No. 11916

BRAZIL
and
MEXICO

Air Transport Agreement (with route schedule). Signed at Mexico City on 17 October 1966

Authentic texts: Portuguese and Spanish.

Registered by Brazil on 18 August 1972.

BRÉSIL
et
MEXIQUE

Accord relatif aux transports aériens (avec tableau des routes). Signé à Mexico le 17 octobre 1966

Textes authentiques : portugais et espagnol.

Enregistré par le Brésil le 18 août 1972.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT[1] BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE UNITED MEXICAN STATES

The Government of the Federative Republic of Brazil and the Government of the United Mexican States,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;[2]

Considering that the possibilities of commercial aviation as a means of transport and of promoting friendly understanding and goodwill among peoples are increasing from day to day;

Desiring to strengthen even more the cultural and economic bonds which link their peoples and the understanding and good will which exist between them;

Considering that it is desirable to organize, on equitable bases of equality and reciprocity, regular air services between the two countries, in order to obtain greater co-operation in the field of international air transport;

Desiring to conclude an agreement which will facilitate the attainment of the afore-mentioned objectives;

Have accordingly appointed duly authorized Plenipotentiaries for this purpose, who have agreed as follows :

Article 1

For the purposes of this Agreement :

(*a*) The word " Agreement " means this Agreement and the route schedule annexed thereto.

(*b*) The term " aeronautical authorities " means, in the case of the Federative Republic of Brazil, the Ministry of Air or any person or entity authorized to perform the functions exercised at present by the Ministry of Air, and in the case of the United Mexican States, the Ministry of Communications and Transport or any person or entity authorized to perform the functions exercised at present by the Ministry of Communications and Transport.

[1] Came into force provisionally on 17 October 1966, the date of signature, and definitively on 20 November 1970, the date specified in an exchange of diplomatic notes, which took place after the Contracting Parties had obtained the necessary approval in accordance with their respective constitutional procedures (the exchange of the instruments of ratification having taken place at Brasília on 20 November 1970), in accordance with article 15.

[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.

(*c*) The term " airline " means any air transport enterprise offering or operating an international air service.

(*d*) The term " designated airline " means an airline that the aeronautical authorities of one Contracting Party have notified the aeronautical authorities of the other Contracting Party to be the airline that will operate a route or routes specified in the route schedule annexed to the Agreement.

(*e*) The term " capacity of an aircraft " means the maximum payload of an aircraft expressed in terms of the numbers of seats for passengers and the permissible weight for cargo and mail.

(*f*) The term " capacity offered " means the total capacity of the aircraft used in the operation of each agreed air service, multiplied by the frequency operated by such aircraft over a given period.

(*g*) The term " air route " means the pre-established route to be followed by aircraft operating a regular air service.

(*h*) The term " specified route " means the route described in the route schedule annexed to this Agreement.

(*i*) The term " passenger load factor " means the ratio between the number of passengers carried by an airline on a specified route over a given period and the number of seats offered by the same airline on the same route over the same period.

(*j*) The term " frequency " means the number of round-trip flights made by an airline over a given period on a specified route.

(*k*) The term " change of gauge " means a change on a specified route, from one aircraft to another of a different capacity.

(*l*) The term " regular flights " means flights made by designated airlines on specified routes, according to the approved schedules.

(*m*) The terms " territory ", " air service ", " international air service " and " stop for non-traffic purposes " shall have, for the purposes of this Agreement, the meaning specified in articles 2 and 96 of the Convention on International Civil Aviation of 7 December 1944.

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 routes specified in the annexed route schedule.

2. Save as otherwise provided in this Agreement, the airline designated by each Contracting Party shall, in the operation of international services, enjoy the following rights :

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

3. The fact that such rights may not be exercised immediately shall not preclude the subsequent inauguration of air services by the airline of the Contracting Party to which such rights are granted over the routes specified in the said route schedule.

Article 3

1. Upon the entry into force of this Agreement, the aeronautical authorities of the two Contracting Parties shall as soon as possible exchange information concerning the authorizations granted for the operation of the routes referred to in the route schedule.

2. Air service on a specified route may be inaugurated by the airline immediately or at a later date at the option of the Contracting Party to which the rights are granted after that Party has designated such airline to provide service on that route and the other Contracting Party has given the necessary permission. The said other Contracting Party shall require the designated airline to qualify before the competent aeronautical authorities of that Contracting Party, in accordance with the laws and regulations normally applied by these authorities.

Article 4

Each Contracting Party reserves the right to withhold or revoke operating permission from an airline designated by the other Contracting Party : (*a*) in the event that it is not fully satisfied that substantial ownership and effective control of such airline are vested in nationals of the other Contracting Party; (*b*) in case of failure by such airline to comply with the laws and regulations referred to in this Agreement; (*c*) in case of failure by the airline or the Government designating it to fulfil the conditions under which the rights are granted in accordance with this Agreement; (*d*) in case of failure by the designated airline to fulfil the conditions pertaining to the permission granted; (*e*) in the event that the crews of the aircraft are not nationals of the other Contracting Party, except for cases of training.

Article 5

1. 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 designated by the other Contracting Party and shall be complied with by such aircraft upon entering or departing from, and while within, the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party relating to the admission to, stay in and departure from its territory of passengers, crew, cargo and mail, such as regulations relating to entry, departure, clearance, immigration, customs and quarantine, shall apply to passengers, crew, cargo and mail carried by aircraft of the airline designated by the other Contracting Party upon entry into or departure from, or while within, the territory of the first Contracting Party.

Article 6

Certificates of air worthiness, certificates of competency and licences issued or revalidated 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 specified in this Agreement, provided that the requirements under which such certificates or licences were issued or revalidated are equal to or above the minimum standards established pursuant to the Convention on International Civil Aviation. Each Contracting Party reserves the right to refuse to recognize, for the purpose of flights over its own territory, certificates of competency and licences granted to its own nationals by another State.

Article 7

1. Each Contracting Party may impose or permit to be imposed on aircraft of the other Party fair and reasonable charges for the use of public airports and other facilities under its authority. Both Contracting Parties agree, however, that such charges shall not be higher than those applied for the use of such airports and facilities by their national aircraft engaged in similar international services.

2. Lubricating oils, technical supplies for consumption, spare parts, regular equipment and stores introduced into the territory of one Contracting Party by the other Contracting Party solely for use by aircraft of the latter Contracting Party shall be exempt, on a basis of reciprocity, from customs duties, inspection fees and other federal, state and municipal taxes and charges.

3. Fuel, lubricating oils, other technical supplies for consumption, spare parts, regular equipment and stores retained on board aircraft of the designated airlines shall be exempt, on a basis of reciprocity, upon arriving in or leaving

the territory of the other Contracting Party, from customs duties, inspection fees and other federal, state and municipal taxes or charges, even if such articles are used by such aircraft on flights within the said territory.

4. Fuel, lubricating oils, other technical supplies for consumption, spare parts, regular equipment and stores taken on board aircraft of the airline of one Contracting Party on international service in the territory of the other Contracting Party shall be exempt, on a basis of reciprocity, from customs duties, excise taxes, inspection fees and other federal, state and municipal taxes or charges.

Article 8

The Contracting Parties agree as follows :

1. The capacity afforded by the airlines designated by the Contracting Parties shall be closely related to the demand for traffic.

2. The airlines designated by the two Contracting Parties shall enjoy fair and equitable treatment, to ensure equal opportunity for the operation of the agreed services.

3. In the operation by the designated airline of either Contracting Party of the air services referred to in this Agreement, the interests of the airline of the other Contracting Party shall be taken into consideration, particularly in the operation of common routes or portions of routes, so as not to affect unduly the services provided by the latter.

4. It is agreed that the services offered by an airline designated under this Agreement shall have as principal objective the provision of air transport with capacity adequate to the traffic requirements between the two countries, on the understanding that the designated airline may offer capacity adequate to the traffic requirements between the territory of the Contracting Party designating it and other points on the specified routes.

5. The right to take on or set down, in the operation of such services, international traffic to or from third countries at any point or points on the routes specified in the route schedule shall be exercised in accordance with the general principles of orderly development of air transport, which both Contracting Parties accept, and shall be subject to the general principle that the capacity must be related to :

(*a*) The demand for traffic between the country of origin and the countries of destination;

(*b*) The requirements of through traffic; and

(*c*) Traffic requirements of the areas through which the airline passes, after local and regional services have been taken into account.

6. The two Contracting Parties agree to recognize that fifth freedom traffic is complementary to the traffic requirements on the routes between the territories of the Contracting Parties or subsidiary as regards the requirements of third and fourth freedom traffic between the territory of one of the Contracting Parties and third countries on the route.

7. Both Contracting Parties recognize that the operation of local and regional services constitutes a right of their respective countries. Consequently, they agree to consult each other periodically on the way in which the rules in this article are to be applied by their designated airlines in order to ensure that their interests in the local and regional services, as well as their continental services, will not be prejudiced.

8. Any change of gauge justified by reason of economy of operation shall be permitted at any point on the specified routes. However, no change of gauge may be made in the territory of the other Contracting Party where it would alter the operating pattern of through traffic or would be incompatible with the principles set forth in this Agreement.

9. The aeronautical authorities of one of the Contracting Parties shall give notice to the aeronautical authorities of the other Contracting Party that its airline wishes to increase the capacity offered or the frequency of service on one of the specified routes, not less than thirty (30) days in advance of the date on which the increase is to be put into effect. In the event that the Contracting Party so notified considers such an increase to be unjustified in view of the volume of traffic on the route or to be detrimental to the interests of the airline designated by it, it may, within thirty (30) days, request consultation with the other Contracting Party. Such consultation shall begin within sixty (60) days from the request, and the designated airlines shall be required to submit any information requested of them so as to facilitate a decision on the need or justification for the proposed increase. If no agreement is reached between the Contracting Parties within ninety (90) days from the date of the request for a consultation, the question shall be submitted to arbitration in accordance with the provisions of article 11. In the meantime, the proposed increase may not be put into effect.

Article 9

1. The rates for any agreed service shall be fixed at reasonable levels, taking into account all relevant factors, including cost of operation, reasonable profit, the characteristics of each service and the rates charged by the other airlines on all or part of the same routes.

2. The designated airline of each Contracting Party shall submit its rates for traffic from or to the territory of the other Contracting Party to the aeronautical authorities of the latter for prior approval, in accordance with their directives or instructions, at least forty-five (45) days prior to the anticipated date of their entry into force; this period may be reduced in special cases at the discretion of the authorities on which approval depends.

3. For the purpose of establishing such rates, the designated airlines may reach agreement through the machinery of IATA (International Air Transport Association). If that is not possible, the designated airlines shall endeavour to reach agreement directly between themselves, adhering in any case to the principles and requirements of approval set forth in this article.

4. The rates proposed by the designated airline of either of the Contracting Parties shall comprise the rates from the point of origin to the point of destination and vice versa, on the specified routes, and shall be subject to approval by both Contracting Parties. The rates relating to portions of the routes between the territory of one of the Contracting Parties and any other points on the specified routes, as well as points beyond those indicated as terminal points, shall also be subject to approval by both Contracting Parties, provided that they relate to the same flight number and the same aircraft.

5. The aeronautical authorities of each of the Contracting Parties shall do everything possible to ensure that the rates charged conform to the rates approved by the Contracting Parties and that no airline rebates any portion of such rates, either directly or indirectly, to the user or to travel agents, to the detriment of the rate structures approved by the aeronautical authorities of the Contracting Parties, including the payment of excessive sales commissions to agents or the use of currency conversion rates different from those officially in force.

6. If a Contracting Party upon review of an existing rate charged for carriage to or from its territory by an airline of the other Contracting Party, is not satisfied with that rate, it shall so notify the other Contracting Party and the two Contracting Parties shall endeavour to reach agreement on an appropriate rate.

7. If the designated airlines cannot reach an agreement on rates, or if the aeronautical authorities of either Contracting Party do not approve the rates submitted to them in accordance with the preceding paragraphs, those rates shall not be put into effect until the aeronautical authorities of the two Contracting Parties find a satisfactory solution. In the event that no agreement can be reached, the procedure laid down in article 11 of this Agreement shall be followed.

Article 10

1. Either of the Contracting Parties may at any time request the holding of consultations between the competent authorities of the two Contracting Parties for the purpose of discussing the interpretation, application or modification of this Agreement. Such consultations shall begin within a period of sixty (60) days from the date on which the request therefor is received from the Ministry of Foreign Affairs of the United Mexican States or from the Ministry of Foreign Affairs of the Federative Republic of Brazil, as the case may be. If agreement is reached on a modification of the Agreement, such agreement shall be formally confirmed by an exchange of diplomatic notes.

2. The amendments so approved shall enter into force definitively on the date agreed upon by both Contracting Parties in a further exchange of notes, after they have obtained the necessary approval in accordance with their respective constitutional procedures, and provisionally as of the date of the exchange of notes containing the approved amendments.

Article 11

1. Unless otherwise stipulated, any dispute between the Parties relative to the interpretation or application of this Agreement, which cannot be settled through consultation, shall be submitted for an advisory opinion to a tribunal of three arbitrators, one to be named by each Contracting Party and the third by the two arbitrators so designated, provided that the third arbitrator is not a national of either Contracting Party. Each Party shall designate an arbitrator within two months following the submission by one Party to the other of a diplomatic note requesting arbitration of a dispute; and the third arbitrator shall be selected within one month after the said period of two months.

2. Should either Party fail to name its own arbitrator within two months, or if the third arbitrator is not designated within the time-limit indicated, either Party may request the President of the International Court of Justice to select and appoint such arbitrator or arbitrators as may be required.

3. The Parties shall make every effort, to the extent of their capabilities, to comply with the advisory opinion of the tribunal. Each Party shall bear half of the expenses of the arbitral tribunal.

Article 12

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

Article 13

If a general multilateral air transport convention, accepted by both Contracting Parties, enters into force, this Agreement shall be amended so as to conform with the provisions of such convention.

Article 14

Either Contracting Party may at any time notify the other Contracting Party of its intention to denounce this Agreement, in which case it shall be required to notify the International Civil Aviation Organization at the same time. The Agreement shall terminate six (6) months after the date of receipt of the notice of termination, unless the latter is withdrawn by mutual agreement before the expiry of this time-limit. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen (14) days after receipt of such notice by the International Civil Aviation Organization.

Article 15

1. This Agreement, which is subject to ratification, shall enter into force definitively on the date specified in an exchange of diplomatic notes, which shall take place as soon as the Contracting Parties have obtained the necessary approval in accordance with their respective constitutional procedures and the instruments of ratification have been exchanged. The exchange of instruments of ratification shall take place as soon as possible at Rio de Janeiro.

2. However, the Agreement shall become applicable provisionally, within the limits of the administrative powers of the competent authorities of each of the Contracting Parties, as of the date of its signature.

Article 16

Without prejudice to the provisions of article 14, this Agreement shall remain in force for a period of three (3) years from the date of its signature and shall be tacitly understood to have been renewed for successive periods of three (3) years, unless one of the Contracting Parties requests revision of it six (6) months before the date of its termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement at Mexico City, on the

seventeenth day of October, nineteen hundred and sixty-six, in duplicate, in the Portuguese and Spanish languages, both texts being equally authentic.

For the Government of the Federative Republic of Brazil :

FRANK DE MENDONÇA MOSCOSO
Ambassador of Brazil

For the Government of the United Mexican States :

ANTONIO CARRILLO FLORES
Minister for Foreign Affairs

ROUTE SCHEDULE

SECTION I

The airline designated by the Government of Mexico shall be entitled to operate air services, in both directions, on the route specified and to make scheduled stops at the points indicated in this paragraph :

Points in Mexican territory – Panama – Bogotá – Lima – Rio de Janeiro and beyond.

NOTES

1. The designated airline may operate up to three weekly flights on the specified route.

2. The designated airline may exercise fifth freedom rights at Lima, on its three authorized weekly flights.

3. The designated airline may, at Bogotá, exercise fifth freedom rights limited to 35 per cent of the capacity of the aircraft, on each of two of its three authorized weekly flights.

4. The designated airline shall not have fifth freedom rights or stop-over rights from Panama to Rio de Janeiro and from Rio de Janeiro to Panama.

5. The designated airline shall not have fifth freedom rights or stop-over rights from Rio de Janeiro to points beyond and vice versa.

6. The designated airline may, on one or all of its flights, omit the intermediate points and the points beyond.

7. The designated airline shall operate its route using DC-8 aircraft, or similar or smaller aircraft, with a maximum capacity of 150 seats.

SECTION II

The airline designated by the Government of Brazil shall be entitled to operate air services, in both directions, on the route specified and to make scheduled stops at the points indicated in this paragraph :

Points in Brazilian territory – Lima – Bogotá – Panama – Mexico City and beyond.

NOTES

1. The designated airline may operate up to three weekly flights on the specified route.

2. The designated airline may exercise fifth freedom rights at Lima on its three authorized weekly flights.

3. The designated airline may, at Bogota, exercise fifth freedom rights limited to 35 per cent of the capacity of the aircraft, on each of two of its three authorized weekly flights.

4. The designated airline shall not have fifth freedom rights or stop-over rights from Panama to Mexico City or from Mexico City to Panama.

5. The designated airline shall not have fifth freedom rights or stop-over rights from Mexico City to points beyond and vice versa.

6. The designated airline may, on one or all of its flights, omit the intermediate points and the points beyond.

7. The designated airline shall operate its route using DC-8 or Boeing aircraft, or similar or smaller aircraft, with a maximum capacity of 150 seats.