

No. 19177

**SPAIN
and
CUBA**

**Air Transport Agreement (with annex and route schedules).
Signed at Madrid on 19 June 1951**

Authentic text: Spanish.

Registered by Spain on 22 October 1980.

**ESPAGNE
et
CUBA**

**Accord relatif aux transports aériens (avec annexe et
tableaux de routes). Signé à Madrid le 19 juin 1951**

Texte authentique : espagnol.

Enregistré par l'Espagne le 22 octobre 1980.

[TRANSLATION — TRADUCTION]

SPANISH-CUBAN AIR TRANSPORT AGREEMENT¹

The Spanish State and the Government of the Republic of Cuba, desiring to conclude an agreement for the purpose of establishing, as soon as possible, air service between the territories of Spain and Cuba and points beyond, have to that end appointed the undersigned plenipotentiaries who, being duly authorized for this purpose by their respective Governments, have agreed as follows:

Article I. Each Contracting Party shall grant to the other the rights specified in the annex to this Agreement, for the purpose of establishing the air services described in that annex, hereinafter referred to as "agreed services".

Article II. The operation of air traffic between their respective territories is, for both Contracting Parties, a fundamental and primary right.

Article III. For the purposes of this Agreement and its annex, unless the text indicates otherwise:

(a) The term "aeronautical authorities" shall mean, in the case of Spain, the Department of Civil Aviation of the Air Ministry and, in the case of the Republic of Cuba, the National Transport Commission, through the Civil Aeronautics Board, and any other person or agency authorized to perform the functions currently performed by that Commission, or similar functions.

(b) The term "designated airlines" shall mean the airlines which the aeronautical authorities of each Contracting Party have notified the aeronautical authorities of the other Contracting Party in writing as being the airlines designated by them in accordance with article IV of this Agreement for the routes specified in such notification.

The term "airline" shall be used in this Agreement to refer to the airline or airlines designated by the Contracting Parties in accordance with the above provisions.

(c) The term "territory" shall have the meaning given it in article 2 of the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944.²

(d) The definitions contained in article 96 (a), (b) and (d) of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, shall apply.

Article IV. (1) The agreed services may be started immediately or at a later date, at the choice of the Contracting Party to which rights have been granted, but not before:

(a) The Contracting Party to which rights have been granted has designated an airline for the specified route or routes; and

¹ Applied provisionally from 19 June 1951, the date of signature, and came into force definitively on 9 April 1953 by the exchange of the instruments of ratification, which took place at Havana, in accordance with article XVII (b).

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; vol. 1008, p. 213, and vol. 1175, p. 297.

(b) The Contracting Party granting the rights has issued the corresponding operating permit to the airline designated in the aforementioned manner, which it shall do without delay subject to the provisions of paragraph 2 of this article and of article VIII.

(2) Each airline may be required to satisfy the aeronautical authorities of the Contracting Party granting rights that it is able to fulfil the conditions prescribed by the laws, regulations and other provisions in force governing the operation of commercial air services.

(3) Each Contracting Party, subject to giving prior notice to the other Party, shall have the right to substitute another airline for the airline designated to operate the agreed services, as well as the right to designate additional airlines. The new designated airline shall have the same rights and obligations as earlier ones.

Article V. (1) The charges which either Contracting Party imposes or allows to be imposed, for the use of airports and other installations, on the designated airline of the other Party shall not be higher than those which would be paid for the use of the said airports and installations by its national airlines, or the airline of the most favoured nation, engaged in international services.

(2) Aircraft of the airline designated by a Contracting Party, and fuel, lubricants, spare parts, usual equipment and stores on board such aircraft when they arrive in the territory of the other Contracting Party and still on board when they leave, shall be exempt in that territory from customs duties, inspection fees and similar national and local duties and taxes.

(3) Fuel, lubricants, spare parts, usual equipment and aircraft stores not covered by paragraph 2 which are brought into the territory of a Contracting Party or taken on board in it by the other Party, by its designated airline or on its behalf and which are intended solely for the use of aircraft of that airline shall enjoy the following treatment with respect to customs duties and other taxes:

- (a) In the case of fuel and lubricants taken on board aircraft while in that territory and still on board at the last airport in which they land before leaving that territory: exemption on departure;
- (b) In the case of spare parts and usual aircraft equipment brought into that territory: exemption on entry;
- (c) In the case of fuel, lubricants, spare parts, usual equipment and aircraft stores not covered by paragraphs (a) and (b): treatment no less favourable than that granted to similar articles brought into that territory and intended for the use of aircraft of a national airline, or of the most favoured foreign airline, engaged in international air services.

Article VI. Certificates of airworthiness, certificates of competency and licences issued or accepted by one Contracting Party and still in force shall be recognized as valid by the other Party for the operation of the agreed services. Each Contracting Party reserves the right, however, not to accept, for flights over its own territory, certificates of competency and licences issued to its own nationals by the other Party or by any other State.

Article VII. Each designated airline may maintain in the territory of the other Contracting Party its own technical and administrative staff, subject to the domestic

provisions of the respective Contracting Parties. This authorization is understood to cover the minimum staff essential to the normal functioning of services.

Article VIII. The postal administrations of the two Contracting Parties shall reach agreement on the carriage of air mail, in accordance with the norms of the international conventions in force on this subject.

Article IX. The aeronautical authorities of the Contracting Parties, within the limits imposed on them by the obligations deriving from multilateral agreements signed by them, shall make every effort to reach an agreement on the minimum services that they will provide to each other at airports and other points on the specified routes, with regard to such matters as air navigation services, exchanges of information, units of measurement, language to be used and keys.

Article X. (1) The laws, regulations and other provisions of each Contracting Party relating to the entry into, stay in and departure from its territory of aircraft engaged in international air navigation, or regulating the operation, handling and navigation of such aircraft, shall apply to aircraft of the airline designated by the other Party while they are within the boundaries of that territory.

(2) The laws, regulations and other provisions of each Contracting Party relating to the entry into, stay in and departure from its territory of aircraft passengers, crew or cargo (such as provisions concerning entry, dispatch, passports, customs, immigration, emigration, police, health and foreign currency rules) shall apply to the passengers, crew or cargo of aircraft of the airline designated by the other Party while they are within the boundaries of that territory.

(3) As long as a visa is required for the admission of foreigners to the territory of either Contracting Party, crew members listed in the manifest of any aircraft operating a service agreed to in this Agreement shall be exempt from the visa requirement provided that they are nationals of the other Party and are in possession of a valid passport and of an identity document issued by the designated airline to which the aircraft belongs.

Article XI. Subject to prior consultation with the other Party, which shall take place within a period of 60 days from the date of the request, each Contracting Party reserves the right to deny or revoke or impose such conditions as it may deem relevant on the exercise by the designated airline of the other Party of the rights specified in the annex of this Agreement, if it considers that substantial ownership and effective control of the airline are not vested in the other Party or in its nationals. It may also, without prior consultation, deny or revoke or impose such conditions as it may deem relevant on the exercise of the said rights if the airline does not comply with the laws, regulations and other provisions referred to in article X of this Agreement, or otherwise fails to comply with the conditions under which the aforementioned rights were granted to it.

Article XII. This Agreement shall be registered with the Council of the International Civil Aviation Organization, in accordance with the provisions of article 83 of the Convention opened for signature at Chicago on 7 December 1944.

Article XIII. Should either Contracting Party consider it desirable to amend the terms of the annex to this Agreement, it may request consultation between the aeronautical authorities of the two Parties, which shall take place within a period of

60 days from the date of the request. If those authorities agree to amendments in the annex, these amendments shall enter into force after they have been confirmed by an exchange of notes through the diplomatic channel.

If no agreement is reached, the Parties may exercise the rights reserved to them under article XVI of this Agreement, as of the date on which the consultation ends.

Article XIV. (1) Any dispute relating to the interpretation or application of this Agreement or its annex which has not been resolved through negotiation between the Parties, taking place within a period of 60 days from the date on which either of them requested it, may be submitted for an advisory report to the Council of the International Civil Aviation Organization, or for arbitration to a person, entity or tribunal designated by agreement between the Parties. The Parties undertake to abide by any ruling resulting from such arbitration.

(2) If the dispute is submitted to an arbitral tribunal, the composition and functioning of that tribunal shall conform to the provisions of the following paragraphs:

- (a) The tribunal shall consist of three arbitrators. Each Contracting Party shall appoint one arbitrator; the third arbitrator shall be designated by agreement between the two already nominated and may not be a national of either Party;
- (b) The first two arbitrators shall be appointed within a period of 15 days from the date on which either Party receives from the other Party a diplomatic note requesting arbitration; the third arbitrator shall be appointed within the 30 days following the appointment of the first two;
- (c) If no agreement is reached within the period specified, on the appointment of the third arbitrator, the Contracting Parties shall request the President of the Council of the International Civil Aviation Organization to designate the third arbitrator. The latter shall be chosen from the list of persons kept for this purpose by that Organization;
- (d) The arbitral tribunal thus appointed shall issue a ruling within 30 days from the date on which it was set up.

Article XV. Should a multilateral air convention ratified by the two Contracting Parties enter into force, this Agreement shall be amended to bring it into line with the provisions of that convention.

Article XVI. Either Contracting Party may at any time give notice to the other Party of its desire to terminate this Agreement. Such notice shall be communicated simultaneously to the Council of the International Civil Aviation Organization. In that event, this Agreement shall terminate 180 days after the date on which the other Party received such notice, unless the notice is withdrawn by mutual agreement before that period expires. If the other Contracting Party does not acknowledge receipt of such notice, the latter shall be deemed to have been received 14 days after the date of its receipt by the Council of the International Civil Aviation Organization.

Article XVII. (a) This Agreement shall enter into force provisionally on the date of its signature and definitively on the date of its ratification.

(b) Until the instruments of ratification are deposited and this Agreement enters into force definitively, the Contracting Parties undertake to give effect, in so

far as their constitutional powers allow, to the provisions of the Agreement as of the date of its signature.

If there is no reciprocity or if one Party wishes to terminate the provisional application of the Agreement, three months advance notice shall be given in writing to the other Party.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized by their respective Governments, hereby sign and seal this Agreement.

DONE at Madrid, on 19 June 1951, in duplicate in the Spanish language.

For the Spanish Government:

[Signed]

TOMÁS SUÑER

Under-Secretary

for the External Economy and Trade

For the Government
of the Republic of Cuba:

[Signed]

ENRIQUE PATTERSON

Chargé d'affaires

[Signed]

MARIO TORRES MENIER

[Signed]

GUALTERIO LEZA

[Signed]

ULISES VALDÉS LLANSÓ

ANNEX

For the purpose of operating air services on the routes specified in the schedule attached to this annex, the airlines of each Party shall enjoy, in the territory of the other, the right of transit and the right to make technical stopovers at the airports authorized by each country for international traffic, as well as to take on and discharge international traffic in passengers, cargo and mail coming from the territory of either of the Parties, on the terms established in this annex.

For the purpose of orderly regulation of these services, the Contracting Parties agree as follows:

(a) The main object of the air transport capacity offered shall be to meet traffic needs between the terminal points of the specified routes.

(b) The airlines of the two Parties shall enjoy equal opportunities to operate the specified routes.

(c) The primary objective of the services provided by each airline shall be to provide, with a reasonable rate of use, adequate transport capacity for normal and reasonably foreseeable demands for traffic from or to the territory of the Party designating the airline.

(d) The capacities offered initially by the designated airlines, after taking into consideration the above principles, shall be stipulated in the additional protocol to this Agreement and may be modified if traffic statistics show that there is a primary traffic demand for each airline which would justify such modification economically.

New frequencies shall be established by consultation between the aeronautical authorities.

If statistics show that, during the six months prior to the proposed increase, the capacity offered by the aircraft of the designated airline of a Contracting Party which is requesting the increase in capacity is being used at a rate of less than 60 per cent of full load, the other Party may reject the requested increase in frequency.

(e) On a complementary basis, designated airlines may pick up at terminal points on their routes traffic destined for intermediate points on those routes and, conversely, shall be authorized to pick up, at intermediate points, traffic destined for terminal points. Such complementary capacity shall not unduly affect the operation of the corresponding local and regional services.

(f) The aeronautical authorities of the two Parties shall consult together periodically, or at any time at the request of either of them and within a period of 15 days from such request, to determine whether the principles of this annex are being duly observed by the designated airlines.

The aeronautical authorities of each Party shall supply to those of the other Party, at their request:

1. Such traffic statistics as may be appropriate for reviewing the frequencies and capacities of the agreed services;
2. Such periodical reports as may reasonably be required on the traffic carried by the airline of the Party concerned on the specified routes, including data on the origin and destination of such traffic.

(g) The tariffs to be charged for the carriage of passengers, cargo and mail by the airlines referred to in this annex shall be fixed, in the first instance, by agreement between them, in consultation with other airlines operating on all or part of the same routes, and shall be based, wherever possible, on the information provided by the special office for the calculation of tariffs of the International Air Transport Association (IATA).

The tariffs so fixed shall be subject to the approval of the Contracting Parties. If the airlines cannot agree on a tariff, the Contracting Parties shall endeavour to find a solution. If no solution is found, the matter shall be submitted to arbitration, as provided for in article XIV of the Agreement.

(h) Tariffs established in accordance with paragraph (g) shall be fixed at fair and reasonable levels, due regard being paid to all relevant factors such as economical operation, reasonable profits, differences in the characteristics of the service — including differences in speed and comfort — and the tariffs charged by other airlines serving the same route.

(i) Each Contracting Party shall, within the limits of its legal powers, ensure that no new or revised tariff enters into force as long as there is disagreement over it between the aeronautical authorities of the two Parties.

ROUTE SCHEDULE

(A) *Spanish route*

Spain–Lisbon–Azores (Gander)–Bermuda–Nassau–Havana and points beyond, in both directions.

For operating convenience, the above route may be replaced in either direction by the following:

Spain–Isla de la Sal–Paramaribo–Cayenne–Georgetown–Trinidad–Puerto Rico–Santo Domingo–Havana and points beyond, in both directions.

Any of the intermediate points on the above routes may be omitted at the convenience of the airline operating the traffic.

ROUTE SCHEDULE

(B) *Cuban route*

Cuba-Nassau-Bermuda (Gander)-Azores-Lisbon-Madrid and points beyond, in both directions.

For operating convenience, the above route may be replaced in either direction by the following:

Cuba-Santo Domingo-Puerto Rico-Trinidad-Georgetown-Cayenne-Paramaribo-Belem do Pará-Natal-Isla de la Sal-Madrid and points beyond, in both directions.

Any of the intermediate points on the above routes may be omitted at the convenience of the airline operating the traffic.
