

## **Agreement relating to Air Services**

July 16, 1959

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF ITALY RELATING TO AIR SERVICES

### **Rome**

The Government of India and the Government of the Italian Republic, hereinafter described as the "Contracting Parties",

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

HAVE agreed as follows:

### **Article I**

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

1. the term "the convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;
2. the term "aeronautical authorities" means, in the case of India the Director General of Civil Aviation, and, in the case of Italy: the Ministry of Defence-Air (Directorate General of Civil Aviation and Air Traffic) or any person or body authorised to perform the functions presently exercised by the said Director General or by the said Ministry;
3. the term "designated airline" means an airline which one Contracting Party shall have designated, through its aeronautical authorities and by written notification, to the aeronautical authorities of the other Contracting Party, in accordance with Article IV of the present Agreement, for the operation of air services on the routes specified in such notification;
4. the terms "territory", "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Articles 2 and 96 of the Convention.

### **Article II**

To the extent to which they are applicable to the air services established under the present 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 the present Agreement.

### **Article III**

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 IV 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 :

I.to fly without landing across the territory of the other Contracting Party,

II.to make stops in the territory of the other Contracting Party for non-traffic purposes, and

III.while operating an agreed service on a specified route to make stops in the territory of the other Contracting Party at the points specified for that route in the Annex to the present Agreement for the purpose of putting down or taking on international traffic in passengers, cargo and mail originating in or destined for the territory of the first Contracting Party or of a third country.

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 IV**

1. Each Contracting Party shall have the right-through its own aeronautical authorities-to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

2. On receipt of the designation, the Contracting Party shall, through its own aeronautical authorities and subject to the provisions of paragraphs 3 and 4 of this Article, without delay grant to the designated airline the appropriate operating authorisation.

3. 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 operations of air carriers and of international commercial air services.

4. Each Contracting Party shall have the right to refuse to accept the designation of the airline and to withhold or revoke the grant to the airline of the rights specified in paragraph 2 of Article III 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 Contracting Party designating the airline or in nationals of the Contracting Party designating the airline.

5. The airline so designated and authorised may begin to operate the agreed services at any time provided that the provisions of Article VIII and X have been complied with.

6. 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 authorization in case of failure by a designated airline 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. Such action shall be taken only after consultation between the Contracting Parties. Such consultation shall begin within a period of sixty days from the date of the request.

## **Article V**

1. Fuel, lubricating oils, spare parts and aircraft stores introduced into the territory of a Contracting Party or taken on board aircraft of the airline designated by the other Contracting Party which are in the said territory, for the exclusive use of aircraft of the same airline operating the agreed services shall be accorded, with respect to customs duties, inspection fees and other, similar charges, treatment not less favourable than that granted 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 duties, 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. The concessions in the matter to be granted on the basis of reciprocity will be adopted by mutual understanding between the respective Governments.
2. The aircraft of the designated airline engaged in the agreed services in flights from, to or across the territory of a Contracting Party, shall be admitted into the territory of the other Contracting Party temporarily free from customs duties, inspection fees and other similar charges, in the same manner as the aircraft of the most favoured nation.
3. Fuel, lubricating oils, aircraft stores, spare parts and normal equipment retained on board aircraft of the designated airline of a Contracting Party authorized to operate the agreed services, shall, on the territory of the other Contracting Party, be exempt from customs duties and other similar charges, even when they are used or consumed during flights over the said territory.
4. Fuel, lubricating oils, spare parts, aircraft stores and normal equipment which are exempt from any duties and charges under the provisions of the above paragraph cannot be unloaded without the permission of the customs authorities of the other Contracting Party. When they cannot be used they must be re-exported. While awaiting use or re-exportation, they shall be kept under the supervision of the customs authorities.

## **Article VI**

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between and beyond their respective territories.
2. In the establishment and 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 services which the latter provides on any of the specified routes or sectors thereof.
3. The capacity provided by the designated airlines of both Contracting Parties on any specified route shall bear a close relationship to the requirements of the public for air transport on that route. The primary objective of a designated airline in providing capacity on a specified route shall be the carriage, at a reasonable load factor, of the traffic on that route between the territory of the Contracting Party designating the airline and the countries of destination of the traffic.
4. The designated airline of each Contracting Party may embark and disembark in the territory of the other Contracting Party traffic destined for and coming from third countries by utilising a part of the total capacity which may be provided by the airline in conformity with the provisions of paragraphs 1, 2, 3, and 5 of this Article.

5. The interpretation and application of these paragraphs shall be such as may be agreed from time to time between the aeronautical authorities of the Contracting Parties.

#### **Article VII**

1. 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 set forth in the present Agreement.

2. Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments to the present Agreement which it may deem desirable. Such consultation shall begin within a period of sixty days from the date of the request.

3. Should agreement be reached on amendment of the Agreement or its Annex, amendment of the Agreement will come into effect upon confirmation by an exchange of diplomatic notes and amendment of the Annex will come into effect upon confirmation by an exchange of letters between the aeronautical authorities of the two Contracting Parties.

#### **Article VIII**

Each Contracting Party shall cause its designated airline to provide to the aeronautical authorities of the other Contracting Party as long in advance as practicable, copies of time tables, tariff schedules, including any, modification thereof 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 the present Agreement are being duly observed.

#### **Article IX**

Each Contracting Party shall cause its designated airline to provide to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried during each month on their air services to, from or over the territory of the other Contracting Party showing the origin and destination of the traffic.

#### **Article X**

1. The tariffs on any agreed service shall be established at reasonable level, 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, where it is deemed suitable, 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 in respect of each of the specified routes between the designated airlines concerned (where it is deemed suitable, in consultation with other airlines operating over the whole or part of that route), having regard to the relevant rates adopted by the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

3. If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff 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 dispute shall be settled in accordance with the provisions of Article XI of the present Agreement.

5.

I. No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph 3 of Article XI of the present Agreement.

II. When tariffs have been established in accordance with the provisions of this Article, these tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

#### **Article XI**

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 consultation between themselves as laid down in Article VII

2. If the Contracting Parties fail to reach a settlement by consultation :

I. they may agree to refer the dispute for decision to an arbitral tribunal appointed by agreement between them or to some other person or body; or

II. if they do not so agree or if, having agreed to refer the dispute to an arbitral tribunal they cannot reach agreement as to its composition, either Contracting Party may submit the dispute for decision to any tribunal competent to decide it which may hereafter be established within the International Civil Aviation Organisation or, if there is no such tribunal, to the Council of the said Organisation, or if it is not possible to submit the dispute to the said Council, to the International Court of Justice.

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

4. If and so long as either Contracting Party or the designated airline of either Contracting Party fails to comply with the decision given under paragraph 2 of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of the present Agreement to the Contracting Party in default or to the designated airline of that Contracting Party.

#### **Article XII**

In the event of the conclusion of any general multilateral convention concerning air transport by which both Contracting Parties become bound, the present Agreement shall be amended so as to conform with the provisions of such convention.

#### **Article XIII**

Either Contracting Party may at any time give notice to the other of its desire to terminate the present Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. If such notice is given, the present Agreement shall terminate twelve (12) 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 (14) days after the receipt of the notice by the International Civil Aviation Organisation.

#### **Article XIV**

1. The Annex attached to the present 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. The present Agreement shall be subject to ratification and instruments of ratification shall be exchanged as soon as possible.
3. The present Agreement shall come into force on the date of the exchange of instruments of ratification.

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

DONE at Rome this 16th day of July 1959, in duplicate in the Hindi, Italian and English languages, all the three texts being equally authentic.

For the Government of India : (Signed) KHUB CHAND

For the Government of Italy : (Signed) ALBERTO FOLCHI

#### **A N N E X SECTION**

The airline designated by the Government of India shall be entitled to operate air services in both directions on the route specified in this Section and to land for traffic purposes in the territory of Italy at each of the points specified.

**Route** : India, Karachi, Kandahar, Jeddah, Bahrein, Kuwait, Dharan Tehran, Basra, Baghdad, Damascus, Beirut, Tel Aviv, Cairo: Athens, Istanbul, Sofia, Belgrade, Rome or Milan, Vienna, Geneva, Zurich, Prague, Paris, Brussels, Frankfurt or Dusseldorf or Berlin, Copenhagen, London, Shannon, Gander, Montreal, Ottawa, Vancouver, Boston, New York, Chicago, San Francisco, Los Angeles.

#### **SECTION II**

The airline designated by the Government of Italy shall be entitled to operate air services in both directions on the route specified in this section and to land for traffic purposes in the territory of India at each of the points specified.

**Route** : Italy, Istanbul, Athens, Cairo, Tel Aviv, Beirut, Damascus, Baghdad, Basra, Tehran, Dharan, Kuwait, Bahrein, Jeddah, Kandahar, Karachi, Bombay or Calcutta, Rangoon, Bangkok, and thence to

1. Saigon, Hong Kong, Manila, Tokyo, and
2. Singapore, Djakarta, Darwin, Sydney, Melbourne, Brisbane.

#### **SECTION III**

1. Points on any of the specified routes may, at the option of the designated airline, be omitted on any or all flights.
2. If, at any time any of the services on the specified routes are so operated by the designated airline of either Contracting Party as to terminate in the territory of the other Contracting Party and

not as part of a transiting air service extending beyond such territory, the terminal point(s) of such service(s) on the specified routes shall be agreed previously between the aeronautical authorities of the Contracting Parties.

#### **EXCHANGE OF NOTES**

Rome, July 16th 1959

Dear EXCELLENCY,

I have the honour to refer to the Air Services Agreement between the Government of Italy and the Government of India signed today and to record hereunder the understanding of the Government of India in regard to the interpretation and application of Article IV (4) of the said Agreement :

For the purpose of paragraph 4 of Article IV, referred to above, 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

1. effective control in the management of the designated airline; and
2. ownership and effective control of the major part of the fleet of aircraft and equipment used in the operation of the services.

2. I have the honour to request you kindly to confirm that this is also the understanding of the Government of Italy.-

Yours sincerely,

(Signed) KHUB CHAND.

H.E. ALBERTO FOLCHI,

Under Secretary of State for Foreign Affairs, Rome.

Rome, July 16th 1959

Dear EXCELLENCY,

I have the honour to refer to your letter of today's date, reading as follows

[See Note 11

2. I have the honour to confirm that the above represents also the understanding of the Government of Italy.

Yours sincerely,

(Signed) ALBERTO FOLCHI

H.E. KHUB CHAND,

Ambassador of India Rome.

III

Rome,

July 16th 1959

Dear EXCELLENCY,

With reference to paragraph 5 of Article VI of the Air Services Agreement between the Government of Italy and the Government of India signed today, I have the honour to record hereunder the understanding of the Government of India with regard to the interpretation and application of paragraphs 1, 2, 3, and 4, of the said Article :

1.

I. The Delegations of the Government of Italy and the Government of India agreed that the anticipated traffic requirements justified, initially, the operation of three transiting services per week in each direction by each designated airline.

II. The Delegation of the Government of India agreed that the Italian airline shall be permitted to operate two services a week in each direction terminating in India at Bombay as desired by the Delegation of the Government of Italy; and by way of reciprocity, the Delegation of the Government of Italy agreed that the Indian airline shall have the entitlement to operate four transiting services per week in each direction through Italy.

2. The Delegations of the Government of Italy and the Government of India agreed that when the Italian airline discontinued the operation of both the terminating services and proposed to operate transiting services in lieu thereof, the said airline shall be entitled to operate the same number of transiting services as are, then, actually operated by the Indian airline, subject to a minimum of three transiting services per week in each direction. It was further agreed that in the event of the Italian airline discontinuing only one of its terminating services at Bombay, the said airline shall be entitled to operate two transiting services in lieu of the one terminating service so discontinued.

3. According to the desire expressed by the Delegation of Government of India, the Delegation of the Government of Italy agreed that the Indian airline shall be entitled to operate two all-cargo services transiting through Italy per week in each direction in addition to the entitlements set out in paragraph (A) above; and by way of reciprocity, the Delegation of the Government of India agreed that the Italian airline shall be entitled to operate two all-cargo services transiting through India per week in each direction in addition to the entitlements set out in paragraphs (A) and (B) above.

4. The Delegations of the Government of Italy and the Government of India agreed that any proposal for increasing the frequency entitlements referred to in (A), (B) and (C) above, shall be discussed, in the first instance, between the designated airlines of the Contracting Parties in accordance with the provisions of paragraphs 1, 2, 3, and 4 of Article VI of the Agreement. Any agreement so reached between the designated airlines shall come into force after it has been approved by the aeronautical authorities of the Contracting Parties. In the event of disagreement between the designated airlines, the aeronautical authorities themselves shall endeavour to reach agreement and shall take all necessary steps to give effect to such agreement. Pending such agreement, the frequency entitlements already in force shall prevail.

2. I have the honour to request you kindly to confirm that this is also the understanding of the Government of Italy.

Yours sincerely,



(Signed) KHUB CHAND.

H.E. ALBERTO FOLCHI,

Under Secretary of State for Foreign Affairs, Rome.

IV

Rome, July 16th 1959

Dear EXCELLENCY,

I have the honour to refer to your letter of today's date, reading as follows

[See Note III]

2. I have the honour to confirm that the above represents also the understanding of the government of Italy.

Yours sincerely,

(Signed) ALBERTO FOLCHI

H.E. KHUB CHAND, Ambassador of India, Rome.