

No. 16154

**FRANCE
and
SENEGAL**

Air Transport Agreement (with annex and exchanges of letters). Signed at Dakar on 16 September 1974

Authentic text: French.

Registered by France on 29 December 1977.

**FRANCE
et
SÉNÉGAL**

Accord relatif au transport aérien (avec annexe et échanges de lettres). Signé à Dakar le 16 septembre 1974

Texte authentique : français.

Enregistré par la France le 29 décembre 1977.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF SENEGAL

The Government of the French Republic and the Government of the Republic of Senegal,

Considering the ties of friendship between the two countries,

Desiring to co-operate in the field of air transport on the basis of equality and mutual respect and interest,

Desiring to apply to such transport 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 I. 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 II. 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.

(2) The expression “aeronautical authorities” means:

- in the case of the French Republic, the Secretariat-General for Civil Aviation;
- in the case of the Republic of Senegal, the Ministry responsible for civil aviation;
- or, in either case, any person or body authorized to perform the functions presently exercised by them.

Article III. 1. Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall, upon entry into the territory of the other Contracting Party, be exempt from all customs duties, inspection fees and other similar taxes, duties and charges, provided such equipment and supplies remain on board the aircraft until re-exported.

2. The following shall also 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, within the limits fixed by the authorities of the said Contracting Party, and placed on board aircraft of the other Contracting Party engaged in international service;

¹ Came into force on 1 September 1976, i.e., the first day of the second month following the date of exchange of the instruments of approval, which took place at Paris on 16 July 1976, in accordance with article XXI.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, p. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117, and vol. 958, p. 217.

- (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 airlines of the other Contracting Party;
- (c) fuels and lubricants intended for aircraft employed in international traffic by the designated airlines 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 on board.

3. Regular aircraft equipment, materials and stores retained on board the aircraft of either Contracting Party may not be unloaded in the territory of the other Contracting Party save 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 have been declared to customs.

Article IV. 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 operating the air services specified in the annex hereto.

Each Contracting Party reserves the right, however, to refuse to recognize as valid for flight above its own territory certificates of competency and licences granted to its own nationals by the other Contracting Party.

Article V. (a) The laws and regulations of each Contracting Party relating to the admission to and 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 apply to aircraft of the airline or airlines of the other Contracting Party.

(b) 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, clearance, immigration, customs and quarantine.

Article VI. Subject to the provisions of article XIII, each Contracting Party reserves the right to withhold an operating permit from an airline designated by the other Contracting Party, or to revoke such a permit, whenever it considers on sufficient grounds that it has no proof that substantial ownership and effective control of that airline are vested in the other Contracting Party or its nationals, or in the case of failure by that airline to comply with the laws and regulations referred to in article V or to fulfil its obligations under this Agreement.

Article VII. Either Contracting Party may at any time request a consultation between the competent authorities of the two Contracting Parties concerning the interpretation, application or modification of this Agreement.

Such consultation shall begin within thirty (30) days from the date of receipt of the request.

Such modification of this Agreement as are decided upon shall enter into force after they have been confirmed by an exchange of notes through the diplomatic channel.

Article VIII. Either Contracting Party may at any time give notice to the other Contracting Party of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. The Agreement shall terminate one year after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the expiry of this period. If the Contracting Party receiving such notice fails to acknowledge receipt thereof, the said

notice shall be deemed to have been received fifteen (15) days after its receipt at the headquarters of the International Civil Aviation Organization.

Article IX. 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 VII shall, at the request of either Contracting Party, be referred to an arbitral tribunal.

2. Such arbitral tribunal shall consist of three members. Each of the two Governments shall appoint its 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 after the date on which one of the two Governments proposed the arbitral settlement of the dispute, or if the arbitrators have not agreed upon the appointment of a Chairman within a further period of one month, each Contracting Party may request the President of the International Civil Aviation Organization to make the necessary appointments.

3. If the arbitral tribunal cannot arrive at an amicable settlement of the dispute, it shall take a decision by majority vote. Unless the Contracting Parties agree otherwise, it shall establish its own rules of procedure and determine its place of meeting.

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 in all cases be considered final.

5. If and so long as either Contracting Party fails to comply with the arbitral awards, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

Title II. AGREED SERVICES

Article X. The Government of the French Republic and the Government of the Republic of Senegal grant each other the right to have the air services specified in the route schedule appearing in the annex to this Agreement operated by one or more designated airlines. The said services shall hereinafter be referred to as "agreed services".

Article XI. 1. The agreed services may be put into operation immediately or at a later date at the option of the Contracting Party to which the rights have been granted on condition that:

- (a) the Contracting Party to which the rights have been granted shall have designated one or more airlines to operate on the specified route or routes;
- (b) the Contracting Party granting the rights shall have given to the airline or airlines concerned, under the conditions set forth in paragraph 2 below, the necessary operating permit, which shall be granted as promptly as possible, subject to the provisions of article VI of this Agreement.

2. The designated airlines may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that they are qualified to fulfil the conditions prescribed by the laws and regulations normally applied by those authorities to the operation of commercial airlines.

Article XII. The airline or airlines designated by the French Government under this Agreement shall enjoy, in Senegalese territory, the right to set down and pick up international traffic in passengers, mail and cargo at the points on the French routes listed in the annex hereto.

The airline or airlines designated by the Government of the Republic of Senegal under this Agreement shall enjoy in French territory the right to set down and pick up

international traffic in passengers, mail and cargo at the points on the Senegalese routes listed in the annex hereto.

Article XIII. For the operation of the agreed services, the Contracting Parties may in principle designate only airlines of which preponderant ownership is vested in the Contracting Party designating the airline or in nationals of either Contracting Party.

A Contracting Party which considers it has insufficient proof that this condition has been fulfilled may, before issuing the requested permit, require a consultation according to the procedure laid down in article VII. If such consultation produces no result, the matter shall be submitted to arbitration in accordance with article IX.

Pursuant to:

- 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, and
- articles 4 and 2 and the annexes to the Treaty on Air Transport in Africa, signed at Yaoundé on 28 March 1961,

the Government of the Republic of Senegal reserves the right to designate the company Air Afrique as the instrument chosen by the Republic of Senegal for the operation of the agreed services, such designation being accepted by the Government of the French Republic.

Article XIV. 1. The operation of services between French territory and Senegalese territory and vice versa, on the routes specified in the schedule annexed to this Agreement, shall constitute a basic and primordial right of the two countries.

2. The airlines designated by each of the two Contracting Parties shall be guaranteed fair and equitable treatment and shall enjoy equal opportunities and equal rights for the operation of the agreed services. They shall respect the principle of equal division of the capacity to be offered for the operation of the agreed services.

3. On common routes, they shall take their mutual interests into account so as not to affect unduly their respective services.

Article XV. On each of the routes specified in the annex to this Agreement, the agreed services shall have as their primary objective the provision, at a load factor deemed reasonable, of transport capacity adequate to meet the normal and reasonably foreseeable requirements of international air traffic from and to the territory of the Contracting Party which has designated the airline operating the said services.

The airline or airlines designated by one Contracting Party may, within the limit of the over-all capacity referred to in the first paragraph of this article, satisfy traffic requirements between the territories of third States situated on the agreed routes and the territory of the other Contracting Party, local and regional services being taken into account.

In order to meet unforeseen or temporary traffic demands on these same routes, the designated airlines shall agree among themselves on 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 consider it advisable.

If either Contracting Party should not wish to use, on one or more routes, part or all of the transport capacity which it is entitled to offer, it shall come to an agreement with the other Contracting Party for the purpose of transferring to the latter, for a specified period, all or part of the capacity in question.

The Contracting Party transferring all or part of its rights may recover them at the end of the specified period.

Article XVI. The designated airlines shall inform the aeronautical authorities of the two Contracting Parties, not later than sixty (60) days before the inauguration of the agreed services, of the operating conditions, the types of aircraft to be used and the proposed time-tables.

Article XVII. The two Contracting Parties agree to consult together whenever necessary in order to co-ordinate their respective air services. In such consultations they shall take into account statistics relating to traffic carried, which statistics they shall exchange regularly.

If a third country should propose acquiring rights on one of the routes listed in the annex, the two Governments shall consult together in order to consider the practical consequences which the exercise of such rights would involve.

Article XVIII. 1. The tariffs to be applied in respect of the agreed services on the French and Senegalese routes specified in this Agreement shall be fixed as far as possible by agreement between the designated airlines.

The said airlines shall proceed by direct agreement after consultation, where necessary, with airlines of third countries operating on all or part of the same routes.

2. The tariffs so fixed shall be submitted for approval to the aeronautical authorities of each Contracting Party at least sixty (60) days before the proposed date of their introduction. This period may be reduced in special cases, subject to the agreement of the said authorities.

3. If the designated airlines fail to agree on the fixing of a tariff in accordance with the provisions of paragraph 1 above, or if either Contracting Party makes known its disapproval of the tariff submitted to it in accordance with the provisions of paragraph 2 above, the aeronautical authorities of the two Contracting Parties shall try to reach a satisfactory settlement.

In the last resort, recourse shall be had to arbitration as provided for in article IX of this Agreement.

Pending the announcement of an arbitral award, the Contracting Party which has given notice of its disapproval shall be entitled to require the other Contracting Party to maintain the tariffs previously in force.

FINAL PROVISIONS

Article XIX. This Agreement replaces and abrogates the Air Transport Agreement signed at Paris on 15 June 1962¹ between the French Republic and the Republic of Senegal.

It is concluded for a period of two years renewable by tacit agreement unless it is terminated by one of the Contracting Parties.

Notice of such termination shall be given through the diplomatic channel at least six months in advance and under the conditions set forth in article VIII of this Agreement.

Article XX. This Agreement and its annex and any subsequent modifications shall be communicated to the International Civil Aviation Organization for registration.

Article XXI. This Agreement shall enter into force on the first day of the second month following the exchange of instruments of approval.

¹ United Nations, *Treaty Series*, vol. 524, p. 3.

DONE at Dakar on 16 September 1974.

For the Government
of the French Republic:
The Ambassador, High Representative
of the French Republic
to the Republic of Senegal,

[Signed]

XAVIER DAUFRESNE DE LA CHEVALERIE

For the Government
of the Republic of Senegal:
The Minister
for Foreign Affairs,

[Signed]

ASSANE SECK

A N N E X

ROUTE SCHEDULE

I. *French route*

— from points in French territory, via intermediate points in the Iberian Peninsula and the Canary Islands to Dakar and beyond to four points in South America.

II. *Senegalese route*

— from points in Senegalese territory, via intermediate points in the Canary Islands and the Iberian Peninsula, to Marseilles or Bordeaux and Paris and beyond to four points in Western Europe and the Scandinavian countries.

NOTES. 1. Any point on the routes listed above may, at the option of the designated airlines, be omitted on any or all flights.

2. If, on a route linking the territory of the two Contracting Parties, one of the airlines designated by either Contracting Party serves one or more points other than those listed in the route schedule, no traffic right may be exercised between such point or points and the territory of the other Contracting Party.

3. Some of the intermediate points listed in the route schedule may, at the option of the designated airlines, be treated as points beyond; similarly, some of the points beyond may be treated as intermediate points.

DONE at Dakar, on 16 September 1974.

For the Government
of the French Republic:
The Ambassador, High Representative
of the French Republic
to the Republic of Senegal,

[Signed]

XAVIER DAUFRESNE DE LA CHEVALERIE

For the Government
of the Republic of Senegal:
The Minister
for Foreign Affairs,

[Signed]

ASSANE SECK

EXCHANGES OF LETTERS

I a

Dakar, 16 September 1974

Sir,

During the negotiations which led to the conclusion of the Air Transport Agreement between the French Republic and the Republic of Senegal, signed at Dakar today, the

Senegalese delegation requested that it be allowed to benefit from the privileges of the fifth freedom between France and the countries of North Africa on the Senegalese route specified in the annex to the said Agreement.

The French delegation was unable to accede to that request, in particular, because of the existence of written agreements between the Governments concerned; it was not, however, opposed to the operation of lines to France via those countries.

The Government of Senegal, believing that such operation would be profitable only if the carrier designated by it were granted the privileges of the fifth freedom, would like this question to be studied most carefully with a view to achieving a balance with regard to the routes operated by the two designated airlines.

Accept, Sir, etc.

[Signed]

ASSANE SECK
Minister for Foreign Affairs
of the Republic of Senegal

His Excellency Mr. Xavier Daufresne de la Chevalerie
Ambassador, High Representative of the French Republic
to the Republic of Senegal

II a

Dakar, 16 September 1974

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[See letter I a]

I have the honour to confirm to you that because of the agreements concluded with the Governments of the countries of North Africa, the Government of the French Republic regrets that it is unable at this time to consider favourably the Senegalese request to benefit from the privileges of the fifth freedom between France and the countries of North Africa.

Accept, Sir, etc.

[Signed]

XAVIER DAUFRESNE DE LA CHEVALERIE
Ambassador, High Representative of the French Republic
to the Republic of Senegal

His Excellency Mr. Assane Seck
Minister for Foreign Affairs
of the Republic of Senegal

I b

Dakar, 16 September 1974

Sir,

During the negotiations which led to the conclusion of an Air Transport Agreement between the French Republic and the Republic of Senegal, signed at Dakar today, the Senegalese and French delegations:

- (1) recognized the need to concentrate maximum traffic on the lines provided for in the route schedule annexed to the said Agreement in the mutual interest of the airlines designated by the two Contracting Parties;
- (2) agreed to maintain the operating rights and facilities granted to the French and Senegalese companies by the French and Senegalese Governments, so long as this does not conflict with the interests of the two Contracting Parties;
- (3) expressed the desire that the modalities of operation of these services should be the subject of an equitable understanding between the designated airlines.

All these provisions may be examined during the consultations provided for in article XVII, paragraph 1, of the said Agreement.

I should be grateful if you would be good enough to inform me whether the preceding meets with the agreement of the Government of the Republic of Senegal.

If so, this letter and your reply shall be regarded as constituting a confidential agreement between our two Governments.

Accept, Sir, etc.

[Signed]

XAVIER DAUFRESNE DE LA CHEVALERIE
Ambassador, High Representative of the French Republic
to the Republic of Senegal

His Excellency Mr. Assane Seck
Minister for Foreign Affairs
of the Republic of Senegal

II b

Dakar, 16 September 1974

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[See letter I b]

I wish to inform you that these provisions meet with the full agreement of the Government of the Republic of Senegal.

Accept, Sir, etc.

[Signed]

ASSANE SECK
Minister for Foreign Affairs
of the Republic of Senegal

His Excellency Mr. Xavier Daufresne de la Chevalerie
Ambassador, High Representative of the French Republic
to the Republic of Senegal