

AVIATION

Transport Services

Agreement Between the
UNITED STATES OF AMERICA
and the PHILIPPINES

Amending the Agreement of
September 16, 1982, as Amended

Effected by Exchange of Notes
Signed at Washington April 24, 1989



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“. . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

PHILIPPINES

Aviation: Transport Services

*Agreement amending the agreement of September 16, 1982,
amended.*

Effected by exchange of notes

Signed at Washington April 24, 1989;

Entered into force April 24, 1989.

The Secretary of State to the Philippine Ambassador

DEPARTMENT OF STATE
WASHINGTON
April 24, 1989

Excellency:

I have the honor to refer to the civil aviation consultations held between our two Governments on September 28-October 1 and November 8-10, 1988; to the Memorandum of Understanding agreed *ad referendum* by the two delegations and attached as Annex 1 to this note; and to the Air Transport Agreement between the United States and the Philippines, effected by exchange of notes dated September 16, 1982, as amended ("the Agreement").¹

I have the honor to propose that the Agreement be further amended in accordance with the provisions contained in Annex 1 to this note. The amendment of November 23, 1983, and January 23, 1984, and the amendment of September 5 and October 31, 1985, and the reservations to the Agreement contained therein shall be superseded upon the entry into force of this agreement. The amendment of May 29, 1987, and January 13, 1988, concerning aviation security shall remain in force for the duration of the Air Transport Agreement and is reproduced as Article IV of the Memorandum of Understanding contained in Annex 1 for ease of reference.

If this proposal is acceptable to the Government of the Republic of the Philippines, I have the further honor to propose that this note and the note of the Government of the Republic of the Philippines in reply shall constitute an agreement between the two governments which shall enter into force on the date of the note of the Government of the Republic of the Philippines and shall remain in force through September 30, 1996.

His Excellency

Emmanuel N. Pelaez,

Ambassador of the Philippines.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

Eugene J. McAllister

Enclosure:

Annex I: Memorandum of Understanding

ANNEX I
MEMORANDUM OF UNDERSTANDING

The Government of the United States of America and the Government of the Republic of the Philippines have agreed upon the following reservations, modifications and clarifications to the Air Transport Agreement effected by the Exchange of Notes dated September 16, 1982. The reservations and modifications will be in effect until September 30, 1996.

The provisions of this Memorandum will supersede all previous reservations and include the text of the amendments to the Article 12 (Pricing), Article 7 (Aviation Security) and Article 4 (Revocation of Authorization).

I. Capacity, Frequencies and Routes

1. Operation on Routes 1 and 2

Notwithstanding paragraph (3) of Article 11 of the Agreement, the designated airlines of each Party shall have the right to operate:

(A) on Route 1, until September 30, 1996, only narrow bodied aircraft:

(B) on Route 2:

– until September 30, 1990: a total of 20 combination roundtrip frequencies per week;

– from October 1, 1990 until September 30, 1991: a total of 23 combination roundtrip frequencies per week, which includes one additional frequency to be operated by each of the designated U.S. carriers on Route 2;

– from October 1, 1991 until September 30, 1993: a total of 26 combination roundtrip frequencies per week, which includes one additional frequency to be operated by each of the designated U.S. carriers on Route 2; and

– from October 1, 1993 to September 30, 1996: a total of 28 combination roundtrip frequencies per week.

Each Party shall have the right to allocate or reallocate authorized frequencies among its designated carriers.

2. Routes

(A) Notwithstanding Section 1 B of Annex I to the Agreement, until September 30, 1996, the designated airline or airlines of the Philippines shall, on Philippine Route 2, have the right:

(i) to serve Honolulu, San Francisco, Los Angeles and Chicago;

(ii) to serve up to an additional four U.S. points provided a stop is first made at one of the points referred to in (A) (i) above;

(iii) from October 1, 1991 to serve, at the option of any designated airline of the Philippines, one point selected by such airline under (A) (ii) above on a non-stop basis; and

(iv) from October 1, 1993, at the option of any designated airline of the Philippines, to serve an additional point selected by such airline under (A) (ii) above on a non-stop basis.

(B) Notwithstanding Section 1 B of Annex I to the Agreement, until September 30, 1996, the Government of the Philippines may unilaterally substitute on a one-time basis another U.S. point:

(i) for one of the points in (A) (i) above; and

(ii) for each of the points under (A) (iii) and (A) (iv) above.

(C) It is expressly understood and agreed, however, that the Government of the Philippines may freely change any or all of the points under (A) (ii) any number of times except the U.S. points under (A) (iii) and (iv) which the airline or airlines of the Philippines may have chosen to serve on a non-stop basis. Substitutions may be made upon sixty days' prior notice to the Government of the United States.

(D) Until September 30, 1996, authorizations to serve any of the points selected under (A) (ii), (iii) or (iv) will be granted by the Government of the United States initially for a period of two years; such authorizations will be renewed in additional two-year increments until the expiration of this Memorandum.

(E) Pursuant to Article 2 of the Agreement, the exercise of a stop in the United States for non-traffic purposes by the designated airline or airlines of the Philippines will be allowed by the Government of the United States. The exercise of this right will have no bearing on the provisions of paragraphs (A), (B) and (C) above.

(F) Pursuant to Annex I, Section 1 B 2 of the Agreement, the designated airline or airlines of the Philippines may operate via any number of intermediate points outside the United States, of their choice, and to three countries beyond the United States (to be selected by the Government of the Philippines) subject to the provisions on frequencies under Paragraph I 1 (B) above and on service via Japan under paragraph (G) below.

(G) Notwithstanding any of the provisions of this Memorandum, if a designated airline of the Philippines operates six or more scheduled air services to or from

the United States via Japan prior to October 1, 1996, these reservations and modifications to the Agreement shall terminate, and all provisions of the Air Transport Agreement and its Annexes shall become effective immediately.

II. *Designations and Operating Permits*

1. *Designations*

(A) Notwithstanding paragraph (1) of Article 3 of the Agreement, until September 30, 1996, each Party shall designate no more than three airlines to operate on Route 2 and one airline on Route 3.

(B) It is agreed that any successor airline to be designated by the Government of the United States on Route 1 shall be a Pacific regional airline which does not operate scheduled air service between Saipan, Palau, or Guam, on the one hand, and nonstop to Hawaii and/or to the U.S. Mainland, on the other.

2. *Operating Permits*

(A) The Government of the Philippines shall issue an operating permit to Continental Airlines on Route 2, and an operating permit in the name of Continental/Air Micronesia on Route 1. It is agreed that the issuance of an operating permit on Route 1 in the name of Continental/Air Micronesia does not in any way accord independent operating authority to Continental Airlines on Route 1. Except as provided in paragraph (B) of this section, the above described operating permits shall be under terms and conditions similar to those issued to other designated airlines of the United States.

(B) The operating permit to be issued in the name of Continental/Air Micronesia on Route 1 shall contain the following specific limitations:

(i) Continental Airlines, Air Micronesia, and Continental/Air Micronesia shall not advertise, sell, or promote on-line, or interline service by each of them or among themselves between the Philippines and Hawaii and the U.S. Mainland via Guam, Palau, and/or Saipan; and

(ii) The flights or frequencies operated by Continental/Air Micronesia on Route 1, shall not be operated, advertised, promoted, published or sold as Continental Airlines' flights or frequencies.

III. *Pricing*

The text of Article 12 of the Air Transport Agreement (Pricing) as amended by the Memorandum of Consultation of July 9, 1982, and which entered into force on September 16, 1982, is reproduced below:

*ARTICLE 12**Pricing*

(1) Subject to the provisions of this Article, each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Neither Party shall take unilateral action to prevent the inauguration or continuation of any price proposed or charged by the airlines of either Party for international air transportation between the territories of the Parties unless such action is in accordance with the provisions of this Article. Intervention by the Parties shall be limited to:

- (a) protection of consumers from discriminatory prices or practices or prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- (b) protection of airlines from predatory prices that are artificially low or uneconomic.

(2) Each Party may require prior notification to or filing with its aeronautical authorities of prices proposed to be charged by airlines of the other Party to or from its territory. Notification or filing by the airlines of both Parties may be required no more than 60 days before the proposed date of effectiveness. In individual cases, notification or filings may be permitted on shorter notice than normally required.

(3) (a) If either Party is dissatisfied with any other price proposed or charged by an airline of the other Party for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for its dissatisfaction. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Party within 30 days of receiving the notification or filing of the price. If the Party presenting a notice of dissatisfaction does not require consultations, the price shall go into effect as filed unless a Party disapproves such a price pursuant to its rights under paragraph 6(b) of this Article. If the notifying Party requests consultations, such consultations shall be held as soon as possible, and in no event later than 30 days after receipt of the request. If the notified Party fails to agree to consult within the prescribed time frame, the dissatisfied party has the right to defer the implementation of the proposed price.

(b) If a Party is dissatisfied with any other price proposed or charged by an airline of the other Party for international air transportation between the territory of the first Party and a third country, it shall notify the other Party of the reasons for its dissatisfaction within 30 days of receiving notification of filing

of the price. In this particular case, the notifying party may unilaterally disapprove the price proposed or charged by the airline of the other Party. However, with respect to matters arising pursuant to the provisions of paragraph 5(b) of this Article, either Party may request consultations which shall be held as soon as possible, and in no event later than 30 days after receipt of the request.

(c) If either Party is dissatisfied with any price proposed or charged by an airline of a third country for international air transportation between the territories of the Parties, it shall notify the other Party of the reasons for the dissatisfaction within 30 days of receiving notification or filing of the price. In the case of proposed price leadership by a third party airline, the notifying Party may unilaterally disapprove the price proposed or charged by the third country airline.

(4) The consultations referred to in this Article may be formal or informal, and may be effected through a telephonic exchange of views between the two Parties (later confirmed in a written communication) or by a written exchange of views transmitted by letter, cable, telegram, diplomatic note or other written means. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall promptly carry out the terms of that agreement. If the Parties fail to reach such agreement, the price shall go into effect unless a Party disapproves such price pursuant to its route rights under paragraph 6(b) of this Article.

(5) Each Party shall allow:

(a) any airline of either Party to meet a more competitive price proposed or charged in the marketplace for international air transportation between the territories of the Parties;

(b) any airline of one Party to meet a lower or more competitive price proposed or charged in the marketplace for international air transportation between the territory of the other Party and a third country; and

(c) any airline of a third country to meet a lower or more competitive price proposed or charged in the marketplace for international air transportation between the territories of the Parties provided that the third country has granted reciprocal rights to the airlines of both Parties.

As used in this Article, the term "meet" means the right to establish on a timely basis, using such expedited procedures as may be necessary, an identical or similar price on a direct, interline or intra-line basis, notwithstanding differences relating to distance, routing, roundtrip requirements, connections, type or conditions of service including aircraft configuration or type, or such price through a combination of prices:

(6) With respect to unilateral action by a Party to prevent the inauguration or continuation of any passenger price proposed or charged by the airlines of either Party for international air transportation between the territories of the Parties:

- (a) Neither party may take such action if the price is equal to or greater than 80 percent of the appropriate index fare level as defined in Annex II;
- (b) Either Party may take such action provided that the price is less than 80 percent of the appropriate index fare level, but only with respect to traffic for which the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory.

(7) Neither Party may take unilateral action to prevent the inauguration or continuation of a cargo price proposed or charged by an airline of either Party for transportation between the territories of the Parties.

IV. *Aviation Security*

The text of an addition to Article 4 (Revocation of Authorization) and the text of Article 7 (Aviation Security), as amended by the Exchange of Notes dated May 29, 1987, and January 13, 1988, are reproduced below:

1. Article 4 paragraph 3: (3) This Article does not affect either Party's rights or obligations under Article 7.

2. *ARTICLE 7 Aviation Security*

(1) In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against unlawful interference forms an integral part of this agreement.

(2) The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.

(3) The Parties shall act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and the Convention for Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.¹

¹ TIAS 6768, 7192, 7570; 20 UST 2941; 22 UST 1641; 24 UST 564.

(4) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as annexes to the Convention on International Civil Aviation;¹ they shall require that operators of aircraft of their registry or operators who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

(5) Each Party agrees to observe the security provisions required by the other Party for entry into the territory of that other Party and to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items as well as cargo and aircraft stores prior to and during boarding or loading. In case either Party proposes to strengthen the security measures required, both Parties agree to consult expeditiously upon request as how these measures will be implemented. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.

(6) When an incident or threat of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such an incident or threat thereof.

(7) When a Party has reasonable grounds to believe that that other Party has departed from the aviation security provisions of this article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request will constitute grounds to withhold, revoke, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

V. *Change of Gauge*

Without prejudice to either Party's position with respect to the issue of change of gauge, and without creating a precedent or in any way intending it to be construed as a practice between the Parties:

1. The designated airlines of either side may change gauge, in third countries on an authorized Route, provided:

(A) for flights outbound from the homeland, onward transportation from the point of change of gauge is performed by a single flight having the same flight

¹ TIAS 1591; 61 Stat. 1180.

number with an aircraft having a capacity not more than the aircraft arriving at the change of gauge point;

(B) for flights inbound to the homeland, transportation to the point of change of gauge is performed by a single flight with an aircraft having a capacity not more than the aircraft performing onward transportation from the point of change of gauge; and

(C) such onward transportation is a continuation of the transportation from or to the homeland of the airline.

2. The provisions of subparagraph A above shall continue for so long as this understanding, or any agreed modification, continues in effect.

VI. *Cooperative Services*

The designated airlines of the Philippines and the United States may hold out or operate services to any points specified on the Philippine or U.S. Route 2, respectively, as modified by this Memorandum, either directly or through cooperative arrangements with other airlines such as, but not limited to, code sharing, blocked space, and wet-lease arrangements, provided that each airline participating in the cooperative arrangements holds the appropriate underlying route authority to operate or hold out such services individually and that the cooperative arrangements are otherwise consistent with U.S. and Philippine law and regulations. Approval of cooperative arrangements involving third country carriers shall be on the basis of reciprocity. Neither Party shall withhold approval for such cooperative arrangements solely among the carriers of the Parties, and the application of U.S. and Philippine law and regulations will be on a uniform and non-discriminatory basis.

VII. *Review*

Delegations representing the Parties will meet periodically and at least one year prior to the expiration of this Memorandum on September 30, 1996 to review market and airline circumstances then prevailing to determine whether there is need for any mutually agreed adjustments to this Memorandum or the Agreement.

VIII. *Effect of this Memorandum on the Agreement*

Except as expressly modified by this Memorandum, the provisions of the Agreement and its Annexes, as clarified by the exchange of letters dated October 3, 1980, between Messrs. Tiansay and Ferrer, shall remain in full force and effect.

IX. *Entry into Force*

The provisions of this Memorandum will enter into force upon an exchange of diplomatic notes.

The Philippine Ambassador to the Secretary of State

EMBASSY OF THE PHILIPPINES
WASHINGTON, D. C. 20036

NO. _____

24 April 1989

I have the honor to acknowledge receipt of your Note dated 24 April 1988, which reads as follows:

[For text of U.S. note, see pp. 2-12.]

I am pleased to inform you Excellency that the understandings contained in the above-quoted Note are acceptable to my government, and that Your Excellency's Note above-quoted and this reply shall constitute an agreement between our two Governments.

Accept, Excellency, the renewed assurances of my highest consideration.

EMMANUEL N. PELAEZ

His Excellency
James Baker III
Secretary of State
Washington, D.C.