No. 14555

SPAIN
and
GUATEMALA

Agreement on scheduled international air transport services (with exchanges of notes). Signed at Guatemala City on 3 May 1971

Authentic text: Spanish.

Registered by Spain on 16 January 1976.

ESPAGNE
et
GUATEMALA

Accord relatif aux services aériens internationaux réguliers (avec échanges de notes). Signé à Guatemala le 3 mai 1971

Texte authentique : espagnol.

Enregistré par l'Espagne le 16 janvier 1976.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF SPAIN AND THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA ON SCHEDULED INTERNATIONAL AIR TRANSPORT SERVICES

The Government of Spain and the Government of the Republic of Guatemala, hereinafter called "the Contracting Parties", inspired by a mutual wish to strengthen the cultural and economic bonds which have linked their peoples and desiring to organize, increase and develop scheduled air services between the two countries with a view to achieving greater co-operation in international air transport, have decided to conclude, in the broadest spirit of co-operation and reciprocity, an agreement which will facilitate the attainment of the aforementioned objectives, and to that end have appointed as their plenipotentiaries: the Government of Spain: the Ambassador of Spain in Guatemala; the Government of Guatemala: the Minister for Foreign Affairs of Guatemala, who, having exchanged their full powers, found in good and due form, have agreed to conclude the Agreement set forth in the following articles:

Article I. For the purposes of this Agreement, the terms and expressions described in this article shall have the meaning assigned to them therein, except where the text of the Agreement itself provides otherwise.

(A) The term "Agreement" means the Agreement between the Government of Spain and the Government of the Republic of Guatemala on scheduled international air transport services.

(B) The term "aeronautical authorities" means, in the case of Spain, the Under-Secretariat for Civil Aviation and, in the case of the Republic of Guatemala, the Ministry of Communications and Public Works or, in both cases, any person, agency or office authorized to perform the functions exercised at present by the aforementioned authorities.

(C) The term "airline" means any air transport enterprise offering or operating an international air service.

(D) The term "designated airline" means any airline which one of the Contracting Parties has designated in writing through the diplomatic channel to the other Contracting Party, in pursuance of article III of the Agreement, as the airline which will operate one or more of the routes specified in the route schedule.

(E) The term "territory" shall mean, in relation to a State, the land area and the territorial waters adjacent thereto under the sovereignty, protection, jurisdiction or trusteeship of that State, as well as the superjacent air space.

(F) The term "air service" means any scheduled air service operated by aircraft intended for public transport of passengers, mail or cargo.

(G) The term "international air service" means any air service traversing the air space above the territory of more than one State.

[1] Came into force on 25 January 1972, the date on which both Contracting Parties had notified each other of the completion of their necessary legal formalities, in accordance with article XIX.

(H) The term "agreed services" means the rights which each Contracting Party grants to the other Contracting Party.

(I) The term "stop for non-traffic purposes" means a stop for purposes other than taking on or putting down passengers, cargo or mail for traffic purposes.

(J) The term "capacity of an aircraft" means the payload of an aircraft expressed as the number of passenger seats and/or the weight of cargo and mail.

(K) The term "capacity offered" means the total capacity of all aircraft used in the operation of each agreed air service, multiplied by the frequency with which they would operate during a given period.

(L) The term "air route" means the pre-established route followed by an aircraft in scheduled air service.

(M) The term "specified route" means a route described in the route schedule.

(N) The term "frequency" means the number of round-trip flights made by an airline during a given period on a specified route.

(O) The term "change of gauge" means a change, on a specified route, from one aircraft to another of a different capacity.

(P) The term "scheduled flights" means flights made by the designated airlines on specified routes according to the approved schedules.

(Q) The term "through plane service" means the service provided by an airline without a change of aircraft from a point in the territory of one Contracting Party to a point in the territory of the other Contracting Party and beyond those points.

(R) The term "five freedoms of the air" means, as applicable, that each Contracting Party grants to the other:

—first freedom: the privilege to fly across its territory without landing;

—second freedom: the privilege to land for non-traffic purposes;

—third freedom: the privilege to put down passengers, mail and cargo taken on in the territory of the Contracting Party whose nationality the aircraft possesses;

—fourth freedom: the privilege to take on passengers, mail and cargo destined for the territory of the Contracting Party whose nationality the aircraft possesses; and

—fifth freedom: the privilege to take on and put down passengers, mail and cargo destined for or coming from third States.

Article II. 1. Each Contracting Party grants to the other Contracting Party, for the purpose of establishing scheduled international air services on the routes specified in the route schedule mentioned in paragraph 4 of this article, the following rights only:

(A) to fly, without landing, across the territory of the other Contracting Party;

(B) to make stops for non-traffic purposes in the said territory;

(C) to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;

(D) to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses; and

(E) to take on and put down passengers, mail and cargo destined for or coming from the points specified in the route schedule.

2. The fact that the rights granted in paragraph 1 of this article are not exercised immediately shall not preclude the subsequent inauguration of air services by the airlines of the Contracting Party to which such rights are granted on the routes specified in the route shcedule.

3. The right to take on in the territory of the other Contracting Party passengers, cargo or mail for carriage to or destined for another point in the territory of the other Contracting Party is expressly excluded.

4. The routes on which the airlines designated by the Contracting Parties may operate international air services and the points in respect of which the use of the fifth freedom of the air is granted shall be specified in a route schedule, to be agreed upon through an exchange of diplomatic notes between the Governments of the Contracting Parties, at the request of the aeronautical authorities. The said exchange of notes and those establishing subsequent amendments shall enter into force immediately, without any further formalities.

Article III. 1. The Contracting Parties shall notify each other as soon as possible of the designation of the airlines which will operate the routes specified in the route schedule.

2. Each Contracting Party shall have the right, upon giving written notice to the other Contracting Party, to revoke the designation of the airline and to replace it by the designation of another airline.

3. Air service on a specified route may be inaugurated by the designated airline immediately or at a later date, at the option of the Party to which the rights are granted, after the other Party has granted the appropriate authorization. The said other Party shall be required to grant such authorization provided that the designated airline fulfils the requirements laid down by the competent authorities, in accordance with the laws and regulations normally applied by those authorities.

Article IV. Each Contracting Party reserves the right to withhold, suspend or revoke the authorization to operate an air service granted to the designated airline of the other Party in the event that it is not fully satisfied that substantial ownership and effective control of that airline are vested in nationals of the other Party, if that airline fails to comply with the laws and regulations of the Contracting Party which granted it the rights, or if the airline or the Government designating it fails to comply with the provisions of this Agreement or to fulfil the conditions on which the rights are granted or those embodied in the authorization granted.

Article V. 1. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft used in international air service or to the operation and use of such aircraft while within its territory shall be applied to the aircraft of the designated airline of the other Party and shall be complied with by such aircraft when entering or departing from and while within the territory of the first Party.

2. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew and cargo of aircraft, such as regulations relating to entry, departure, migration, passports, customs and quarantine, shall be complied with by such passengers, crew or cargo of the other Party, or by their agents on their behalf upon entry into or departure from and while within the territory of the first Party.

Article VI. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by a Contracting Party and still in force shall be accepted as valid by the other Contracting Party for the purpose of operating the routes specified in pursuance of article II, paragraph 4, and the services specified in this Agreement, provided that the requirements laid down for the issue or validation of such certificates or licences are equal to or above the minimum standards established in pursuance of the Convention on International Civil Aviation signed at Chicago on 7 December 1944.[1] Each Contracting Party reserves the right, however, to refuse to accept, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another State.

Article VII. In order to prevent discriminatory practices and to ensure equality of treatment, both Contracting Parties agree also to observe the following principles:

1. Each Contracting Party may impose or permit to be imposed on aircraft of the other Contracting Party fair and reasonable charges or fees for the use of airports, services and facilities. The Contracting Parties agree, however, that such charges and fees shall not be higher than those paid for the use of such airports, services and facilities by other aircraft engaged in similar international services.

2. Aircraft operated on international services by the designated airline of either Contracting Party and the regular equipment, supplies of fuels and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or charges on arriving in the territory of the other Contracting Party provided that such equipment and supplies remain on board the aircraft until re-exported.

3. The following shall also be exempt from the said duties and charges:

(A) aircraft supplies taken on board in the territory of one Contracting Party, within the limits laid down by the authorities of that Contracting Party, and intended for use on board aircraft operating the international air service of the other Contracting Party;

(B) spare parts brought into the territory of one Contracting Party for the maintenance or repair of aircraft engaged in international air services by the designated airline of the other Contracting Party; and

(C) fuels and lubricants for use by aircraft operated in international service by the designated airline of the other Contracting Party, even when such supplies are to be used on the part of the flight effected over the territory of the Contracting Party in which they are taken on board.

[1] 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.

4. The regular airborne equipment and the materials and supplies on board the aircraft of one Contracting Party may be unloaded in the territory of the other Contracting Party with the approval or authorization of the customs authorities of that territory.

5. Either Contracting Party may subject the materials or supplies referred to in paragraphs 3 and 4 of this article to customs supervision or inspection.

Article VIII. 1. The Contracting Parties agree that the designated airlines shall be accorded fair and equitable treatment and equal opportunity to operate the agreed air services between their respective territories so that the services of each of them on all or part of the routes may not be unfairly or unduly affected.

2. They each recognize further that the development of air services in the territory of the other Contracting Party is a legitimate right of that Party.

3. Accordingly, in the operation by the designated airline of each Contracting Party of the agreed services on the specified routes, the interests of the designated airline of the other Contracting Party shall be respected so as not to affect unfairly or unduly the services which the latter airline provides on its local routes, whether on all or part of the said routes.

4. The Contracting Parties agree that their aeronautical authorities shall ensure that the designated airlines of both Parties comply with the principles set forth in this article and with the pertinent rules of the Agreement, and that they shall consult each other periodically on the way in which those principles and rules are to be observed by the respective designated airlines.

Article IX. It is agreed that the services provided by the designated airlines in pursuance of this Agreement shall have as their principal objective the provision of adequate air transport capacity to meet the requirements of the traffic between the two countries and their respective territories.

The services provided by airlines operating under this Agreement shall be closely related to the public demand for such services.

Article X. The type and capacity of the aircraft, the frequency of flights and any permanent modifications thereto shall be decided on by agreement between the aeronautical authorities of both countries through an exchange of notes.

Any change of gauge justified by reasons of economy of operation shall be permitted at any point on the specified routes. However, no change of gauge may be made in the territory of either Contracting Party if it would alter the operating pattern of a long-haul service or be incompatible with the principles set forth in this Agreement.

Article XI. The aeronautical authorities of each Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party, at their request, such available periodic statistics or other data as may reasonably be required for the purpose of reviewing the capacity provided on the agreed services by the respective designated airlines. Such reports shall include all data required to determine the volume, origin and destination of traffic.

Article XII. The tariffs to be charged for tickets and cargo on the routes specified in the route schedule shall be established at reasonable levels, due regard being paid to all relevant factors such as flight equipment, costs of

operation, reasonable profit, the tariff charged by other airlines and the characteristics of each service and of the various routes.

These tariffs shall be subject to the approval of the aeronautical authorities of the Contracting Parties and shall be fixed in accordance with the following provisions:

(A) The tariff which a designated airline of either Contracting Party proposes to establish shall include the tariffs from the point of origin to the point of destination on the specified routes; the tariffs from these two points to intermediate points; the tariffs between such intermediate points; and the tariffs applicable to points beyond those specified as terminal points.

(B) The aforementioned tariffs shall, if possible, be established by agreement between the designated airlines of the two Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where feasible, be reached through the rate-fixing procedures of any air transport association.

(C) The tariffs so agreed shall be submitted for approval to the aeronautical authorities of the Contracting Parties at least forty-five (45) days before the proposed date of their entry into force, unless the Contracting Party to which they are submitted permits them to be submitted within a shorter period.

(D) If a Contracting Party, upon receipt of the notification referred to in paragraph (C) above, is not satisfied with the proposed tariff, it shall so inform in writing the other Contracting Party and the designated airline which proposed the disputed tariff, at least thirty (30) days before the date on which it would otherwise enter into force, and the Contracting Parties shall endeavour to reach agreement on the appropriate tariff.

(E) If a Contracting Party, upon examining or studying a tariff being charged for air transport to or from its territory by an airline of the other Contracting Party, is dissatisfied with such tariff, it shall so notify the other Contracting Party, and the two Parties shall endeavour to reach agreement on the appropriate tariff.

(F) If agreement is reached in accordance with the provisions of paragraphs (D) and (E) of this article, each Contracting Party shall put the agreed tariff into effect.

(G) If, in the circumstances set forth in paragraph (D), it is not possible to reach agreement before the date on which the tariff would otherwise enter into force or if, in the circumstances set forth in paragraph (E), it is not possible to reach agreement within sixty (60) days from the date of notification, the Contracting Party which raised the objection to the tariff may take such measures as it deems necessary in order to prevent the inauguration or continuation of the service in question at the tariff objected to, provided that the Contracting Party raising the objection does not ask that a tariff higher than the minimum tariff charged by its own airline or airlines for similar services between the same two points be charged.

(H) In any case in which, under paragraphs (D) and (E) of this article and following the consultations initiated on account of the objection of a Contracting Party to a proposed or existing tariff of the airline of the other Contracting Party, the respective authorities of the two Contracting Parties are unable to reach

agreement on the appropriate tariff within six (6) months, the provisions of article XIV of this Agreement shall be applied at the request of either Party. In rendering its judgement, the arbitral tribunal shall be guided by the principles laid down in this article.

(I) Pursuant to the provisions of paragraph (C) of this article, no tariff shall enter into force unless approved by the aeronautical authorities of one Contracting Party.

(J) The tariff established in accordance with the provisions of this Agreement shall remain in force until new tariffs have been established in accordance with the provisions of this article.

(K) The aeronautical authorities of each Contracting Party shall make every effort to ensure that the tariffs charged and paid correspond to those submitted to either of the Contracting Parties and that no airline refunds any portion of such tariffs, directly or indirectly, including the payment of excessive commissions to agents.

Article XIII. Whenever it is deemed necessary, there shall be an exchange of views between the aeronautical authorities of the Contracting Parties in order to achieve close co-operation in and understanding of all matters relating to the application of this Agreement.

Either Contracting Party may at any time request the holding of consultations between the competent authorities of the Contracting Parties for the purpose of discussing the interpretation of the Agreement, or its application if, in the opinion of either Contracting Party, the exchange of views provided for in the preceding paragraph has produced no result. The consultations shall begin within a period of sixty (60) days from the date of the receipt of the request made by the Ministry of Foreign Affairs of Spain or the Ministry of Foreign Affairs of Guatemala, as the case may be.

Amendments to the Agreement shall be made by means of additional protocols.

Article XIV. 1. Save as otherwise provided in this Agreement, any dispute between the Contracting Parties concerning its interpretation or application which cannot be settled through consultation shall, at the request of either Contracting Party, be submitted to an arbitral tribunal composed of three members, one to be designated by each Contracting Party and the third to be designated jointly by the first two members of the tribunal, provided that such third member shall not be a national or either Contracting Party. The third arbitrator shall serve as president of the arbitral tribunal.

2. Each Contracting Party shall designate one arbitrator within sixty (60) days of the date of delivery by either Contracting Party to the other Contracting Party of a diplomatic note requesting arbitration of a dispute, the third arbitrator shall be designated within thirty (30) days of the expiry of the period of sixty (60) days.

3. If either Contracting Party fails to designate its arbitrator within the said sixty (60) days or if the third arbitrator is not designated within the period specified in the preceding paragraph, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make

the necessary designation or designations to select the arbitrator or arbitrators, as the case may be.

4. Each Contracting Party shall defray the cost of the remuneration of its arbitrator. The cost of the remuneration of the third arbitrator and the costs occasioned by the proceedings of the tribunal shall be shared equally by the two Contracting Parties. The tribunal shall, moreover, adopt its own rules of procedure.

5. The Contracting Parties undertake to comply with any decision rendered in pursuance of this article.

Article XV. As soon as possible after the entry into force of this Agreement, the aeronautical authorities of the two Contracting Parties shall exchange information concerning the authorizations granted to the airlines designated by them to operate the routes specified in the route schedule in pursuance of article II, paragraph 4.

Article XVI. Should a general multilateral air transport agreement accepted by both Contracting Parties enter into force, this Agreement shall be amended so as to conform with the provisions of such agreement.

Article XVII. This Agreement, all amendments thereto and exchanges of diplomatic notes relating thereto shall be registered with the International Civil Aviation Organization.

Article XVIII. Either Contracting Party may at any time notify the other Contracting Party of its intention to terminate this Agreement, in which case it shall be required to notify the International Civil Aviation Organization at the same time. The Agreement shall expire one year after the date of receipt of the notice of termination, unless the said notice is withdrawn by agreement before the date of expiry. If the other Contracting Party fails to acknowledge receipt, the notice shall be deemed to have been received by it fourteen (14) days after the date of receipt of such notice by the International Civil Aviation Organization.

Article XIX. This Agreement shall enter into force on the date on which both Contracting Parties have notified each other that the formalities required for its entry into force under their respective legislations have been completed in their countries.

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

DONE at Guatemala City, on the third day of May nineteen hundred and seventy-one, in duplicate, in the Spanish language.

For the Government of Spain:	For the Government of the Republic of Guatemala:
[JUSTO BERMEJO Y GÓMEZ]	[ROBERTO HERRERA IBARGÜEN]

EXCHANGES OF NOTES

I*a*

EMBASSY OF SPAIN

Guatemala City, 3 May 1971

No. 33/71

Sir,

I have the honour to refer to article II, paragraph 4, of the Agreement between Spain and the Republic of Guatemala on scheduled international air transport services, signed today in Guatemala, and to propose to you, on behalf of the Government of Spain, the following Agreement:

Air services between the territories of the two countries may be operated on the routes specified in the following

ROUTE SCHEDULE

A. *Guatemalan routes*

I. from Guatemala to Madrid with intermediate points in North America, with possible extension to points beyond Madrid in Europe, in both directions;

II. from Guatemala to Madrid with intermediate points in Central America, Panama and the Caribbean, with possible extension to points beyond Madrid in Europe, in both directions.

B. *Spanish routes*

I. from Spain to Guatemala City, via San Juan (Puerto Rico), Santo Domingo and Panama, with possible extension to points beyond Guatemala in North America, in both directions;

II. from Spain to Guatemala City, via points in North America, with possible extension to points beyond Guatemala in South America, in both directions.

The designated airlines may transport fifth freedom traffic only between Santo Domingo and Madrid and vice versa and between Santo Domingo and Guatemala City and vice versa, as the case may be.

Any point mentioned in the route schedule may be omitted at the option of the designated airline of either Contracting Party in all or part of its services.

Should the Government of the Republic of Guatemala intimate its agreement to the above-mentioned route schedule and provisions, I have the honour to propose that this note and your similar reply indicating your Government's approval shall constitute an agreement between our two countries, which shall enter into force on the same day as the above-mentioned Agreement and the validity of which shall be subject to that Agreement.

Accept, Sir, etc.

[*Signed*]

JUSTO BERMEJO
Ambassador of Spain

His Excellency Mr. Roberto Herrera Ibargüen
Minister for Foreign Affairs of Guatemala

II*a*

MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF GUATEMALA, C.A.

Guatemala City, 3 May 1971

9688
II-5/Eu.8

Sir,

I have the honour to acknowledge receipt of your note No. 33/71 of today's date, which reads as follows:

[*See note I* a]

In reply, I am pleased to inform you that my Government agrees to the content of your note and that accordingly the said note and the present note constitute an agreement between our two Governments, which shall enter into force on the date of this note.

Accept, Sir, etc.

[ROBERTO HERRERA IBARGÜEN]

His Excellency Mr. Justo Bermejo y Gómez
Ambassador of Spain
Guatemala City

I*b*

EMBASSY OF SPAIN

Guatemala City, 3 May 1971

No. 34/71

Sir,

In the course of the negotiations concerning the Agreement between Spain and the Republic of Guatemala on scheduled international air transport services, signed today in Guatemala, it was agreed that the following special provisions should be applied in respect of the route schedule established in pursuance of article II, paragraph 4, of the Agreement by means of an exchange of notes between the aeronautical authorities of both countries:

1. The services specified in the above-mentioned route schedule may be operated with a maximum of two flights per week in both directions. This limitation shall not apply to stops for non-traffic purposes.

2. (*a*) The airline designated by Spain shall use aircraft of the DC-8 type with a maximum configuration of 208 seats.

(*b*) The types of aircraft to be used by the airline designated by the Republic of Guatemala shall be determined in due course by means of an arrangement between the aeronautical authorities of the two countries.

I should be grateful if you would notify me of your agreement to this proposal.

In the event of an affirmative answer, this note and your note in reply shall constitute an agreement between our two Governments.

Accept, Sir, etc.

[*Signed*]

JUSTO BERMEJO
Ambassador of Spain

His Excellency Mr. Roberto Herrera Ibargüen
Minister for Foreign Affairs of Guatemala

II*b*

MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF GUATEMALA, C.A.

Guatemala City, 3 May 1971

9689
II-5/Eu.8

Sir,

I have the honour to acknowledge receipt of your note No. 34/71 of today's date, which reads as follows:

[*See note I* b]

In reply, I am pleased to inform you that my Government agrees to the content of your note and that the said note and this note accordingly constitute an agreement between our two Governments, which shall enter into force on the date of this note.

Accept, Sir, etc.

[ROBERTO HERRERA IBARGÜEN]

His Excellency Mr. Justo Bermejo y Gómez
Ambassador of Spain
Guatemala City

Ic

EMBASSY OF SPAIN

Guatemala City, 3 May 1971

No. 35/71

Sir,

In the course of the negotiations concerning the Agreement between the Republic of Guatemala and Spain on scheduled international air transport services, signed today in Guatemala, the following was agreed upon:

1. Each Contracting Party undertakes that the airline designated by it will transport the diplomatic bags dispatched by the Government of the other Contracting Party on the agreed services on the routes specified in the route schedule.

2. Each Contracting Party also undertakes that its designated airline will provide the Government of the other Party with tickets for officials of that Government on the routes specified in the route schedule, in accordance with the resolutions of IATA.

I should be grateful if you could inform me of your agreement to this proposal. In the event of an affirmative answer, this note and your note in reply shall constitute an agreement between the aeronautical authorities of our two countries on this subject, which shall enter into force on the date of your note in reply.

Accept, Sir, etc.

[*Signed*]

JUSTO BERMEJO
Ambassador of Spain

His Excellency Mr. Roberto Herrera Ibargüen
Minister for Foreign Affairs of Guatemala

IIc

MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF GUATEMALA, C.A.

Guatemala City, 3 May 1971

9687
II-5/Eu.8

Sir,

I have the honour to acknowledge receipt of your note No. 35/71 of today's date, which reads as follows:

[*See note Ic*]

In reply, I am pleased to inform you that my Government agrees to the content of your note and that the said note and this note accordingly constitute an agreement between our two Governments, which shall enter into force on the date of this note.

Accept, Sir, etc.

[ROBERTO HERRERA IBARGÜEN]

His Excellency Mr. Justo Bermejo y Gómez
Ambassador of Spain
Guatemala City