

No. 21824

**FRANCE
and
CONGO**

**Air Transport Agreement (with annex). Signed at Brazza-
ville on 1 January 1974**

Authentic text: French.

Registered by France on 12 April 1983.

**FRANCE
et
CONGO**

**Accord relatif au transport aérien (avec annexe). Signé à
Brazzaville le 1^{er} janvier 1974**

Texte authentique : français.

Enregistré par la France le 12 avril 1983.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT¹ BETWEEN THE FRENCH REPUBLIC AND THE PEOPLE'S REPUBLIC OF THE CONGO

The Government of the French Republic, on the one hand,
The Government of the People's Republic of the Congo, on the other hand,
Desiring to promote the development of air transport between France and the Congo and to pursue international co-operation in this area to the greatest possible extent,

Desiring to apply to such transport the principles and provisions of the Convention on International Civil Aviation signed in Chicago on 7 December 1944,²

Have agreed as follows:

PART 1. GENERAL PROVISIONS

Article I. The Contracting Parties shall grant each other the rights specified in this Agreement with a view to the establishment of the international civil aviation services listed in the annex hereto.

Article II. For the purposes of this Agreement and its annex:

1. The term "territory" shall have the meaning given in article 2 of the Convention on International Civil Aviation;

2. The term "aeronautical authorities" shall mean:

- In the case of the French Republic, the Secrétariat Général à l'Aviation Civile;
- In the case of the People's Republic of the Congo, the Minister responsible for civil aviation;
- Or, in either case, any person or agency authorized to perform the functions at present exercised by them.

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

2. There shall also be exempt from the same duties and taxes, with the exception of charges or taxes corresponding to services performed:

- (a) Aircraft stores irrespective of provenance taken on board in the territory of one Contracting Party within limits fixed by the authorities of the said Contracting Party and carried aboard aircraft engaged in an international service of the other Contracting Party;

¹ Came into force on 1 November 1981, i.e., the first day of the second month following the exchange of the instruments of approval, which took place at Paris on 30 September 1981, in accordance with article XIX.

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) Spare parts imported into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party;
- (c) Fuel and lubricants destined to supply aircraft used on international air services by the designated airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

3. Regular airborne equipment and material and supplies aboard aircraft of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the permission of the customs authorities of that territory. In that case, they may be placed under the supervision of such authorities until such time as they are re-exported or declared on a bill of entry.

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

Article V. 1. The laws and regulations of each Contracting Party relating to the entry into and departure from its territory of aircraft engaged in international navigation or to the operation and navigation of such aircraft while within its territory shall apply to the aircraft of the other Contracting Party's airline or airlines.

2. Passengers, crew and cargo shippers shall be required to comply, either personally or through a third person acting on their behalf and on their account, with the laws and regulations in force in the territory of each Contracting Party relating to the entry, stay and departure of passengers, crew or cargo, such as those relating to entry, stay, immigration, customs and measures required by the health regulations.

Article VI. Save as provided in article XIII, each Contracting Party reserves the right to withhold or revoke operating authorization in respect of an airline designated by the other Contracting Party if it believes it does not have satisfactory evidence that preponderant ownership and effective control of that airline are vested in the other Contracting Party or its nationals, or if the airline fails to comply with the laws and regulations referred to in article V or fails to fulfil its obligations under this Agreement.

Article VII. Either Contracting Party may at any time request consultations between the competent authorities of the two Contracting Parties for the purpose of interpreting, enforcing or modifying this Agreement.

Such consultations shall commence no later than sixty (60) days from the date of receipt of such a request.

Such modifications as it may be decided to make to this Agreement shall enter into force after confirmation by 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. Similar notice shall simultaneously be given to the International Civil Aviation Organization. The

denunciation shall take effect one year after the date of receipt of such notice by the other Contracting Party unless the notice is withdrawn by common accord before the expiry of this period. If the Contracting Party receiving such notice fails to acknowledge receipt thereof, 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. If a dispute relating to the interpretation or enforcement of this Agreement cannot be settled, in accordance with the provisions of article VII, either between the aeronautical authorities or between the Governments of the Contracting Parties, it shall at the request of either Contracting Party be referred to an arbitral tribunal.

2. The arbitral tribunal shall be composed of three members. Each Government shall appoint one arbitrator; those two arbitrators shall agree on 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 Governments proposed arbitration of the dispute, or if in the course of the ensuing month the arbitrators have not agreed on the appointment of a Chairman, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointments.

3. If the arbitral tribunal fails to settle the dispute by mutual agreement, it shall render its decision by majority vote. Save as otherwise agreed by the Contracting Parties, it shall draw up its own rules of procedure and shall determine its own seat.

4. The Contracting Parties undertake to comply with any provisional measures ordered in the course of the proceedings and with the decision of the arbitral tribunal, which shall in all cases be considered final.

5. If, and so long as, either Contracting Party fails to comply with the decisions of the arbitrators, the other Contracting Party may limit, suspend or revoke the rights and privileges which it has granted under this Agreement to the Contracting Party in default. Each Contracting Party shall bear the remuneration of its arbitrator and one half of the remuneration of the appointed Chairman.

PART II. AGREED SERVICES

Article X. The Government of the French Republic grants to the Government of the People's Republic of the Congo and, reciprocally, the Government of the People's Republic of the Congo grants to the Government of the French Republic the right to arrange for one or more designated airlines to operate the air services specified in the route schedule annexed to this Agreement. Such services shall hereinafter be designated as "agreed services".

Article XI. 1. Agreed services may be operated immediately or at a later date, at the option of the Contracting Party to which the rights have been granted, provided that:

- (a) The Contracting Party to which the rights have been granted has designated one or more airlines to operate the specified route or routes;
- (b) The Contracting Party granting the rights has, in accordance with the terms of paragraph 2 below, duly authorized the airline or airlines concerned, which it shall do without delay 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 able 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 under this Agreement shall in Congolese territory have the right to discharge and take on international traffic in passengers, mail and cargo at the points and on the French routes listed in the annex hereto.

The airline or airlines designated by the Government of the People's Republic of the Congo under this Agreement shall, in French territory have the right to discharge and take on international traffic in passengers, mail and cargo at the points and on the Congolese routes listed in the annex hereto.

Article XIII. In principle, each Contracting Party may designate, to operate the agreed services, only airlines preponderant ownership of which is vested in the designating Contracting Party or nationals of either Contracting Party.

If either Contracting Party believes there is not satisfactory evidence that this stipulation has been met it may, before issuing the authorization requested, call for consultations under the procedure described in article VII. If these consultations fail, the matter shall be referred to arbitration in accordance with article IX.

Pursuant to

- Articles 77 and 79 of the Convention on International Civil Aviation covering the constitution by two or more States of joint operating organizations or international operating agencies, and
- Articles 4 and 2 of, and the material annexed to, the Treaty on Air Transport in Africa signed in Yaoundé on 28 March 1961,

the Government of the People's Republic of the Congo reserves, and the Government of the French Republic concedes, the right to designate Air Afrique as the chosen agency of the People's Republic of the Congo for the operation of the agreed services.

Article XIV. 1. The operation between French territory and Congolese territory, or vice versa, of services on the routes listed in the schedule annexed to this Agreement, shall constitute a fundamental and primordial right for both countries.

2. The airlines designated by each of the Contracting Parties shall receive fair and equitable treatment and shall enjoy equal opportunities and equal rights in the operation of the agreed services.

3. On common routes the airlines shall have regard for their mutual interests so as not to affect their respective services unduly.

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 which is deemed reasonable, of capacity adequate to meet the normal and reasonably foreseeable requirements of international air traffic from or to the territory of the Contracting Party which has designated the airline operating the said services.

Within the limit of the overall capacity referred to in the first paragraph of this article, the airline or airlines designated by either Contracting Party may satisfy

traffic requirements between the territories of third States situated along the agreed routes and the territory of the other Contracting Party, taking into account local and regional services.

To meet unforeseen or short-lived traffic requirements on the same routes, the designated airlines shall decide between themselves on appropriate means of coping with the temporary increase in traffic. They shall immediately report thereon to the aeronautical authorities of their respective countries, which may consult each other if they deem it necessary.

Should either Contracting Party not wish to use part or all of the capacity on one or more routes which it should offer in accordance with its entitlements, it shall arrange with the other Contracting Party to transfer all or part of the capacity concerned to the latter for a specified period.

If a Contracting Party does transfer all or part of its entitlements, it may resume them upon expiry of the said period.

Article XVI. The designated airlines shall notify the aeronautical authorities of the two Contracting Parties not later than 30 days before the commencement of the agreed services, of the nature of the service, the types of aircraft used and the schedule planned. The same rule shall apply to subsequent changes.

Article XVII. The Contracting Parties agree to consult each other whenever the need may arise in order to co-ordinate their respective air services. They shall take account during such consultations of statistics on traffic carried, which they shall regularly exchange.

If a third country should seek to obtain rights on any of the routes listed in the annex, the two Governments shall consult each other on the practical consequences of the exercise of such rights.

Article XVIII. 1. The tariffs to be charged on the agreed services serving the Congolese and French routes covered by this Agreement shall, wherever possible, be fixed by agreement between the designated airlines.

These airlines shall proceed by direct agreement after consultation, where necessary, with any 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 not less than thirty (30) days before the date set for their entry into force; in special cases this time-limit may be reduced, subject to the agreement of the said authorities.

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

In the last resort, the matter shall be referred to arbitration as provided in article IX of this Agreement.

Pending the arbitral decision, the Contracting Party which has made known its dissatisfaction with the tariff shall have the right to require the other Contracting Party to maintain the tariffs previously in force.

FINAL PROVISIONS

Article XIX. This Agreement, which supersedes the Agreement of 2 May 1962, shall enter into force on the first day of the second month following the exchange of instruments of ratification, which shall take place in Paris as soon as possible.

Article XX. This Agreement and the annex thereto shall be transmitted to the International Civil Aviation Organization for registration.

DONE at Brazzaville on 1 January 1974, in two original copies in the French language.

For the Government
of the French Republic:

[Signed]

JEAN-FRANÇOIS DENIAU
Secretary of State
at the Ministry of Foreign Affairs

For the Government
of the People's Republic of the Congo:

[Signed]

DAVID-CHARLES GANAO
Minister for Foreign Affairs

ANNEX

ROUTE SCHEDULE

I. *French routes*

Points in French territory via Rome, Tunis, Tripoli, Kano and Lagos to Brazzaville and/or Pointe Noire and one point beyond, and vice versa.

II. *Congolese routes*

Points in Congolese territory via Kano, Lagos, Rome and a point in Switzerland to Marseilles or Nice and/or Paris and one point beyond, and vice versa.

The exercise of fifth-freedom rights at the points beyond shall be decided upon by common accord between the Contracting Parties.

Additionally, on these routes an airline designated by either Contracting Party may at its option serve one or more points in third countries provided that no traffic right is exercised between said point or points and the territory of the other Contracting Party.

DONE at Brazzaville on 1 January 1974, in two original copies in the French language.

For the Government
of the French Republic:

[Signed]

JEAN-FRANÇOIS DENIAU
Secretary of State
at the Ministry of Foreign Affairs

For the Government
of the People's Republic of the Congo:

[Signed]

DAVID-CHARLES GANAO
Minister for Foreign Affairs