

Agreement between the United States of America and India respecting air transport services. Signed at New Delhi November 14, 1946; effective November 14, 1946. And exchange of notes signed at New Delhi November 14, 1946.

November 14, 1946
[T. I. A. S. 1586]

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE
GOVERNMENT OF THE UNITED STATES RELATING TO AIR
SERVICES.

The Government of India and the Government of the United States of America, hereinafter described as the Contracting Parties, being parties to the Interim Agreement on International Civil Aviation and the International Air Services Transit Agreement, both signed at Chicago on the seventh day of December, 1944, the terms of which agreements are binding on both parties,

59 Stat. 1516.
59 Stat. 1693.

Considering

That it is desirable to organise international air services in a safe and orderly manner and to further as much as possible the development of international cooperation in this field, and

That it is desirable to stimulate international air travel, at the lowest rates consistent with sound economic principles, as a means of promoting friendly understanding and good will among peoples and securing the many indirect benefits of this new form of transportation to the common welfare of both countries, and

That it is desirable to establish direct air communications between the United States of America and India,

have accordingly appointed plenipotentiaries, who, being duly authorised to this effect, have agreed as follows:

ARTICLE I.

(A) Each Contracting Party grants to the other Contracting Party the right to operate the air services specified in the Annex to this Agreement (hereinafter referred to as the "specified air services") and to carry traffic to, from and in transit over the territory of the other Party as provided in this Agreement.

Right of operation.

Post, p. 2582.

(B) The air lines designated as provided in Article II hereof shall have the right to use

- (i) for traffic purposes, airports provided for public use at the points specified in the Annex to this Agreement and ancillary services provided for public use on the air routes specified in the said Annex (hereinafter referred to as the "specified air routes") and
- (ii) for non-traffic purposes, all airports and ancillary services provided for public use on the specified air routes,

subject in either case to such conditions as may normally be applicable thereto.

ARTICLE II.

Inauguration of specified air services.

(A) Each of the specified air services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, on condition that:

- (1) The Contracting Party to whom the rights have been granted shall have designated an air line (hereinafter referred to as a "designated air line") for the specified air route.
- (2) The Contracting Party which grants the rights shall have given the appropriate operating permission to the air line pursuant to Paragraph (C) of this Article which it shall do with the least possible delay.

(B) Substantial ownership and effective control of the designated air lines of each Contracting Party shall be vested in that Party or its nationals.

(C) The designated air line may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfil the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operation of commercial air carriers.

(D) The operation of each of the specified air services shall be subject to the agreement of the Contracting Party concerned that the route organisation available for civil aviation on the specified air route is adequate for the safe operation of air services.

ARTICLE III.

Traffic rights in Indian territory.

(A) The air lines designated by the United States Government shall, subject to the provisions of Article IV, be entitled in Indian territory to carry, set down or pick up traffic as detailed below:

- (1) Traffic embarked in or destined for the United States.
- (2) Traffic between any two countries other than the United States and India carried in transit across Indian territory and not embarked or disembarked in India.
- (3) Subject to the consent of the other State concerned, traffic embarked in the territory of a third country and destined for India, and traffic embarked in India and destined for a third country.

Traffic rights in U. S. territory.

(B) The air lines designated by the Government of India, shall, subject to the provisions of Article IV, be entitled in United States territory to carry, set down or pick up traffic as detailed below:

- (1) Traffic embarked in or destined for India.
- (2) Traffic between any two countries other than India and the United States carried in transit across United States territory and not embarked or disembarked in the United States.

- (3) Subject to the consent of the other State concerned, traffic embarked in the territory of a third country and destined for the United States, and traffic embarked in the United States and destined for a third country.

ARTICLE IV.

In order to maintain equilibrium between the capacity of the specified air services and the requirements of the public for air transport on the specified air routes and in order to maintain proper relationship between the specified air services and other air services operating on the specified air routes or sections thereof, the Contracting Parties agree as follows:

(A) The air lines of each Contracting Party shall enjoy equal opportunity for the operation of air services between the territories of the two Parties.

Equal opportunity
for operation of serv-
ices.

(B) To the extent that the air lines of one of the Contracting Parties are temporarily unable to take advantage of such opportunities as a result of the war, the situation will be mutually examined by the two Parties for the purpose of aiding as soon as possible the air lines concerned increasingly to make their proper contribution to the services contemplated.

(C) In the operation by the air lines of either Contracting Party of the specified air services the interests of the air lines of the other Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same route.

(D) The air transport offered by the air lines of both countries should bear a close relationship to the requirements of the public for such air transport.

(E) The services provided by a designated air line under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such air line is a national and the country of ultimate destination of the traffic, and the right of the air lines of either Party to embark and to disembark at points in the territory of the other Party international traffic destined for or coming from third countries shall be applied in accordance with the general principles of orderly development to which both Parties subscribe and shall be subject to the general principle that capacity shall be related:

Provision of ade-
quate capacity.

- (1) to traffic requirements between the country of origin of the air service and destinations on the specified air routes,
 - (2) to the requirements of through air line operation for fill-up traffic,
- and
- (3) to the traffic requirements of the area through which the air line passes after taking account of other air transport services established by air lines of the States concerned between their respective territories.

ARTICLE V.

Connecting service.

When, for the purpose of economy of onward carriage of through traffic, different aircraft are used on different sections of a specified air route, with the point of change in the territory of one of the Contracting Parties, such change of aircraft shall not affect the provisions of this Agreement relating to the capacity of the air service and the carriage of traffic. In such cases the second aircraft shall be scheduled to provide a connecting service with the first aircraft, and shall normally await its arrival.

ARTICLE VI.

Determination of rates.

(A) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other air lines, as well as the characteristics of each service.

Approval of rates.

(B) The rates to be charged by the air lines of either Contracting Party between points in the territory of the United States and points in Indian territory on the specified air routes shall be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal powers.

(C) The Civil Aeronautics Board of the United States has approved the traffic conference machinery of the International Air Transport Association for a period of one year beginning in February 1946. Any rate agreements concluded through this machinery during this period and involving United States air lines will be subject to approval by the Board. While neither Contracting Party desires in this Agreement to commit itself to any continued approval of the traffic conference machinery of the International Air Transport Association, both Parties express their desire to facilitate rate agreements by means of machinery of this type, it being understood, however, that rates agreed upon through such machinery must be subject to the approval of the Contracting Parties of this Agreement.

Filing of proposed rates.

(D) Any rate proposed by the air line or air lines of either Contracting Party for carriage from the territory of one Contracting Party to a point or points in the territory of the other Contracting Party shall be filed with the aeronautical authorities of both Contracting Parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both Contracting Parties.

Procedure if U. S. authorities are empowered to fix rates, etc.

(E) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, the following procedure shall apply:

- (1) If one of the Contracting Parties on receipt of the notification referred to in Paragraph (D) above is dissatisfied with the rate proposed by the air line or air lines of the other Contracting Party, it shall so notify the other Contracting Party prior to the expiration of the first fifteen of the thirty days referred to, and the Contracting Parties shall endeavour to reach agreement on the proposed rate.
- (2) In the event that such agreement is reached, each Contracting Party will exercise its statutory powers to give effect to such agreement.
- (3) If agreement has not been reached at the end of the thirty-day period referred to in Paragraph (D) above, the proposed rate may, unless the aeronautical authorities of the country of the air line concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute by submitting the question to the Provisional International Civil Aviation Organisation, as provided in Paragraph (G) below; provided, however, that if the Provisional International Civil Aviation Organisation, or its successor, has not rendered its report on the matter in dispute within a period of ninety days from the date of the submission to it of the question, the Contracting Party raising the objection to the proposed rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

Notice of dissatisfaction with proposed rate.

Provisional rate pending settlement of dispute.

(F) In the event that the power referred to in Paragraph (E) above has not been conferred by law upon the aeronautical authorities of the United States, the following procedure shall apply:

Procedure if power to fix rates, etc., is not conferred.

- (1) If one of the Contracting Parties on receipt of the notification referred to in Paragraph (D) above is dissatisfied with the rate proposed by the airline or airlines of the other Contracting Party it shall so notify the other Contracting Party prior to the expiration of the first fifteen of the thirty days referred to and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.
- (2) In the event that such agreement is reached, each Contracting Party will use its best efforts to cause such agreed rate to be put into effect by its air line or air lines. It is recognised that if such efforts are not successful the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.
- (3) If agreement has not been reached at the end of the thirty days period referred to in Paragraph (D) above the Contracting Party raising the objection to the rate may, if it so elects, take such steps as it may consider necessary to prevent the inauguration or continuation of the service in

question at the rate complained of, pending the submission of the question to the Provisional International Civil Aviation Organisation as provided in Paragraph (G) below.

Advisory report.

(G) When in any case under Paragraphs (E) and (F) above the aeronautical authorities of the two Contracting Parties, after consultation as provided therein, cannot agree within a reasonable time upon the appropriate rate, both Contracting Parties shall, upon the request of either, submit the question to the Provisional International Civil Aviation Organisation for an advisory report, and each Party shall use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

(H) In order to give effect to the provisions of this section, the executive branch of the United States Government will use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for international air services and to suspend proposed rates, in the same manner as the Civil Aeronautics Board is qualified to act with respect to air transportation within the United States.

ARTICLE VII.

Exchange of information concerning authorizations, etc.

(A) The aeronautical authorities of both Contracting Parties shall exchange information as promptly as possible concerning the authorisations extended to their respective designated air lines to render service to, through and from the territory of the other Contracting Party. This will include copies of current certificates and authorisations for service on the specified air routes, together with amendments, exemption orders and authorised service patterns.

(B) Each Contracting Party shall cause its designated air lines to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables, tariff schedules and all other similar relevant information concerning the operation of the specified air services and of all modifications thereof.

(C) Each Contracting Party shall, upon request, cause to be provided to the aeronautical authorities of the other Contracting Party copies of any reports relating to traffic carried on their air services to, from or over the territory of the other Contracting Party which are required to be filed with the Provisional International Civil Aviation Organisation in accordance with the provisions of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944.

59 Stat. 1516.

ARTICLE VIII.

Customs duties, etc.

(A) Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, the other Contracting Party or its designated air lines and intended solely for use by the latter's aircraft shall be accorded, with respect to customs duty, inspection fees or other charges imposed by the former Contracting Party, treatment not less favourable than that

granted to its national air lines engaged in international public transport or to the air lines of the most favoured nation.

(B) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of the designated air lines of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory.

ARTICLE IX.

Each Contracting Party reserves the right to itself to withhold or revoke, or impose such appropriate conditions as it may deem necessary with respect to, an operating permission in case of failure by a designated air line of the other Party to comply with the laws and regulations of the former Party, or in case, in the judgment of the former Party, there is a failure to fulfil the conditions under which the rights are granted in accordance with this Agreement. Except in case of a failure to comply with laws and regulations, such action shall be taken only after consultation between the Parties. In the event of action by one Party under this Article, the rights of the other Party under Article XI shall not be prejudiced.

Right to impose appropriate conditions, etc.

ARTICLE X.

(A) In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in this Agreement.

Consultations.

(B) Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement which may be desirable in the light of experience. Such consultation shall begin within a period of sixty days from the date of the request. Any modification of this Agreement agreed to as a result of such consultation shall come into effect when it has been confirmed by an exchange of diplomatic notes.

Amendments.

(C) When the procedure for consultation provided for in Paragraph (B) of this Article has been initiated, either Contracting Party may at any time give notice to the other of its desire to terminate this Agreement as provided in Paragraph (E) of this Article. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organisation.

Notice of desire to terminate agreement.

(D) Changes made by either Contracting Party in the specified air routes, except those which change the points served by the designated air lines in the territory of the other Contracting Party, shall not be considered as modifications of this Agreement. The aeronautical authorities of either Contracting Party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change shall be given without delay to the aeronautical authorities of the other Contracting Party. If such latter aeronautical authorities find that, having regard to the principles set forth in Article IV of

Changes in air routes.

Notice of change.

Ante, p. 2575.

this Agreement, the interests of any of their air lines are prejudiced by the carriage by a designated air line of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the latter Party may request consultation in accordance with the provisions of Paragraph (B) of this Article.

Termination.

(E) This Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate, unless the notice is withdrawn by agreement before the expiration of this period. In the absence of acknowledgment 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 Provisional International Civil Aviation Organisation.

ARTICLE XI.

Disputes.

Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement, which cannot be settled through consultation, shall be referred for an advisory report to the Interim Council of the Provisional International Civil Aviation Organisation, in accordance with the provisions of Article III, Section 6 (8), of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944, and the executive authorities of each Contracting Party will use their best efforts under the powers available to them to put into effect the opinion expressed in such report.

59 Stat. 1521.

ARTICLE XII.

Entry into force;
registration.

This Agreement shall come into force on the day it is signed. The Agreement and all relative contracts shall be registered with the Provisional International Civil Aviation Organisation set up by the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944.

59 Stat. 1516.

ARTICLE XIII.

61 Stat., Pt. 2, p.
1180.

(A) When the Convention on International Civil Aviation signed at Chicago on December 7, 1944, comes into operation in respect of both the Contracting Parties reference in this Agreement to the Interim Agreement and the Provisional International Civil Aviation Organisation shall be interpreted as reference to the Convention and the corresponding organisation established pursuant thereto. In the event of the conclusion of any other multilateral convention concerning air transport to which both Contracting Parties adhere, this Agreement shall be modified to conform with the provisions of such convention.

"Territory"; "air
service"; "international
air service";
"air line".

(B) For the purpose of this Agreement the terms "territory", "air service", "international air service" and "air line" shall have the meaning specified in the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944.

59 Stat. 1516.

"Aeronautical au-
thorities".

(C) The term "aeronautical authorities" shall mean, in the case of India, the Director General of Civil Aviation in India and, in the

case of the United States, the Civil Aeronautics Board, and in both cases any person or body authorised to perform the functions presently exercised by the above mentioned authorities.

(D) The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the "Agreement" shall include references to the Annex, except where otherwise expressly provided.

Annex.

In witness whereof the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Agreement.

Done this fourteenth day of November 1946 in duplicate at New Delhi.

For the Government of India:

[SEAL]

JAWAHARLAL NEHRU
Member for External Affairs.

ABDUR RAB NISHTAR
Member for Communications.

These signatures are appended in agreement with His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States.

For the Government of the United States of America:

GEORGE R. MERRELL
Charge d'Affaires a. i.
Embassy of the United States of America.

GEORGE A. BROWNELL
Personal Representative of the
President of the United States.

A N N E X

1. An air line designated by the United States Government shall be entitled to operate air services on each of the routes specified and to make scheduled landings in India at the points specified in this paragraph:

Route 1: The United States through Central Europe and the Near East to Karachi, Delhi and Calcutta, thence to a point in Burma, a point in Siam, a point in Indo China and beyond to the United States over various routes; via intermediate points in both directions.

Route 2: The United States through Western Europe, North Africa and the Near East to Bombay and beyond Bombay to:

(a) Calcutta, a point in Burma, a point in Indo China, points in China, points in Japan and beyond to the United States over Pacific routes; via intermediate points in both directions;

(b) Ceylon, Singapore and beyond; via intermediate points in both directions.

2. An air line designated by the Government of India shall be entitled to operate air services on each of the routes to, from and across United States territory to be mutually agreed at a later date.

3. (A) Points on any of the specified routes may, at the option of the designated air line, be omitted on any or all flights.

(B) If, at any time, scheduled flights on any of the specified air services of one Contracting Party are operated so as to terminate in the territory of the other Contracting Party and not as part of a through air service extending beyond such territory, the latter Party shall have the right to nominate the terminal point of such scheduled flights on the specified air route in its territory. The latter Party shall give not less than six months notice to the other Party if it decides to nominate a new terminal point for such scheduled flights.

*The Secretary to the Government of India to the American
Chargé d'Affaires*

GOVERNMENT OF INDIA.
DEPARTMENT OF COMMUNICATIONS.

NEW DELHI, *the 14th November 1946.*

From

SIR HAROLD SHOEBERT, C.I.E., E.D., I.C.S.,
Secretary to the Government of India,

To

The Chargé d'Affaires of the United States of America, New Delhi.

SIR,

I am directed to refer to the Agreement between the Government of India and the Government of the United States of America relating to air services which has been signed on behalf of both Governments today, and to say, with regard to two matters which have been discussed, that the understanding of the Government of India is as follows:

1. Ratification of the Convention on International Civil Aviation.

The Government of the United States of America and the Government of India, having both ratified the Convention on International Civil Aviation signed at Chicago on the seventh day of December 1944, it is understood to be the intention of both Governments to deposit their instruments of ratification of the Convention on or before the 1st day of March 1947. In the event that either Government should fail to complete the necessary steps whereby they will become bound by the provisions of the Convention when it enters into force, it is agreed that the two Governments will consult together and will enter into a supplementary agreement giving effect to the following articles of the Convention namely Articles 11, 13, 15, 32 and 33 and such other articles as may be mutually agreed to be applicable and necessary.

2. Regulation of rates for Fifth Freedom Traffic.

It is recognised that the determination of rates to be applied by an air line of one Contracting Party between the territory of the other Contracting Party and a third country is a complex question, the overall solution of which cannot be sought through consultation between only two countries. It is noted, furthermore, that the method of determining such rates is now being studied by the Provisional International Civil Aviation Organisation. It is understood under these circumstances:

(1) That, pending the acceptance by both Parties of any recommendations which the Provisional International Civil Aviation Organization may make after its study of this matter, such rates shall be fixed on the basis of the principles set out in Paragraph (A) of Article VI of the Agreement and after taking into consideration the interests

of the air lines of the other Party and shall not vary unduly in a discriminatory manner from the rates established by the air lines of the other Party operating air services on that part of the specified air routes concerned. Provided, however, that a designated air line under the Agreement shall not be required to charge rates higher than those established by any other air line operating on the specified air routes.

(2) That in case the Provisional International Civil Aviation Organization fails to establish a means of determining such rates satisfactory to both Contracting Parties within a reasonable time, the consultation provided for in Article X of the Agreement shall be inaugurated.

I am to request that you will be good enough to confirm your understanding on these matters to be as set out in this letter.

I have the honour to be, Sir,

Your most obedient servant,

W. H. SHOEBERT

Secretary to the Government of India.

The American Chargé d'Affaires to the Secretary to the Government of India

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 174

New Delhi, November 14, 1946

SIR HAROLD SHOEBERT, C.I.E., E.D., I.C.S.,

Secretary to the Government of India

*in the Department of Communications (Post and Air),
New Delhi.*

SIR:

I have the honor to refer to your note of today's date on the subject of the Agreement between the Government of the United States of America and the Government of India relating to air services signed on behalf of both our Governments today, and to state, with regard to two matters which have been under discussion, that the understanding of the Government of the United States of America is as follows:

1. Ratification of the Convention on International Civil Aviation.

The Government of India and the Government of the United States of America, having both ratified the Convention on International Civil Aviation signed at Chicago on the seventh day of December 1944, it is understood to be the intention of both Governments to deposit their instruments of ratification of the Convention on or before the first day of March 1947. In the event that either Government should fail to complete the necessary steps whereby they will become bound by the provisions of the Convention when it enters into force, it is agreed that the two Governments will consult together and will enter into a supplementary agreement giving effect to the following articles of the

Convention, namely Articles 11, 13, 15, 32 and 33, and such other articles as may be mutually agreed to be applicable and necessary.

61 Stat., Pt. 2, pp.
1183, 1184, 1189.

2. Regulation of Rates for Fifth Freedom Traffic.

It is recognized that the determination of rates to be applied by an air line of one Contracting Party between the territory of the other Contracting Party and a third country is a complex question, the overall solution of which cannot be sought through consultation between only two countries. It is noted, furthermore, that the method of determining such rates is now being studied by the Provisional International Civil Aviation Organization. It is understood under these circumstances:

(1) That, pending the acceptance by both Parties of any recommendations which the Provisional International Civil Aviation Organization may make after its study of this matter, such rates shall be fixed on the basis of the principles set out in Paragraph (a) of Article VI of the Agreement and after taking into consideration the interests of the air lines of the other Party and shall not vary unduly in a discriminatory manner from the rates established by the air lines of the other Party operating air services on that part of the specified air routes concerned. Provided, however, that a designated air line under the Agreement shall not be required to charge rates higher than those established by any other air line operating on the specified air routes.

Ante, p. 2576.

(2) That in case the Provisional International Civil Aviation Organization fails to establish a means of determining such rates satisfactory to both Contracting Parties within a reasonable time, the consultation provided for in Article X of this Agreement shall be inaugurated.

Ante, p. 2570.

I have the honor to be, Sir,
Your obedient servant,

GEORGE R. MERRELL
Charge d'Affaires a.i.