

No. 17879

**NETHERLANDS
and
SENEGAL**

Air Transport Agreement (with annex and exchange of letters). Signed at Dakar on 27 July 1977

Authentic text: French.

Registered by the International Civil Aviation Organization on 2 July 1979.

**PAYS-BAS
et
SÉNÉGAL**

Accord relatif au transport aérien (avec annexe et échange de lettres). Signé à Dakar le 27 juillet 1977

Texte authentique : français.

Enregistré par l'Organisation de l'aviation civile internationale le 2 juillet 1979.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE REPUBLIC OF SENEGAL

The Government of the Kingdom of the Netherlands and the Government of the Republic of Senegal, hereinafter referred to as Contracting Parties;

Desiring to promote the development of air transport services between and beyond their territories and to further as much as possible international co-operation in this field;

Desiring to apply to these services the principles and provisions of the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;²

Have agreed as follows:

TITLE I. GENERAL PROVISIONS

Article 1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing the international civil air services specified in the annex hereto, drawn up pursuant to this Agreement.

Article 2. For the purpose of this Agreement and its annex,

(1) The term “territory” means, for each Contracting Party, the land and the territorial waters adjacent thereto over which each Contracting Party exercises its sovereignty.

With regard to the Kingdom of the Netherlands, this Agreement shall apply only to the territory in Europe.

(2) The term “aeronautical authorities” means:

- In the case of the Republic of Senegal, the Minister for Civil Aviation
- In the case of the Kingdom of the Netherlands, the Minister for Civil Aviation
- Or in both cases any person or body authorized to perform such functions.

(3) The term “designated airline” means an airline designated by name by one of the Contracting Parties as the carrier which it has chosen to operate the air services specified in this Agreement, and which shall have been accredited by the other Contracting Party, in accordance with this Agreement.

(4) The term “tariff” means the prices charged for carrying passengers, baggage and cargo and the conditions under which those prices apply, and the prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail.

¹ Applied provisionally from 27 July 1977, in accordance with the provisions of the annexed exchange of letters, and came into force definitively on 22 September 1978, the date of the last of the notifications by which the Contracting Parties informed each other of the completion of their required constitutional procedures, in accordance with article 20.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217, and vol. 1008, p. 213.

Article 3. (1) The laws and regulations of each Contracting Party governing entry into and departure from its territory of aircraft engaged in international air navigation or flights of such aircraft within its territory shall apply to the aircraft of the designated airline of the other Contracting Party.

(2) The passengers, crews and consignors of cargo and mail shall comply, either personally or through a third party acting in their name and on their behalf, with the laws and regulations governing, in the territory of each Contracting Party, the entry, stay and exit of passengers, crews, cargo and mail, such as those relating to admission, exit clearance formalities, immigration, customs and measures arising from health and foreign-exchange regulations.

Article 4. Certificates of airworthiness, certificates of competency and licences issued or validated by one Contracting Party and still valid shall be recognized as valid by the other Contracting Party for the purpose of operating the air routes specified in the attached annex. Each Contracting Party, however, reserves the right to refuse to recognize as valid for flight over its territory, certificates of competency and licences issued to its own nationals by the other Contracting Party.

Article 5. (1) Aircraft operated on international services by the designated airline of one Contracting Party, as well as their regular equipment (including spare parts), their supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) shall, when entering the territory of the other Contracting Party, be exempt from all customs duties, inspection fees and other similar duties or taxes, provided such equipment and supplies remain on board the aircraft until they are re-exported.

(2) The following shall also be exempt from the same duties and taxes with the exception of any fees or taxes charged for services rendered:

- (a) Stores of any origin taken on board in the territory of one Contracting Party within the limits fixed by the authorities of the said Contracting Party and taken on board aircraft operating an international service of the other Contracting Party;
- (b) Spare parts imported into the territory of one of the Contracting Parties for the maintenance or repair of aircraft operated on international services of the designated airline of the other Contracting Party;
- (c) Fuel and lubricants intended to supply aircraft operated on international services by the designated airline of the other Contracting Party, even when these supplies have to be used on the part of the flight above the territory of the Contracting Party in which they were taken on board.

(3) Aircraft equipment and materials and supplies that are on board aircraft of the designated airline of a Contracting Party may be unloaded in the territory of the other Contracting Party only with the consent of the customs authorities of that territory. In such a case, they may be placed under the supervision of the said authorities until they are re-exported or have been declared to customs.

TITLE II. AGREED SERVICES

Article 6. The Contracting Parties grant to each other the right to have the air services specified in this Agreement and its annex operated by the designated airlines of either of them. The said services shall hereinafter be referred to as "agreed services".

Article 7. (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline for the purpose of operating the agreed services on the routes indicated in the annex to this Agreement.

(2) As soon as this designation has been received, the other Contracting Party shall, subject to the provisions of paragraph 3 of this article and those of article 9 of this Agreement, without delay grant to the airline thus designated the appropriate operating authorization.

(3) The aeronautical authorities of one of the Contracting Parties may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed for operating an international airline under the laws and regulations normally applied by the said authorities under the Convention on International Civil Aviation.

Article 8. In implementation of articles 77 and 79 of the Convention on International Civil Aviation referring to the creation by two or more States of joint operating airline or international operating agencies, the Government of the Kingdom of the Netherlands agrees that the Government of the Republic of Senegal, in accordance with articles 2 and 4 and the annexed documents of the Treaty relating to air transport signed at Yaoundé on 28 March 1961, to which the Republic of Senegal acceded, reserves the right to designate the Air Afrique company as the carrier it chooses to operate the agreed services.

Article 9. (1) Each Contracting Party shall have the right not to grant the operating authorization referred to in article 7, paragraph 2, if the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the other Contracting Party or its nationals.

(2) Each Contracting Party shall have the right to revoke an operating authorization or to limit or suspend the exercise of the rights specified in article 6 of this Agreement by the airline designated by the other Contracting Party:

- (a) In any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party that has designated the airline or in nationals of such Contracting Party, or
- (b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party which has granted these rights, or
- (c) In case the airline fails to operate in accordance with the conditions prescribed under this Agreement.

(3) Unless limitation, suspension or revocation is essential to prevent further particularly serious infringements of the said laws and regulations, such right shall be exercised only after consultation, as referred to in article 17, with the other Contracting Party. If such consultation is unsuccessful, arbitration shall be resorted to in accordance with article 18.

Article 10. (1) Operation of the agreed services between the territories of the Contracting Parties constitutes for them, a basic and primary right.

(2) The two Contracting Parties agree to apply the principle of equality and reciprocity in all areas connected with exercise of the rights arising from this Agreement.

The designated airlines of the two Contracting Parties shall be guaranteed fair and equitable treatment; they shall enjoy equal opportunities and rights and shall

respect the principle of equal distribution of the capacity to be offered for operating the agreed services.

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

Article 11. The airline designated by each Contracting Party shall enjoy, while operating an agreed service, the following rights:

- (a) To fly without landing across the territory of the other Contracting Party,
- (b) To make stops in the said territory for non-traffic purposes, and
- (c) To make stops in the said territory for the purpose of putting down and taking on international traffic in passengers, mail and cargo.

Article 12. (1) On each of the routes specified in the annex to this Agreement, the main object of the agreed services shall be to provide a capacity, on the basis of a reasonable load factor, corresponding to the normal and reasonably foreseeable requirements of the international traffic from or to the territory of the Contracting Party which has designated the airline exploiting the said services.

(2) The airline designated by each Contracting Party may satisfy, within the limits of the overall capacity provided for under paragraph 1 of this article, the traffic requirements between the territories of the third States situated on the routes specified in the annex to this Agreement and the territory of the other Contracting Party, local and regional services being taken into account.

(3) In order to meet the requirement of any unforeseen or temporary traffic on these routes, the designated airlines shall decide among themselves how to respond to this temporary increase in traffic. They shall immediately inform the aeronautical authorities of their respective countries which may consult each other if they deem this useful.

(4) In the case where the airline designated by one of the Contracting Parties does not wish to use on one or more routes either a part or the whole of the transport capacity which it should offer, having regard to its rights, it shall agree with the airline designated by the other Contracting Party to transfer to the latter, for a specified period of time, all or part of the transport capacity in question.

The designated airline which transfers all or part of its rights may take them back at the end of the period specified.

Article 13. (1) The designated airlines shall submit their operational schedule for approval to the aeronautical authorities of the two Contracting Parties, not later than sixty (60) days before the entry into operation of the agreed services; this period may be reduced in the light of subsequent changes subject to the agreement of the said authorities.

(2) The aeronautical authorities of one of the Contracting Parties shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical air transport data as may be reasonably required for monitoring the transport capacity provided by the designated airline of the first Contracting Party. These statistics shall include all the necessary data for determining the volume, origin and destination of the traffic carried on the agreed services.

Article 14. (1) The tariffs to be charged by the designated airlines of one of the Contracting Parties for carriage to or from the territory of the other Contracting

Party shall be established at a reasonable level, due regard being paid to all relevant factors, in particular the cost of operation, reasonable profit, 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 the two Contracting Parties after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by the airlines using the procedures of the International Air Transport Association for establishing the tariffs.

(3) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Contracting Parties, at least sixty (60) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.

(4) This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 3 of this article, these tariffs shall be considered approved. Where the period for submission is reduced as provided for in paragraph 3, the aeronautical authorities may agree on a period of less than thirty (30) days for notification of possible disapproval.

(5) Where a tariff cannot be established in accordance with paragraph 2 of this article, or where an aeronautical authority, within the period referred to in paragraph 4 of this article, gives the other aeronautical authority notice of its disapproval of any tariff agreed in accordance with the provisions of paragraph 2, the aeronautical authorities of both Contracting Parties, after consulting the aeronautical authorities of any other State whose advice they consider useful, shall endeavour to determine the tariff by mutual agreement.

(6) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this article, or on the determination of any tariff under paragraph 5 of this article, the dispute shall be settled in accordance with the provisions of this Agreement for the settlement of disputes.

(7) Any tariff established in accordance with the provisions of this article shall remain in force until a new tariff has been established.

(8) Designated airlines may not apply tariffs other than those which have been agreed and approved.

Article 15. (1) Either Contracting Party shall grant the designated airline of the other Contracting Party the right to transfer freely the excess of receipts over expenditure achieved on its territory in connection with the carriage of passengers, baggage, mail and cargo.

(2) This transfer shall be transacted on the basis of the commercial rates of exchange for current payments.

(3) To the extent that the payments system between the Contracting Parties is governed by a special agreement, such special agreement shall apply.

(4) The excess of receipts over expenditures referred to in paragraph 1 of this article obtained by the designated airline of one of the Contracting Parties shall be exempt from income tax and/or company tax by the other Contracting Party.

Article 16. The two Contracting Parties agree to consult each other whenever the need arises, in order to co-ordinate their respective air services.

TITLE III. CONSULTATION—ARBITRATION—DENUNCIATION

Article 17. (1) Each Contracting Party may at any time request consultation between the aeronautical authorities of the two Contracting Parties for the purpose of interpreting, applying or amending this Agreement and/or its annex.

(2) Such consultation, which may be held through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of receipt of the request.

(3) Any amendment of this Agreement decided upon during the consultation referred to in paragraph 1 above shall be agreed upon in writing between the Contracting Parties and shall take effect on the date on which both Governments have informed each other that the formalities required by their respective internal laws have been complied with.

(4) Any amendment of the annex to this Agreement decided upon during the consultation referred to in paragraph 1 above shall be agreed upon in writing between the aeronautical authorities and shall take effect immediately.

Article 18. (1) Where a dispute relating to the interpretation or application of this Agreement has not been settled in accordance with the provisions of article 17, either between the aeronautical authorities or between the Governments of the Contracting Parties, it shall, at the request of one of the Contracting Parties, be submitted to an arbitration tribunal.

(2) This arbitration tribunal shall be composed of three members. Each of the two Contracting Parties shall appoint an arbitrator and the two arbitrators shall agree upon the appointment of a national of a third State as Chairman.

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

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

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

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

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

Article 19. Either Contracting Party may at any time give notice to the other Contracting Party of its desire to denounce this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization. The denunciation shall take effect twelve (12) months after the date of receipt by the other Contracting Party, unless the notice is withdrawn by agreement before the end of that 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.

TITLE IV. FINAL PROVISIONS

Article 20. Each of the Contracting Parties shall notify the other of the completion of the constitutional procedures required for the entry into force of this Agreement which shall take effect on the date of the last notification.

Article 21. This Agreement and the annex thereto as well as any subsequent amendments shall be communicated to the International Civil Aviation Organization for registration.

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

DONE at Dakar, on 27 July 1977, in duplicate in the French language.

For the Government
of the Kingdom of the Netherlands:

[Signed]

EMERIC EITEL SYDNEY DE JONGH
Ambassador
of the Kingdom of the Netherlands

For the Government
of the Republic of Senegal:

[Signed]

MAMADOU DIOP
Minister of Public Works,
Urban Development and Transport

ANNEX

(1) ROUTE SCHEDULE

(a) Senegalese route

A point in Senegal—Madrid or Rome—a point in the Federal Republic of Germany—a point in the Netherlands—Copenhagen—Oslo—Stockholm—London or New York, in both directions.

(b) Netherlands route

A point in the Netherlands—a point in the Federal Republic of Germany or Zurich—a point in Senegal—Conakry or Freetown—Rio de Janeiro or São Paulo—Buenos Aires—Montevideo—Santiago, Chile, in both directions.

(2) Any point on the above-mentioned routes may, at the option of the designated airlines, be omitted on all or part of their services.

(3) The designated airlines of the Contracting Parties may, respectively, serve one or more different points on the above routes other than those included in the route schedule.

However, no commercial traffic rights shall be exercised by any of those airlines between this or these points and the territory of the other Contracting Party, unless these rights have been specially granted by that Party.

EXCHANGE OF LETTERS

I

AMBASSADOR OF THE KINGDOM OF THE NETHERLANDS

Dakar, 27 July 1977

Sir,

With reference to the Air Transport Agreement between the Kingdom of the Netherlands and the Republic of Senegal signed at Dakar today, 27 July 1977, I have the honour to propose to you that this Agreement should be applied provisionally as from today, pending completion of the constitutional formalities required for its entry into force.

I should be grateful to receive notification of your Government's acceptance of this proposal.

Accept, Sir, etc.

[Signed]

EMERIC EITEL SYDNEY DE JONGH

His Excellency Mr. Mamadou Diop
Minister of Public Works, Urban Development and Transport
of the Republic of Senegal

II

THE MINISTER OF PUBLIC WORKS, URBAN DEVELOPMENT AND TRANSPORT
OF THE REPUBLIC OF SENEGAL

Dakar, 27 July 1977

Sir,

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

[See letter I]

I hereby inform you that the Government of Senegal accepts this proposal.
Accept, Sir, etc.

[Signed]

MAMADOU DIOP

His Excellency Mr. Emeric Eitel Sydney de Jongh
Ambassador of the Kingdom of the Netherlands