic route, mentioned in paragraph I B (2) of this document, it may operate as many as three flights on the South Atlantic route, mentioned in paragraph I B (1), with a stop for traffic purposes at Montevideo, with the limitation that it may not exercise fifth freedom traffic rights with respect to more than two weekly flights between Buenos Aires and Madrid, Montevideo and Madrid and Rio de Janeiro and Madrid.

VIII. The point on the West coast of Africa to which the airline designated by Chile may operate service shall not be Dakar, Lagos or Abidjan.

IX. The points beyond Chile in the Pacific Ocean to which the airline designated by Spain may operate service shall have an economic value equal to that of the points beyond Spain included in the Chilean routes and shall be determined by mutual agreement between the aeronautical authorities of the two Contracting Parties.

For the Chilean Aeronautical Authority:
[*Illegible*]

For the Spanish Aeronautical Authority:
[LUIS GARCÍA LLERA]