

No. 2598

**CUBA
and
PORTUGAL**

**Agreement (with annex and protocol) for the establishment
of air services between and beyond their respective
territories. Signed at Lisbon, on 26 June 1951**

Official texts: Spanish and Portuguese.

Registered by the International Civil Aviation Organization on 30 June 1954.

**CUBA
et
PORTUGAL**

**Accord (avec annexe et protocole) relatif à l'établissement
de services aériens entre leurs territoires respectifs et
au-delà. Signé à Lisbonne, le 26 juin 1951**

Textes officiels espagnol et portugais.

Enregistré par l'Organisation de l'aviation civile internationale le 30 juin 1954.

[TRANSLATION — TRADUCTION]

No. 2598. AGREEMENT¹ BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE REPUBLIC OF CUBA FOR THE ESTABLISHMENT OF AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES. SIGNED AT LISBON, ON 26 JUNE 1951

The Government of Portugal and the Government of the Republic of Cuba, desiring to conclude an agreement for the purpose of establishing air services between and beyond the territories of Portugal and Cuba as soon as possible, have to that end appointed their representatives, who, being duly authorized by their respective Governments, have agreed on the following provisions :

Article I

The Contracting Parties grant each other the rights specified in the Annex² to this Agreement for the purpose of establishing the air services described therein and hereinafter referred to as the "agreed services."

Article II

(1) The agreed services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, but not before

(a) the Contracting Party to whom the rights are granted has designated an airline or airlines for the specified route or routes, and

(b) the Contracting Party granting the rights has given the appropriate operating permission to the airline or airlines so designated, which it shall do without delay, subject to paragraph (2) of this article and to article VII.

(2) Each of the designated airlines may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by those authorities to the operation of commercial air services.

¹ Came into force on 10 February 1953, by the exchange of the instruments of ratification at Havana, in accordance with article XIV.

² See p. 144 of this volume.

Article III

Any operating rights previously granted by either Contracting Party to a third party (States or airlines) shall continue in force according to their terms.

Article IV

(1) The charges which either of the Contracting Parties may impose or permit to be imposed on the designated airline or airlines of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(2) Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of either Contracting Party by or on behalf of an airline designated by the other Contracting Party and intended solely for use by the aircraft of such airline shall be accorded, with respect to customs duties, inspection fees or similar charges imposed by the former Contracting Party, treatment not less favourable than that granted to national airlines (or to the airline of the most-favoured nation) engaged in similar international services.

(3) Aircraft operating on the agreed services of one Contracting Party and fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board such aircraft shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees, and similar duties or charges even though such supplies be used by such aircraft on flights in that territory.

(4) Goods exempted under the provisions of the foregoing paragraph may be unloaded only with the approval of the customs authorities concerned and shall remain under customs supervision until re-exported.

Article V

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by either Contracting Party and still valid shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency or licences issued to its own nationals by the other Contracting Party or by any other State.

Article VI

(1) The laws and regulations of either Contracting Party concerning the admission to or departure from its territory of aircraft engaged in international air navigation of such aircraft while within its territory shall apply to aircraft of the designated airline or airlines of the other Contracting Party.

(2) The laws and regulations of either Contracting Party relating to the admission or departure from its territory of passengers, crew or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall apply to the passengers, crew or cargo of aircraft of the designated airline or airlines of the other Contracting Party while within the territory of the first Contracting Party.

Article VII

Each Contracting Party reserves the right to withhold or revoke, by giving thirty days' notice thereof to the other Contracting Party, the rights specified in the Annex to this Agreement with respect to an airline designated by the latter Contracting Party, in any case where it is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the Contracting Party which has designated the said airline, or in case of failure by the said airline to comply with the laws and regulations referred to in article VI of this Agreement or otherwise to fulfil the conditions under which the rights were granted in accordance with this Agreement and its Annex.

Article VIII

This Agreement shall be registered with the Council of the International Civil Aviation Organization established under the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944,¹ in accordance with the provisions of article 83 of that Convention.

Article IX

If either of the Contracting Parties considers it desirable to modify the routes or the conditions specified in the Annex to this Agreement, it may request consultation between the aeronautical authorities of the two Contracting Parties, such consultation to take place within a period of sixty days from the date of the request. Any modification of the routes or of the Annex agreed upon between the said authorities shall come into effect when it has been confirmed by an exchange of diplomatic notes.

¹ United Nations, *Treaty Series*, Vol. 15, p. 295; Vol. 26, p. 420; Vol. 32, p. 402; Vol. 33, p. 352; Vol. 44, p. 346; Vol. 51, p. 336; Vol. 139, p. 469, and Vol. 178, p. 418.

Article X

Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement or of its Annex shall be referred for decision to the Council of the International Civil Aviation Organization, unless the Contracting Parties agree to settle the dispute by reference to an arbitral tribunal appointed by agreement between them, or to any other body or organ. The Contracting Parties undertake to comply with the decision given.

Article XI

For the purposes of this Agreement and its Annex, unless the context otherwise requires :

(a) The term "aeronautical authorities" means, in the case of Portugal, the Directorate General of Civil Aviation or any other body or organ authorized to perform the functions at present exercised by the Directorate General or similar functions, and, in the case of Cuba, the National Transport Commission through the Civil Aviation Board or any other body or organ authorized to perform the functions at present exercised by the said Commission or similar functions.

(b) The term "designated airline" means any airline which the aeronautical authorities of one Contracting Party have notified in writing to the aeronautical authorities of the other Contracting Party as being the airline designated by them in conformity with article II of this Agreement for the routes specified in such notification.

(c) The term "territory" has the meaning assigned to it by article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944.

(d) The definitions contained in paragraphs (a), (b) and (d) of article 96 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944 are deemed to apply.

Article XII

Either Contracting Party may at any time give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the Council of the International Civil Aviation Organization. If such notice is given, the present Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the Council of the International Civil Aviation Organization.

Article XIII

Should the two Contracting Parties ratify or accede to a multilateral air convention, the present Agreement and its Annex shall be amended so as to conform with the provisions of the said convention as soon as it comes into force as between the two Contracting Parties.

Article XIV

(a) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Havana as soon as possible. The Agreement shall come into force immediately following the exchange of the instruments of ratification.

(b) Pending the deposit of the instruments of ratification and the definitive entry into force of this Agreement, the Contracting Parties undertake to give effect to its provisions, within the limits of their constitutional powers and on a basis of perfect reciprocity, as from the date of signature.

IN FAITH WHEREOF the undersigned Plenipotentiaries, duly authorized thereto by their respective Governments, have signed the present Agreement and have affixed thereto their seals.

DONE at Lisbon, this 26th day of June 1951, in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government of Portugal :

(Signed) Paulo CUNHA

For the Government of Cuba :

(Signed) Vidal MORALES Y CALVO
Nemesio LEDO Y SEIJO
Mario TORRES MENIER
Ulises VALDÉS LLANSÓ

A N N E X

For the purpose of operating the air services on the routes specified in the Schedules¹ of this Annex, the designated airlines of either Contracting Party shall be accorded in the territory of the other Contracting Party the use on the said routes, of airports open to international traffic and ancillary facilities, as well as rights of transit of non-traffic stops, and of commercial entry and departure for international traffic in passengers, cargo and mail, subject to the observance of the following principles :

(a) The air transport capacity provided shall bear a close relationship to traffic requirements ;

¹ See p. 150 of this volume.

(b) There shall be a fair and equal opportunity for the designated airlines of both Contracting Parties to operate the routes between their respective territories covered by this Annex.

(c) The services provided by an airline designated under this Agreement and its Annex shall have as their primary objective the provision of capacity adequate to meet traffic demands between the country to which the airline belongs and the country of ultimate destination of the traffic.

(d) In the operation by the airlines of either Contracting Party of the trunk services specified in Schedules I and II to this Annex, the interests of the airlines of the other Contracting Party shall be taken into consideration in order that the services provided by the latter on all or part of the same routes may not be unduly affected.

(e) The right to pick up and set down at a point or points on the routes specified in the Schedules to this Annex international traffic destined for or coming from third countries shall be exercised in accordance with the general principles of orderly development of air transport to which both Governments subscribe and shall be subject to the principle that capacity should be related :

(1) to traffic requirements between the country of origin and the countries of destination ;

(2) to the requirements of the economic operation of the services in question ;

(3) to the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

(f) If the whole or part of any route specified in Schedules I and II to this Annex is served by the airlines of both Contracting Parties, they may open negotiations with a view to a system of co-operative working over the said route or part thereof. Any agreement reached shall be submitted for approval to the competent aeronautical authorities of the two Parties.

(g) For the purposes of the two preceding paragraphs, the Government of the Republic of Cuba recognizes the special nature of the air services between Portugal and Brazil which shall be considered as being of the same character as the last category of services mentioned in paragraph (e) 3 of this Annex.

(h) Similarly, the Government of Portugal for its part recognizes the special nature of the air services between Cuba and the United States of America, which shall be considered as being of the same character as the last category of services mentioned in paragraph (e) 3 of this Annex.

(i) The aeronautical authorities of the Contracting Parties shall consult together periodically, and at any time at the request of either of them, to determine whether the principles set forth in this Annex are being complied with by the airlines designated by the Contracting Parties. The aeronautical authorities of each Contracting Party shall for this purpose supply to the aeronautical authorities of the other Contracting Party at their request :

(1) such traffic statistics as may be appropriate for the purpose of reviewing the frequency and capacity of the agreed services ;

(2) such periodic statements as may be reasonably required relating to the traffic carried by its airlines on the routes specified in this Annex, to, from and across the territories of the other Contracting Party, including information concerning the origin and destination of such traffic.

(j) The terms "change of gauge" means the operation of one of the agreed services by a designated airline in such a way that the section nearer to the terminal point of the route in the territory of the Contracting Party designating the airline is operated by an aircraft different in capacity from that employed on more distant sections. An airline designated by one Contracting Party may make a change of gauge at a point in the territory of the other Contracting Party on the following conditions only :

(1) that it is justified by reason of economy of operation ;

(2) that the aircraft used on the section more distant from the terminal point in the territory of the first Contracting Party is smaller in capacity than that used on the nearer section, and carries only passengers, mail and cargo coming from or destined for the aircraft of larger capacity.

(3) that the aircraft of smaller capacity operates only in connexion with the aircraft of larger capacity, for which purpose the time-tables shall be so co-ordinated that the former arrives at the point of change in time for traffic to be transferred from the smaller to the larger aircraft, or vice-versa, and its capacity shall be determined with primary reference to this purpose ;

(4) that there is an adequate volume of transit traffic ;

(5) that the provisions of paragraphs (a), (b), (c) and (e) of the present Annex shall govern all arrangements made with regard to change of gauge.

(k) The rates to be charged for the carriage of passengers and cargo by the airlines specified in the present Annex shall be agreed in the first instance between these airlines, in operating all or part of the same routes. Such agreement shall be based, where possible, on the rates fixed by the special services of the International Air Transport Association. All rates so agreed shall be subject to the approval of the Contracting Parties.

In the event of disagreement between the airlines, the Contracting Parties shall endeavour to reach agreement. Should the Contracting Parties fail to reach agreement, the matter shall be referred to arbitration as provided for in article X of the Agreement.

(1) The rates to be determined in accordance with paragraph (k) shall be fixed at fair and reasonable levels, due regard being paid to all relevant factors, such as economical operation, reasonable profit, differences in characteristics of service, including standards of speed and accommodation, and the rates charged by other airlines operating the same route.

(Signed) Paulo CUNHA

(Signed) Vidal MORALES
N. LEDO
M. TORRES MENIER
U. VALDÉS LLANSÓ

SCHEDULE I

ROUTES TO BE OPERATED BY THE AIRLINES DESIGNATED BY THE PORTUGUESE GOVERNMENT

1. Lisbon – Azores – Bermuda – a point in Cuba, with a possible extension to Mexico ; or Lisbon – Azores – Gander – a point or points in the United States of America a point in Cuba, with a possible extension to Mexico ; in both directions.
2. Lisbon – Sal – Natal and/or Paramaribo – Caracas – a point in Cuba, with a possible extension to Mexico ; in both directions.

NOTE

(a) No cabotage traffic may be carried in Cuban territory on any of the routes described above ; nevertheless, any intermediate point or points between Lisbon and Cuba may be omitted if necessary.

(b) It is understood that the right to pick up and set down international traffic in passengers, mail and cargo, granted under the terms of the Annex to the designated Portuguese airlines shall not apply to any points between Cuba and the United States of America.

(c) The Cuban authorities agree that passengers carried by the designated Portuguese airlines who break their journey at Havana may continue to the final destination indicated on the ticket with which they entered Havana, within the period of its validity, in any other aircraft of the same airline provided that it follows the same route as the aircraft in which the journey was begun.

(d) In view of the small volume of air traffic which exists at present between Cuba and Mexico, the two Governments agree that, in accordance with the provisions of paragraphs (d) and (e) of the Annex and in order that regional Cuban services between the points mentioned may not be unduly affected, the designated Portuguese airlines may not pick up or set down in Havana international traffic destined for or coming from Mexico.

(Signed) Paulo CUNHA

(Signed) Vidal MORALES
N. LEDO
M. TORRES MENIER
U. VALDÉS LLANSÓ

SCHEDULE II

ROUTES TO BE OPERATED BY THE AIRLINES DESIGNATED BY THE GOVERNMENT OF THE
REPUBLIC OF CUBA

1. From a point or points in Cuba via Nassau, Bermuda, Azores, with an intermediate or emergency stop where necessary at Gander in Newfoundland, to Lisbon, and thence to Madrid or London, or a point or points beyond in Europe ; in both directions.

2. From a point or points in Cuba, via any suitable intermediate points, to Belem (Pará), Portuguese Guinea, the Cape Verde Islands, the Canary Islands; or to Dakar in French Equatorial Africa, Lisbon and beyond; in both directions.

NOTE

(a) No cabotage traffic may be carried in Portuguese territory on any of the routes described above; nevertheless, any intermediate point or points between Cuba and Lisbon may be omitted if necessary.

(b) It is understood that the right to pick up and set down international traffic in passengers, mail and cargo, granted under the terms of the Annex to the designated Cuban airlines, shall not apply to any points between Portugal and Spain.

(c) The Portuguese authorities agree that passengers carried by the designated Cuban airlines who break their journey at Lisbon, may continue to the final destination indicated on the ticket with which they entered Lisbon, within the period of its validity, in any other aircraft of the same airline, provided that it follows the same route as the aircraft in which the journey was begun.

(d) In view of the small volume of air traffic which exists at present between Lisbon and Paris and Lisbon and London, the two Governments agree that, in accordance with the provisions of paragraphs (d) and (e) of the Annex and in order that the regional Portuguese services between the points mentioned may not be unduly affected, the designated Cuban airlines may not pick up or set down in Lisbon international air traffic destined for or coming from Paris or London.

(Signed) Paulo CUNHA

(Signed) Vidal MORALES
N. LEDO
M. TORRES MENIER
U. VALDÉS LLANSÓ

P R O T O C O L

Upon signing this day the Air Transport Agreement between the Government of Portugal and the Government of the Republic of Cuba, the signatories, duly authorized thereto, have agreed as follows :

(1) The Governments of Portugal and of the Republic of Cuba state that they consider that the following procedure should be followed in setting up an Arbitral Tribunal designated by the Contracting Parties pursuant to article X of the Agreement :

(a) The Tribunal shall consist of three arbitrators, one to be appointed by each Contracting Party and the third to be designated by agreement between the two arbitrators so appointed, it being understood that the third arbitrator shall not be a national of either Contracting Party.

(b) Upon the receipt by one Contracting Party of a diplomatic note from the other Contracting Party requesting arbitration in any dispute, each Contracting Party shall appoint its arbitrator within a period of two months. The third arbitrator shall be appointed within a further period of one month ;

(c) Should no agreement be reached on the appointment of the third arbitrator within the specified period, the President of the Council of the International Civil Aviation Organization shall be requested to designate a third arbitrator to be elected from the panel of available persons which the International Civil Aviation Organization maintains for service as arbitrators.

(1) As soon as the airlines of the two Contracting Parties begin operating the agreed services for which they were designated, the diplomatic mail of each Contracting Party shall be carried free of charge between Lisbon and Havana in both directions by the designated airline or airlines of the other Contracting Party, on a basis of reciprocity, provided that such mail does not exceed eight kilogrammes in weight. For this purpose only mail sent by the Portuguese Ministry of Foreign Affairs or the Cuban Ministry of State to their respective diplomatic mission, and mail received therefrom, shall be deemed to be diplomatic mail.

IN FAITH WHEREOF the undersigned plenipotentiaries have drafted the present Protocol which shall have the same force and value as if its provisions had been included in the text of the Agreement of which it is a part.

DONE at Lisbon, this 26th day of June 1951, in the Portuguese and Spanish languages, both texts equally authentic.

(Signed) Paulo CUNHA

(Signed) Vidal MORALES Y CALVO
Nemesio LEDO Y SEIJO
Mario TORRES MENIER
Ulises VALDÉS LLANSÓ