No. 18244

SPAIN
and
MEXICO

Agreement on air transport (with annex). Signed at Mexico City on 21 November 1978

Authentic text: Spanish.

Registered by Spain on 29 January 1980.

ESPAGNE
et
MEXIQUE

Accord relatif aux transports aériens (avec annexe). Signé à Mexico le 21 novembre 1978

Texte authentique : espagnol.

Enregistré par l'Espagne le 29 janvier 1980.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] ON AIR TRANSPORT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SPAIN AND THE GOVERNMENT OF THE UNITED MEXICAN STATES

The Government of the Kingdom of Spain and the Government of the United Mexican States,

Desiring to promote the development of air transport between the Kingdom of Spain and the United Mexican States and to promote to the fullest extent possible international co-operation in that domain,

Desiring further to apply to such transport the principles and provisions of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,[2]

Desiring to organize, on equitable bases of equality and reciprocity, regular air services between the two countries, in order to improve co-operation in the field of international air transport,

Have agreed as follows:

Article 1. For the interpretation and purposes of this Agreement and its annex, the terms set out below shall have the following meanings:

(A) The term "Convention" means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, and includes any annexes and amendments adopted and approved in accordance with articles 90 and 94 of the Convention which have been accepted by both Contracting Parties.

(B) The term "Agreement" means this Agreement and its annex.

(C) The term "Aeronautical Authority" means, in the case of the Kingdom of Spain, the Ministry of Transport and Communications (Office of the Under-Secretary for Civil Aviation) and, in the case of the United Mexican States, the Ministry of Communications and Transport, or, in either case, any person or body authorized to perform the functions exercised at present by the said Authority.

(D) The term "designated airline" refers to the airline designated by each Contracting Party to operate the agreed services on the routes specified in the annex to this Agreement, in accordance with the provisions of its article 3.

(E) The term "air service" means any scheduled air service performed by aircraft for the public carriage of passengers, cargo or mail.

(F) The term "international air service" means an air service which passes through the airspace over the territory of more than one State.

[1] Applied provisionally from 21 November 1978, the date of signature, and came into force definitively on 22 November 1979, the date on which the Contracting Parties informed each other through an exchange of diplomatic notes (dated 16 and 22 November 1979) that their respective constitutional formalities had been fulfilled, in accordance with article 20 (1).

[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; vol. 958, p. 217, and vol. 1008, p. 213.

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

(H) The term "tariff" means the price paid for the carriage of passengers, baggage and cargo and the conditions under which such a sum is charged, including amounts and commissions for agency or other auxiliary services, with the exception of payments and other conditions for the carriage of mail.

(I) The term "capacity of an aircraft" means the payload of an aircraft expressed in terms of the number of seats for passengers and the weight of cargo and mail that can be carried.

(J) The term "capacity offered" means the total of the capacities of the aircraft utilized for the operation of each of the agreed air services multiplied by the frequency.

(K) The term "frequency" means the number of roundtrips over a given period that an airline operates on a specified route.

(L) The term "agreed services" means the international air services which may, in accordance with the provisions of this Agreement, be established on the specified routes.

(M) The term "specified routes" means the routes established in the annex to this Agreement.

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

Article 2. 1. Each Contracting Party shall grant to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the annex to this Agreement.

2. Except as otherwise provided in this Agreement, the airline designated by each Contracting Party shall enjoy, in the operation of the agreed air services on the specified routes, the following rights:

(*a*) To overfly the territory of the other Contracting Party without landing;

(*b*) To make stops for non-traffic purposes in the territory of the other Contracting Party;

(*c*) To make stops at the points in the territory of the other Contracting Party specified in the route schedule contained in the annex to this Agreement for the purpose of putting down and taking up international traffic in passengers, mail and cargo from or to the other Contracting Party or another State, in accordance with the provisions of the annex to this Agreement;

(*d*) Nothing in this Agreement shall be interpreted as conferring on the airline designated by a 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 designate in writing to the other Contracting Party an airline for the operation of the agreed services on the specified routes.

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraph 3 of this article, without delay grant the appropriate operating authorizations to the designated airline.

3. The Aeronautical Authority of either Contracting Party may require the designated airline of the other Contracting Party to show proof that it is qualified to fulfill the obligations prescribed by the laws and regulations normally and reasonably applied by the said Authority to the operation of international air services, in accordance with the provisions of the Convention.

4. When an airline has been so designated and authorized, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of this Agreement is in force in respect of those services.

Article 4. 1. Each Contracting Party reserves the right to deny an operating authorization to an airline designated by the other Contracting Party or to revoke an operating authorization granted to it, or to suspend the exercise by that airline of the rights specified in article 2 of this Agreement or impose such conditions as it may deem necessary on the exercise of those rights:

(*a*) If it is not satisfied that ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; or

(*b*) If that airline does not comply with the laws and regulations of the Contracting Party granting those rights; or

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

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

Article 5. 1. The laws and regulations of each Contracting Party applicable in its territory to the entry and departure of aircraft engaged in international air navigation or to the operation of such aircraft while within its territory shall apply to aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations applicable in the territory of each Contracting Party to the entry, stay and departure of passengers, crew, baggage, cargo and mail and the formalities relating to entry into and departure from the country, to migration, to customs and to sanitary measures shall also apply in the said territory to operations of the designated airline of the other Contracting Party.

3. For military reasons or for reasons of public security either Contracting Party may restrict or prohibit flights over certain zones of its territory by the aircraft of the designated airline of the other Contracting Party, provided that such restrictions or prohibitions also apply to the aircraft of the designated airline of the first Contracting Party and to airlines of third States operating scheduled international air services.

Article 6. 1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by a Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the routes specified in the Annex to this Agreement, provided that the

requirements under which such certificates or licences were issued or rendered valid are equal to or above any minimum established by the Convention.

2. However, each Contracting Party reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences issued to its own nationals by the other Contracting Party.

Article 7. Either Contracting Party may impose or permit to be imposed on aircraft of the other Party fair and reasonable charges for the use of airports and other services. Each of the Contracting Parties agrees, however, that the said charges shall not be higher than those paid for the use of such airports and services by other aircraft used in similar international air services.

Article 8. 1. Aircraft operated in international air services by the airline designated by either Contracting Party, as well as their regular equipment, fuel, lubricants and stores (including food, tobacco and beverages) on board such aircraft, shall be exempt from all customs duties, inspection fees and other federal, state or municipal duties, taxes and charges on arriving in the territory of the other Contracting Party, provided that such equipment and stores remain on board the aircraft until such time as they are re-exported, even if the said articles are used or consumed by the said aircraft on flights within the said territory.

2. The following shall also be exempt, on terms of reciprocity, from the same duties, taxes and charges, with the exception of charges for services rendered:

(*a*) Lubricating oils, technical supplies for consumption, spare parts, tools and special equipment for maintenance work, as well as food, beverages, tobacco and publicity material considered necessary and used solely for the airline's operations and sent by the airline of one Contracting Party to the territory of the other Contracting Party;

(*b*) Fuel, lubricating oils, other technical supplies for consumption, spare parts, standard equipment, food, beverages and tobacco placed on board the aircraft of the airline of one of the Contracting Parties in the territory of the other Contracting Party and used in international services.

3. The equipment normally carried on board the aircraft, together with other material and supplies remaining on board the aircraft of either of the Contracting Parties, may be unloaded in the territory of the other Contracting Party only with the prior authorization of the customs authorities of the territory concerned. In such cases, they may be stored under the supervision of the said authorities until they are exported or used in accordance with customs regulations.

4. Passengers in transit across the territory of either Contracting Party shall be subject only to simplified control. Baggage and cargo in direct transit shall be exempt from customs and other similar duties.

Article 9. The two Contracting Parties agree that the airlines designated by them shall be accorded fair and equitable treatment in the operation of the agreed services on the specified routes between their respective territories, on the basis of the principle of equal opportunities.

Article 10. 1. In the operation of the agreed services by the designated airline of either Contracting Party, the interests of the designated airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services provided by the latter airline.

2. It is understood that the services provided by the designated airlines in accordance with this Agreement shall have the primary objective of providing air transport capacity appropriate to the traffic demand between the two countries.

3. Both Contracting Parties recognize that fifth-freedom traffic is complementary and subsidiary to the principal traffic of third and fourth freedoms, whose development is the primary objective of this Agreement.

4. The Contracting Parties recognize that the frequency of the service provided by the designated airlines, the capacity offered by such service and changes in the type of aircraft which result in substantial changes in the agreed services shall be determined by agreement between the Aeronautical authorities of the two Parties.

Article 11. 1. The tariffs to be applied by the airline of each Party for carriage to or from the territory of the other Party shall be established at reasonable levels, due regard being given to all relevant factors, especially cost of operation, reasonable profit and the tariffs applied by other airlines.

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be agreed by the airlines concerned of both Parties.

3. The tariffs so agreed shall be submitted for approval to the Aeronautical Authorities of the two Parties at least 45 days before the proposed date of their introduction. In special cases, the time-limit may be reduced with the consent of the said Authorities. Prior approval by the Aeronautical Authorities of both Parties shall be necessary for the introduction of a tariff.

4. If agreement on a tariff cannot be reached in accordance with the provisions of paragraph 2 of this article, or if, within the time-limit referred to in paragraph 3 of this article, one Aeronautical Authority gives the other Aeronautical Authority notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph 2, the Aeronautical Authorities of the two Parties shall endeavour to determine the tariff by mutual agreement.

5. If the Aeronautical Authorities are unable to agree on the approval of any tariff submitted to them under paragraphs 2, 3 and 4 of this article, the dispute shall be settled in accordance with the provisions of article 16 of this Agreement.

6. Any tariff established in accordance with the provisions of this article shall remain in force until a new tariff has been established. However, the applicability of a tariff shall not be extended by virtue of this paragraph for a period of more than six months from the date on which it had been scheduled to expire.

7. In determining tariffs, account shall also be taken of the recommendations of the international body whose regulations are usually applied.

8. The airlines designated by the Contracting Parties shall in no way modify prices under current tariffs or the rules for their application.

Article 12. Each Contracting Party undertakes to grant the designated airline of the other Contracting Party free transfer, at the official rate of exchange, of the excess of receipts over expenditure achieved in its territory in connection with the carriage of passengers, baggage, mail and cargo by the airline designated by the other Contracting Party. Where transfers between the Contracting Parties

are governed by a special agreement, they shall be effected in accordance with that agreement.

Article 13. The Aeronautical authority of each Contracting Party shall ensure that its designated airline furnishes to the Aeronautical Authority of the other Party, on request, all the statistical data required for determining the volume of traffic carried in the agreed services by the airline in question.

Article 14. The Aeronautical Authorities of the Contracting Parties shall consult each other whenever necessary in a spirit of close collaboration in order to ensure the satisfactory application of the provisions of this Agreement.

Article 15. 1. Consultation between the competent authorities of the two Contracting Parties, for the purpose of analyzing the interpretation, application or amendment of this Agreement, may be requested at any time by either Contracting Party. Such consultation shall begin within a period of sixty (60) days from the date of receipt of the request made by the Ministry of Foreign Affairs of the Kingdom of Spain or by the Ministry of Foreign Affairs of the United Mexican States, as the case may be. If agreement is reached on amendment of the Agreement, such agreement shall be formalized through an exchange of diplomatic notes.

2. The amendments so approved shall enter into force provisionally on the date of the exchange of notes and definitively on the date on which the two Contracting Parties, having obtained the necessary approval in accordance with their respective constitutional procedures, agree on a further exchange of notes.

Article 16. 1. Except as otherwise provided in this Agreement, any dispute between the Contracting Parties which relates to the interpretation or application of this Agreement and cannot be settled through consultation shall be submitted to an arbitral tribunal composed of three members, one of whom shall be designated by each of the Contracting Parties and the third by agreement by the first two members of the tribunal on condition that the third member is not a national of either of the Contracting Parties.

2. Each of the Contracting Parties shall designate an arbitrator within sixty (60) days after the date on which either of the Contracting Parties delivers to the other Contracting Party a diplomatic note requesting the settlement of a dispute by arbitration; the third arbitrator shall be designated within sixty (60) days after the date of expiration of the sixty (60) days referred to above.

3. If no agreement concerning the third arbitrator is reached within the time-limit indicated, he shall be designated by the President of the Council of the International Civil Aviation Organization, in conformity with its practice, at the request of either of the Contracting Parties.

4. The Contracting Parties undertake to comply with any settlement imposed in accordance with this article. The arbitral tribunal shall determine the apportionment of costs arising from such a procedure.

Article 17. This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

Article 18. If a general multilateral air transport convention binding on both Contracting Parties enters into force, this Agreement shall be amended so as to conform to the provisions of that convention.

Article 19. 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 six (6) months after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the expiry of that period. If the other Contracting Party fails to acknowledge receipt of the notice, it shall be deemed to have been received fourteen (14) days after receipt of such notice by the International Civil Aviation Organization.

Article 20. 1. This Agreement shall be applied provisionally from the date of its signature and shall enter into force definitively on the date on which the Contracting Parties notify each other through an exchange of diplomatic notes that their respective constitutional formalities have been fulfilled.

2. Unless one of the Parties informs the other Party by means of a diplomatic note, six (6) months in advance, of its intent to terminate this Agreement in accordance with article 19, it shall remain in force for a period of four (4) years from the date of its signature and may be extended for similar periods through an exchange of diplomatic notes.

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

DONE at Mexico City on 21 November 1978, in duplicate in the Spanish language, both texts being equally authentic.

For the Government
of the Kingdom of Spain:

[*Signed*]

MARCELINO OREJA
Minister for Foreign
Affairs

For the Government
of the United Mexican States:

[*Signed*]

SANTIAGO ROEL
Minister for Foreign
Affairs

ANNEX

A. ROUTE SCHEDULE

Section I. The airline designated by the Government of the Kingdom of Spain shall be entitled to operate air services, in both directions, on the route specified below and to make scheduled stops at the points indicated in this section:

—Points in Spanish territory: An intermediate point in Canada or in the United States of America or in the Caribbean region–Mexico City and beyond to Central America.

Section II. The airline designated by the Government of the United Mexican States shall be entitled to operate air services in both directions, on the route specified below and to make scheduled stops at the points indicated in this section:

—Points in Mexican territory: an intermediate point in Canada or in the United States of America or in the Caribbean region–Madrid and beyond in Europe.

B. MODE OF OPERATION

1. The designated airlines may omit the intermediate point and points beyond on any of their flights in one or both directions, provided that a point of departure in the country of origin of the designated airline is covered on each flight.

2. This Agreement grants the designated airlines third-freedom and fourth-freedom traffic rights. The exchange of fifth-freedom traffic rights on the agreed services shall be subject to prior agreement between the Aeronautical Authorities of the Contracting Parties.

3. The capacity offered on the agreed services shall be predetermined by joint agreement between the Aeronautical Authorities of the Contracting Parties, after study of proposals made by the designated airlines on the basis of the principle of equal opportunity for the said airlines.

4. Every effort shall be made to establish the operating schedules of the agreed services by agreement between the airlines designated by both Contracting Parties before they are submitted for approval to the Aeronautical Authorities of both Contracting Parties, at least thirty (30) days before their introduction.