

No. 27819

—

**AUSTRIA
and
INDIA**

**Agreement relating to air services (with annex). Signed at
New Delhi on 26 October 1989**

Authentic texts: German, Hindi and English.

Registered by Austria on 19 December 1990.

—————

**AUSTRALIE
et
INDE**

**Accord relatif aux transports aériens (avec annexe). Signé à
New Delhi le 26 octobre 1989**

Textes authentiques : allemand, hindi et anglais.

Enregistré par l'Autriche le 19 décembre 1990.

AGREEMENT¹ BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF INDIA RELATING TO AIR SERVICES

The Austrian Federal Government and the Government of India, hereinafter described as the "Contracting Parties",

BEING parties to the Convention on International Civil Aviation (hereinafter referred to as the "Convention") opened for signature at Chicago on the 7th December, 1944,²

AND DESIRING to conclude an Agreement for the purpose of establishing air services between their respective territories,

HAVE AGREED as follows:

Article 1

Definitions

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

- (a) the term "Contracting Party" means the Austrian Federal Government on the one hand and the Government of India on the other;
- (b) the term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago, on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annex or Convention under Articles 90 and 94 thereof insofar as these have become effective for both Contracting Parties;
- (c) the term "aeronautical authorities" means, in the case of the Austrian Federal Government, the Federal Minister for Public Economy and Transport and, in the case of the Government of India, the Director General of Civil Aviation, or any other authority legally empowered to perform the functions exercised now by the said authorities;
- (d) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of the present Agreement;
- (e) the term "territory" in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty of that State;
- (f) the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo;
- (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 "airline" means any air transport enterprise offering or operating an international air service;
- (i) the term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail;
- (j) the term "capacity" means:
 - (i) in relation to an aircraft, the payload of that aircraft available on a route or section of a route;
 - (ii) 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 a section of a route.

Article 2

Grant of Traffic Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing air services on the routes specified in the Annex thereto (hereinafter called "the agreed services" and "the specified routes"). The agreed services may be inaugurated at any time after the provisions of Article 3 have been complied with.
2. Subject to the provisions of the present Agreement, the airline designated by each Contracting Party shall enjoy the following rights:

¹ Came into force on 1 December 1989, i.e., the first day of the second month following the date (26 October 1989) on which the Contracting Parties had notified each other of the completion of the required constitutional procedures, in accordance with article 20 (2).

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; vol. 1008, p. 213, and vol. 1175, p. 297.

- (a) to fly without landing across the territory of the other Contracting Party;
 - (b) to make stops in the territory of the other Contracting Party for non-traffic purposes; and
 - (c) while operating an agreed service on a specified route, to make stops in the territory of the other Contracting Party at the point specified for that route in the Annex to the present Agreement, for the purpose of embarking or disembarking traffic in passengers, cargo or mail.
3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo or mail destined for another point in the territory of that other Contracting Party.
 4. The laws, regulations and instructions of one Contracting Party, relating to entry into or departure from its territory, of aircraft or air services operated in international air navigation or to the operation of such aircraft or air services while within its territory shall apply to aircraft and agreed services of the designated airline of the other Contracting Party.

Article 3

Designation of Airlines

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services in accordance with the Annex to this Agreement.
2. On receipt of the designation, the Contracting Party shall, through its own aeronautical authorities and subject to the provisions of paragraphs (4) and (5) of this Article, without delay grant to the designated airline the appropriate operating authorization.
3. Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw the designation of any such airline and to designate another one.
4. The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by them to the operation of air carriers and of international commercial air services.
5. Each Contracting Party shall have the right to refuse to accept the designation of the airline or to withhold the grant to the airline of the

rights specified in paragraph (2) of Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by the airline of those rights in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the other Contracting Party or its nationals. For the purpose of this paragraph, the expression "substantial ownership and effective control" means that in any case where the designated airline operates its services under this Agreement by entering into any agreement with the airline of any other country or the Government or nationals of any other country, the Contracting Party designating the airline or its nationals shall not be deemed to have substantial ownership and effective control of the designated airline, unless the Contracting Party or its nationals, in addition to the ownership of the major part of the assets of the designated airline, have also

- (i) effective control in the management of the designated airline, and
 - (ii) ownership and effective control of the major part of the fleet of aircraft and equipment used in the operation of the services.
6. The airline so designated and authorized may begin to operate the agreed services at any time provided that the provisions of Articles 10 and 12 have been complied with.

Article 4

Revocation or Suspension of Operating Authorization

Each Contracting Party reserves the right to itself to revoke the operating authorization or to impose such appropriate conditions as it may deem necessary in case of failure by a designated airline of the other Contracting Party to comply with the laws and regulations of the former Contracting Party, or in case, in the judgement of the former Contracting Party, there is a failure to fulfil the conditions under which the rights are granted in accordance with the present Agreement. This shall also apply if the provisions of paragraph (5) of Article 3 are not complied with. Such action shall be taken only after consultation between the Contracting Parties in accordance with Article 16 of the present Agreement unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringement of laws, regulations or provisions of the present Agreement.

Article 5**Charges**

The charges imposed in the territory of one Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline of the other Contracting Party shall not be higher than those paid by the aircraft of a national airline engaged in similar international air services.

Article 6**Exemption from Customs and other Duties**

Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft of the designated airline of one Contracting Party and intended solely for use by or in such aircraft and remaining on board on departure from the last airport of call in the territory of the second Contracting Party shall be accorded, with respect to customs duty, inspection fees or similar charges, treatment not less favourable than that granted by the second Contracting Party to the national airlines operating scheduled international air services or to the airlines of the most favoured nation:

Provided that neither Contracting Party shall be obliged to grant to the designated airline of the other Contracting Party exemption or remission of customs duty, inspection fees or similar charges unless such other Contracting Party grants exemption or remission of such charges to the designated airline of the first Contracting Party.

Article 7**Equal Opportunity**

The designated airline of each Contracting Party shall, in all respects, enjoy fair and equal opportunity for the carriage of international traffic between the territories of the two Contracting Parties.

Article 8**Interest of Designated Airlines**

In the operation by the designated airline of either Contracting Party of the agreed air services, the interest of the designated airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on the same route.

Article 9**Representation, Ticketing and Sales Promotion**

Subject to the laws and regulations of the other Contracting Party, the designated airline of each Contracting Party shall have an equal opportunity to:

- (a) employ technical and commercial personnel;
- (b) establish and operate offices;
- (c) issue all documents of carriage; and
- (d) advertise and promote sales in the territory of the other Contracting Party, for the requirements of the concerned designated airline.

Article 10**Capacity**

1. The capacity to be provided and the frequency of services to be operated shall be agreed between the designated airlines in accordance with the principles laid down in Articles 7 and 8 and the provisions of this Article.
2. The schedules so agreed upon shall be submitted for approval to the aeronautical authorities of both Contracting Parties at least thirty (30) days before the proposed date of their introduction. In special cases, this time limit may be reduced subject to the consent of the said authorities.
3. Any increase in the capacity to be provided and/or frequency of services to be operated by the designated airline of either Contracting Party shall be agreed in the first instance between the designated airlines and shall be subject to the approval of the aeronautical authorities on the basis of the estimated requirements of traffic between the territories of the Contracting Parties. Pending such agreement or settlement, the capacity and frequency entitlements already in force shall prevail.
4. If the designated airlines of the Contracting Parties fail to agree on any matter the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement thereon.
5. The capacity to be provided and the frequency of services to be operated in terms of paragraph (1) of this Article, as agreed shall be specified in an exchange of letters. Any increase in the frequency so specified pursuant to paragraph (3) of this Article shall be specified jointly by the aeronautical authorities.

Article 11

Provision of Operating Information

Each Contracting Party shall cause its designated airline to communicate to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, prior to the inauguration of the agreed services, the type of service, the type of aircraft to be used, the flight schedules, tariff schedules, and all other relevant information concerning the operation of the agreed services including such information as may be required to satisfy the aeronautical authorities that the requirements of this Agreement are being duly observed. The requirements of this Article shall likewise apply to any changes concerning the agreed services.

Article 12

Provision of Statistics

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried during each month on its air services to or from the territory of the other Contracting Party showing the countries of origin and destination and the points of embarkation and disembarkation of such traffic. Such statistics shall be furnished as early as possible.

Article 13

Tariffs

1. For the purpose of the following paragraphs, the term "tariff" means the prices to be paid for the carriage of passengers and cargo and the conditions under which these prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.
2. The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable level, due regard being paid to all relevant factors, including cost of operation, reasonable profit, and the tariffs of other airlines.
3. The tariffs referred to in paragraph (2) of this Article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, and such agreement shall, wherever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

4. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least ninety (90) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.
5. This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph (4) of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph (4), the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.
6. If a tariff cannot be agreed in accordance with paragraph (3) of this Article, or if, during the period applicable in accordance with paragraph (5) of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph (3) the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual agreement.
7. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph (4) of this Article, or on the determination of any tariff under paragraph (6) of this Article, the dispute shall be settled in accordance with the provisions of Article 18 of this Agreement.
8. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which it otherwise would have expired.

Article 14

Transfer of Earnings

1. Each Contracting Party grants to the designated airline of the other Contracting Party the right to remit to its head office, the excess over expenditure of receipts earned in the territory of the first Contracting Party. Such remittances, however, shall be made in freely convertible currency at the official rate of exchange and subject to and in accordance

with the foreign exchange regulations of the Contracting Party in the territory of which the revenue accrued.

2. In case special arrangements ruling the settlement of payments are in force between the two Contracting Parties, the provisions of such arrangements shall be applied to the transfer of funds under paragraph (1) of this Article.

Article 15

Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.³
2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in

their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.
5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 16

Consultation

In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties shall exchange views regularly on the application and interpretation of the present agreement.

Article 17

Modification

1. Consultations may be requested at any time by either Contracting Party for the purpose of initiating any amendments to this Agreement. Consultations may also be required on matters concerning the interpretation and application of this Agreement if either Contracting Party

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

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 974, p. 177, and vol. 1217, p. 404 (corrigendum to vol. 974).

considers that an exchange of views within the meaning of Article 16 has been without success. Such consultations shall begin within a period of sixty days from the date of the request. Any modification of this Agreement as a result of such consultations shall come into effect after the respective constitutional requirements have been fulfilled and when it has been confirmed by an exchange of letters.

2. Modifications to the routes specified in the Annex may be made by direct agreement between the competent authorities of the Contracting Parties and shall be confirmed by an exchange of notes through diplomatic channels.

Article 18

Settlement of Disputes

If any dispute arises relating to the interpretation or application of this Agreement, the aeronautical authorities of the Contracting Parties shall endeavour to settle it by negotiations between themselves, failing which the dispute shall be referred to the Contracting Parties for settlement.

Article 19

Applicability of Chicago Convention

To the extent to which they are applicable to the air services established under this Agreement, the provisions of the Convention shall remain in force in their present form between the Contracting Parties for the duration of the Agreement, as if they were an integral part of the Agreement, unless both Contracting Parties ratify any amendment to the Convention, which shall have duly come into force in which case the Convention as amended shall remain in force for the duration of this Agreement.

Article 20

Entry into Force

1. The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the Agreement shall include reference to the Annex, except where otherwise expressly provided.
2. This Agreement shall enter into force on the first day of the second month, following the date on which the two Contracting Parties have notified each other in an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

Article 21

Termination

Either Contracting Party may, at any time, give written notice to the other Contracting Party of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the Council of the International Civil Aviation Organization and the Secretariat of the United Nations. If such notice is given, this Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

DONE at New Delhi, this 26th day of October 1989 in six Originals, two each in the German, Hindi and English language, all the texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Austrian Federal Government:

CORNARO

For the Government of India:

S. K. MISRA

ANNEX

A. The airline designated by the Austrian Federal Government shall be entitled to operate scheduled air services in both directions on the following routes:

Points of departure:	Points of arrival:
Points in Austria	New Delhi

B. The airline designated by the Government of India shall be entitled to operate scheduled air services in both directions on the following routes:

Points of departure:	Points of arrival:
Points in India	Vienna

Note: Intermediate points and points beyond and the exercise of traffic rights to/from these points shall be agreed upon by the two aeronautical authorities of the Contracting Parties.
