

Agreement relating to Air Services

November 26, 1955

AGREEMENT BETWEEN INDIA AND JAPAN FOR AIR SERVICES

New Delhi

The Government of India and the Government of Japan,

Desiring to conclude an agreement for the purpose of establishing air services between and beyond their respective territories,

Have accordingly appointed their respective representatives for this purpose, who have agreed as follows:

Article I

For the purpose of the present Agreement, the provisions of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 (hereinafter called "Convention"), which are applicable to the air services established hereunder, shall, in their present terms or as amended in respect of both Contracting Parties in accordance with relevant provisions of the Convention, apply between the Contracting Parties for the duration of the present Agreement.

Article 2

1. For the purpose of the present Agreement, unless the context otherwise requires :

I. the term "aeronautical authorities" means, in the case of India, the Director General of Civil Aviation, India, and any person or body authorized to perform any functions presently exercised by the said Director General of Civil Aviation or similar functions, and, in the case of Japan, the Ministry of Transportation and any person or body authorized to perform any functions presently exercised by the said Ministry or similar functions;

II. the term "designated airline" means an airline which one Contracting Party shall have designated by written notification to the other Contracting Party for the operation of air services on the route specified in such notification, and which has the appropriate operating permission from the other Contracting Party, in accordance with the provisions of Article 4 of the present Agreement;

III. the term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;

IV. the term "international air service" means an air service which passes through the air space over the territory of more than one State;

V. the term "airline" means any air transport enterprise offering or operating an international air service;

VI. the term "stop for non-traffic purposes" means a landing for any purpose other than taking on or putting down passengers, cargo or mail;

VII. the term "Schedule" means the Schedule to the present Agreement or as amended in accordance with the provisions of Article 15 of the present Agreement.

2. The Schedule forms an integral part of the present Agreement, and all reference to the "Agreement" shall include reference to the Schedule except where otherwise provided.

Article 3

Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement to enable its designated airlines to establish international air services on the routes specified in the appropriate Section of the Schedule (hereinafter called "agreed services" and "specified routes" respectively).

Article 4

1. The agreed services on any specified route may be inaugurated immediately or at a later date at the option of the Contracting Party to which the rights are granted under Article 3 of the present Agreement, but not before

I. the Contracting Party to which the rights have been granted has designated an airline or airlines for that route; and

II. the Contracting Party granting the rights has given the appropriate operating permission to the airline or airlines concerned; which it shall, subject to the provisions of paragraph (2) of this Article and of paragraph (1) of Article 7, be bound to grant without delay.

2. Each of the airlines designated may be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally and reasonably applied by those authorities to the operation of international air services.

Article 5

1. Subject to the provisions of the present Agreement, the designated airlines of each Contracting Party shall enjoy, while operating an agreed service on a specified route the following privileges :- (a) to fly without landing across the territory of the other Contracting Party; (b) to make stops in the said territory for non-traffic purposes; and (c) to make stops in the said territory at the points specified for that route in the Schedule for the purposes of putting down and of taking on international traffic in passengers, cargo and mail.

2. Nothing in paragraph (1) of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail destined for another point in the territory of that other Contracting Party.

Article 6

1. The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airlines of the other Contracting Party for the use of airports and other facilities under its control shall not be higher than would be paid for the use of such airports and facilities by any national airline of the first Contracting Party in providing similar international air services.

2. In respect of customs duties, inspection fees and similar national duties or charges on supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores incorporated into or taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other 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 that territory, the designated airlines of the first Contracting Party shall be accorded treatment not less favourable than that granted by the second Contracting Party to the airlines of the most favoured nation or to its national airlines engaged in international air services : provided that neither Contracting Party shall be obliged to grant to the designated

airlines of the other Contracting Party exemption or remission of customs duties, inspection fees or similar national duties or charges unless such other Contracting Party grants exemption or remission of such charges to the designated airlines of the first Contracting Party.

Article 7

1. Each Contracting Party reserves the right to withhold or revoke the privileges specified in paragraph (1) of Article 5 of the present Agreement in respect of an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise by the airline of those privileges, in any case where it is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party.

2. Each Contracting Party reserves the right to suspend the exercise by a designated airline of the other Contracting Party of the privileges referred to in paragraph (1) above, or to impose such conditions as it may deem necessary on the exercise by the airline of those privileges, in any case where the airline fails to comply with such laws and regulations of the Contracting Party granting those privileges as referred to in Article 11 and 13 of the Convention or otherwise fails to operate in accordance with the conditions prescribed in the present Agreement : provided that, unless immediate suspension or imposition of conditions is essential to prevent further infringements of such laws and regulations, this right shall be exercised only after consultation with the other Contracting Party.

Article 8

There shall be fair and equal opportunity for the airlines of both Contracting Parties to establish and operate the agreed services between and beyond their respective territories.

Article 9

In the operation by the designated airlines of either Contracting Party of the agreed services, the interests of the designated airlines of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

Article 10

1. The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for such services.

2. The agreed services provided by a designated airline shall retain as their primary objective the provision of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers, cargo and mail both taken up and put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to :- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline; (b) the requirements of through airline operation; and (c) traffic requirements of the area through which the airline passes, after taking account of local and regional services.

Article 11

1. The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profits, 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 the Article.
2. Agreement on the tariffs shall, wherever possible, be reached by the designated airlines concerned through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed between the designated airlines concerned. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.
3. If the designated airlines concerned cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them, in accordance with the provisions of paragraph (2) of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on the appropriate tariffs.
4. If the agreement under paragraph (3) of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article 14 of the present Agreement.
5. No new tariff shall come into effect if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the terms of paragraph (3) of Article 14 of the present Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall prevail.

Article 12

1. The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party on request (a) such traffic statistics as may be appropriate for the purpose of reviewing the frequency and accommodation of the agreed services; (b) such periodical statements as may reasonably be required relating to the traffic carried by the designated airlines on the agreed services including information concerning the origin and destination of such traffic, and (c) such other information as may reasonably be required in respect of the operation of the agreed services.
2. The designated airlines of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables and tariff schedules and particulars concerning the types of aircraft to be operated on the agreed services.

Article 13

There shall be regular and frequent consultation between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of the present Agreement.

Article 14

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.
2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third to be agreed upon by the two arbitrators so

chosen, provided that such third arbitrator shall not be a national of either Contracting Party. Each of the Contracting Parties shall designate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty days or if the third arbitrator is not agreed upon within the period indicated, the President of the International Court of Justice may be requested by either Contracting Party to appoint an arbitrator or arbitrators.

3. The Contracting Parties undertake to comply with any decision given under Paragraph (2) of this Article.

Article 15

Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending the present Agreement, such consultation to begin within a period of sixty days from the date of request. If the amendment relates only to the Schedule, the consultation shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Schedule, their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

Article 16

If the Government of India and the Government of Japan become parties to any multilateral agreement concerning air transport, the present Agreement shall be modified to conform with the provisions of such multilateral agreement.

Article 17

The present Agreement and the diplomatic notes exchanged in accordance with Article 15 shall be registered with the International Civil Aviation Organisation.

Article 18

1. The present Agreement shall be approved by each Contracting Party in accordance with its legal procedures, and shall enter into force upon exchange of diplomatic notes indicating such approval.

2. The present Agreement shall remain in force for a period of one year, and, should neither Contracting Party notify the other, three months prior to its expiry, of its intention to terminate the Agreement, it shall continue in force for another period of one year and so on.

Article 19

The present Agreement shall be in the Hindi, Japanese and English languages. In case of any divergence of interpretation, the English text shall prevail.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed the present Agreement.

DONE in duplicate at New Delhi, this twenty-sixth day of November, 1955.

For the Government of India:
JAGJIVAN RAM,
Minister for Communications.

For the Government of Japan:
SEIJIRO YOSHIZAWA,
Ambassador for Japan.

SCHEDULE

Section I

Route to be operated by the designated airline of Japan:

Tokyo-Osaka-Fukuoka-Okinawa-points on the island of Formosa-Hong Kong or Manila-points in Indo-China-a point in Thailand-a point in Burma-Dacca-Calcutta/Delhi and, if desired, points beyond, in both directions.

The agreed services provided by the designated airline of Japan on this route shall begin at a point in the territory of India, but other points on the route may at the option of the designated airline be omitted on any or all flights.

Section II

Route to be operated by the designated airline of India:

Points in India-a point in East Pakistan-a point in Burma-a point in Thailand-points in Indo-China-Manila or Hong Kong Okinawa- Tokyo and, if desired, points beyond, in both directions.

The agreed services provided by the designated airline of India on this routeshall begin at a point in the territory of India, but other points on the route may at the option of the designated airline be omitted on any or all flights.

New Delhi, November 26,1955

Monsieur le MINISTRE,

With reference to the Agreement between Japan and India for Air Services signed today, I have the honour to state that the following is the understanding of the Government of Japan :

If Japan resumes the exercise of administrative, legislative and jurisdictional authority over Okinawa, the designated airline of India would, from the date of such resumption, cease to exercise traffic rights at Okinawa; in which case the Government of Japan will enter without delay into negotiations with the Government of India in respect of such rights.

I have further the honour to request Your Excellency to be good enough to confirm, on behalf of your Government, that this is also the understanding of the Government of India.

I avail myself of this opportunity to renew to Your Excellency, Monsieur le Ministre, the assurance of my highest consideration.

SEIJIRO YOSHIZAWA,
Ambassador Extraordinary and
Plenipotentiary of Japan.

His Excellency
Mr. JAGJIVAN RAM,
Minister for Communications,
Government of India,
New Delhi.

New Delhi, November 26, 1955

Monsieur le' AMBASSADEUR,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date reading as follows :

"With reference to the agreement between Japan and India for Air Services signed today, I have the honour to state that the following is the understanding of the Government of Japan :

If Japan resumes the exercise of administrative, legislative and jurisdictional authority over Okinawa, the designated airline of India would, from the date of such resumption, cease to exercise traffic rights at Okinawa; in which case the Government of Japan will enter without delay into negotiations with the Government of India in respect of such rights.

I have further the honour to request Your Excellency to be good enough to confirm, on behalf of your Government, that this is also the understanding of the Government of India."

I have further the honour to confirm on behalf of my Government that this is also the understanding of the Government of India.

I avail myself of this opportunity to renew to your Excellency, Monsieur l'Ambassadeur, the assurance of my highest consideration.

JAGJIVAN RAM,
Minister for Communications,
Government of India
New Delhi.

His Excellency
Mr. SEIJIRO YOSHIKAWA,
Ambassador Extraordinary
and Plenipotentiary of Japan,
New Delhi.

New Delhi, November 26, 1955

Monsieur le'AMBASSADEUR,

With reference to the Agreement between India and Japan for Air Services signed today, I have the honour to state that the following is the understanding of the Government of India of the phrase "Calcutta/Delhi" in the Japanese route specified in the Schedule to the said Agreement :

1. In case the designated airline of Japan operates the agreed service only once a week, such airline may make traffic stops both at Calcutta and Delhi.

2. In case the designated airline of Japan operates the agreed service twice or more times a week, such airline may make a traffic stop at either Calcutta or Delhi at the option of such designated airline on each flight unless otherwise mutually agreed.

I have further the honour to request Your Excellency to be good enough to confirm, on behalf of your Government, that this is also the understanding of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency, Monsieur l' Ambassadeur, the assurance of my highest consideration.

JAGJIVAN RAM,
Minister for Communications,
Government of India
New Delhi.

His Excellency
Mr. SEIJIRO YOSHIKAWA
Ambassador Extraordinary
and Plenipotentiary of Japan,
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SEIJIRO YOSHIKAWA,
Ambassador Extraordinary
and Plenipotentiary of Japan.

His Excellency
Mr. JAGJIVAN RAM,

Minister for Communications,
Government of India,
New Delhi.