No. 29903

MEXICO
and
CUBA

Air Transport Agreement (with routes schedules). Signed at Mexico City on 9 August 1991

Authentic text: Spanish.

Registered by Mexico on 16 April 1993.

MEXIQUE
et
CUBA

Accord relatif au transport aérien (avec tableaux de routes). Signé à Mexico le 9 août 1991

Texte authentique : espagnol.

Enregistré par le Mexique le 16 avril 1993.

[TRANSLATION — TRADUCTION]

AIR TRANSPORT AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE REPUBLIC OF CUBA

The Government of the United Mexican States and the Government of the Republic of Cuba, hereinafter called the Contracting Parties,

Considering that the two countries are parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944,[2]

Wishing to strengthen their reciprocal relations in the field of civil aviation and to conclude an Agreement to supplement the aforesaid Convention and to replace the agreement of 31 July 1971, in order to develop air transport services between their respective territories,

Have agreed as follows:

Article 1

DEFINITIONS

For the interpretation and purposes of this Agreement and its Route Schedule, the terms listed below shall be understood as follows:

A. The term "Convention" shall mean the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944 and shall include any annexes adopted under article 90 of that Convention and any amendments made in the annexes or the Convention in accordance with articles 90 and 94 thereof, provided that such annexes and amendments have been adopted by both Contracting Parties.

B. The term "this Agreement" shall include the Route Schedule annexed hereto and any amendments to the Agreement or the Route Schedule.

C. The term "aeronautical authorities" shall mean, in the case of the United Mexican States, the Ministry of Communications and Transport and, in the case of the Republic of Cuba, the President of the Institute of Civil Aeronautics of Cuba or any other person or body authorized to perform the functions exercised by those authorities.

D. The term "international air service" shall mean air service that passes through the airspace above the territory of more than one State.

E. The term "stop for non-traffic purposes" shall mean a landing for purposes other than the embarkation or disembarkation of passengers, cargo and mail.

[1] Came into force on 29 January 1993, the date on which the Contracting Parties notified each other of the completion of the required legislative formalities, in accordance with article 17.

[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.

F. The term "designated airline" shall mean an airline which has been designated and authorized in accordance with article 3 of this Agreement.

G. The term "tariff" shall mean the price payable for the transport of passengers, baggage and cargo and the conditions in which that price shall be charged, including payments and commissions for agency and other auxiliary services, but excluding payments and conditions for the carriage of mail.

H. The term "frequency" shall mean the number of round trips that an airline operates on a specified route over a given period.

I. The term "specified routes" shall mean the routes described in the Route Schedule annexed to this Agreement.

J. The term "territory" in relation to either Contracting Party shall have the meaning assigned to it in the respective Constitutions of the Contracting Parties.

Article 2

RIGHTS GRANTED

1. Each Contracting Party shall grant the other Contracting Party the rights specified in this Agreement for the purpose of establishing regular international air services on the routes specified in the Route Schedule annexed hereto.

2. In accordance with the provisions of this Agreement, the airline designated by each Contracting Party shall enjoy, in the operation of the agreed air services, the following rights:

(*a*) To fly over the territory of the other Contracting Party without landing;

(*b*) To make stops for non-traffic purposes in the territory of the other Contracting Party;

(*c*) To embark and disembark passengers, cargo and mail in international traffic in the said territory, at the points specified in the annexed Route Schedule.

3. Nothing in this Agreement or its annex may be interpreted as conferring upon the designated airline of either Contracting Party the right to embark, in the territory of the other Contracting Party, passengers, cargo and mail for transport between points within the territory of the other Contracting Party, for remuneration or hire.

Article 3

DESIGNATION AND AUTHORIZATION OF AIRLINES

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party up to two airlines for the operation of the agreed air services on the specified routes. The same procedure shall be followed in the case of replacement of any of the designated airlines.

2. On receiving this designation, the other Contracting Party shall grant the appropriate operating authorization to the designated airline or airlines without delay, subject to the provisions of paragraph 3 of this article.

3. The aeronautical authorities of either Contracting Party may require the designated airlines of the other Contracting Party to prove that they are qualified to fulfil the conditions set forth in the laws and regulations normally and reasonably applied by those authorities to the operation of international air services in accordance with the provisions of the Convention.

4. When an airline has been so designated and authorized, it may begin to operate the agreed air services at any time, provided that a tariff has been set for those services in accordance with the provisions of article 10 of this Agreement; and provided that the frequency, itineraries and time-tables of the air services to be operated by that airline have been approved by the aeronautical authority of the Contracting Party which granted the operating authorization.

5. The airlines designated by each Contracting Party shall have equal opportunity to employ, in accordance with the laws and regulations of the other Contracting Party, personnel to perform the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party.

The designated airlines of each Contracting Party shall also have equal opportunity to publish any type of transport document and to announce and promote sales in the territory of the other Contracting Party.

Article 4

DENIAL, REVOCATION OR SUSPENSION OF OPERATING AUTHORIZATIONS

1. Each Contracting Party shall have the right to deny or revoke an operating authorization or to suspend the exercise of any of the rights set forth in article 2 of this Agreement by an airline designated by the other Contracting Party or to impose the conditions it deems necessary for the exercise of those rights:

(*a*) If the said airline does not comply with the laws and regulations of the Contracting Party granting those rights, or

(*b*) If the airline fails in any other way to operate in accordance with the conditions set forth in this Agreement.

2. Except where the immediate denial, revocation, suspension or imposition of conditions referred to in paragraph 1 of this article is necessary to prevent further infractions of laws or regulations, this right shall be exercised only after consultations have been held with the other Contracting Party. In such cases, the consultations shall take place in accordance with article 11.

Article 5

APPLICABILITY OF LAWS AND REGULATIONS

The laws and regulations of each Contracting Party relating to the entry into, presence in and departure from its territory of aircraft operated on international air services and of their passengers, crew, baggage, cargo and mail, as well as formalities concerning migration, customs and health measures, shall also apply in that territory to the operations of the designated airlines of the other Contracting Party.

Article 6

RECOGNITION OF CERTIFICATES OF AIRWORTHINESS AND LICENCES

1. Certificates of airworthiness, credentials or certificates of competency and licences issued or validated by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating on the routes described in the Route Schedule.

2. Nevertheless, each Contracting Party reserves the right to refuse to recognize, for the purpose of flight over its own territory, the validity of credentials or certificates of competency and licences granted to its own nationals by the other Contracting Party.

Article 7

CUSTOMS DUTIES

1. Aircraft used for international air services by the airlines designated by either Contracting Party and the equipment used for the operation of the aircraft, fuel, lubricants, technical supplies for consumption, spare parts and stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, national taxes, inspection fees and other duties and from federal, state or municipal taxes or charges on arriving in the territory of the other Contracting Party, provided that such equipment and supplies remain on board the aircraft up to such time as they are re-exported, even if such items are used or consumed by such aircraft on flights within that territory.

2. The following items shall also be exempt, on a basis of reciprocity, from such duties, taxes and charges, with the exception of charges for services performed: lubricating oils, technical materials for consumption, spare parts, tools and special maintenance equipment, stores (including food, beverages and tobacco), airline documentation such as tickets, pamphlets, time-tables and other printed material required by the airline for its operations, and advertising material which is deemed necessary and which is exclusively for use in the airline's activities, when sent by or for the airline of one Contracting Party to the territory of the other Contracting Party, as well as materials taken on board aircraft of the airlines of one Contracting Party in the territory of the other Contracting Party for use on international air services.

3. Standard equipment taken on board and other 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 authorization of the customs authorities of that territory. In such cases, they may be stored under the supervision of the said authorities up to such time as they are exported or otherwise disposed of in accordance with the relevant legal provisions.

Article 8

PRINCIPLES GOVERNING THE OPERATION OF THE AGREED SERVICES

1. The total capacity to be offered by the designated airlines of the Contracting Parties for the agreed air services shall be agreed upon or approved by the aeronautical authorities of the Contracting Parties before the commencement of the air services and, subsequently, in accordance with the traffic requirements foreseen.

2. The designated airlines of both Contracting Parties shall have fair and equal opportunity to carry on the agreed services on the routes specified between their respective territories.

3. The agreed services provided by the designated airlines of the Contracting Parties shall be closely related to the demand for the transport of passengers and cargo, including mail, embarked or disembarked in the territory of the Contracting Party which has designated the airline.

Article 9

STATISTICS

At the request of the aeronautical authorities of the Contracting Parties, the designated airlines shall provide periodic statistics or other data such as may reasonably be requested on the agreed services carried out by the designated airlines of the Contracting Parties. Such data shall include all information needed to determine the volume of traffic transported by each airline in the course of the agreed services and the origin and destination of such traffic.

Article 10

TARIFFS

1. The tariffs to be applied by the airlines of each Party for transportation to or from the territory of the other Party shall be established at reasonable levels, due regard being paid to all relevant factors, especially the cost of operation, reasonable profit and the tariffs charged by other airlines.

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be established by mutual agreement between the designated airlines of both Parties and shall be submitted for approval to the aeronautical authorities of both Parties at least forty-five (45) days before the proposed date of their introduction. In special cases, this time limit may be reduced, subject to the agreement of the said authorities. No tariff shall come into force unless it has been approved in advance by the aeronautical authorities of both Parties.

3. If agreement cannot be reached on a tariff in accordance with the provisions of paragraph 2 of this article, the aeronautical authorities of both Parties shall endeavour to establish a tariff by mutual agreement; if they cannot agree on a tariff which has been submitted to them for approval, the dispute shall be settled according to the provisions of article 12 of this Agreement.

4. Tariffs established in accordance with the provisions of this article shall remain in force until new tariffs have been established. However, the validity of a tariff may not be prolonged by virtue of this paragraph for a period of more than six (6) months from the date on which the tariff was to have expired.

5. The airlines designated by the Contracting Parties may in no way modify the price or the rules of application of the tariffs in force.

Article 11

CONSULTATIONS AND AMENDMENTS

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 and of the annex hereto and, where necessary, their amendment.

2. Either Contracting Party may request a consultation, orally or in writing, which shall take place within a period of sixty (60) days from the date of receipt of the request, unless both Contracting Parties agree to extend that period.

3. If either Contracting Party considers it desirable to amend any provision of this Agreement, it may request consultations in accordance with paragraph 2 of this article; such an amendment, if agreed between the Contracting Parties, shall come into force when an exchange of diplomatic notes has confirmed that the formalities required by the respective national legislations have been completed.

The annex may be amended by mutual agreement between the aeronautical authorities of the Contracting Parties.

Article 12

SETTLEMENT OF DISPUTES

1. If any dispute arises concerning the interpretation or application of this Agreement or the annex hereto, the aeronautical authorities of both Contracting Parties shall in the first place endeavour to settle it by negotiation. If the aeronautical authorities fail to reach an agreement, the dispute shall be referred, through the usual diplomatic channels, to the Contracting Parties for a decision.

2. Except as otherwise provided in this Agreement, any dispute between the Contracting Parties concerning the interpretation or application of this Agreement which cannot be settled through consultation shall be submitted to a tribunal of three arbitrators, of whom two shall be appointed by each of the Contracting Parties and the third shall be appointed by mutual agreement between the first two arbitrators, on condition that the third arbitrator may not be a national of either of the Contracting Parties.

3. Each Contracting Party shall designate an arbitrator within sixty (60) days from the date on which either Contracting Party delivers to the other Contracting Party a diplomatic note requesting the settlement of a dispute by arbitration, and the third arbitrator shall be appointed within sixty (60) days from the end of the aforesaid period of sixty (60) days.

4. If no agreement is reached concerning the third arbitrator within the time limit specified, the arbitrator shall, at the request of either Contracting Party, be designated by the President of the Council of the International Civil Aviation Organization in accordance with the procedures of that body.

5. The Contracting Parties undertake to comply with any decision given in accordance with this article. The tribunal of arbitrators shall determine responsibility for the costs incurred as a result of the procedure described herein.

Article 13

MULTILATERAL CONVENTIONS

If a multilateral convention, to which both Parties accede, concerning any aspect covered by this Agreement comes into force, this Agreement shall be amended to conform to the provisions of the multilateral convention.

Article 14

TRANSFER OF EARNINGS

Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the exchange rate applicable to such transactions at the time such revenues are presented for conversion and remittance.

Article 15

TERMINATION

Each Contracting Party may at any time notify the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization. In such a case, the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by mutual agreement before the expiry of this period. In default of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the date on which it is received by the International Civil Aviation Organization.

Article 16

REGISTRATION WITH ICAO

This Agreement shall be registered with the International Civil Aviation Organization.

Article 17

ENTRY INTO FORCE

This Agreement shall enter into force as of the date on which both Contracting Parties notify each other by an exchange of diplomatic notes that they have completed the formalities required by their national legislations.

DONE at Mexico City on 9 August 1991, in two originals in the Spanish language, both texts being equally authentic.

For the Government
of the United Mexican States:

[ENRIQUE ZAPATA B.]

For the Government
of the Republic of Cuba:

[ROGELIO ACEVEDO GONZÁLEZ]

ROUTE SCHEDULE

Section I

The airlines designated by the Government of the United Mexican States shall be entitled to operate regular air services on the following route:

Points in the territory of the United Mexican States to and from Havana and two additional points in the territory of the Republic of Cuba.

Notes:

1. The designated airlines may omit calling at any point or points on any or all flights, provided that the flight begins or ends in the territory of the United Mexican States.

2. The designated airlines may combine any point or points in the territory of the United Mexican States with any point or points in the territory of the Republic of Cuba.

3. From time to time, the aeronautical authority of the Republic of Cuba shall grant Mexico a fifth freedom beyond Cuban territory.

4. Each Contracting Party shall be entitled to a frequency of 10 flights per week in each direction, using equipment of its choice, for distribution between its designated airlines.

5. The frequency may be increased to meet the demands that arise, following consultation between the aeronautical authorities of the Contracting Parties.

Section II

The airlines designated by the Government of the Republic of Cuba shall be entitled to operate regular air services on the following route:

Points in the territory of the Republic of Cuba to and from Mexico City and two additional points in the territory of the United Mexican States.

Notes:

1. The designated airlines may omit calling at any point or points on any or all flights, provided that the flight begins or ends in the territory of the Republic of Cuba.

2. The designated airlines may combine any point or points in the territory of the Republic of Cuba with any point or points in the territory of the United Mexican States.

3. From time to time, the aeronautical authority of the United Mexican States shall grant Cuba a fifth freedom beyond Mexican territory.

4. Each Contracting Party shall be entitled to a frequency of 10 flights per week in each direction, using equipment of its choice, for distribution between its designated airlines.

5. The frequency may be increased to meet the demands that arise, following consultation between the aeronautical authorities of the Contracting Parties.