

# The Aviation Cooperation between the Koreas Preparing for the Reunification\*

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## I. Introduction

On 17 Sep. 1992, representatives of the respective governments of the two Koreas signed the Agreement on Reconciliation, Non-Aggression, Exchange and Cooperation between the Republic of Korea (ROK) and the Democratic People's Republic of Korea (DPRK) (hereinafter referred to as "Agreement"). At that time, the atmosphere for mutual cooperation seemed to be so good that some people made a hasty prediction that the

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\* The contents contained in this paper are the views and opinions of the author, and do not necessarily represent government policy.

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two Koreas would be reunited sooner rather than later. Actually Para. 3 of Article 1 of the Agreement stipulates that the two Koreas shall try to establish an air route between Kimpo and Soonan as the exchange and cooperation continue and military confrontation is diluted. Of course there are numerous items of cooperation and exchange other than aviation cooperation in that Agreement. Since then no substantial measures to implement that agreement have been taken by either party

In the civil aviation field, there have been intermittent and indirect dialogues between the Koreas through ICAO's intermediary role over the past couple of decades, mainly regarding the establishment of ATS route passing through FIRs of the respective country. The continued stubbornness of DPRK to avoid any direct contact with ROK has prevented the two Koreas from achieving any meaningful agreement between them in this area.

## II. FIR and ATS route

Article 1 of the Convention on International Civil Aviation (hereinafter referred to as "the Convention") stipulates that the contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory<sup>1)</sup>. And the Convention primarily deals with civil aviation issues relating to the airspace over the territory of a Contracting State.<sup>2)</sup> As the airspace can be only delineated over territorial land and waters<sup>3)</sup>, the territory is a key concept in the international civil aviation.

For various reasons and purposes, the jurisdiction over the airspace is

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1) The territory of a State is deemed to include the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State. (Article 2 of the Convention)

2) Articles 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 24, 25, 27, 28, 36 of the Convention.

3) 12 NM is the internationally established width of the territorial waters.

extended to certain areas over the high seas beyond the airspace over the territory. Limited Identification Zone<sup>4</sup>), ADIZ (Air Defense Identification Zone<sup>5</sup>), and FIR (Flight Information Region) are such examples of extended areas. Those extended airspace over the high seas, particularly FIR is mainly dealt with through Annex to the Convention.<sup>6</sup>) A similar analogy is found sea, which extends to the high seas beyond territorial waters. Exclusive Economic Zone (EEZ) and Continental shelf belong to such examples.

FIR, including the airspace over the territory, is the most important airspace concept for its wide range of implications regarding the overspace of the adjacent State. It is defined as "an airspace of defined dimensions within which flight information service and alerting service are provided".<sup>7</sup>)

FIR is established, because of the actual needs to provide air traffic services to aircraft in airspace over high seas. The jurisdiction and responsibilities of the adjacent State within FIR are to provide air traffic services (including flight information and alerting service) to aircraft as long as it is within FIR. In addition, the adjacent State is responsible for search and rescue within FIR. Normally the region for ATS (air traffic services) and SAR (search and rescue) is duplicate.

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4) The zone where special or enforced attention by the military authorities is not needed for the defense purpose under normal circumstances. Therefore, when in the state of emergency, enforced alert is resumed.

5) The zone which the adjacent State unilaterally set for the defense purpose. It is not in force vis-a-vis other States in respect of its legality.

6) Article 12 of the Convention stipulates that "Over the high seas, the rules in force shall be those established under this Convention." In order to implement this provision, ICAO shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures (SARPs) dealing with rules of the air and air traffic control practices. In practice, Annex 2 (Rules of the Air), and 11 (Air Traffic Services) mainly deal with the relevant SARPs for this purpose.

7) Annex 11 (Air Traffic Services) to the Convention on International Civil Aviation.

ATS route, on which air traffic control unit provides air traffic services within the FIR under its jurisdiction, is also established, made public through AIP (Aeronautical Information Publication), and made available internationally for the use by aircraft who wants to use it. The objectives of providing air traffic services are to prevent collisions between aircraft, to prevent collision between aircraft on the maneuvering area and obstructions on that area, to expedite and maintain an orderly flow of air traffic, to provide advice and information useful for the safe and efficient conduct of flights, and to notify a appropriate organization regarding aircraft in need of search and rescue aid, and assist such organizations as required.<sup>8)</sup>

Even though the airspace over territory and FIR are very different from each other, States regard both as the same in actual sense. Whereas air traffic control unit requires a permission to the aircraft which is going to enter the airspace over the territory, the said unit only requires the aircraft which is going to enter FIR to submit a flight plan. In practice, there would be no substantial difference between the airspace over territory and FIR in respect of the treatment of the aircraft, because in case that air traffic control unit does not accept the flight plan, the safety of operation would not be guaranteed within FIR.

Adjacent States mutually decide the border of FIRs. Under normal circumstance, the two States draw the middle line of the two territories. However, adjacent States sometimes engage in the negotiations to draw the border between the FIRs, for example under the circumstances which one of air traffic control units lacks sufficient ability to handle traffic within its control, or the adjacent State has the economic difficulty providing the relevant services.

The procedures for establishing a FIR are as follows: an agreement

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8) Article 2.2 of Chapter 2 of the Annex 11 to the Convention.

between adjacent States, notification of the agreement to the ICAO Regional Office, Report of the agreement to the ICAO Council for approval, and promulgation through AIP. Those portions of the airspace over the high seas or in airspace of undetermined sovereignty where air traffic services will be provided shall be determined on the basis of regional air navigation agreements.<sup>9)</sup> When the adjustment of existing FIR is needed, the interested States can ask other States, if necessary through ICAO, to do so. ICAO is obliged to accommodate the positions of interested parties. The procedures for establishing ATS route are basically the same as those for FIR.

There have been many cases in many parts of the world of the border disputes regarding FIRs. India and Bangladesh finally agreed to draw the middle line between their territories after a prolonged dispute. In the case of Singapore and Indonesia, they resolved FIR border issue without creating noise. Hongkong has been refusing the return of a portion of FIR to Vietnam.

### III. ATS Route between Tokyo and Beijing

There has been a long pursuit of establishing a direct ATS route between Tokyo and Beijing since the late 1970s. Several players have been involved in this matter from the beginning, including the four States (i.e. ROK, DPRK, Japan and China), IATA (International Air Transport Association) representing the interests of the carriers who would like to use a shortcut between Tokyo and Beijing, and ICAO, responsible for coordinating the positions of the four States concerned.

A593, a corridor airway passing through the southern part of Taegu, FIR was established in 1983 in accordance with an agreement between

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<sup>9)</sup> Article 2.1.2 of Chapter 2 of the Annex 11 to the Convention.

South Korea, China and Japan and ICAO, in order to make an airway between Japan and China. Because of the absence of the diplomatic relationship between ROK and China, they agreed that air traffic services shall be provided by the air traffic control agencies of Japan and China, making use of a segment of Taegu FIR.

This issue has been virtually resolved, as the designated airlines of Korea and China commenced operation using a direct route between Seoul and Beijing in Dec. 1994 some time after the two countries reached an air services agreement in June 1994. This agreement was reached after a series of bilateral negotiations which had been conducted for three and a half years.

The ROK's position with regard to this matter is very clear and simple. ROK is very open-minded and liberal in that it would allow any foreign carriers, which are interested in using this route, to do so unless such flight is restricted by other factors (for example, China's air traffic management capacity to deal with traffic), and it would not oppose foreign carriers of overflying the territory of DPRK.

Dr. Assad Kotaite, President of the ICAO Council, has tried to play a role of mediator among the four countries concerned since the early 1980s.<sup>10)</sup> However, it would be very difficult to say that ICAO's efforts brought forth substantial fruits to the solution of this matter. ICAO may not have basically understood the political nature the situation regarding this issue. Moreover, it has seemed that the complex and delicate nature

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10) We are not sure if Dr. Kotaite, who represents the ICAO Council, was properly mandated from any ICAO bodies including Assembly regarding this issue. Or has he been carrying out this job as a personal capacity? Even though, in accordance with Article 54 of the Convention, the Council shall .....(n) Consider any matter relating to the Convention which any contracting State refer to it, it is not clear whether four or any State concerned referred this matter to the ICAO Council.

of this matter, which seemingly stems from the political relations among the four countries concerned, in particular between the two Koreas, prevented ICAO from providing any meaningful solutions.

This has been well manifested throughout many of ICAO's initiatives and the developments thereof up to now. In 1981, Dr. Kotaite visited DPRK and agreed, with its authorities, to the Memorandum of Understanding which encouraged to establish a direct route between Tokyo and Pyongyang. ROK reacted to this surprising initiative with a counterproposal that the two Koreas respectively establish a direct route transcending half of the Korean peninsula between Tokyo and Beijing with the same distance at the nearly same time. The political situation surrounding the Korean peninsula did not allow four countries concerned to implement the two different direct routes mainly because of the then hostile relationship between ROK and China on the one hand, and Japan and DPRK on the other hand.

In 1988, Dr. Kotaite made a new proposal that a single direct route be established passing ROK and DPRK between Tokyo and Beijing in order to implement his earlier initiative in a different way. However, his new proposal had much more difficulty being implemented compared with the former ones. He may have underestimated the political and military confrontation between the two Koreas. ROK expressed its position that both Air Traffic Control agencies of the two Koreas must conclude an agreement regarding air traffic services and install a direct speech circuit in order to ensure the safety of flight.

In the end, ICAO's initiative ended up not being realized due to ICAO's lack of understanding of the peninsula's political situation. As a result of the conclusion of the bilateral air services agreement, Korea and China established a direct route between Seoul and Beijing, not relying

upon any outside parties.

Japan and China are usually in a position to be allured to use the situation of a divided Korean peninsula in their favor. Moreover, they would not object to ICAO's initiative as long as it would not have any harmful effect on their interests. Furthermore, as the two Koreas have always remained competitive against each other, each generally attempts to save face vis-a-vis international organizations in order to enhance its own image, or at least not to lose its reputation. Naturally the resolution of this issue has long been delayed because of the political situation surrounding the Korean Peninsula and the cautious diplomacy of the four countries concerned.

We have learned a very important lesson from this experience. ICAO is not a political body, but mainly a body dealing with technical matters, which would not usually involve political considerations. In this respect, ICAO committed an error in that they intervened in a basically political matter.

#### **IV. DPRK's Recent Gesture Regarding its Airspace**

In December 1994, the Director General of the General Civil Aviation Administration of Civil Aviation (GACA) of DPRK, made an announcement that DPRK was willing to open its airspace to all civil aircraft of all States and that it would join the International Air Services Transit Agreement (IATA). As a follow-up, GACA accepted the IATA and became a party thereto as of 8 Feb. 1995.

The background of this apparently bold gesture may be that they became frustrated at the situation where most foreign carriers would use the newly established Seoul-Beijing route between Tokyo and Beijing as a result of an agreement between ROK and China, avoiding overflight of



North Korean airspace.

The ROK's position regarding this matter is very open-minded and just to the international aviation community as already shown in the case of ATS route between Tokyo and Beijing, in that it would welcome any foreign carriers of using this route, except where other factors on the part of China make it impossible, and it would not oppose the establishment of a direct air route between Pyongyang and Tokyo.

Now the question is whether DPRK is ready to allow aircraft of the ROK to overfly its territory when applied. In spite of its announcement, no country has been permitted until now to fly into DPRK airspace except the countries such as China and Russia, the aircraft of which had already flown even before the DPRK authorities expressed their willingness to open airspace.

More recently two U.S. carriers, namely Delta and Northwest, sought permission to fly through the Flight Information Region (FIR) of DPRK, to that of ROK after they had reportedly gotten a permission from the DPRK authorities. The ROK Aeronautical Authorities have not allowed the U.S. carriers to do so because the relevant ICAO regulation requires that both ATC authorities conclude an agreement on the cooperation regarding air traffic services, and install a direct speech circuit (telephone links) between them. Moreover DPRK authorities must permit the overflight in nondiscriminatory manner to every foreign carriers including ROK carriers.

Therefore the ROK's principles regarding ATS route have remained the same. First, the safety of flight shall be guaranteed by all means and cannot be compromised by other factors. Second, operation on ATS route within and/or through FIRs shall be allowed to all civil aircraft of

all States on the basis of the principle of non-discrimination.

## V. Other Suggestions in Preparing for the Reunification of the Korean Peninsula

The aviation relationship between the two Koreas should and cannot but go in tandem with the overall development of the North-South relationship. However, the prospects of the overall relationship between the Koreas are not likely to be improved in the near future.

Nevertheless, the two Koreas must restore mutual trust and accumulate experience of exchange and cooperation step by step in preparation for the reunification of the peninsula. The cooperation in the civil aviation field between the two Koreas shall be conducted on a gradual basis.

First, the aircraft belonging to either Korea should be allowed to overfly the airspace of the other. As mentioned in the cases of foreign carriers' overflight of FIRs of the two Koreas, an agreement regarding the cooperation on air traffic services between the relevant authorities (Taegu ARTCC and Pyongyang ACC) should be reached, and a direct speech circuit (telephone links) should be installed prior to actual operation in order to ensure the safety of such operations.

Such cooperation between both ATC authorities of the two Koreas could pave the way to shortening the existing air routes between ROK and other countries such as Russia, China, and the United States, by operating through the FIR of DPRK.

Then charter flights on a non-scheduled basis should be allowed to the operators of the two Koreas. Once operators have accumulated experience of charter flights, they will be able to try scheduled air services. Normally an air services agreement is needed in order for one

party to allow a carrier or carriers to commence scheduled services.

Therefore, mutual trust should be restored to conclude this kind of agreement. Both Aeronautical Authorities of the two Koreas would determine the points to be served, capacity and frequency, and the other related matters. Possible points to be served would include Seoul, Pusan, Kwangju, Taegu, Cheju, etc. of South Korea, and Pyongyang, Shineuju, Chongjin, Wonsan, etc. of DPRK. Another possibility, if both Aeronautical Authorities could not reach an agreement for some reasons, the airlines of both Koreas could make some form of commercial agreement which shall be subject to government approval.

Even before scheduled or non-scheduled services are introduced, aviation cooperation can be implemented on a small scale. For example, aviation business to transport passengers between Kumkang and Sorak Mountain would be able to facilitate mutual exchange and understanding. The unification of terminology used in civil aviation is also another important task. Some training programs for aviation personnel may be useful tools in helping each other to better understand the other.

In sum, the aviation cooperation between the two Koreas can be conducted in various forms until the two Koreas are reunited. I would like to emphasize that aviation cooperation is a very important means to shorten the journey to the reunification of the Korean Peninsula.

## VI. Conclusion

I firmly believe that aviation cooperation in many forms between the Koreas until the reunification of the peninsula would facilitate the exchange of people and goods, thereby restoring mutual trust and ties.

Before both Koreas could have a full-scale cooperation such as having scheduled services, there could be many ways and means to encourage

cooperation in the civil aviation field. For example, the two governments can allow people, from government or the private sector, involved in civil aviation to meet each other, on such occasions as seminars, workshops and informal meetings. Airlines can reach commercial agreements before formal consultations between the governments take place. Lastly, I would like to urge the DPRK authorities to come to the table for dialogue and discuss what both Aeronautical Authorities can do to promote aviation cooperation until this peninsula is reunited.

## 국 문 요 약

최근 남북관계는 대북 쌀 지원 문제와 관련한 북한 측의 태도와 이후의 무장공비 남파 등으로 악화되어 있다. 북한 측을 대화창구로 유도하고 남북 경협 등을 통하여 남북한 관계를 개선하려는 우리측의 노력은 아무런 성과를 거두고 있지 못한 것 같다. 남북한 항공관계의 진전도 전반적인 남북관계에서만 고려가 가능한 실정으로 있다.

최근 언론매체를 통하여 북한당국이 미국 항공사(델타, 노스웨스트)의 평양비행정보구역 통과 우리 영공으로의 비행을 허가하였으며, 이에 대하여 우리측은 우선 남북한 관계당국간 관계협정이 체결되고, 동 향로를 이용한 비행은 우리 항공사를 포함한 모든 항공사에 비차별적으로 적용되어야 하는 것을 전제로 운항을 허가할 수 있음을 밝혔다.

이것은 북한당국이 '95년 12월에 자국영공을 전세계에 개방하겠다고 밝힌 후 진전된 일련의 사태 발전의 일부분이다. 북한은 '95.2월 초 국제영공통과 업무협정에 가입하였다. 외국항공기에 의한 북한의 영공통과비행은 이 협정에 가입하였다고 자동적으로 허가되는 것은 아니며 사안별로 허가되어야 한다는 점에 유의할 필요가 있다. 북한이 이러한 영공개방의사를 밝힌 것은 오랫동안 진행되어 왔던 일본/중국간 직선항로 문제에 있어서, 한국과 중국간의 합의로 서울/북경간에 직선항로를 설정하게 됨으로써 사실상 문제가 해결되었고, 따라서 향후 외국항공사가 한반도의 남쪽만을 통과하여 동경/북경간을 운항하게 되는 가능성에 대하여 당혹감을 가지고 있기 때문이라고 보여진다.

한편 일본/중국간 직선항로 설정문제는 이것이 운항시간과 연료를 절약하게 된다는 점에서 IATA, ICAO 등 국제기구에 의하여 1980년대 초반부터 추구되어져 왔다. 그러나 남북간의 대립 등 복잡한 한반도 정세, 남북한을 포함한 일본, 중국 등 이해관계 당사국의 ICAO에 대한 형식적이고 외교적인 태도 등으로 인하여 아무런 해결책없이 십수년이 지나가게 되었다. 심지어 ICAO는 '88년 휴전선을 통과하는 단일항로안까지 제시하였는 바 이것은 한반도 정세에 대한 뚜렷한 이해가 없었던 때문이라고 생각된다.

'95.9.17. “남북간 화해, 불가침, 교류 및 협력에 관한 합의서” 가 서명되었다. 동 합의서에서는 남북간 군사적 대치 상태가 해소되는 상황에 따라

김포 및 순안비행장간 직항로를 개설한다고 되어있다. 현재까지 항공부문에서는 이렇다할 교류, 협력 실적은 없었으나 향후 남북관계의 진전에 따라 이 부문에서의 협력사업은 많다고 생각된다. 우선 위에서 언급한 남북한 및 각국 항공기가 남북의 비행정보구역을 통과 비행할 수 있도록 관계협정을 체결하고 필요할 경우 기술인력을 훈련하는데 상호 협조할 수 있다. 또한 설악산과 금강산을 연결하는 관광코스를 개발하여 항공기를 운항할 수 있다. 다음 남북의 주요 지점간에 전세기를 운항하고, 수요가 성숙할 경우 주요 도시 (남: 서울, 부산, 대구, 광주, 제주 등, 북: 평양, 신의주, 청진, 원산 등)를 연결하는 정기편을 개설할 수 있을 것이다. 이밖에 항공사간 영업사항에 관한 협력을 기대해 볼 수 있다. 남북간 항공협력은 한반도의 통일을 앞당길 수 있는 좋은 수단으로 작용할 수 있다.