

No. 20396

**FINLAND
and
UNITED STATES OF AMERICA**

Protocol relating to air transport (with related exchange of letters of 7 November 1980). Signed at Washington on 12 May 1980

Authentic text: English.

Registered by Finland on 23 September 1981.

**FINLANDE
et
ÉTATS-UNIS D'AMÉRIQUE**

Protocole relatif aux transports aériens (avec échange de lettres connexes du 7 novembre 1980). Signé à Washington le 12 mai 1980

Texte authentique : anglais.

Enregistré par la Finlande le 23 septembre 1981.

PROTOCOL¹ BETWEEN THE GOVERNMENT OF FINLAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING TO AIR TRANSPORT

The Government of the United States of America and the Government of Finland;

Recognizing that both scheduled and charter air transportation are important to the consumer interest and are essential elements of a healthy international air transport system;

Recognizing the relationship between scheduled and charter air services and the need for continued development of a total air service system which caters to all segments of demand and provides a wide and flexible range of air services;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government regulation;

Intending to make it possible for airlines to offer the traveling and shipping public low-fare competitive services and increased opportunities for charter air services;

Have agreed to this Protocol relating to the Air Transport Agreement, signed at Helsinki on March 29, 1949.²

Article 1. DEFINITIONS

As used in this Protocol:

(1) "Agreement" means the Air Transport Agreement between Finland and the United States of America signed at Helsinki on March 29, 1949 including its attached Annex and Schedule.

(2) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944.³

Article 2. DESIGNATION AND AUTHORIZATION

(1) Each Party shall have the right to designate an airline or airlines for the purpose of exercising the rights granted by the Agreement, as amended by article 3 of this Protocol, and by article 4 of this Protocol.

(2) Each Party shall have the right to withdraw, alter or amend such designations and may designate as many airlines as it wishes for any market covered by the route schedule as amended by articles 3 and 4 of this Protocol.

(3) Any airline or airlines of a Party whose designation allows the exercise of scheduled air service rights shall be permitted to exercise those rights on the routes specified in the Schedule attached to the Agreement, as amended by article 3 of this Protocol.

(4) Any airline or airlines of a Party whose designation allows the exercise of the charter air service rights specified in article 4 of this Protocol shall be permitted to

¹ Came into force on 7 December 1980, i.e., the thirtieth day following the exchange of notes through diplomatic channels (effected on 7 November 1980) confirming the completion of the required constitutional procedures, in accordance with article 17.

² United Nations, *Treaty Series*, vol. 55, p. 59.

³ *Ibid.*, 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; vol. 1008, p. 213, and vol. 1175, p. 297.

exercise those rights in accordance with the rules specified in that Party's designation for the carriage of international charter traffic from its territory on a one-way or roundtrip basis, or in accordance with any waivers of such rules granted for appropriate reasons. Those rules shall be the charterworthiness rules of the country where the traffic originates, now or hereafter published by the aeronautical authorities of each Party pursuant to its statutory requirements for scheduled and charter services. However, if the aeronautical authorities of one Party change such rules after the entering into force of this Protocol, such new rules will enter into force not earlier than 45 days after the official notification to the other Party of such changes.

(5) When the charterworthiness rules of one Party apply more restrictive terms, conditions or limitations to one or more of its designated airlines, the designated airlines of the other Party shall be subject to the least restrictive of such terms, conditions or limitations. Moreover, if the aeronautical authorities of either Party promulgate charterworthiness rules applicable to North Atlantic services from their countries which have different conditions for different destination countries, each Party shall apply the most liberal of such conditions as well to charter air services between the United States and Finland.

(6) Designated airlines shall be granted appropriate operating permission without undue delay in accordance with this article and article 3 of the Agreement.

Article 3. ROUTES FOR SCHEDULED AIR SERVICES

(1) The Schedule attached to the Agreement is amended to read, in its entirety, as follows:

"1. An airline or airlines designated by the Government of the United States shall be entitled to operate scheduled air services on the following route, in both directions, and to make scheduled landings at the following points: The United States via intermediate points to Finland and beyond to any point or points outside Finland, including points in the United States, without geographical or directional limitation.

"2. An airline or airlines designated by the Government of Finland shall be entitled to operate scheduled air services on the following routes, in both directions, and to make scheduled landings at the following points:

1. Finland via intermediate points to New York.
2. Finland to Seattle and one point in California, the exact point in California to be selected by Finland and notified to the United States.
3. Finland to Anchorage and beyond to Tokyo, without traffic rights between Anchorage and Tokyo.*

"3. Each designated airline may, on any or all flights and at its option, operate flights in either or both directions; serve points on each route in any combination and in any order; and omit stops at any point or points without loss of any right to uplift or discharge traffic otherwise permissible under this Schedule, provided the service begins and/or terminates in the territory of the Party designating the airline.

"4. On any segment or segments of the routes described in paragraphs 1 and 2 of this Schedule, a designated airline may operate air services without any limitation as to change in number or type of aircraft operated."

* Stopover rights in Anchorage are permitted on this route.

Article 4. GRANT OF RIGHTS FOR CHARTER AIR SERVICES

(1) Each Party grants to the other Party the right for the designated airlines of that other Party to uplift and discharge international charter traffic in passengers (and their accompanying baggage) or in cargo or in combination, at any point or points in the territory of the first Party for carriage between such points and any point or points in the territory of the other Party, either directly or with stopovers at points outside the territory of either Party or with carriage of stopover or transiting traffic to points beyond the territory of the first Party.

(2) Charter traffic carried by an airline of one Party and originating in or destined for a third country behind the territory of that Party without a stopover in the home territory of that airline of at least two consecutive nights shall not be covered by this Protocol. However, each Party shall continue to extend favorable consideration to applications by designated airlines of the other Party to carry such traffic on the basis of comity and reciprocity.

Article 5. FAIR COMPETITION

(1) Each Party shall allow a fair opportunity for the designated airlines of both Parties to compete in providing and selling the international air transportation services covered by this Protocol.

(2) Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with article 15 of the Convention.

(3) Neither Party shall impose a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic, inconsistent with the purposes of this Protocol.

(4) Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices affecting the airlines of the other Party.

(5) Sections IV, V, VI, and VII of the Annex to the Agreement are hereby rescinded.

Article 6. PRICING

(1) As used in this article, "price" means the fare, rate, or price and its conditions or terms of its availability charged or to be charged by an airline or its agents for the public transport of passengers, baggage and cargo (excluding mail).

(2) Each Party shall allow prices subject to this Protocol to be established by each airline based upon commercial considerations in the marketplace, and intervention by the Parties shall be limited to (a) prevention of predatory or discriminatory prices or practices; (b) protection of consumers from prices that are unduly high or restrictive due to the abuse of a dominant position; and (c) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support or because of other similar reasons.

(3) Each Party may require notification or filing with its aeronautical authorities of prices proposed to be charged by airlines of the other Party to or from its territory. If either Party chooses to require a notification or filing of prices, such requirement

shall not discriminate among the airlines of either Party or with respect to airlines of third countries. Such notification or filing may be required no more than sixty (60) days before the proposed date of effectiveness. Each Party shall permit notifications or filings on shorter notice than set forth above when necessary to enable airlines to respond on a timely basis to competitive offerings. Neither Party shall require the notification or filing by airlines of the other Party of prices charged by charterers to the public for traffic originating in the territory of that other Party.

(4) (a) Neither Party shall take unilateral action to prevent the initiation or continuation of a price charged or proposed to be charged by an airline of either Party for the carriage of international traffic between the territories of the Parties, or to prevent an airline of one Party from meeting a price or prices permitted to be charged by any airline for the carriage of international traffic between the territory of the other Party and a third country.

(b) If relevant arrangements with third countries reciprocally so provide, each Party shall allow airlines of those third countries to meet any price of a designated airline of either Party for carriage of international traffic between the territories of the Parties.

(c) For purposes of this article, the term "meet" includes the right to establish an identical or similar price on a direct, intra-line or inter-line routing, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections or aircraft type, or such price through a combination of prices.

(5) (a) If either Party believes that a price proposed or charged by an airline of either Party or by an airline of a third country for the carriage of international traffic between the territories of the Parties, or a price proposed or charged by an airline of one Party for the carriage of international traffic between the territory of the other Party and a third country, including prices for the carriage of traffic carried on an inter-line or intra-line basis via intermediate points, is inconsistent with the considerations set forth in paragraph (2) of this article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. Consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of pricing consultations.

(b) If the Parties reach agreement with respect to a price for which a notice of dissatisfaction is given, each Party shall use its best efforts to put such agreement into effect. Without mutual agreement, that price shall go into effect or continue in effect for airlines of the two Parties, and for airlines of third countries with which relevant arrangements provide for reciprocity, consistent with the provisions of paragraph (4) of this article.

(6) Section IX of the Annex to the Agreement is hereby rescinded.

Article 7. COMMISSIONS

The airlines of one Party may be required to file with the aeronautical authorities of the other Party the level or levels of commissions and all other forms of compensation to be paid or provided by such an airline, in any manner or by any device, directly or indirectly, to or for the benefit of any person (other than its own employees) for the sale of air transportation originating in the territory of the other Party.

Article 8. FLIGHT OR PROGRAM APPROVALS

(1) Each Party shall minimize the administrative burdens of filing requirements and procedures on passenger or cargo charterers and designated airlines of the other Party.

(2) A designated airline of one Party proposing to carry charter traffic originating in the territory of the other Party shall comply with the applicable rules of that other Party.

(3) Neither Party shall require a designated airline of the other Party, in respect of the carriage of charter traffic originating in the territory of that other Party, to submit more than a statement of the charter category involved and a declaration of conformity with the rules for such category applicable to charter traffic of that other Party or of a waiver of those rules granted by the aeronautical authorities of that other Party.

(4) Notwithstanding paragraph (3) above, each Party may require that a designated airline of the other Party provide such advance information with regard to flights as is essential for customs, airport, and air traffic control purposes.

(5) Designated airlines shall comply with established procedures in regard to airport slotting and shall provide prior notification of flights or series of flights to the relevant authorities or entities if so required.

(6) Neither Party shall require prior approval of flights or notifications of information relating thereto by designated airlines of the other Party, except as provided in paragraphs (2), (3), (4) and (5) of this article.

Article 9. ENFORCEMENT

(1) The Party in whose territory the traffic originates shall have the exclusive jurisdiction for the enforcement of its rules and regulations.

(2) The Parties shall cooperate with each other on enforcement matters.

(3) Each Party may take such steps as it considers necessary to regulate the conduct of its own airlines, charterers, travel organizers, agents, forwarders, or shippers offering or organizing services covered by this Protocol. However, such regulations shall not preclude or limit the power of the other Party to regulate, within its territory and pursuant to its domestic laws, the conduct of such organizations or individuals of the first Party.

Article 10. COMMERCIAL OPERATIONS

(1) The airlines of one Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of their services.

(2) The designated airline or airlines of one Party shall have the right, in accordance with the laws and regulations relating to entry, residence and employment of the other Party, to bring in and maintain in the territory of the other Party their own managerial, technical, operational and other specialist staff who are required to support the provision of air services.

(3) Each designated airline may perform its own ground handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines;

charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services if self-handling were possible.

(4) Each Party grants to each designated airline of the other Party the right to engage in the sale of air transportation in its territory directly and, at the airline's discretion, through its agents. In the case of charter services, however, such sales shall be subject to the applicable respective rules on a non-discriminatory basis. Any airline shall be free to sell such transportation in the currency of that territory or in freely convertible currencies of other countries. These rights shall, however, be available only to the extent authorized by the authorities of the country of the airline concerned.

(5) Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions or remittance taxation at the rate of exchange applicable to current transactions and remittance.

Article 11. USER CHARGES

(1) User charges imposed by the competent charging authorities on the designated airlines of the other Party shall be just, reasonable, and non-discriminatory.

(2) User charges imposed upon the designated airlines of the other Party may reflect, but shall not exceed, an equitable portion of the full economic cost to the competent charging authorities of providing the airport, air navigation, and aviation security facilities and services. Facilities and services for which charges are made shall be provided on an efficient and economic basis. Reasonable notice shall be given prior to changes in user charges.

(3) Each Party shall encourage consultations between the competent charging authorities in its territory and airlines using the services and facilities, and shall encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges.

Article 12. AVIATION SECURITY

The Parties, recognizing their responsibilities under the Convention to develop international civil aviation in a safe and orderly manner, reaffirm their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation. To this end, each Party:

(a) Reaffirms its commitment to act under and consistently with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970,² and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;³

(b) Shall require that operators of aircraft of its registry act consistently with applicable aviation security provisions established by the International Civil Aviation Organization; and

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177.

(c) Shall provide maximum aid to the other Party with a view to preventing unlawful seizure of aircraft, sabotage to aircraft, airports, and air navigation facilities, and threats to aviation security; give sympathetic consideration to any request from the other Party for special security measures for its aircraft or passengers to meet a particular threat; and, when incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, assist the other Party by facilitating communications intended to terminate such incidents rapidly and safely;

(d) May request consultations concerning the safety and security standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety and security standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to bring the safety and security standards and requirements of the other Party to standards at least equal to the minimum standards which may be established pursuant to the Convention; and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke, or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate action within a reasonable time.

Article 13. CONSULTATIONS

Either Party may, at any time, request consultations relating to any issue under this Protocol or under the Agreement. Such Party shall notify the other Party of the subjects on which consultations are requested, and the Parties shall cooperate in securing information necessary for a reasoned resolution of the consultations. The consultations shall be held not later than 30 days after receipt of the request or at such later date agreed upon by the Parties. If the Parties reach agreement in the consultations, each Party shall use its best efforts to put such agreement into effect.

Article 14. MULTILATERAL AGREEMENT

If a multilateral agreement concerning charter air transportation accepted by both Parties enters into force, the Agreement and this Protocol shall be amended so as to conform with the provisions of the multilateral agreement.

Article 15. REVISION OF AGREEMENT

Consultations shall be scheduled at a mutually agreeable date for the purpose of concluding a new air transport agreement governing all types of air services which would incorporate the provisions of this Protocol and would update provisions on other aspects of the Agreement.

Article 16. TERMINATION

Until such time as this Protocol is incorporated into the Agreement, the Protocol shall be coterminous with the Agreement. The termination provisions specified in article 9 of the Agreement shall apply equally to this Protocol. The termination of either the Air Transport Agreement or of this Protocol shall result in the simultaneous termination of both the Protocol and the Agreement and notice of termination in that event shall be given for each.

Article 17. ENTRY INTO FORCE

This Protocol shall enter into force on the thirtieth day following the exchange of notes through diplomatic channels confirming that the constitutional requirements for the entry into force of the Protocol have been complied with.

DONE in duplicate at Washington this twelfth day of May, nineteen hundred and eighty in the English language.

For the Government
of Finland:

[Signed — Signé]¹

For the Government
of the United States of America:

[Signed — Signé]²

EXCHANGE OF LETTERS RELATING TO THE PROTOCOL TO THE AGREEMENT ON AIR SERVICES BETWEEN THE REPUBLIC OF FINLAND AND THE UNITED STATES OF AMERICA

I

DEPARTMENT OF STATE
WASHINGTON, D.C.

November 7, 1980

Dear Mr. Pajari:

On February 15, 1980 a provision of a new United States Law (PL 96-192 — The International Air Transportation Competition Act of 1979) extended to foreign air transportation an existing prohibition on the operation of part charters by U.S. airlines in United States territory. Further, it is the expressed intent of the United States Congress that the U.S. civil aeronautical authorities not authorize such operations to foreign airlines by permit or exemption. This provision of U.S. law shall cease to be in effect on December 31, 1981.

Therefore, notwithstanding the provisions of paragraph 4 of article 2 of the Protocol between the Government of the United States of America and the Government of Finland which shall enter into effect thirty days from today, I ask your concurrence in the understanding that neither Party shall permit the operations of part charters by the airlines of either Party in traffic to and from the United States during the pendency of any legislative prohibition against such charters by the United States of America. This understanding shall not apply to the carriage of passengers under group tariffs (such as GIT, affinity, advance purchase or contract bulk) currently in effect, nor shall it apply to group tariffs to be filed in the future provided

¹ Signed by Esko Rekola — Signé par Esko Rekola.

² Signed by Rozanne L. Ridgway — Signé par Rozanne L. Ridgway.

that the specific terms of such tariffs are consistent with the existing law of each Party concerning prohibition of part charters.

Sincerely,

[Signed — Signé]

RICHARD W. BOGOSIAN
Chief
Aviation Negotiations Division
Office of Aviation

Mr. Erkki Pajari
Counselor
Ministry of Foreign Affairs
Helsinki

II

November 7th, 1980

Dear Mr. Bogosian:

I refer to your letter dated November 7th, 1980, which states as follows:

[See letter I]

I confirm that this understanding has been mutually agreed between both delegations.

Sincerely,

ERKKI PAJARI

Mr. Richard W. Bogosian
Chief
Aviation Negotiations Division
Department of State
