

No. 26698

**SPAIN
and
INDIA**

**Air Transport Agreement (with annex). Signed at New Delhi
on 10 April 1987**

Authentic texts: Spanish, Hindi and English.

Registered by Spain on 22 June 1989.

**ESPAGNE
et
INDE**

**Accord relatif au transport aérien (avec annexe). Signé à
New Delhi le 10 avril 1987**

Textes authentiques : espagnol, hindi et anglais.

Enregistré par l'Espagne le 22 juin 1989.

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF SPAIN

The Government of the Republic of India and
The Government of Spain,

Desiring to promote the development of air transport between India and Spain and to continue to the fullest extent the international cooperation in this field;

Have agreed as follows:

Article I. DEFINITIONS

For the purpose of the interpretation and application of the Agreement, except as otherwise provided herein:

(a) The term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,² and includes any Annex adopted under Article 90 of that Convention, any amendment of the Annexes or Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have become effective for or have been ratified by both Contracting Parties.

(b) The term "aeronautical authorities" means in the case of India, the Director General of Civil Aviation and in the case of Spain, the Ministry of Transport, Tourism and Communications (Director General of Civil Aviation), or in both cases any person or body duly authorised to perform any functions exercised by the said authorities.

(c) The term "designated airline" means the airline that each Contracting Party has designated to operate the agreed services as specified in the Annex to this Agreement and in accordance with Article III of this Agreement.

(d) The terms "territory", "air services", "international air services" and "stop for non traffic purposes" have the meaning specified in Articles 2 and 96 of the Convention.

(e) The term "Agreement" means this Agreement, its Annex and any amendments thereto.

(f) The term "specified routes" means the routes established or to be established in the Annex to the Agreement.

(g) The term "agreed services" means the international air services which can be operated, according to the provisions of the Agreement, on the specified routes.

¹ Came into force provisionally on 10 April 1987, the date of signature, and definitively on 11 April 1988, the date of the last of the notifications (of 14 September 1987 and 11 April 1988) by which the Contracting Parties informed each other of the completion of their respective constitutional requirements, in accordance with article XX.

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.

(h) The term “tariff” means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail.

Article II. OPERATING RIGHTS

Each Contracting Party grants to the other Contracting Party the rights specified in the Agreement, for the purpose of establishing scheduled international air services on the routes specified in the Annex hereto.

The airline designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

- (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;
- (c) To make stops in the said territory at points specified in the Route Schedule in the Annex to this Agreement for the purpose of taking on or putting down, on international traffic, passengers, cargo and mail in accordance with the provisions of the Annex to the Agreement, to or from the territory of the other Contracting Party, or to or from the territory of other States;
- (d) Nothing in this Agreement shall be deemed to confer on the designated airline of one Contracting Party, the privilege of taking on board in the territory of the other Contracting Party passengers, cargo and mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

Article III. DESIGNATION OF AIRLINE

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 on the specified routes in the Annex to this Agreement.

2. On receipt of such designation, the other 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 and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to grant the operating authorisation referred to in paragraph 2 of this Article or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article II of this Agreement in any case when the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

5. When an airline has been so designated and authorised, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of Article VI of this Agreement is in force in respect of those services.

Article IV. REVOCATION

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article II of this Agreement given to the airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary for the exercise of these rights:

- (a) In any case where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or
- (b) In the case of failure by that airline to comply with the laws and regulations of the Contracting Party granting these rights; or
- (c) In any case in which the airline otherwise fails to operate the agreed services in accordance with the conditions prescribed under the Agreement.

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

[Items referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under Customs supervision or control of the appropriate authorities.

3. Regular airborne equipment, as well as materials and supplies mentioned above, may be unloaded in the territory of the other Contracting Party only with the approval of the Customs Authorities of such territory. In such case, they may be placed under the supervision of the said Authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

4. Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.]¹

Article V. EXEMPTIONS

1. Aircraft operated on international air services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) which are on board such aircraft shall be exempt, on the basis of reciprocity, from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. There shall also be exempt from the same duties and taxes, with the exception of charges corresponding to the service performed:

- (a) Aircraft stores taken on board in the territory of either Contracting Party, within the limits fixed by the authorities of the said Contracting Party, and for use on board the aircraft engaged in an international air service of the other Contracting Party;
- (b) Spare parts, including engines, brought into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the designated airline of the other Contracting Party; and

¹ The text within brackets appears to be a duplication of paragraphs appearing in article V — Le texte entre crochets semble constituer une répétition de paragraphes figurant à l'article V.

(c) Fuels and lubricants [destined] to supply aircraft operated on international air services by the designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Items referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under Customs supervision or control of the appropriate authorities.

3. Regular airborne equipment, as well as materials and supplies mentioned above, may be unloaded in the territory of the other Contracting Party only with the approval of the Customs Authorities of such territory. In such case, they may be placed under the supervision of the said Authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

4. Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from Customs duties and other similar taxes.

Article VI. TARIFFS

1. The tariffs to be charged by the designated airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of the operation, reasonable profit and the tariffs of the other airlines.

2. The tariffs referred to in paragraph 1 of this Article, shall, if possible, be agreed by the designated airlines of both Contracting Parties, after consultation with the other airlines operating over the whole or part of the route, and such agreement shall whenever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

3. 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.

4. 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 3 of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided in paragraph 3, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

5. If a tariff cannot be agreed in accordance with the provisions of paragraph 2 of this Article, or if, during the period applicable in accordance with paragraph 4 of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of any tariff agreed in accordance with the provisions of paragraph 2, the aeronautical authorities of the two Contracting Parties shall, after consultation with the aeronautical authorities of any other State whose service they consider useful, endeavour to determine the tariff by mutual agreement.

6. If the aeronautical authorities cannot agree on any tariff submitted to them in accordance with paragraph 3 of this Article, or on the determination of any tariff as specified in paragraph 5 of this Article, the dispute shall be settled in accordance with the provisions of Article XVII of this Agreement.

7. 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 VII. TECHNICAL AND COMMERCIAL PERSONNEL

The designated airlines of both Contracting Parties shall have the right to maintain, in the territory of the other Contracting Party, the technical and commercial staff necessary for the normal development of its commercial activities. The staff shall have the nationality of either Contracting Party.

Article VIII. LAWS AND REGULATIONS

1. The laws and regulations of each Contracting Party controlling the admission to or departure from its own territory of aircraft engaged in international air navigation, or relative to the operation of such aircraft while within its territory, will be applied to the aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations controlling the entry, stay and departure of passengers, crew, baggage, mail and cargo, over the territory of each Contracting Party, and also the regulations relative to the requirements of entry and departure from the country, immigration, customs and sanitary rules, will be applied, in such territory, to the operations of the designated airline of the other Contracting Party.

Article IX. PROHIBITED AREAS

For military reasons or public security, each Contracting Party shall have the right to restrain or forbid the flights of the aircraft belonging to the airline designated by the other Contracting Party above certain zones of its territory provided such restrictions and prohibitions are applied equally to the aircraft of the airline designated by the first Contracting Party or the airlines of the other States which operate on international scheduled air services.

Article X. CERTIFICATES AND LICENCES

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services on the specified routes in the Annex to the Agreement, provided that the requirements under such certificates and licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the International Civil Aviation Conventions.

Each Contracting Party reserves the right, however, of refusing to recognise the validity of the certificates of competency and the licences granted to its own nationals by the other Contracting Party, for the purpose of overflying its own territory.

Article XI. SECURITY AND SAFETY

The Contracting Parties agree to provide maximum aid to each other with a view to suppressing the unlawful seizure of the aircraft and other unlawful acts against aircraft, airports and air navigation facilities, and threats to aviation

security. The Contracting Parties shall have regard to the provisions of the Convention on Offences and certain other Acts Committed on Board the Aircraft, signed at Tokyo on September 14, 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16th, 1970,² and the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation signed at Montreal on September 23rd, 1971.³ The Contracting Parties shall also have regard to applicable aviation security provisions established by the International Civil Aviation Organisation. When incidents or threats of unlawful seizure of aircraft or other unlawful acts against aircraft, airports or air navigation facilities occur, the Contracting Parties shall expedite and facilitate all communications intended to terminate such incidents rapidly and safely.

Article XII. TRANSFER OF EXCESS RECEIPTS

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 in connection with the carriage of passengers, baggage, mail and cargo. Such remittances, however, shall be made in accordance with the foreign exchange regulations of the Contracting Party in the territory of which the revenue accrued. Such transfers shall be [effected] on the basis of official exchange rates for current payment, or where there are no official exchange rates, at the prevailing foreign exchange market rates for current payment.

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 XIII. EQUAL OPPORTUNITY

There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.

Article XIV. CAPACITY

1. The agreed services on any of the routes specified in the Annex to this Agreement shall have as their primary objective the provision of a capacity adequate for transportation of traffic originating in or destined for the territory of the Contracting Party which has designated the airline.

2. In operating the agreed services, the designated airline of each Contracting Party shall take into account the interest of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same routes.

3. The right to embark or disembark in their respective territories international traffic originating in or destined for a third country and according to the provisions of Article II(c) of this Agreement and its Annex, shall be exercised in accordance with the general principles accepted by both Contracting Parties.

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).

Article XV. STATISTICS

The aeronautical authorities of either Contracting Party shall supply 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 per direction the traffic carried in 3rd, 4th and 5th freedoms and their respective points of embarkation and disembarkation. Such statistics shall be furnished as early as possible.

Article XVI. CONSULTATIONS

In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the Agreement.

Article XVII. MODIFICATIONS

1. If either Contracting Party considers it desirable to modify any provisions of the Agreement, it may request consultations with the other Contracting Party. Such consultations between aeronautical authorities may be through discussion or by correspondence, and shall begin within a period of sixty (60) days from the date of request. Any modifications so agreed shall come into force after the respective constitutional requirements have been fulfilled and when it has been so notified by an exchange of diplomatic notes.

2. Modifications of the Annex to this Agreement may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties and confirmed by an exchange of diplomatic notes.

Article XVIII. SETTLEMENT OF DISPUTES

If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall, in the first place, endeavour to settle it by direct negotiation.

Article XIX. REGISTRATION

The Agreement, including any amendments thereto, as well as any exchange of Diplomatic Notes, shall be registered with the International Civil Aviation Organisation.

Article XX. ENTRY INTO FORCE AND TERMINATION

The Agreement shall enter into force provisionally on the date of signature and definitely after the date on which both Contracting Parties give written notification to each other by exchange of Diplomatic Notes that their respective constitutional requirements for definite entry into force have been fulfilled.

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice of termination is withdrawn by mutual 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.

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

DONE in duplicate at New Delhi, this tenth day of April, 1987, in the Hindi, Spanish and English languages, all texts being equally authentic.

[Signed]

CARLOS FERNANDEZ ESPESO
Ambassador of Spain
For the Government
of Spain

[Signed]

S. S. SIDHU
Secretary
For the Government
of the Republic of India

ANNEX

SECTION I

The airline designated by the Government of the Republic of India shall be entitled to operate air services in both directions on the routes specified in this Section and to land for traffic purposes in the territory of Spain at the points therein specified:

<i>Points of origin</i>	<i>Intermediate point</i>	<i>Points in Spain</i>	<i>Points beyond</i>
Points in India	To be agreed upon between the aeronautical authorities of both Contracting Parties	Madrid	One point in Central or South America of India's choice

SECTION II

The airline designated by the Government of Spain shall be entitled to operate air services in both directions on the routes specified in this Section and to land for traffic purposes in the territory of India at the points therein specified:

<i>Points of origin</i>	<i>Intermediate point</i>	<i>Points in India</i>	<i>Points beyond</i>
Points in Spain	To be agreed upon between the aeronautical authorities of both Contracting Parties	Bombay	Tokyo or any other point in East Asia of Spain's choice

NOTES. (1) The designated airline(s) may change or omit any one or more of the intermediate or beyond point(s) on the routes given in Schedules I and II above provided that the departure point of the service(s) is located in the territory of the Contracting Party which has designated the airline.

(2) The schedules, including frequencies, of the operation of the agreed air services shall be submitted by the designated airlines to the aeronautical authorities of both Contracting Parties for approval at least thirty (30) days prior to their entry into force.