

No. 3070

**UNITED STATES OF AMERICA
and
CUBA**

**Air Transport Agreement (with annex). Signed at Havana,
on 26 May 1953**

Official texts : English and Spanish.

Registered by the United States of America on 20 December 1955.

**ÉTATS-UNIS D'AMÉRIQUE
et
CUBA**

**Accord relatif aux transports aériens (avec annexe). Signé à
La Havane, le 26 mai 1953**

Textes officiels anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 20 décembre 1955.

No. 3070. AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF CUBA. SIGNED AT HAVANA, ON 26 MAY 1953

The Government of the United States of America and the Government of the Republic of Cuba, desiring to conclude an Agreement for the purpose of promoting direct air communications between their respective territories, have accordingly appointed authorized representatives for this purpose, who have agreed as follows :

Article 1

For the purposes of the present Agreement, and its Annex, except where the text provides otherwise :

(A) The term "aeronautical authorities" shall mean in the case of the United States of America, the Civil Aeronautics Board and any person or agency authorized to perform the functions exercised at the present time by the Civil Aeronautics Board, and in the case of the Republic of Cuba, the Junta de Aeronáutica Civil and any person or agency authorized to perform the functions exercised at present by the said Organization.

(B) The term "designated airlines" shall mean those airlines that the aeronautical authorities of one of the contracting parties have communicated in writing to the aeronautical authorities of the other contracting party that they are the airlines that it has designated in conformity with Article 3 of the present Agreement for the routes specified in such designation.

(C) The term "territory" shall have the meaning given to it by Article 2 of the Convention on International Civil Aviation, signed at Chicago on December 7, 1944.²

(D) The definitions contained in paragraphs A, B, and D of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 shall be applied to the present Agreement.

¹ Came into force on 30 June 1953, the date on which the Government of the United States of America received notification of the ratification of the Agreement by the Government of Cuba, in accordance with article 15.

² 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 ; Vol. 178, p. 418, and Vol. 199, p. 362.

Article 2

Each contracting party grants to the other contracting party the rights specified in the Annex¹ hereto necessary for establishing the international civil air routes and services therein described, whether such services be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.

Article 3

Each of the air services so described may be placed in operation as soon as the contracting party to whom the rights have been granted by Article 2 to designate an airline or airlines for the route concerned has authorized an airline for such route, and the contracting party granting the rights shall, subject to Article 7 hereof, be bound to give the appropriate operating permission to the airline or airlines concerned ; provided that the airlines so designated may be required to qualify before the competent aeronautical authorities of the contracting party granting the rights under the laws and regulations normally applied by these authorities before being permitted to engage in the operations contemplated by this agreement ; and provided that in areas of hostilities or of military occupation, or in areas affected thereby such operations shall be subject to the approval of the competent military authorities.

Article 4

In order to prevent discriminatory practices and to assure equality of treatment, both contracting parties agree that :

(a) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control. Each of the contracting parties agrees, however, that these charges 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.

(b) Fuel, lubricating oils and spare parts introduced into the territory of one contracting party by the other contracting party or its nationals, and intended solely for use by aircraft of the airline of such contracting party shall, with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered, be accorded the same treatment as that applying to national airlines and to airlines of the most-favored-nation.

(c) The fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of one contracting party authorized

¹ See p. 86 of this volume.

to operate the routes and services described in the Annex shall, upon arriving in or leaving the territory of the other contracting party, be exempt from customs, inspection fees or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

Article 5

Certificates of airworthiness, certificates of competency and licenses 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 routes and services described in the Annex, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation. Each contracting party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another State.

Article 6

(a) The laws and regulations of one contracting party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operations and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airlines designated by the other contracting party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party.

(b) The laws and regulations of one contracting party as to the admission to 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 be complied with by or on behalf of such passengers, crew or cargo of the other contracting party upon entrance into or departure from, or while within the territory of the first party.

Article 7

Notwithstanding the provisions of Article 10 hereof, each contracting party reserves the right to withhold or revoke, after thirty (30) days prior notice to the other contracting party, the exercise of the rights specified in the Annex to this Agreement by an airline designated by the other contracting party in the event that it is not satisfied that substantial ownership and effective control of such airlines are vested in nationals of the other contracting party, or in case of failure by such airline, or the Government designating such airlines, to comply with the

laws and regulations referred to in Article 6 hereof, or otherwise to perform its obligations hereunder, or to fulfill the conditions under which the rights are granted in accordance with this Agreement and its Annex.

In the event of action by one contracting party under this Article, the right of the other contracting party to request consultation pursuant to Article 11 shall not be prejudiced.

Article 8

This Agreement and all contracts connected therewith shall be registered with the International Civil Aviation Organization.

Article 9

Existing rights and privileges relating to air transport services which may have been granted previously by either of the contracting parties to an airline of the other contracting party shall continue in force according to their terms.

Article 10

Either of the contracting parties may at any time notify the other of its intention to terminate the present Agreement. Such a notice shall be sent simultaneously to the International Civil Aviation Organization. In the event such communication is made this Agreement shall terminate one year after the date of receipt of the notice to terminate, unless by agreement between the contracting parties the communication under reference is withdrawn before the expiration of that time. If the other contracting party fails to acknowledge receipt, notice shall be deemed as having been received 14 days after its receipt by the International Civil Aviation Organization.

Article 11

In the event either of the contracting parties considers it desirable to modify the routes or conditions set forth in the Agreement and attached Annex, it may request consultation between the competent authorities of both contracting parties, such consultation to begin within a period of sixty days from the date of the request. When these authorities mutually agree on new or revised conditions affecting the Annex, their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

Article 12

If a general multilateral air transport Convention accepted by both contracting parties enters into force, the present Agreement shall be amended so as to conform with the provisions of such Convention.

Article 13

Except as otherwise provided in this Agreement or its Annex, any dispute between the contracting parties relative to the interpretation or application of this Agreement or its Annex, which cannot be settled through consultation, shall be submitted for an advisory report to a tribunal of three arbitrators, one to be named by each contracting party, and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either contracting party. Each of the contracting parties shall designate an arbitrator within two months of the date of delivery by either party to the other party of a diplomatic note requesting arbitration of a dispute ; and the third arbitrator shall be agreed upon within one month after such period of two months.

If either of the contracting parties fails to designate its own arbitrator within two months, or if the third arbitrator is not agreed upon within the time limit indicated, either party may request the President of the International Civil Aviation Organization to make the necessary appointment or appointments by choosing the arbitrator or arbitrators.

The contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. A moiety of the expenses of the arbitral tribunal shall be borne by each party.

Article 14

Changes made by either contracting party in the routes described in the schedules attached except those which change the points served by these airlines in the territory of the other contracting party shall not be considered as modifications of the Annex. The aeronautical authorities of either contracting party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change is given without delay to the aeronautical authorities of the other contracting party.

If such other aeronautical authorities find that, having regard to the principles set forth in Section VII of the Annex to the present Agreement, interests of their airline or airlines are prejudiced by the carriage by the airline or airlines of the first contracting party of traffic between the territory of the second contracting party and the new point in the territory of the third country, the authorities of the two contracting parties shall consult with a view to arriving at a satisfactory agreement.

Article 15

This Agreement, including the provisions of the Annex thereto, shall come into force on the day on which notice of its ratification by the Government of the Republic of Cuba is given to the Government of the United States of America.

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

DONE at Habana, Cuba, this twenty-sixth day of May 1953, in duplicate, in the English and Spanish languages, each of which shall be of equal authenticity.

For the Government of the United States of America :
Willard L. BEAULAC
Ambassador Extraordinary and Plenipotentiary

For the Government of the Republic of Cuba :
P. CARRERA JUSTIZ
Minister of Communications and Transport

Miguel Angel CAMPA
Minister of State

[SEAL]

ANNEX

Section I

The Government of the Republic of Cuba grants to the Government of the United States of America the right to conduct air transport services by one or more airlines of United States nationality designated by the latter country on the routes, specified in Schedule One¹ attached, which transit or serve commercially the territory of the Republic of Cuba.

Section II

The Government of the United States of America grants to the Government of the Republic of Cuba the right to conduct air transport services by one or more airlines of Cuban nationality designated by the latter country on the routes, specified in Schedule Two¹ attached, which transit or serve commercially the territory of the United States of America.

Section III

One or more airlines designated by each of the contracting parties under the conditions provided in this Agreement will enjoy, in the territory of the other contracting party, rights of transit and of stops for nontraffic purposes, as well as the right of commercial entry and departure for international traffic in passengers, cargo and mail at the points enumerated on each of the routes specified in the Schedules attached.

¹ See p. 92 of this volume.

Section IV

The air transport facilities available hereunder to the travelling public shall bear a close relationship to the requirements of the public for such transport.

Section V

There shall be a fair and equal opportunity for the airlines of the contracting parties to operate on any route between their respective territories (as defined in the Agreement) covered by this Agreement and Annex.

Section VI

In the operation by the airlines of either contracting party of the trunk services described in the present Annex, the interest of the airlines of the other contracting party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

Section VII

It is the understanding of both contracting parties that services provided by a designated airline under the present Agreement and Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in the present Annex shall be applied in accordance with the general principles of orderly development to which both contracting parties subscribe and shall be subject to the general principle that capacity should be related :

- (a) to traffic requirements between the country of origin and the countries of destination ;
- (b) to the requirements of through airline operation ; and
- (c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

Section VIII

It is the intention of both contracting parties that there should be regular and frequent consultation between their respective aeronautical authorities (as defined in the Agreement) and that there should thereby be close collaboration in the observance of the principles and the implementation of the provisions outlined in the present Agreement and Annex.

Section IX

(A) The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other airlines, as well as the characteristics of each service.

(B) The rates to be charged by the airlines of either contracting party between points in the territory of the United States and points in Cuban territory referred to in the attached Schedules shall, consistent with the provisions of the present Agreement and its Annex, be subject to the approval of the aeronautical authorities of the contracting parties, who shall act in accordance with their obligations under the present Annex, within the limits of their legal powers.

(C) Any rate proposed by the airline or airlines of either contracting party shall be filed with the aeronautical authorities of both contracting parties at least thirty (30) days before the proposed date of introduction ; provided that this period of thirty (30) days may be reduced in particular cases if so agreed by the aeronautical authorities of both contracting parties.

(D) The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association (hereinafter called IATA), for a period of three years beginning June 30, 1952, any rate agreements concluded through this machinery during this period and involving United States airlines will be subject to approval of the Board. Rate agreements concluded through this machinery may also be required to be subject to the approval of the aeronautical authorities of the Government of Cuba pursuant to the principles enunciated in paragraph (B) above.

(E) The contracting parties agree that the procedure described in paragraphs (F), (G) and (H) of the Section shall apply.

1. If, during the period of the Civil Aeronautics Board's approval of the IATA traffic conference machinery, either any specific rate agreement is not approved within a reasonable time by either contracting party, or a conference of IATA is unable to agree on a rate, or

2. At any time no IATA machinery is applicable, or

3. If either contracting party at any time withdraws or fails to renew its approval of that part of the IATA traffic conference machinery relevant to this Section.

(F) In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its airlines for services from the territory of one contracting party to a point or points in the territory of the other contracting party from becoming effective, if in the judgment of the aeronautical authorities of the contracting party whose airline or airlines is or are proposing such rate, that rate is unfair or uneconomic. If one of the contracting parties on receipt of the notification referred to in paragraph (C) above is dissatisfied with the rate proposed by the airline or airlines of the other contracting party, it shall so notify the other contracting party prior to the expiry of the first fifteen of the thirty (30) days referred to, and the contracting parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each contracting party will exercise its best efforts to put such rate into effect as regards its airline or airlines.

If agreement has not been reached at the end of the thirty (30) day period referred to in paragraph (C) above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its application, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph (H) below.

(G) Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the contracting parties is dissatisfied with any rate proposed by the airline or airlines of either contracting party for services from the territory of one contracting party to a point or points in the territory of the other contracting party, it shall so notify the other prior to the expiry of the first fifteen (15) of the thirty (30) day period referred to in paragraph (C) above, and the contracting parties shall endeavor to reach agreement on the appropriate rate.

In the event that such agreement is reached, each contracting party will use its best effort to cause such agreed rate to be put into effect by its airline or airlines.

It is recognized that if no such agreement can be reached prior to the expiry of such thirty (30) days, the contracting party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

(H) When in any case under paragraphs (F) and (G) above the aeronautical authorities of the two contracting parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one contracting party concerning the proposed rate or an existing rate of the airline or airlines of the other contracting party, upon the request of either, both contracting parties shall submit the question to the International Civil Aviation Organization for an advisory report, and each party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

ROUTE SCHEDULES

1. An airline or airlines designated by the Government of the United States shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled landings in Cuba at the points specified in this paragraph :
 1. From Miami, Florida to Camaguey, Cuba, and beyond.
 2. From Miami, Florida to Habana, Cuba, and beyond.
 3. From New York and/or Washington, D. C. to Habana, Cuba, and beyond.
 4. From Tampa, Florida/St. Petersburg, Florida, to Habana, Cuba, and beyond.
 5. From Houston, Texas and/or New Orleans, Louisiana, to Habana, Cuba, and beyond.

2. An airline or airlines designated by the Government of the Republic of Cuba shall be entitled to operate air services on each of the air routes specified via intermediate points, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph :
 1. From Habana, Cuba, to Miami, Florida.
 2. From Varadero, Cuba, to Miami, Florida.
 3. From Habana, Cuba, to New York.
 4. From Habana, Cuba, to Key West, Florida.
 5. From Habana, Cuba, to West Palm Beach, Florida.
 6. From Habana, Cuba, to St. Petersburg, Florida.
3. Points on any of the specified routes may at the option of the designated airline be omitted on any or all flights.

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