

**No. 10912**

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**UNITED STATES OF AMERICA  
and  
CONGO (DEMOCRATIC REPUBLIC)**

**Air Transport Agreement (with route schedule). Signed at  
New York on 14 August 1970**

*Authentic texts: English and French.*

*Registered by the United States of America on 7 January 1971.*

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
CONGO (RÉPUBLIQUE DÉMOCRATIQUE)**

**Accord relatif aux transports aériens (avec tableau de routes).  
Signé à New York le 14 août 1970**

*Textes authentiques: anglais et français.*

*Enregistré par les États-Unis d'Amérique le 7 janvier 1971.*

AIR TRANSPORT AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF THE CONGO

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The Government of the United States of America and the Government of the Democratic Republic of the Congo,

Desiring to conclude an Agreement for the purpose of promoting air transportation between their respective territories,

Have agreed as follows:

*Article 1*

For the purposes of the present Agreement:

A. "Agreement" shall mean this Agreement and the annexed Route Schedule, and any amendments thereto.

B. "Aeronautical authorities" shall mean, in the case of the United States of America, the Civil Aeronautics Board or 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 Democratic Republic of the Congo, the Directorate of Civil Aeronautics or any body authorized to perform the functions exercised at present by the Directorate of Civil Aeronautics.

C. "Designated airline" shall mean an airline that one Contracting Party has notified the other Contracting Party to be an airline which will operate a specific route or routes listed in the Route Schedule annexed to this Agreement. Such notification shall be communicated in writing, through diplomatic channels.

D. "Territory", in relation to a State, shall mean the land areas under the sovereignty, suzerainty, protection, jurisdiction or trusteeship of that State, and territorial waters adjacent thereto.

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<sup>1</sup> Came into force on 14 August 1970 by signature, in accordance with article 17.

E. "Air service" shall mean any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo, separately or in combination.

F. "International air service" shall mean an air service which passes through the air space over the territory of more than one State.

G. "Stop for non-traffic purposes" shall mean a landing for any purpose other than taking on or discharging passengers, cargo or mail.

### *Article 2*

Each Contracting Party grants to the other Contracting Party rights necessary for the conduct of air services by the designated airlines as follows: the rights of transit, of stops for non-traffic purposes, and of commercial entry and departure for international traffic in passengers, cargo, and mail, separately or in combination, at the points in its territory named on each of the routes specified in the appropriate paragraph of the Route Schedule annexed to this Agreement.

### *Article 3*

Air service on a specified route may be inaugurated by an airline or airlines of one Contracting Party at any time after that Contracting Party has designated such airline or airlines for that route and the other Contracting Party has granted the appropriate operating permission. Such other Contracting Party shall, subject to Article 4, grant this permission with a minimum of procedural delay provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that Contracting Party, under the laws and regulations normally applied by those authorities, before being permitted to engage in the operations contemplated in this Agreement.

### *Article 4*

A. Each Contracting Party reserves the right to withhold, suspend, or revoke the operating permission referred to in Article 3 of this Agreement

with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event that:

- (1) such airline fails to qualify under the laws and regulations normally applied by the aeronautical authorities of that Contracting Party;
- (2) such airline fails to comply with the laws and regulations referred to in Article 5 of this Agreement;
- (3) that Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in nationals of the other Contracting Party.

B. Unless immediate action is essential to prevent infringement of the laws and regulations referred to in Article 5 of this Agreement, the right to suspend or revoke such permission shall be exercised only after consultation with the other Contracting Party.

#### *Article 5*

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 operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

B. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail 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, cargo or mail of the other Contracting Party upon entrance into or departure from, and while within, the territory of the first Contracting Party.

#### *Article 6*

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 provided for in this Agreement, 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.<sup>1</sup> 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 7

In order to prevent discriminatory practices and to assure equality of treatment, the Contracting Parties agree that :

A. Each 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 imposed for the use of such airports and facilities by its national aircraft engaged in similar international services.

B. Each shall exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular equipment, ground equipment, stores, and other items intended for use solely in connection with the operation or servicing of aircraft of the airlines of such other Contracting Party in international air service. The exemptions provided under this paragraph shall apply to items :

- (1) introduced into the territory of one Contracting Party by the airlines of the other Contracting Party or its nationals;

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<sup>1</sup> 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, p. 21.

- (2) retained on aircraft of the airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party; or
- (3) taken on board aircraft of the airlines of one Contracting Party in the territory of the other and intended for use in international air service,

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption.

C. The exemptions provided under this article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph B, provided such other airline or airlines similarly enjoy such exemptions from such other Contracting Party.

#### *Article 8*

There shall be a fair and equal opportunity for the airlines of each Contracting Party to operate on any route covered by this Agreement.

#### *Article 9*

In the operation by the airlines of either Contracting Party of the air services described in this Agreement, 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.

#### *Article 10*

A. The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

B. Services provided by a designated airline under the present Agreement 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 countries 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 this Agreement 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:

- (1) to traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
- (2) to the requirements of through airline operations; and,
- (3) to the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

C. The airline or airlines of both Contracting Parties shall, in keeping with the provisions of paragraphs A and B of this article, have the freedom to determine the capacity, frequency, scheduling, and type of aircraft to be employed in connection with services over any of the routes specified in the route schedule. In the event that one of the Contracting Parties believes that the operations conducted by an airline of the other Contracting Party have been inconsistent with the standards and principles set forth in this article, it may request consultations pursuant to Article 13 of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with said standards and principles.

### *Article 11*

A. All rates to be charged by an airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, such as costs of operation, reasonable profit, and the rates charged by any other airlines, as well as the characteristics of each service. Such rates shall be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal competence.

B. Any rate proposed to be charged by an airline of either Contracting Party for carriage to or from the territory of the other Contracting Party shall,

if so required, be filed by such airlines with the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of introduction unless the Contracting Party with whom the filing is to be made permits filing on shorter notice. The aeronautical authorities of each Contracting Party shall use their best efforts to insure that the rates charged and collected conform to the rates filed with the other Contracting Party, and that no airline rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents.

C. It is recognized by both Contracting Parties that during any period for which either Contracting Party has approved the traffic conference procedures of the International Air Transport Association, or other associations of international air carriers, any rate agreements concluded through these procedures and involving an airline or airlines of that Contracting Party will be subject to the approval of the aeronautical authorities of that Contracting Party.

D. If a Contracting Party, on receipt of the notification referred to in paragraph B above, is dissatisfied with the rate proposed, it shall so inform the other Contracting Party at least fifteen (15) days prior to the date that such rate would otherwise become effective, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

E. If a Contracting Party upon review of an existing rate charged for carriage to or from its territory by an airline or airlines of the other Contracting Party is dissatisfied with that rate, it shall so notify the other Contracting Party and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

F. In the event that an agreement is reached pursuant to the provisions of paragraph D or E, each Contracting Party will exercise its best efforts to put such rate into effect.

G. If:

- (1) under the circumstances set forth in paragraph D no agreement can be reached prior to the date that such rate would otherwise become effective, or
- (2) under the circumstances set forth in paragraph E no agreement can be reached prior to the expiration of sixty (60) days from the date of notification,



then the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or the continuation of the service in question at the rate complained of; provided, however, that the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable service between the same points.

H. When in any case under paragraphs D and E of this article 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, the terms of Article 14 of this Agreement shall apply. In rendering its decision or award, the arbitral tribunal shall be guided by the principles laid down in this article.

### *Article 12*

A. Each designated airline has the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, in its discretion, through its agents. Such airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation in the currency of that territory or in freely convertible currencies of other countries.

B. Any rate specified in terms of the national currency of one of the Contracting Parties shall be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Contracting Party.

C. Each designated airline has the right to convert and remit to its country local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly and without restrictions at the rate of exchange in effect for the sale of transportation at the time such revenues are presented for conversion and remittance, and shall be exempted from taxation to the fullest extent permitted by national law. If a Contracting Party requires the submission of applications for conversion and remittance, the

airlines of the other Contracting Party shall be permitted to file such applications, as often as weekly, free of burdensome or discriminatory documentary requirements.

### *Article 13*

Consultation between the competent authorities of both Contracting Parties may be requested at any time by either Contracting Party for the purpose of discussing the interpretation, application, or amendment of the Agreement or the annexed Route Schedule. Such consultation shall begin within a period of sixty (60) days from the date of the receipt of the request by the Department of State of the United States of America or the Ministry of Foreign Affairs of the Democratic Republic of the Congo as the case may be. Should agreement be reached on amendment of the Agreement or its Route Schedule, such amendment will come into effect upon confirmation by an exchange of diplomatic notes.

### *Article 14*

A. Any dispute with respect to matters covered by this Agreement not satisfactorily adjusted through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein.

B. Arbitration shall be by a tribunal of three arbitrators constituted as follows:

- (1) One arbitrator shall be named by each Contracting Party within 60 days of the date of delivery by either Contracting Party to the other of a request for arbitration. Within 30 days after such period of 60 days, the two arbitrators so designated shall by agreement designate a third arbitrator, who shall not be a national of either Contracting Party.
- (2) If the third arbitrator is not agreed upon in accordance with paragraph (1), either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator.

C. Each Contracting Party shall use its best efforts consistent with its national law to put into effect any decision or award of the arbitral tribunal.

D. Each Contracting Party shall pay the fees and expenses of the arbitrator it has nominated. The fees and expenses of the third arbitrator and of the arbitral tribunal shall be shared equally by the Contracting Parties.

*Article 15*

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

*Article 16*

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. This Agreement shall terminate one year after the date on which the notice of termination is received by the other Contracting Party, unless withdrawn before the end of this period by agreement between the Contracting Parties. Should the other party not acknowledge receipt, the notification will be considered as having been received fourteen days subsequent to the date of its receipt by the International Civil Aviation Organization.

*Article 17*

This agreement will come into force on the day it is signed.

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

DONE in duplicate at New York in the English and French languages, both texts being equally authentic, this fourteenth day of August, 1970.

For the Government of the United States of America :

*[Signed]*

DAVID D. NEWSOM

For the Government of the Democratic Republic of the Congo :

*[Signed]*

EVARISTE LOLIKI

## ROUTE SCHEDULE

A. An airline or airlines designated by the Government of the United States of America shall be entitled to operate air services on the routes specified, in both directions, and to make scheduled landings in the territory of the Democratic Republic of the Congo at the points specified in this paragraph :

From the United States via intermediate points in Portugal (including the Azores and Madeira Islands), Spain (including the Canary Islands), South America, and Africa, to Kinshasa and beyond to points in Africa and the Indian Ocean south of the Equator to Australasia and beyond.

B. An airline or airlines designated by the Government of the Democratic Republic of the Congo shall be entitled to operate air services on the routes specified, in both directions, and to make scheduled landings in the territory of the United States of America at the points specified in this paragraph :

From the Congo via intermediate points in Africa, Spain (including the Canary Islands), Portugal (including the Azores and Madeira Islands) to New York and beyond to a point in Canada.

C. 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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