

No. 10469

**NETHERLANDS
and
PEOPLE'S REPUBLIC OF THE CONGO**

**Air Transport Agreement (with annex). Signed at The
Hague on 3 February 1969**

Authentic text: French.

Registered by the International Civil Aviation Organization on 12 May 1970.

**PAYS-BAS
et
RÉPUBLIQUE POPULAIRE DU CONGO**

**Accord relatif au transport aérien (avec annexe). Signé à
La Haye le 3 février 1969**

Texte authentique: français.

Enregistré par l'Organisation de l'aviation civile internationale le 12 mai 1970.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT¹ BETWEEN THE KING-
DOM OF THE NETHERLANDS AND THE REPUBLIC
OF THE CONGO

The Government of the Kingdom of the Netherlands and
The Government of the Republic of the Congo,

Desiring to promote the development of air transport services between
the Kingdom of the Netherlands and the Republic of the Congo and to further
as much as possible international co-operation in this field,

Desiring to apply to these services the principles and provisions of the
Convention on International Civil Aviation signed at Chicago on 7 December
1944,²

Have agreed as follows:

TITLE I

GENERAL

Article 1

The Contracting Parties grant to each other the rights specified in this
Agreement for the establishment of the international civil air services listed in
the annex hereto.

Article 2

For the purposes of this Agreement and its annex:

(1) The term "territory" shall be understood as it is defined in article 2
of the Convention on International Civil Aviation.

¹ Came into force on 5 February 1970, the date of the latter of the notifications by which each Contracting Party informed the other of the completion of the formalities constitutionally required, in accordance with article 19.

² United Nations, *Treaty Series*, vol. 15, p. 295; for the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161, vol. 514, p. 209, and vol. 740, no. 10612.

(2) The term “aeronautical authority” means: in the case of the Kingdom of the Netherlands, the Minister responsible for air transport, and in the case of the Republic of the Congo, the Minister responsible for air transport.

(3) The term “designated airline” means the airline which the aeronautical authorities of one of the Contracting Parties have explicitly designated as being the instrument chosen by them to operate the traffic rights specified in this Agreement and which has been approved by the other Contracting Party in accordance with the provisions of articles 10, 11 and 13 below.

Article 3

(1) Aircraft operated in international service by the designated airline of a Contracting Party, as well as their regular equipment, their supplies of fuel and lubricants and their aircraft stores (including food-stuffs, beverages, and tobacco), shall, on entry into the territory of the other Contracting Party, be exempt from all customs duties, inspection fees and similar duties and charges, provided that such equipment and stores remain on board the aircraft until re-exported.

(2) The following shall likewise be exempt from the same duties and charges, excluding fees and charges levied as consideration for services rendered:

- (a) Aircraft stores, irrespective of origin, obtained in the territory of either Contracting Party in quantities not exceeding the limits set by the authorities of the said Contracting Party, and taken on board aircraft of the other Contracting Party engaged in international air service;
- (b) Spare parts imported into the territory of either Contracting Party for the maintenance or repair of aircraft used in international navigation by the designated airline of the other Contracting Party;
- (c) Fuel and lubricants intended for aircraft used in international traffic by the designated airline of the other Contracting Party, even though such supplies are consumed during that part of the flight which takes place over the territory of the Contracting Party in which they were taken aboard.

(3) Regular equipment, supplies and stores on board the aircraft of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the consent of the customs authorities of that territory. When

so unloaded, they may be placed under the supervision of the said authorities until they are re-exported or are declared to customs.

Article 4

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still valid shall be recognized as valid by the other Contracting Party for the purpose of operation of the air routes specified in the annex hereto. Each Contracting Party reserves the right, however, to refuse to recognize as valid for flight over its own territory certificates of competency and licences issued to its own nationals by the other Contracting Party.

Article 5

(1) The laws and regulations of each Contracting Party relating to the admission to and departure from its territory of aircraft engaged in international navigation or to the operation and navigation of such aircraft while within its territory shall apply to the aircraft of the airline of the other Contracting Party.

(2) Passengers, crews and shippers of goods shall be required to comply, either personally or through a third party acting in their name and on their behalf, with the laws and regulations in force in the territory of each Contracting Party governing the entry, stay and departure of passengers, crews and cargo, such as those relating to entry, exit clearance, immigration, customs and requirements under health regulations.

(3) Passengers in transit across the territory of either Contracting Party shall only be subject to a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar charges.

Article 6

(1) Either Contracting Party may at any time request consultation between the competent authorities of the two Contracting Parties concerning the interpretation, application or amendment of this Agreement and its annex.

(2) Such consultation shall begin not later than sixty (60) days after the request is received,

(3) Such amendments to this Agreement as are decided upon shall enter into force after they have been confirmed by an exchange of notes through the diplomatic channel. This exchange of notes may be preceded by ratification in accordance with the respective constitutional requirements of the Contracting Parties. Any amendments to the annex shall enter into force as soon as they have been confirmed by an exchange of notes through the diplomatic channel.

Article 7

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 International Civil Aviation Organization. The notice shall take effect one year after the date of its receipt by the other Contracting Party, unless it is withdrawn by agreement before the expiry of this period. If the Contracting Party receiving such notice fails to acknowledge it, it shall be deemed to have been received fifteen (15) days after its receipt at the headquarters of the International Civil Aviation Organization.

Article 8

(1) Any dispute relating to the interpretation or application of this Agreement which cannot be settled between the aeronautical authorities or between the Governments of the Contracting Parties in accordance with the provisions of article 6 shall, on the request of either Contracting Party, be referred to an arbitral tribunal.

(2) Such arbitral tribunal shall be composed of three members. Each of the two Governments shall appoint one arbitrator; these two arbitrators shall agree upon the appointment of a national of a third State as chairman.

If the two arbitrators have not been appointed within two months from the date on which one of the two Governments proposed arbitration of the dispute, or if the arbitrators fail to agree upon the appointment of a chairman within a further period of one month, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointments.

(3) If the arbitral tribunal fails to reach an amicable settlement, it shall render its decision by majority vote. Unless the Contracting Parties agree otherwise, it shall draw up its own rules of procedure and choose its own meeting place.

(4) The Contracting Parties undertake to comply with any provisional measures ordered in the course of the proceedings and with the arbitral award, which shall be deemed final in all cases.

(5) If and so long as either Contracting Party fails to comply with an arbitral award, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted under this Agreement to the Contracting Party in default.

(6) Each Contracting Party shall pay the remuneration for the services of its own arbitrator and half the remuneration of the chairman appointed.

TITLE II

AGREED SERVICES

Article 9

The Government of the Kingdom of the Netherlands and the Government of the Republic of the Congo shall grant to each other the right to have the airline which each designates operate the air services specified in the route schedule in the annex to this Agreement. The said services shall hereinafter be referred to as "agreed services".

Article 10

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline to operate the agreed services on the specified routes.

(2) On receipt of the designation, the other Contracting Party shall, subject to the provisions of paragraph (3) of this article and of article 11 of this Agreement grant the appropriate operating permits to the designated airline without delay.

(3) The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions regarding the operation of international air services prescribed under the laws and regulations normally and reasonably

applied by them, in conformity with the provisions of the Convention on International Civil Aviation.

Article 11

(1) Each Contracting Party shall have the right to withhold the operating permits referred to in article 10, paragraph 2, if it is not satisfied that substantial ownership and effective control of the airline in question are vested in the Contracting Party which designated that airline or in nationals of that Party.

(2) Each Contracting Party shall have the right to revoke an operating permit or suspend the exercise by the airline designated by the other Contracting Party of the rights specified in article 9 of this Agreement if:

- (a) It is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party which designated the airline or in nationals of that Party, or
- (b) The airline fails to comply with the laws and regulations, referred to in article 5, of the Contracting Party which granted the rights, or
- (c) The airline fails to operate in accordance with the conditions prescribed in this Agreement.

(3) Unless such revocation or suspension is necessary to prevent further infringements of laws and regulations, this right shall be exercised only after consultation, as provided for in article 6, with the other Contracting Party. If such consultation fails, recourse shall be had to arbitration as provided for in article 8.

Article 12

The airline designated by the Government of the Kingdom of the Netherlands under this Agreement shall enjoy, in the territory of the Republic of the Congo, the right to set down and pick up passengers, mail and cargo in international traffic at the points and on the routes in the Kingdom of the Netherlands listed in the annex hereto.

The airline designated by the Government of the Republic of the Congo under this Agreement shall enjoy, in the territory of the Kingdom of the Netherlands, the right to set down and pick up passengers, mail and cargo in international traffic at the points and on the routes in the Republic of the Congo listed in the annex hereto.

Article 13

In application of articles 77 and 79 of the Convention on International Civil Aviation concerning the establishment by two or more States of joint operating organizations or international operating agencies, the Government of the Kingdom of the Netherlands agrees that the Government of the Republic of the Congo, in conformity with articles 2 and 4 of the Treaty on Air Transport in Africa and the annexes thereto, signed by the Republic of the Congo at Yaoundé on 28 March 1961, reserves the right to designate Air Afrique as the instrument chosen by the Republic of the Congo to operate the agreed services.

Article 14

(1) The operation of the agreed services between the territory of the Kingdom of the Netherlands and the territory of the Republic of the Congo in both directions, on the routes specified in the schedule annexed to this Agreement constitutes a basic and primary right of the two countries.

(2) The two Contracting Parties agree to apply the principle of equality and reciprocity in all matters relating to the exercise of the rights conferred by this Agreement.

The airlines designated by both Contracting Parties shall be assured fair and equitable treatment, shall enjoy equal opportunities and rights and shall respect the principle of an equal division of the capacity to be provided in the operation of the agreed services.

(3) Where they operate on the same routes they shall take their mutual interests into account so as not to affect each other's services unduly.

Article 15

(1) On all the routes appearing in the annex to this Agreement, the agreed services shall have as their primary objective the provision, at a load factor regarded as reasonable, of capacity adequate to satisfy the normal and reasonably foreseeable requirements of international air traffic originating in or destined for the territory of the Contracting Party which has designated the airline operating the said services.

(2) The airline or airlines designated by either Contracting Party may, within the limit of the total capacity stipulated in paragraph (1) of this article satisfy the traffic requirements between the territories of third States lying on

the agreed routes and the territory of the other Contracting Party, account being taken of local and regional services.

(3) In order to meet unforeseen or temporary traffic requirements on the agreed routes, the designated airlines shall decide among themselves upon appropriate measures to deal with such temporary increase in traffic. They shall report such measures immediately to the aeronautical authorities of their respective countries, which may consult together if they see fit.

(4) In the event that the designated airline of one Contracting Party does not wish to use, on one or more routes, part or all of the transport capacity which it ought normally to offer in view of its rights, it shall come to an agreement with the designated airline of the other Contracting Party with a view to transferring to the latter, for a specified period, all or part of the transport capacity in question.

The designated airline that has transferred all or part of its rights may recover them at the end of the specified period.

Article 16

(1) The designated airlines shall inform the aeronautical authorities of the two Contracting Parties not later than thirty (30) days before the inauguration of the agreed services of the type of service, the types of aircraft to be used and the proposed time-tables. The same rule shall apply in respect of any subsequent changes.

(2) The aeronautical authorities of either Contracting Party shall supply, on request, to the aeronautical authorities of the other Contracting Party such periodic or other statistical information concerning the designated airline as may reasonably be required in order to check the transport capacity provided by the designated airline of the first Contracting Party. Such statistics shall include all the data required to determine the volume, origin and destination of the traffic.

Article 17

The two Contracting Parties agree to consult each other whenever necessary in order to co-ordinate their air services.

Article 18

(1) The tariffs to be charged on the agreed services operating on the routes of the Republic of the Congo and of the Kingdom of the Netherlands

specified in this Agreement shall, so far as possible, be fixed by agreement between the designated airlines.

These airlines shall proceed by direct agreement after consultation, where necessary, with any airlines of any third country operating on all or part of the same routes.

Such agreement shall, wherever possible, be reached by recourse to rate-fixing procedure established by the International Air Transport Association (IATA).

(2) The tariffs so fixed shall be submitted to the aeronautical authorities of each Contracting Party for approval not less than thirty (30) days before the date proposed for their entry into force; in special cases this time-limit may be reduced, subject to the agreement of the said authorities.

(3) If the designated airlines should fail to agree on the fixing of a tariff in accordance with paragraph (1) above or if one of the Contracting Parties should make known its dissatisfaction with the tariff submitted to it in accordance with the provisions of paragraph (2) above, the aeronautical authorities of the two Contracting Parties shall endeavour to reach a satisfactory solution.

In the last resort, the matter shall be referred to the arbitration provided for in article 8 of this Agreement.

Pending the announcement of the arbitral award, the Contracting Party making known its dissatisfaction shall have the right to require the other Contracting Party to maintain the tariffs previously in force.

TITLE III

FINAL PROVISIONS

Article 19

Each Contracting Party shall notify the other of the completion of the formalities constitutionally required for the entry into force of this Agreement, which shall take effect on the date on which the latter notification is received.

Article 20

This Agreement and its annex shall be communicated to the International Civil Aviation Organization for registration.

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

DONE at The Hague, on 3 February 1969, in duplicate in the French language.

For the Government of the Kingdom of the Netherlands:
H. J. DE KOSTER

For the Government of the Republic of the Congo:
YAYOS

ANNEX

ROUTE SCHEDULE

1. *Congolese routes*

Brazzaville – Zurich or Geneva – Frankfurt – Brussels – Amsterdam and beyond to one point in Scandinavia, in both directions.

2. *Netherlands routes*

Amsterdam – Zurich or Geneva – Rome – Kano – Brazzaville – Johannesburg, in both directions.

NOTE

(1) The airline designated by either Contracting Party may make stops at one or more intermediate points and at points beyond the territory of the other Contracting Party, other than those specified in the route schedule, but without exercising traffic rights between such point or points and the territory of the other Contracting Party.

(2) The airline designated by either Contracting Party may, on any or all flights, omit stops at one or more of the points specified or may arrange to serve them in a different order.