

No. 25648

**CHINA
and
GERMAN DEMOCRATIC REPUBLIC**

Agreement relating to civil air transport (with routes schedule). Signed at Berlin on 18 February 1987

Authentic texts: Chinese, German and English.

Registered by China on 22 February 1988.

**CHINE
et
RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE**

Accord relatif aux transports aériens civils (avec tableau des routes). Signé à Berlin le 18 février 1987

Textes authentiques : chinois, allemand et anglais.

Enregistré par la Chine le 22 février 1988.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE GER- MAN DEMOCRATIC REPUBLIC RELATING TO CIVIL AIR TRANSPORT

The Government of the People's Republic of China and the Government of the German Democratic Republic (hereinafter referred to as "the Contracting Parties");

Desiring to facilitate friendly contacts between their two peoples, and develop mutual relations between the two countries in the field of civil aviation;

Have agreed on the establishment and operation of air transportation as follows:

Article 1. DEFINITIONS

For the purpose of this Agreement, unless the context otherwise requires:

(a) The term "aeronautical authorities" means in the case of the People's Republic of China, the Civil Aviation Administration of China, and in the case of the German Democratic Republic, the General Administration of Civil Aviation of the Ministry of Transport, or in both cases any other person or agency authorized to perform the functions presently exercised by the said authorities;

(b) The term "territory" means the land and water areas including the territorial waters and air space above coming under the sovereignty of a State;

(c) The term "territory of the Contracting Parties" means the territory of the People's Republic of China and the territory of the German Democratic Republic;

(d) The term "airline" means any air transport enterprise offering or operating international air services;

(e) The term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

(f) The term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, baggage, cargo or mail;

(g) The term "international air service" means an air service which passes through the air space over the territory of more than one State;

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

(i) The term "capacity" means:

- 1) In relation to an aircraft, the payload of that aircraft available on a route or section of a route;
- 2) In relation to a specified air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or section of a route.

(j) The term "tariff" means the prices to be paid for the carriage of passengers, baggage and freight and the conditions under which those prices apply, including

¹ Came into force on 11 April 1987, the date of an exchange of notes (effected on 8 and 11 April 1987) confirming the completion of the respective legal procedures, in accordance with article 22.

prices and conditions for agency and other auxiliary service, but excluding remuneration or conditions for the carriage of mail;

(k) The term "Schedule" means the Route Schedule annexed to this Agreement or as amended in accordance with the provisions of Article 19 of this Agreement. The Schedule forms an integral part of this Agreement and all references to the Agreement shall include references to the Schedule except where otherwise provided.

Article 2. GRANT OF RIGHTS

(1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate international air services on the route specified in the Schedule (hereinafter called "the agreed services" and "the specified route" respectively).

(2) Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy while operating an agreed service on a specified route, the following rights:

- a) To fly without landing from and to third countries across the territory of the other Contracting Party along the air route(s) prescribed by the aeronautical authorities of the other Contracting Party;
- b) To make stops for non-traffic purposes in the said territory, at point(s) to be agreed upon between the aeronautical authorities of both Contracting Parties; and
- c) To make stops at the point(s) on the specified route in the territory of the other Contracting Party for the purpose of taking on board and discharging international traffic in passengers, baggage, cargo and mail.

(3) The traffic right to take up and discharge passengers, baggage, cargo and mail for the agreed services of the designated airlines of the Contracting Parties at the point on the specified route in the territory of a third country shall be agreed upon between the aeronautical authorities of the two Contracting Parties.

(4) In addition to the operation of the agreed services by the designated airlines of the Contracting Parties, the designated airline or other airline(s) of either Contracting Party may request permission from the aeronautical authorities of the other Contracting Party to operate charter flights to and from the territory of that other Contracting Party. The aeronautical authorities to which such a request is submitted shall promptly consider the request on a reciprocal basis in accordance with its charterworthiness rules, and in the light of the spirit of mutual benefit and friendly cooperation and that airlines of both Contracting Parties should have fair and equal opportunity in operating international charter transportation. The application of such charter flights shall be submitted to the aeronautical authorities of the other Contracting Party at least 15 days prior to its proposed operation, and the flights can be operated only after approval has been obtained.

(5) The designated airline of a Contracting Party shall not have the right to carry out transports of passengers, baggage, cargo and mail between places in the territory of the other Contracting Party against payment (cabotage).

Article 3. DESIGNATION AND AUTHORIZATION

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline to operate the agreed services on the route specified in the Schedule.

(2) The substantial ownership and effective control of the airline designated by each Contracting Party shall remain vested in such Contracting Party or its nationals.

(3) The aeronautical authorities of the other Contracting Party may require the airline designated by the first Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by them to the operation of international air services by the said authorities.

(4) On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraph (2) and (3) of this Article, grant to the airline so designated the appropriate operating authorization.

(5) When an airline has been so designated and authorized, it may commence operation of the agreed services from the date specified in the operating authorization or thereafter.

Article 4. REVOCATION OF OPERATING AUTHORIZATION

(1) Each Contracting Party shall have the right to revoke or suspend the operating authorization already granted to the designated airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise by the said designated airline of the rights specified in Article 2 of this Agreement, in any of the following cases:

- a) Where it is not satisfied that the substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or its nationals, or
- b) Where that airline fails to comply with the laws and regulations of the Contracting Party granting these rights, or
- c) Where that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

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

Article 5. PROVISION OF TECHNICAL SERVICES AND RATE OF CHARGES

(1) Each Contracting Party determines on its territory the airways and frontier crossing points.

(2) Each Contracting Party shall designate in its territory regular airport and alternate airports to be used by the designated airline of the other Contracting Party for the operation of the specified route, and shall provide that airline with such air traffic control, communications, navigational, meteorological and other auxiliary services in its territory as are required for the operation of the agreed services. Where necessary, detailed arrangements relating to the above may be agreed between the aeronautical authorities of both Contracting Parties.

(3) The designated airline of each Contracting Party shall be charged for the use of airports, facilities and technical services of the other Contracting Party at fair and reasonable rates prescribed by the appropriate authorities of the other Contracting Party. Such rates shall not be higher than those paid by airlines of other states engaged in international air services for the use of similar facilities and services.

Article 6. CUSTOMS AND DUTIES

(1) Aircraft operated on international air services by the designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuels, oils (including hydraulic fluids), lubricants, and aircraft stores (including food, beverages, tobacco and other commodities in limited volume and intended to be sold to passengers during the flight) on board such aircraft shall be exempt from all customs duties, inspection fees [and other duties and taxes on arrival in the territory of the]¹ other Contracting Party, provided such equipment and supplies remain on board the aircraft and under customs supervision up to such time as they are re-exported.

(2) Supplies of fuels, oils (including hydraulic fluids), lubricants, spare parts, regular equipment and aircraft stores introduced into the territory of each Contracting Party by or on behalf of the designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use in the operation of international air services shall be exempt from all duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party even when those supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are taken on board. The materials referred to above may be required to be kept under customs supervision or control.

(3) The regular airborne equipment, spare parts, aircraft stores, and supplies of fuels, oils (including hydraulic fluids), and lubricants retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Contracting Party, who shall supervise and control those materials up to such time as they are re-exported.

(4) However, if the equipment and materials prescribed in this Article are unloaded with the approval of the customs authorities and intended to be used or sold in the territory of the other Contracting Party, they shall be subject to taxation according to the relevant national laws of that Contracting Party.

Article 7. REPRESENTATION AND PERSONNEL

(1) For the operation of the agreed services on the specified route, the designated airline of each Contracting Party shall have the right, on reciprocal basis, to set up representation at the point of call on the specified route within the territory of the other Contracting Party. The staff of the representation referred to in this paragraph shall be subject to the laws and regulations in force in the country where such representation is located.

(2) The staff members of the representation of the designated airline of each Contracting Party shall be nationals of either Contracting Party, unless otherwise agreed. The number of such staff shall be determined on reciprocal basis between the aeronautical authorities of both Contracting Parties.

(3) Each Contracting Party shall to the maximum extent practicable ensure the safety of the representation and its staff members of the designated airline of the

¹ The text within brackets does not appear in the authentic English text, a translation of which has been provided by the Secretariat of the United Nations on the basis of the authentic Chinese and German texts — Le texte entre crochets, lequel a été traduit par le Secrétariat de l'Organisation des Nations Unies sur la base des textes authentiques chinois et allemand, ne figure pas dans le texte authentique anglais.

other Contracting Party, and safeguard, within its territory, the aircraft, stores and other properties of the said airline for use in the operation of the agreed services.

(4) Each Contracting Party shall extend assistance and facilities to the representation and its staff members of the designated airline of the other Contracting Party necessary for the efficient operation of the agreed services.

(5) The crew members of the designated airline of either Contracting Party on flights into and out of the territory of the other Contracting Party shall be nationals of the Contracting Party designating such airline. If a designated airline of either Contracting Party desires to employ crew members of any other nationality on flights into and out of the territory of the other Contracting Party, prior approval shall be obtained from that other Contracting Party.

Article 8. TRANSFER OF AIRLINE EARNINGS

Either Contracting Party undertakes to grant the designated airline of the other Contracting Party the right for free transfer, at the official rate of exchange and in accordance with the foreign exchange regulations of the excess of receipt over expenditure achieved on its territory in connection with the carriage of passengers, baggage, cargo and mail by the said designated airline. Whenever the payment system between the Contracting Parties is governed by a special agreement, that agreement shall apply.

Article 9. AVOIDANCE OF DOUBLE TAXATION

(1) The revenues and profits made by the designated airline of one Contracting Party shall be exempt from all taxes and other duties in the territory of the other Contracting Party.

(2) The property of the designated airline of a Contracting Party shall be exempt from all taxes and duties in the territory of the other Contracting Party.

(3) The income of the personnel of the representation of the designated airline of a Contracting Party being nationals of that Contracting Party shall be exempt from all taxes and other duties in the territory of the other Contracting Party.

Article 10. ENTRY AND CLEARANCE REGULATIONS

(1) The laws and regulations of either Contracting Party relating to the admission into, stay in, departure from and flight over its territory of aircraft engaged in the operation of international air services, as well as laws and regulations relating to the admission to, stay in and departure from its territory of passengers, crew, baggage, cargo and mail shall be applicable to the aircraft of the airline designated by the other Contracting Party, its crew as well as the passengers, baggage, cargo and mail carried by such aircraft, while in the territory of the first Contracting Party. Each Contracting Party shall promptly supply to the other Contracting Party at the latter's request the texts of the above-mentioned laws and regulations.

(2) Passengers in direct transit across the territory of either Contracting Party shall be subject to no more than very simplified control. Baggage and freight, if in direct transit, shall be exempt from customs duties, inspection fees and other duties and charges.

(3) In connection with the arrival and departure of an aircraft, the Contracting Parties shall take all precautions which may become necessary according to international rules to prevent the spreading of infectious diseases.

Article 11. CAPACITY PROVISIONS

(1) Each Contracting Party shall, in keeping with the principle of equality and mutual benefit, take all appropriate action to ensure that there shall be reasonably equal opportunity and benefit for the designated airlines of both Contracting Parties in the operation of the agreed services on the specified routes.

(2) For the operation of the agreed services on the specified routes, matters relating to frequency, type of aircraft as well as flight schedule, ground handling and other matters pertaining to the operation of the agreed services shall be agreed upon through consultation between the designated airlines of both Contracting Parties in the light of the principle of equality and mutual benefit, and on a reciprocal basis. The arrangement so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties. If the designated airlines of both Contracting Parties fail to reach agreement on frequency, type of aircraft and flight schedule, the aeronautical authorities of both Contracting Parties shall endeavour to settle the matter through consultation.

(3) In the operation of the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the whole route or parts thereof. In [cases] where the right to operate the agreed services is exercised unilaterally by the designated airline of either Contracting Party, that designated airline should make appropriate arrangement to the effect that the interests of the designated airline of the other Contracting Party could be reasonably taken care of.

(4) The agreed services to be operated by the designated airlines of the Contracting Parties shall retain as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the traffic requirements between the points in the territories of the two Contracting Parties. The right to embark on or disembark from such services international traffic destined for or coming from points in third countries shall be of a supplementary nature.

(5) The designated airline of each Contracting Party may, according to traffic requirements, apply for operation of additional flight(s) on the specified route. The application for such flight(s) shall be submitted to the aeronautical authorities of the other Contracting Party no later than 72 hours before the take-off of the said flight, and such flight(s) can be operated only after approval has been obtained.

Article 12. INFORMATION AND STATISTICS

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party, at their request, statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline of the first Contracting Party on the specified route. Such data shall include all information required to determine the amount of traffic carried.

Article 13. ESTABLISHMENT OF TARIFFS

(1) The tariffs on any agreed services shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the following provisions of this Article.

(2) The tariffs referred to in paragraph (1) of this Article shall be agreed upon between the designated airlines of both Contracting Parties, in consultation, when necessary and possible, with other airlines operating over the whole or part of that route. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties and shall be submitted to their respective aeronautical authorities at least 90 days prior to the proposed date of introduction of these tariffs. This period can be reduced in certain cases upon agreement between the said authorities.

(3) If the designated airline cannot agree on any of these tariffs, the aeronautical authorities of the Contracting Parties shall try to determine the tariffs by agreement between themselves.

(4) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this Article or on the determination of any tariff under paragraph (3), the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of Article 18 of this Agreement.

(5) Pending determination of a new tariff in accordance with the provisions of this Article, the tariffs already in force shall prevail. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than 12 months after the date on which it otherwise would have expired.

Article 14. DOCUMENTS

(1) The aircraft of the designated airline of either Contracting Party operating on the specified route shall bear its nationality and registration marks and, subject to the international regulations or recommendations accepted by the two Contracting Parties, carry on board the following certificates and documents:

- a) Certificate of registration,
- b) Certificate of airworthiness,
- c) Journey log sheet,
- d) Aircraft radio station licence,
- e) Licences or certificates for each member of the crew,
- f) List of crew members,
- g) List of passengers giving the places of departure and destination,
- h) Manifest of cargo and mail, and
- i) General declaration.

Each Contracting Party shall recognize as valid the certificates and licences mentioned above issued or rendered valid by the other Contracting Party.

Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competence and licences granted to its own nationals by the other Contracting Party.

(2) The designated airline of either Contracting Party can operate the agreed services on the specified route with aircraft leased from a third country. However, consultations shall be conducted between the Contracting Parties at the request of the other Contracting Party in case of aircraft having nationality of a third country.

Article 15. APPROVAL OF FLIGHT SCHEDULES

The airline designated by a Contracting Party shall notify the aeronautical authorities of the other Contracting Party of the flight schedules and types of aircraft

to be used at least 60 days prior to the beginning of every seasonal schedule for approval.

Article 16. SEARCH AND RESCUE

(1) In case the aircraft of the designated airline of one Contracting Party is in distress or meets with an accident in the territory of the other Contracting Party, the other Contracting Party, subject to the international regulations or recommendations accepted by the two Contracting Parties, shall:

- a) Inform without delay the first Contracting Party of the accident,
- b) Immediately start search and rescue operations,
- c) Render assistance to the passengers and crew,
- d) Provide all security measures for the aircraft and its contents,
- e) Carry out investigation into the accident,
- f) Permit the representatives of the first Contracting Party access to the aircraft and participate in the investigation as observers,
- g) Give clearance to the aircraft and its contents as soon as they are no longer necessary for the investigation,
- h) Communicate in writing to the first Contracting Party its conclusions and the final report concerning the investigation.

(2) The assistance which one Contracting Party accords to the aircraft in distress of the other Contracting Party shall also be rendered to the extent possible, if the aircraft is over the high seas, but within the flight information region of that Contracting Party.

Article 17. AVIATION SECURITY

(1) Each Contracting Party shall take all necessary precautions in its territory and in accordance with its national laws and regulations to prevent unlawful acts against civil aircraft of the other Contracting Party, their crews, passengers, baggage, cargo and mail.

(2) Each Contracting Party shall in the case of an unlawful act against a civil aircraft of the other Contracting Party committed in its territory immediately inform that other Contracting Party and take all measures which it considers necessary against that unlawful act and for the security of the aircraft and its passengers, crew, baggage, cargo and mail.

(3) Unless the circumstances do not permit, there shall be coordination between the Contracting Parties before taking the measures mentioned in paragraph (2).

Article 18. CONSULTATIONS

(1) The Contracting Parties shall ensure the correct implementation of, and satisfactory compliance with, the provisions of this Agreement in a spirit of close cooperation and mutual support. To this end, the aeronautical authorities of the Contracting Parties shall consult each other from time to time.

(2) Either Contracting Party may request consultation with the other Contracting Party, which may be either oral or in writing, and which shall begin within a period of 60 days from the date of receipt of the request, unless both Contracting Parties jointly determine an extension of this period.

(3) If any difference of opinion arises in respect of the interpretation or implementation of this Agreement, the designated airlines of both Contracting Parties

shall, where appropriate, endeavour to settle it directly through consultation in a spirit of friendly cooperation and mutual understanding. If the airlines fail to reach a settlement, or if the matter at issue does not lie within their competence, the aeronautical authorities of the Contracting Parties shall endeavour to settle it through consultation. If a settlement still cannot be reached, the Contracting Parties shall endeavour to settle it through diplomatic channels.

Article 19. AMENDMENT

(1) If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, it may request consultation with the other Contracting Party. This consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of 60 days from the date of receipt of the request. Any amendments so agreed shall not come into force until they have been confirmed by way of an exchange of notes through diplomatic channels.

(2) Modifications and amendments to the Schedule shall be agreed upon through consultation between the aeronautical authorities of the Contracting Parties.

Article 20. TERMINATION

Either Contracting Party may at any time notify the other Contracting Party of its decision to terminate this Agreement. If such notice is given, this Agreement shall terminate twelve months after the date of receipt by the other Contracting Party of the notice to terminate, unless the notice under reference is withdrawn before the expiry of that period. Notice shall be deemed to have been received fourteen days after the date of the notice, or at the date of handing the notice to the diplomatic mission of the other Contracting Party in the territory of the first Contracting Party.

Article 21. TITLES

Titles are inserted in this Agreement at the head of each article for the purpose of reference and convenience and in no way to define, limit or describe the scope or intent of this Agreement.

Article 22. ENTRY INTO FORCE

This Agreement shall enter into force on the date of exchange of diplomatic notes confirming that the Contracting Parties have completed their respective legal procedures.

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

DONE at Berlin, on this 18th day of February 1987, in duplicate, each copy in the Chinese, German and English languages, the three texts being equally authentic.

For the Government
of the People's Republic
of China:

[Signed]

H. YIZHOU

For the Government
of the German Democratic
Republic:

[Signed — Signé]¹

¹ Signed by Klaus Henkes — Signé par Klaus Henkes.

SCHEDULE

(1) Routes:

a) The route of the agreed services operated by the designated airline of the Government of the People's Republic of China shall be as follows in both directions:

Beijing–Moscow or another point–Berlin–two points beyond.

b) The route of the agreed services operated by the designated airline of the Government of the German Democratic Republic shall be as follows in both directions:

Berlin–Moscow or another point–Beijing–two points beyond.

(2) Intermediate points and points beyond shall be agreed upon between the aeronautical authorities of the Contracting Parties.

(3) Any point or points on the specified route may be omitted on any or all flights at the discretion of the designated airline of each Contracting Party provided that this operation originates in the territory of the Contracting Party designating the airline.
