

No. 11895

BRAZIL
and
SWITZERLAND

Agreement concerning scheduled air transport services (with annex and protocol of signature). Signed at Bern on 16 May 1968

Authentic texts : Portuguese and French.

Registered by Brazil on 27 July 1972.

BRÉSIL
et
SUISSE

Accord relatif aux transports aériens réguliers (avec annexe et protocole de signature). Signé à Berne le 16 mai 1968

Textes authentiques : portugais et français.

Enregistré par le Brésil le 27 juillet 1972.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE SWISS CONFEDERATION
AND THE FEDERATIVE REPUBLIC OF BRAZIL CON-
CERNING SCHEDULED AIR TRANSPORT SERVICES

The Swiss Federal Council and the Government of the Federative Republic of Brazil,

Considering that Switzerland and Brazil are parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944,²

Desiring to develop international co-operation in the field of air transport, and

Desiring to conclude an agreement for the purpose of establishing scheduled air services between and beyond their respective countries,

Have appointed their plenipotentiaries, duly authorized for this purpose, who have agreed as follows :

Article 1

For the purpose of this Agreement and its annex :

(a) the term “ Convention ” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;

(b) the term “ aeronautical authorities ” means, in the case of Switzerland, the Federal Air Office and, in the case of Brazil, the Ministry of Aviation or, in both cases, any person or agency authorized to perform the functions at present assigned to the said authorities;

(c) the term “ designated airline ” means an airline which one of the Contracting Parties has designated, in accordance with article 3 of this Agreement, to operate the agreed air services.

Article 2

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing air services on the

¹ Came into force provisionally on 16 May 1968, the date of signature, and definitively on 28 July 1969, the date by which the Contracting Parties had notified each other of the completion of their constitutional formalities, in accordance with article 18.

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, and vol. 514, p. 209.

routes specified in the tables in the annex to this Agreement. Such services and routes are hereinafter called "agreed services" and "specified routes".

2. Subject to the provisions of this Agreement, each Contracting Party's designated airline shall enjoy, while operating international services :

- (a) the right to fly without landing across the territory of the other Contracting Party;
- (b) the right to make stops in the said territory for non-traffic purposes;
- (c) the right to take on and put down in the said territory, at points specified in the annex, international traffic in passengers, cargo and mail.

Article 3

1. Each Contracting Party shall have the right to designate an airline to operate the agreed services. Such designation shall form the subject of a written notification through the diplomatic channel.

2. The Contracting Party which has received the notification of designation shall, subject to the provisions of paragraphs 3 and 4 of this article, without delay grant to the airline designated by the other Contracting Party the appropriate operating authorization.

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 prescribed under the laws and regulations normally applied by those authorities to the operation of international air services in accordance with the provisions of the Convention.

4. Each Contracting Party shall have the right not to grant the authorization provided for in paragraph 2 of this article, or to impose such conditions as it may deem necessary for the exercise, by the designated airline, of the rights specified in article 2 of this Agreement, when the said Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party which has designated the airline or in its nationals.

5. Upon receipt of the operating authorization provided for in paragraph 2 of this article, the designated airline may begin at any time to operate any agreed service, provided that a tariff established in accordance with the provisions of article 10 of this Agreement is in force in respect of such service.

Article 4

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in article 2 of this Agreement by the airline designated by the other Contracting Party, or to

impose such conditions as it may deem necessary on the exercise of such rights, if :

- (a) it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals, or
- (b) that airline has failed to comply with the laws and regulations of the Contracting Party which has granted those rights, or
- (c) that airline fails to operate the agreed services in the manner prescribed in this Agreement and its annex.

2. Unless the revocation, suspension or imposition of conditions referred to in paragraph 1 of this article is imperative in order to prevent further infringement of the laws and regulations, such right shall be exercised only after consultation with the other Contracting Party.

Article 5

1. The designated airlines shall enjoy fair and equal opportunity to operate the agreed services between the territories of the Contracting Parties.

2. The designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the latter airline's agreed services.

3. The capacity provided by the designated airlines shall be related to traffic requirements.

4. In so far as aeronautical relations between the Contracting Parties are concerned, the agreed services shall have as their principal objective the provision of capacity corresponding to the traffic requirements between the territories of the Contracting Parties. Those services may also provide capacity corresponding to traffic requirements between the territory of the Contracting Party which designated the airline and points on the specified routes in the territories of third countries.

5. The right of the designated airline of a Contracting Party to fly without landing across the territory of the other Contracting Party, to make stops in the said territory for non-traffic purposes and to carry international traffic between that territory and points on the specified routes in the territories of third countries shall be exercised in accordance with the general principles of normal development affirmed by the two Contracting Parties and in such a manner that the capacity shall be related to :

- (a) the requirements of traffic coming from or destined for the territory of the Contracting Party which designated the airline;
- (b) the traffic requirements of the areas through which the airline passes, local and regional services being taken into account;
- (c) the requirements of economic operation of the agreed services.

Article 6

1. Aircraft employed in international traffic by the designated airline of one Contracting Party, as well as their regular equipment, reserves of fuel and lubricant, and aircraft stores, including food, beverages and tobacco, shall be exempt, on entry into the territory of the other Contracting Party, from all customs duties, inspection charges and other duties and fees, provided such equipment, reserves and supplies remain on board until they are re-exported.

2. The following shall likewise be exempt from such duties, charges and fees, excluding payments for services performed :

- (a) Aircraft stores taken on board in the territory of one Contracting Party, within limits fixed by the authorities of the said Contracting Party, and intended for consumption on board aircraft employed in international service by the designated airline of the other Contracting Party;
- (b) Spare parts and regular airborne equipment imported into the territory of one Contracting Party for the maintenance or repair of aircraft employed in international service;
- (c) Fuel and lubricants destined to supply aircraft employed in international service by the airline of the other Contracting Party even though such supplies are to be used on that part of the flight which takes place over the territory of the Contracting Party in which they were taken on board.

3. Regular airborne equipment, and products and stores which are on board aircraft employed by the designated airline of one Contracting Party may not be unloaded in the territory of the other Contracting Party without the consent of the customs authorities of such other Contracting Party. When so unloaded, they may be placed under the supervision of the said authorities until they are re-exported or have been otherwise disposed of in accordance with the customs regulations of such authorities.

Article 7

Passengers, baggage and cargo in transit through the territory of one Contracting Party and remaining in the airport area reserved for them shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar charges.

Article 8

1. The laws and regulations of one Contracting Party governing entry to and departure from its territory of aircraft engaged in international air navigation or flights of such aircraft over its territory shall apply to the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party governing entry to, sojourn in or departure from its territory of passengers, crew, cargo or mail,

such as those relating to entry, departure, emigration and immigration, customs and health measures shall apply to passengers, crew, cargo or mail carried by the aircraft of the airline designated by the other Contracting Party while they are in its territory.

3. In the application of the laws and regulations mentioned in this article, each Contracting Party undertakes not to give preferential treatment to its own airlines engaged in similar international air services over the designated airline of the other Contracting Party.

4. The designated airline of one Contracting Party shall not be required to pay for the use of airports and other facilities provided by the other Contracting Party charges greater than those to be paid by national aircraft engaged in similar scheduled international services.

5. The designated airline of one Contracting Party shall have the right to maintain agents on the territory of the other Contracting Party. Such agents may include commercial, operational and technical personnel.

Article 9

1. Certificates of airworthiness, certificates of competency and licences issued or validated by one of the Contracting Parties shall, during the period in which they are in force, be recognized as valid by the other Contracting Party.

2. Each Contracting Party reserves the right, however, to refuse to recognize as valid, for the purpose of flight over its territory, certificates and licences issued to or validated for its own nationals by the other Contracting Party or by any other State.

Article 10

1. The tariffs on all agreed services shall be fixed at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, the characteristics of each service and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be agreed by the designated airlines of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route concerned. The designated airlines shall, where possible, reach such agreement through the rate-fixing machinery established by the international agency which puts forward proposals in this respect.

3. The tariffs so established shall be submitted to the aeronautical authorities of the Contracting Parties for approval at least thirty days before the date proposed for their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.

4. If the designated airlines are unable to reach agreement or if the tariffs are not approved by the aeronautical authorities of one Contracting Party, the

aeronautical authorities of both Contracting Parties shall endeavour to fix the tariff by agreement between themselves.

5. Failing agreement, the dispute shall be settled by arbitration as provided in article 14 below.

6. Tariffs already established shall remain in force until new tariffs are fixed in accordance with the provisions of this article or of article 14 of this Agreement, but no longer than twelve months from the date on which the aeronautical authorities of one of the Contracting Parties refused approval.

Article 11

The designated airline of one Contracting Party shall, at the request of the aeronautical authorities of the other Contracting Party, supply periodic statistics or other similar information relating to traffic on the agreed services.

Article 12

1. Each Contracting Party or its aeronautical authorities may at any time request a consultation with the other Contracting Party or with its aeronautical authorities.

2. A consultation requested by one Contracting Party shall begin within a period of sixty days from the date of receipt of the request.

Article 13

1. Any modification of this Agreement shall enter into force when the two Contracting Parties have informed each other of the completion of their constitutional formalities.

2. Modifications of the annex to this Agreement may be agreed upon directly by the aeronautical authorities of the Contracting Parties. They shall enter into force after they have been confirmed by an exchange of notes through the diplomatic channel.

Article 14

Disputes between the Contracting Parties relating to the interpretation or application of this Agreement which cannot be settled by means of consultations or negotiations shall be submitted to arbitration in accordance with the procedure laid down in article 85 of the Convention.

Article 15

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

Article 16

This Agreement and its annex shall be brought into harmony with any multilateral convention which may in future bind the two Contracting Parties.

Article 17

1. Either of the Contracting Parties may at any time notify the other Contracting Party of its decision to denounce this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization.

2. The denunciation shall take effect six months after the end of the traffic period, as defined in the annex, during which the notice was given unless such denunciation is withdrawn by agreement before the end of this period.

3. Failing acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have reached it fourteen days after the date of its receipt by the International Civil Aviation Organization.

Article 18

This Agreement shall be applied provisionally by the Swiss and Brazilian authorities within the limits of their respective powers from the date of its signature; it shall enter into force when the Contracting Parties have notified each other of the completion of their constitutional formalities.

Article 19

This Agreement supersedes any privileges, licences or concessions which at the time of its signature may have been granted for any reason by one of the Contracting Parties to the designated airline of the other Contracting Party.

IN WITNESS WHEREOF, the plenipotentiaries of the two Contracting Parties have signed this Agreement.

DONE at Berne on 16 May 1968 in two copies in the French and Portuguese languages, both texts being equally authentic.

For the Swiss
Federal Council :

Dr. WERNER GULDIMANN

For the President
of the Federative Republic
of Brazil :

Ten. Brig. MARTINHO
CÂNDIDO DOS SANTOS

ANNEX

A. SCHEDULE OF ROUTES

I

Routes on which air services may be operated by the airline designated by Switzerland :

1. Points in Switzerland – Madrid or Lisbon – two points in Africa (north-west Africa and/or west Africa) – Brasilia and/or Rio de Janeiro and/or São Paulo, in both directions;
2. Points in Switzerland – Madrid or Lisbon – two points in Africa (north-west Africa and/or west Africa) – Brasilia and/or Rio de Janeiro and/or São Paulo – Asunción – Montevideo (this point may be served before or after Buenos Aires) – Buenos Aires – Santiago de Chile, in both directions.

NOTES

(a) The airline may, at its option, serve no more than two of the three points specified in Brazil on each service.

(b) The airline may, at its option, serve no more than three of the four points beyond Brazil specified on route 2 above on each service.

II

Routes on which air services may be operated by the airline designated by Brazil :

1. Points in Brazil – a point in west Africa or in north-west Africa – Lisbon and/or Madrid and/or Rome and/or Paris and/or London (in the order selected by the airline) – Basle and/or Geneva and/or Zurich, in both directions;
2. Points in Brazil – a point in west Africa or in north-west Africa – Lisbon and/or Madrid and/or Rome and/or Paris and/or London (in the order selected by the airline) – Basle and/or Geneva and/or Zurich (in the order selected by the airline) – Frankfurt and/or two points east of Frankfurt (in the order selected by the airline), in both directions.

NOTES

(a) The airline may serve no more than two points in Switzerland on each service.

(b) Paris and London may be served before or after the points in Switzerland.

B

1. The operational programme (HOTRAN) specifying the type and model of and maximum number of usable seats in the aircraft employed, the frequency of services and the stops shall be submitted by the designated airline of each Contracting Party to the aeronautical authorities of the other Contracting Party at least thirty days prior to the anticipated date of their entry into force. The programme shall be approved within this period unless it involves a change in stops or capacity from those specified in the provisions agreed upon by the Contracting Parties.

2. At the request of the airline, the following changes in stops approved by the competent authorities shall not be regarded as modifications to the schedule of routes :

- (a) The inclusion or omission of stops in the territory of the Contracting Party which designated the airline;
- (b) The omission of stops in the territory of the other Contracting Party;
- (c) The omission of stops in the territory of third countries.

The airlines may request such modifications directly without the prior approval of the Contracting Parties.

3. A change in route by inclusion of a stop not provided for in the schedule of routes and situated outside the territory of the Contracting Party which designated the airline shall require the approval of the competent authorities through the diplomatic channel.

4. The crews of aircraft employed on the agreed services shall be composed of nationals of the Contracting Party which designated the airline. If necessary, and with the consent of the aeronautical authorities of the other Contracting Party, crew members of another nationality may be employed.

5. The periods from 1 April to 31 October and from 1 November to 31 March shall be considered traffic periods.

PROTOCOL OF SIGNATURE

In the course of the negotiations which culminated in the signing of an agreement relating to scheduled air transport between Switzerland and Brazil, dated 16 May 1968, the two delegations agreed on the following provisions :

1. The designated airlines of the two Contracting Parties shall continue to have the right to operate two services per week in each direction on the agreed routes using DC-8/Boeing 707 aircraft, fitted with no more than 165 usable seats. That number may be exceeded only in exceptional circumstances and by virtue of a special authorization of the aeronautical authorities.

2. Any change in aircraft type will require authorization by the aeronautical authorities.

3. The Brazilian designated airline shall enjoy, on the specified routes, full rights to carry passengers, cargo and mail between Switzerland and third countries.

4. The Swiss designated airline shall enjoy, on the specified routes, full rights to carry passengers, cargo and mail between Brazil and the points in Africa.

5. The Swiss designated airline shall, from 1 July 1968, enjoy fifth-freedom traffic rights between Brazil and countries beyond, to points served on the specified routes, within the limits fixed by the Brazilian authorities, who shall apply the same criteria as they apply to other European airlines operating in the same sector.

6. The Swiss designated airline shall continue to enjoy stopover rights at points in Brazil for passengers originating in or bound for Switzerland until 30 June 1968.

7. It is understood that employees of each of the designated airlines while travelling in connexion with their duties may use aircraft of their own airline on route sections situated in the territory of the other Contracting Party.

8. The Swiss designated airline shall submit to the Brazilian aeronautical authorities a complete list of foreign crew members employed on the agreed services, giving name, nationality, function in the crew, type and number of licence and the issuing authority. Unless the Brazilian authorities advise otherwise, such crew members may perform their functions on the agreed services.

DONE at Berne on 16 May 1968, in two copies in the French and Portuguese languages, both texts being equally authentic.

For the Swiss Delegation :

Dr. WERNER GULDIMANN

For the Brazilian Delegation :

Ten. Brig. MARTINHO
CÂNDIDO DOS SANTOS