No. 18298

BRAZIL
and
IRAQ

Air Transport Agreement (with annex and protocol of signatures). Signed at Brasília on 21 January 1977

Authentic texts: Portuguese, Arabic and English.
Registered by Brazil on 21 February 1980.

BRÉSIL
et
IRAQ

Accord relatif aux transports aériens (avec annexe et protocole de signature). Signé à Brasília le 21 janvier 1977

Textes authentiques : portugais, arabe et anglais.
Enregistré par le Brésil le 21 février 1980.

AIR TRANSPORT AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE REPUBLIC OF IRAQ

The Government of the Federative Republic of Brazil and the Government of the Republic of Iraq, hereinafter referred to as the "Contracting Parties",

Having ratified the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December 1944,[2]

And desiring to conclude an Agreement on Regular Air Transport services between their respective territories,

Having accordingly appointed authorized representatives for this purpose who have agreed as follows:

Article 1. (DEFINITIONS)

1. For the purpose of the present Agreement, unless otherwise stated, the following terms have the following meanings:

a) "Aeronautical authorities" means, in the case of the Government of the Federative Republic of Brazil, the Ministry of Aeronautics and, in the case of the Government of the Republic of Iraq, the Ministry of Communications or the State Organization for Iraqi Civil Aviation, or, in both cases, any other authority or person empowered to perform the functions presently exercised by the said authorities.

b) "Agreed Services" means scheduled air services for the transport of passengers, cargo and mail on the specified routes herein.

c) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December 1944, including all annexes adopted under article 90 of that Convention and any amendments made to the Convention or its annexes under articles 90 and 94 (*a*) of the Convention itself.

d) "Designated Airline" means an airline that one Contracting Party has designated in writing to the other Contracting Party, in accordance with article 3 of the present Agreement, as being an airline which is to operate international air services on the routes specified in the annex to this Agreement and exercise the rights stated in this Agreement and its annex.

e) "Tariff" means the price to be paid for the carriage of passengers and cargo and the conditions under which this price [applies], including prices and conditions for agency and other related services but excluding remuneration and conditions for the carriage of mail.

f) "Territory", "Air Services", "International Air Services", "Airline" and "Stop for non-traffic purposes" shall have, in the application of the present Agreement, the meaning specified in articles 2 and 96 of the Convention.

2. The annexes as well as any further pertinent act to this Agreement shall be deemed to be part of the Agreement and all reference to the Agreement shall include reference to those documents, except otherwise expressly provided.

[1] Came into force on 24 August 1977, i.e., the date of the exchange of diplomatic notes by which the Contracting Parties informed each other of the completion of the required formalities, in accordance with article 13.

[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 volume 1008, p. 213.

3. Titles are inserted in this Agreement and in this annex at the head of each article or section for the purpose of reference and convenience and in no way define, limit or describe the scope or intent of this Agreement.

Article 2. (RECIPROCITY)

The Contracting Parties reciprocally grant each other the rights specified in the present Agreement and its annex, in order that the international air service specified herein may be established.

Article 3. (DESIGNATION OF AIRLINES)

1. Any of the agreed services may be inaugurated immediately or at a later date, at the criterion of the Contracting Party to which the rights have been granted, but not before:

a) The Contracting Party to which the rights have been granted shall have designated an airline of its nationality for the specified route or routes;

b) The Contracting Party granting the rights shall have issued the necessary operating permit to the designated airline, in compliance with the provisions set forth in paragraph 2 of this article and in article 6.

2. The airline designated by one of the Contracting Parties may be called upon to prove to the aeronautical authorities of the other Contracting Party that it is able to satisfy the requirements prescribed by the laws and regulations normally applied by such authorities to the operation of international airlines.

3. The Contracting Parties reserve the right to substitute the originally designated airline by [another] national airline, giving advance notice to the other Contracting Party. All the provisions of the present Agreement and its annex shall apply to the newly designated airline.

Article 4. (AIR NAVIGATION FACILITIES)

1. In order to avoid discriminatory practices and to ensure equal treatment, it is agreed that:

a) The charges and fees that either of the Contracting Parties imposes or allows to be imposed on the airline designated by the other Contracting Party, for the use of airports and other facilities, shall not be higher than the charges and fees paid by its national aircraft engaged in similar international services for the use of such airports and facilities.

b) Fuels, lubricating oils and spare parts brought into the territory of one Contracting Party or placed on board the aircraft of the other Contracting Party in said territory, whether directly by an airline designated by the latter Contracting Party, whether on the account of said airline for the sole use of its own aircraft in the agreed services, shall enjoy the same treatment granted to the national airlines engaged in international transportation, with respect to customs duties, inspection fees and/or other national duties and charges.

c) Aircraft of one of the Contracting Parties used in the operation of the agreed services, and fuels, lubricating oils, standard equipment and spare parts for the upkeep and repair of the aircraft, as well as aircraft supplies, including food, beverages and tobacco, retained on board, shall be exempt from customs duties, inspection fees and similar duties or fees in the territory of the other Contracting Party, even though used or consumed in flights within such territory.

2. The goods mentioned in the above paragraph and enjoying the exemption established therein may not be unloaded from the aircraft within the territory of the other Contracting Party without the consent of its customs authorities, and, when not used by the airlines themselves, shall be subject to the control of such authorities.

3. Passengers, luggage and merchandise in transit through the territory of one Contracting Party and remaining in the airport area reserved for them shall be subject only to the control established for that area. Luggage and merchandise in direct transit shall be exempt from customs duties, fees and charges.

4. Neither of the Contracting Parties shall give a preference to its own or any other airline over the designated airline of the other Contracting Party in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways and other facilities under its control.

Article 5. (LICENSING)

Certificates of airworthiness, certificates of competency and licenses issued or revalidated by the aeronautical authorities of the other Contracting Party and still in effect shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services. The Contracting Parties reserve the right, however, of refusing to recognize certificates of competency and licenses granted to their own nationals by authorities of the other Contracting Party or by another State for purposes of flight over their own territory.

Article 6. (APPLICABILITY OF LAWS AND REGULATIONS)

1. The laws and regulations of one Contracting Party relating to entry into 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 apply to aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party relating to the entry into or departure from its territory of passengers, crew, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew or cargo of the aircraft of the designated airline of the other Contracting Party while in the territory of the first Contracting Party.

Article 7. (DISCIPLINARY MEASURES)

1. Each Contracting Party reserves the right to withhold or to revoke the operating licenses of an airline designated by the other Contracting Party, when it has not been proved to its satisfaction that substantial ownership and effective control of said airline are vested in the hands of nationals of the other Contracting Party.

2. The airline designated may be fined by the authorities of the other Contracting Party under the terms of its legal operating permission or to have its operating license totally or partially suspended for a period from one to three months:

a) In cases of non-compliance with laws and regulations specified in article 6 of this Agreement, and other governmental norms established for the functioning of the designated airlines;

b) When the aircraft employed in the agreed services are not manned by nationals of one or another of the Contracting Parties, except in cases of training of flight personnel by instructors duly authorized by the responsible agencies of the Contracting Party designating the airline, and during the training period;

c) In case the airline otherwise fails to operate in accordance with conditions prescribed under this Agreement.

3. In cases of recurrence of the violations referred to in the above item, the license may be revoked.

4. The revokement referred to in items 1 and 3 of this article may only be effected after consultation with the other Contracting Party. The consultation should be initiated within sixty (60) days of the respective notification.

Article 8. (CONSULTATION)

1. In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement.

2. If either of the Contracting Parties consider[s it] desirable to modify any of the terms of the annex to this Agreement, it may request a consultation between the aeronautical authorities of both Parties, such consultation to be initiated within sixty days of the respective notification.

3. The results of the consultation shall become effective after confirmation by exchange of notes through diplomatic channels.

Article 9. (SETTLEMENT OF DISPUTES)

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiations.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to a Tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party, from the other, of a notice through diplomatic channels requesting arbitration of the dispute, and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators, as the case requires. In all cases the third arbitrator shall be a national of a third State, shall act as President of the Tribunal and shall determine the place where arbitration will be held.

3. The Arbitral Tribunal shall reach its decisions by a majority of votes. The Contracting Parties shall engage their best efforts to carry out the decisions of such Tribunal.

Article 10. (ADJUSTMENT)

Whenever a multilateral air convention accepted by both Contracting Parties becomes effective, the present agreement shall be modified so that its provisions shall comply with those of the new convention.

Article 11. (REGISTRATION)

The present Agreement and its annex, as well as any further pertinent acts, which may complement or modify them, shall be registered with the International Civil Aviation Organization.

Article 12. (TERMINATION)

Either of the Contracting Parties may, at any time, notify the other Contracting Party of its intention to terminate the present Agreement, making a simultaneous communication of its purpose to the International Civil Aviation Organization. The termination of the present Agreement shall become effective 6 (six) months after receipt of the notice by the other Contracting Party, unless it is withdrawn by mutual consent of the Parties before expiration of said period. If receipt of the notice is not acknowledged by the Contracting Party to which it is addressed, such notice shall be deemed to have been received 14 (fourteen) days after its receipts by the International Civil Aviation Organization.

Article 13. (ENTRY INTO FORCE)

This Agreement shall enter into force on the date to be laid down in exchange of diplomatic notes stating that the formalities required by the national legislations of the Contracting Parties have been complied with.

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

DONE in Brasília, on [21 January] 1977, corresponding to the [1st] day of [Safar] of the year 1397 Hijra, in two originals, in the Portuguese, Arabic and English languages, all texts being equally authentic. In case of dispute, the English text will prevail.

For the Government of the Federative Republic of Brazil:

[*Signed — Signé*][1]

For the Government of the Republic of Iraq:

[*Signed — Signé*][2]

ANNEX

Section I. (MUTUAL GRANTING)

The Contracting Parties grant each other the right to operate the agreed services, on the routes and landing points specified in the Route Schedules attached hereto, by the designated airlines and according to the conditions set forth in this annex.

Section II. (RIGHTS, PERMISSIONS AND AUTHORIZATIONS)

1. Under the conditions in the present Agreement and in this annex, each Contracting Party grants to the airline designated by the other Contracting Party and for the purpose of operating the agreed services on the specified routes:

a) The right of load and unload passengers, cargo and mail, whose point of departure or destination is in the territory of the other Contracting Party;

b) The permission for loading and unloading international traffic in passengers, cargo and mail, from or to landing points in countries other than those of the Contracting Parties included in the Route Schedules.

2. Each Contracting Party authorizes the overflight of its territory by the airline designated by the other Contracting Party, with or without technical landings at stops included in the Route Schedules.

[1] Signed by A. F. Azeredo da Silveira — Signé par A. F. Azeredo da Silveira.
[2] Signed by Jihad G. Karam — Signé par Jihad G. Karam.

3. The carrying out of the item mentioned above is subject to the conditions set forth in section III below.

Section III. (CAPACITY CLAUSE)

1. The agreed services shall have as their fundamental purpose the provision of an air transport capacity adequate to the traffic requirements proceeding from or whose destination is the territory of each of the Contracting Parties.

2. The operation of such services, particularly of routes or common sections of routes, shall take into account the interests of the airline of the other Contracting Party, so as not to affect unduly the services rendered by the carrier. The principles of reciprocity ensured, a fair and equal treatment should be granted to the airlines designated by the two Contracting Parties so that they may operate the agreed services between their respective territories on equal conditions.

3. Both Contracting Parties acknowledge that international traffic between one Contracting Party and third other countries is accessory to the traffic between the territories of the two Contracting Parties. They also agree that such traffic may only be authorized as exceptional and complementary to the needs of the principal traffic, so that the capacity may be related:

a) To the requirements of an economical operation of the agreed services;

b) To the existing traffic demand in the areas traversed with due consideration of the interest of local and regional services.

Section IV. (STATISTICS)

1. The aeronautical authorities of the Contracting Parties shall consult each other at the request of either one in order to determine whether the principles enunciated in section III are being observed by the designated airlines, and particularly to avoid the diverting of an unjust portion of traffic from one of the said airlines.

2. The aeronautical authorities of either of the Contracting Parties shall, at the request of the aeronautical authorities of the other Contracting Party, periodically or at any time, supply the statistics that may be reasonably requested, for verification as to how the capacity provided by the airline designated by the other Contracting Party is being used for the agreed services. These statistics should contain all the elements necessary to determine the volume of traffic, as well as its points of origin and destination.

Section V. (TARIFFS)

1. The rates to be charged by the designated airline of one Contracting Party in payment for transportation of passengers and cargo proceeding to or from the territory of the other Contracting Party shall be set at reasonable levels, due consideration being given to all relevant factors, including the operating cost, characteristics of the service, reasonable profit and the rates charged by other airlines on the same or similar routes, observing as far as possible the mechanism adopted by the International Air Transport Association (IATA).

2. The rates thus established shall be submitted to the approval of the aeronautical authorities of the other Contracting Party at least thirty (30) days before the date they should become effective; in special cases, this period may be shortened, if the said authorities should so agree.

3. If, for any reason, a particular tariff cannot be determined according to the foregoing provisions, or if during the first fifteen (15) days of the period either of the Contracting Parties notifies the other of its disapproval of any tariff that shall have been submitted to it, the aeronautical authorities of the Contracting Parties shall undertake to determine such tariff at a meeting called for consultation.

4. The tariffs established according to the provisions of this section shall remain in effect until new tariffs are established according to these same provisions.

5. The tariffs charged by the designated airlines or one of the Contracting Parties, when serving points common to both Parties or points included on routes common to both, between the territory of one Contracting Party and third countries, shall not be lower than those charged by the airline of the other Party for the performance of identical services.

6. The airline designated by one Contracting Party may not, itself or through any intermediary, directly or indirectly, grant discounts, abatements, or any reductions of rates in effect, excepting those provided for in the resolutions approved by the Contracting Parties.

Section VI. (TIME-TABLES AND FREQUENCIES)

The time-tables schedules shall indicate the type, model and configuration of the aircraft employed, as well as the frequency of services and landing points, and shall be submitted by the designated airline of each Contracting Party to the aeronautical authorities of the other Contracting Party at least thirty (30) days before the date on which they are due to become effective. Such time-tables shall be approved within the above-mentioned period, unless they involve alteration of landing points or of capacity, in disagreement with what is specified in this annex.

Section VII. (ALTERATIONS IN THE ROUTE SCHEDULES)

1. The following alteration of routes shall not be dependent upon advance notice between the Contracting Parties, the respective communication from one aeronautical authority to the other being sufficient:

a) Inclusion or suppression of landing points in the territory of the Contracting Party which designated the airline;

b) Omission of landing points in the territory of third countries.

2. The alteration of agreed routes by inclusion of a landing-point not provided for in the Route Schedule, outside of the territory of the Contracting Party which designates the airline, shall be subject to previous agreement between the aeronautical authorities of both Parties.

SCHEDULE TO THE ANNEX TO THE BRAZILIAN-IRAQIAN AIR TRANSPORT AGREEMENT

PART I. *The Brazilian route*

Points in Brazilian territory — Points in West Africa — Points in North Africa (except Casablanca) — Bagdad and/or Basra — Teheran

PART II. *The Iraqian route*

Points in Iraqian territory — Points in North Africa (except Casablanca) — Points in West Africa — Rio de Janeiro and/or São Paulo — Buenos Aires.

NOTE: The above routes may be operated in either direction.

PROTOCOL OF SIGNATURES

In the course of the negotiations that ended with the signature of an Air Transport Agreement between the Federative Republic of Brazil and the Republic of Iraq, on the date below, the representatives of the Contracting Parties agreed to the following:

1. With reference to the foreign crew members operating the agreed services, the designated Brazilian and Iraqian airlines will submit to the Brazilian or Iraqian aeronautical authorities, as the case may be, a complete list stating name, nationality, post, type and number of the license and the name of the authority who issued said license. Except for any

notification to the contrary on the part of the Brazilian or Iraqian authorities, the crew members will be able to operate the agreed services.

2. Initially, the designated airlines of both Contracting Parties shall have the right to operate, on the specified routes, a maximum of two weekly frequencies, in each flight direction. Any increase in capacity or in frequencies shall be negotiated by the respective aeronautical authorities. However, the designated airlines may establish adjustments on such increases, which shall be submitted to the respective aeronautical authorities.

3. Each Contracting Party grants to the designated airline of the other Contracting Party the right to transfer the excess of the revenues over the expenditures according to the exchange formalities in force in the territory of each Contracting Party, which shall grant the necessary means to this purpose. These transfers shall be made at the exchange market rate in force, applicable to these kinds of payments. Wherever the payments' system between the Contracting Parties is governed by a special agreement, such agreement shall apply.

For the Government
of the Federative Republic of Brazil:

[*Signed — Signé*][1]

For the Government
of the Republic of Iraq:

[*Signed — Signé*][2]

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[1] Signed by A. F. Azeredo da Silveira — Signé par A. F. Azeredo da Silveira.
[2] Signed by Jihad G. Karam — Signé par Jihad G. Karam.