

**No. 24827**

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**AUSTRIA  
and  
GAMBIA**

**Air Transport Agreement (with annexes). Signed at Vienna  
on 20 January 1987**

*Authentic text: English.*

*Registered ex officio on 9 June 1987.*

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**AUTRICHE  
et  
GAMBIE**

**Accord relatif aux transports aériens (avec annexes). Signé à  
Vienne le 20 janvier 1987**

*Texte authentique : anglais.*

*Enregistré d'office le 9 juin 1987.*

## AIR TRANSPORT AGREEMENT<sup>1</sup> BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE REPUBLIC OF THE GAMBIA

The Austrian Federal Government and the Government of the Republic of the Gambia,

Hereinafter called in this Agreement the Contracting Parties,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh of December, 1944,<sup>2</sup>

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing scheduled air services between and beyond their respective territories,

Have agreed as follows:

### *Article 1. DEFINITIONS*

For the purpose of this Agreement and the annexes attached hereto unless the context otherwise requires:

(a) The term “Contracting Party” means the Austrian Federal Government on the one hand and the Government of the Republic of The Gambia on the other;

(b) The term “the Convention” means the Convention on International Civil Aviation, opened for signature at Chicago, on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment to the Annex or Convention under Articles 90 and 94 thereof insofar as these have become effective for both Contracting Parties;

(c) The term “aeronautical authorities” means, in the case of the Austrian Federal Government, the Federal Minister for Public Economy and Transport and, in the case of the Government of the Gambia, the Minister of Works and Communications; or any other authority legally empowered to perform the functions exercised now by the said authorities;

(d) The term “designated airline” means an airline which has been designated and authorized in accordance with Article 3 of the present Agreement;

(e) The term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty of that State;

(f) The terms “air-service”, “international air-service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the Convention;

(g) The terms “aircraft equipment”, “aircraft stores”, and “spare parts” have the meanings respectively assigned to them in Annex 9 of the Convention;

<sup>1</sup> Came into force on 1 April 1987, i.e., the first day of the second month following the date on which the Contracting Parties had notified each other (on 23 and 27 February 1987) of the completion of their respective constitutional procedures, in accordance with article 18.

<sup>2</sup> 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.

(h) The term “tariff” means the prices to be paid for the carriage of passengers, baggage, mail and cargo and the condition under which those prices apply, including prices and conditions for agency and other ancillary services but excluding remuneration and conditions for the carriage of mail.

(i) The term “capacity” means:

- (i) In relation to an aircraft, the payload of that aircraft available on a route or section of a route;
- (ii) In relation to a specified air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or a section of a route.

#### Article 2. TRAFFIC RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

- (a) The right to fly across its territory without landing;
- (b) The right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the Annex. Such services and routes are hereafter called “the agreed services” and “the specified routes” respectively. While operating an agreed service on a specified route the airline designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph 1 of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule for the purpose of taking on board and discharging passengers and cargo including mail.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of that other Contracting Party.

#### Article 3. NECESSARY AUTHORIZATIONS

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of paragraphs 4 and 5 of this Article, without delay grant to the designated airline the appropriate operating authorizations.

3. Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw the designation of any such airline and to designate another one.

4. The airline designated by either Contracting Party may be required to satisfy the other Contracting Party that it is qualified to fulfill the conditions prescribed by the laws and regulations normally and reasonably applied by this Contracting Party to the operation of international air services in conformity with the provisions of the Convention.

5. Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this Article, or to impose such condi-

tions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of the present Agreement, in any case where the said Contracting Party is not satisfied that some ownership and control of that airline are vested in the Contracting Party designating the airline or in its nationals.

6. When an airline has been so designated and authorized, it may at any time begin to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 10 of the present Agreement is in force and an agreement in accordance with the provisions of Article 5 of the present Agreement has been reached in respect of that service.

#### *Article 4. SUSPENSION AND REVOCATION*

1. Each Contracting Party shall have the right to suspend the exercise of the rights specified in Article 2 of the present Agreement by the airline designated by the other Contracting Party, or to revoke the operating authorization, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) In any case where it is not satisfied that some ownership and control of that airline are vested in the Contracting Party designating the airline or in its nationals, or
- (b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or
- (c) In case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement and the annexes attached hereto.

2. Unless immediate suspension, revocation or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultations with the other Contracting Party. In such a case consultations shall begin within a period of sixty (60) days from the date of request made by either Contracting Party for consultations.

#### *Article 5. CAPACITY REGULATIONS*

1. There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate the agreed services on the specified routes and, unless agreed between the two designated airlines and subject to the approval of the aeronautical authorities of each Contracting Party, capacity shall as far as possible be shared equally between the said airlines of the two Contracting Parties. The airlines have to agree in good time upon the frequencies of their schedule services, the types of aircraft to be used and the flight schedules, including the days of operation as well as the estimated times of arrival and departure.

2. The schedules so agreed upon shall be submitted for approval to the aeronautical authorities of both Contracting Parties at least thirty (30) days before the proposed date of their introduction. In special cases, this time limit may be reduced subject to the consent of the said authorities.

3. If the designated airlines cannot agree on the schedules mentioned above, the aeronautical authorities of the Contracting Parties shall endeavour to settle the problem.

4. Subject to the provisions of this Article, no schedules shall come into force, unless the aeronautical authorities of the Contracting Parties have approved of them.

5. The schedules established for one season in accordance with the provisions of this Article shall remain in force for corresponding seasons until new schedules have been established in accordance with the provisions of this Article.

*Article 6. RECOGNITION OF CERTIFICATES AND LICENSES*

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals or rendered valid by another State.

*Article 7. EXEMPTION FROM CUSTOMS AND OTHER DUTIES*

1. Aircraft operated on international services by the airline designated by each Contracting Party, as well as their regular equipment, supplies of fuel and lubricants and the aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

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

(a) Aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board the aircraft engaged on a specified route of the other Contracting Party;

(b) Spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on a specified route by the designated airline of the other Contracting Party;

(c) Fuel and lubricants destined to supply aircraft operated on a specified route by the designated airline of the other Contracting Party, even if 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.

Materials referred to in subparagraphs *a*, *b* and *c* above may be required to be kept under customs supervision or control.

3. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Contracting Party. In each case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

4. There shall also be exempt from all customs duties and/or taxes on a reciprocal basis items and goods imported into the territory of either Contracting Party for the exclusive use by the designated airline of the other Contracting Party as follows:

- Goods to be used for the establishment, equipment and operation of an office, e.g., all kinds of building material, furniture, typewriters, etc.;
- All types of telecommunication equipment as teletype-apparatus and walkie talkies or other wireless equipment for use within the airport;

— Airline computer systems for reservation and operational purposes, various official documents bearing the emblem of the airline such as luggage tags, air tickets, airway bills, timetables, boarding cards, etc. As far as motor vehicles are concerned, the exemption covers only bustype cars used for transfer of passengers and luggage between the city office and the airport.

*Article 8. TAXATION*

1. Profits from the operation of aircraft in international traffic shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.

2. Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.

3. Where a special Agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

*Article 9. DIRECT TRANSIT TRAFFIC*

Passengers, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence and air piracy, be subject to no more than a simplified control. Baggage, cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

*Article 10. TRANSPORT TARIFFS*

1. The tariffs to be charged by the airline of one Contracting Party for the carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, the tariffs of other airlines and characteristics of service such as standards of speed and accommodation.

2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon by the designated airlines of both Contracting Parties.

3. Agreements according to paragraph 2 above may, if possible, be reached through the rate-fixing machinery of the International Air-Transport Association.

4. The tariffs so agreed upon shall be submitted for approval to the aeronautical authorities of the Contracting Parties at least sixty (60) days before the proposed date of their introduction; in special cases this time limit may be reduced, subject to the consent of the said authorities.

5. If the designated airlines cannot agree on any of these tariffs, or if for some other reasons a tariff cannot be fixed in accordance with paragraph 2 of this Article, or if during the first thirty (30) days of the sixty (60) day period referred to in paragraph 4 of this Article, the aeronautical authorities of one Contracting Party give the aeronautical authorities of the other Contracting Party notice of their dissatisfaction with any tariff agreed upon in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to agree upon the tariffs.

6. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 4 above or on the determination of any tariff under paragraph 5, the Contracting Parties shall endeavour to agree upon the tariffs.

7. No tariff shall come into force unless the aeronautical authorities of each Contracting Party have approved of it.

8. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

#### *Article 11.* TRANSFER OF NET REVENUES

1. Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure, earned on its territory in connection with the carriage of passengers, baggage, mail and freight by the designated airline of the other Contracting Party, in a free convertible currency at the prevailing rate of exchange and subject to the laws and regulations in force in the territory of each Contracting Party.

2. Where a special payment agreement exists between the Contracting Parties, payments shall be effected in accordance with the provisions of that Agreement.

#### *Article 12.* REPRESENTATION, TICKETING AND SALES PROMOTION

1. The designated airline of each Contracting Party shall have an equal opportunity to employ, subject to the laws and regulations of the other Contracting Party, the technical and commercial personnel for the performance of the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party.

2. The designated airline of each Contracting Party shall further have an equal opportunity to issue all kinds of documents of carriage and to advertise and promote sales in the territory of the other Contracting Party.

#### *Article 13.* PROVISION OF STATISTICS

The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics. Such statements shall include all information required to determine the amount of traffic carried by that airline on the agreed services and the origin and destination of such traffic.

#### *Article 14.* CONSULTATIONS AND MODIFICATIONS

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 the present Agreement and the Annex thereto.

2. If either of the Contracting Parties considers it desirable to modify any provisions of the present Agreement, it may request consultations with the other Contracting Party. Such consultations (which may be prepared through discussion or by correspondence between the aeronautical authorities), shall begin within a period of sixty (60) days of the date of request, unless both Contracting Parties agree to an extension of this period. Modifications so agreed upon shall be approved of by each Contracting Party in accordance with its constitutional procedures.

3. Modifications to Annex I shall be agreed upon between the appropriate authorities of the Contracting Parties.

*Article 15. SETTLEMENT OF DISPUTES*

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

2. If the Contracting Parties fail to reach settlement by negotiations, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall at the request of either Contracting Party be submitted 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 so nominated. 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 any case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral body.

3. The Contracting Parties shall comply with any decisions given under paragraph 2 of this Article.

4. If and for so long as either Contracting Party fails to comply with a decision given under paragraph 2 of this Article, 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.

5. Each Contracting Party shall bear the expenses and remuneration necessary for its arbitrator; the fee for the third arbitrator and the expenses necessary for this one as well as those due to the activity of the arbitration shall be equally shared by the Contracting Parties.

*Article 16. TERMINATION*

Either Contracting Party may at any time give written notice through diplomatic channels to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

*Article 17. REGISTRATION*

This Agreement, its Annexes, any amendment to either the Agreement or Annexes shall be registered with the International Civil Aviation Organization.



*Article 18.* ENTRY INTO FORCE

This Agreement and its Annexes shall enter into force on the first day of the second month following the date on which the two Contracting Parties have notified each other in an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

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

DONE at Vienna this 20th day of January one thousand nine hundred and eighty-seven in two originals in the English language.

For the Austrian Federal Government:

Dr. PETER JANKOWITSCH

For the Government of the Republic  
of the Gambia:

LAMIN BORA MBOGE

ANNEX I

A. The airline designated by the Austrian Federal Government shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

*Points of departure*

Points in the Republic of Austria

*Points of arrival*

Banjul

B. The airline designated by the Government of the Republic of The Gambia shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

*Points of departure*

Points in the Republic of The Gambia

*Points of arrival*

Vienna

C. Any intermediate points and points beyond may be served by the designated airline of each Contracting Party without exercising fifth freedom traffic rights.

The eventual exercise of fifth freedom traffic rights may be agreed upon by the aeronautical authorities of the two Contracting Parties.

ANNEX II

AVIATION SECURITY

1. The Contracting Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.

3. The Contracting Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,<sup>1</sup> the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970<sup>2</sup> and the Convention for the Suppression of Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.<sup>3</sup>

4. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

5. Each Contracting Party agrees to observe the security provisions required by the other Contracting Party for entry into the territory of that other Contracting Party and to take adequate measures to inspect passengers, crew, their carry-on items as well as cargo prior to boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for special measures for its aircraft or passengers to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

7. Should a Contracting Party depart from the aviation security provisions of this Article, the aeronautical authorities of the other Contracting Party may request immediate consultations with the aeronautical authorities of that Party.

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<sup>1</sup> United Nations, *Treaty Series*, vol. 704, p. 219.

<sup>2</sup> *Ibid.*, vol. 860, p. 105.

<sup>3</sup> *Ibid.*, vol. 974, p. 177.