No. 13464

SWITZERLAND
and
GABON

Agreement concerning scheduled air transport services (with annex). Signed at Bern on 27 January 1972

Authentic text: French.

Registered by the International Civil Aviation Organization on 5 August 1974.

SUISSE
et
GABON

Accord relatif aux transports aériens réguliers (avec annexe). Signé à Berne le 27 janvier 1972

Texte authentique: français.

Enregistré par l'Organisation de l'aviation civile internationale le 5 août 1974.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE SWISS CONFEDERATION AND THE GABONESE REPUBLIC CONCERNING SCHEDULED AIR TRANSPORT SERVICES

The Swiss Federal Council and the Government of the Gabonese Republic,

Desiring to promote the development of air transport services between the Swiss Confederation and the Gabonese Republic and to further as much as possible international co-operation in this field;

Desiring to apply to such services the principles and provisions of the Convention on International Civil Aviation signed at Chicago on 7 December 1944;[2]

Have appointed their plenipotentiaries, duly authorized for this purpose, who have agreed as follows:

I. GENERAL PROVISIONS

Article 1. The Contracting Parties shall grant each other the rights specified in this Agreement, for the purpose of establishing the international civil air services specified in the attached annex.

Article 2. For the purpose of this Agreement and its annex:

(*a*) The term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;

(*b*) The term "Aeronautical Authorities" means, in the case of the Swiss Confederation, the Federal Air Office and, in the case of the Gabonese Republic, the Minister of Civil Aviation or, in both cases, any person or body authorized to perform the functions at present assigned to the said Authorities;

(*c*) The term "designated airline" means an airline which one of the Contracting Parties has designated, in accordance with article 11 of this Agreement, to operate the agreed air services.

Article 3. 1. Aircraft operated on international services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants and aircraft stores, including food, beverages and tobacco 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, supplies and stores remain on board the aircraft until such time as they are re-exported.

[1] Applied provisionally from 27 January 1972, the date of signature, and came into force definitively on 21 November 1973, the date on which the Contracting Parties notified each other of the completion of their respective constitutional procedures, in accordance with article 20.

[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; and vol. 740, p. 21.

2. The following shall likewise be exempt from the same fees, duties and taxes, excluding charges made for services performed:

(*a*) Aircraft stores taken on board in the territory of one Contracting Party, within limits fixed by the authorities of the said Contracting Party and for use on board aircraft employed in international service by the designated airline of the other Contracting Party;

(*b*) Spare parts and regular airborne equipment imported into the territory of one Contracting Party for the maintenance or repair of aircraft employed in international service;

(*c*) Fuels and lubricants destined to supply aircraft employed in international service by the designated airline of the other Contracting Party even though such supplies are to be used on that part of the flight which takes place over the territory of the Contracting Party in which they were taken on board.

3. Regular airborne equipment, as well as material and stores on board the aircraft used by the designated airline of one Contracting Party, may not be unloaded in the territory of the other Contracting Party without the consent of its customs authorities. When so unloaded, they may be placed under the supervision of the said authorities until they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 4. Certificates of airworthiness, certificates of competency and licences issued or validated by one of the Contracting Parties and still in force shall be recognized as valid by the other Contracting Party for the purposes of operating the air services specified in the attached annex. 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 issued to its own nationals by the other Contracting Party.

Article 5. 1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air navigation or flights of such aircraft over that territory shall apply to the designated airline of the other Contracting Party.

2. Passengers and crews of aircraft and consignors of cargo shall be required to comply, either personally or through a third party acting in their name and on their behalf, with the laws and regulations in force in the territory of each Contracting Party governing the entry, stay or departure of passengers, crew and cargo, such as those relating to entry, clearance, immigration and customs, as well as measures resulting from health regulations.

3. Passengers, baggage and cargo in transit through the territory of one Contracting Party and remaining in the airport area reserved for them shall be subject to no more than a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar charges.

4. Each Contracting Party undertakes not to grant any preferences to its own airlines with regard to the designated airline of the other Contracting Party in the application of the laws and regulations provided for in this article.

Article 6. Each Contracting Party undertakes to enable the designated airline of the other Contracting Party to transfer, in accordance with the laws and regulations in force and at the official rate, all surplus earnings over expenditure accruing in its territory as a result of the carriage of passengers, baggage, cargo and mail by such

designated airline. Where payments between the Contracting Parties are regulated by a special agreement, that special agreement shall apply.

Article 7. 1. Either Contracting Party or its Aeronautical Authorities may, at any time, request consultations with the other Contracting Party or with its Aeronautical Authorities.

2. Consultations requested by a Contracting Party or its Aeronautical Authorities must commence within a period of sixty (60) days from the date of receipt of the request.

3. Any modification of this Agreement shall enter into force when the two Contracting Parties have notified each other of the completion of their constitutional formalities concerning the conclusion and entry into force of international agreements.

4. Modifications of the annex to this Agreement may be agreed upon directly by the Aeronautical Authorities of the Contracting Parties. They shall enter into force after they have been confirmed by an exchange of notes through the diplomatic channel.

Article 8. 1. Either of the Contracting Parties may, at any time, notify the other Contracting Party of its decision to denounce this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization.

2. The denunciation shall take effect at the end of the traffic period during which a period of twelve (12) months shall have elapsed, unless such denunciation is withdrawn by mutual agreement before the end of this period.

3. Failing acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have reached it fifteen (15) days after the date of its receipt by the International Civil Aviation Organization.

Article 9. 1. In the event that a dispute relating to the interpretation or application of this Agreement cannot be settled in accordance with the provisions of article 7, either between the Aeronautical Authorities or between the Contracting Parties, it shall be referred at the request of either Contracting Party, to an arbitral tribunal.

2. This tribunal shall be composed of three members. Each of the two Governments shall designate an arbitrator and these two arbitrators shall agree on the appointment of a national of a third State as Chairman. If, within a period of two months from the date on which one of the two Governments proposed arbitration of the dispute, the two arbitrators have not been designated, or if, during the following two months, the arbitrators have not agreed on the appointment of a Chairman, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to make the necessary appointments.

3. If the arbitral tribunal fails to reach an amicable settlement, it shall render its decision by majority vote. Unless the Contracting Parties agree otherwise, it shall draw up its own rules and choose its own venue.

4. The Contracting Parties undertake to comply with any interim measures that may be adopted during the hearing and with the arbitral decision, which shall be deemed final in all cases.

5. If and so long as either Contracting Party fails to comply with a decision given by the arbitrators, the other Contracting Party may limit, withhold or revoke the rights and privileges which it has granted under this Agreement to the Contracting Party in default.

6. Each Contracting Party shall bear the expenses of its arbitrator and one half of the remuneration of the Chairman.

II. AGREED SERVICES

Article 10. 1. The Contracting Parties shall grant each other the rights specified in this Agreement for the purpose of establishing air services on the routes specified in the schedules in the annex to this Agreement. Such services and routes are hereinafter called "agreed services" and "specified routes".

2. Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall, while operating international services, enjoy:

(*a*) the right to fly, without landing, across the territory of the other Contracting Party;

(*b*) the right to make stops in the said territory, for non-traffic purposes;

(*c*) the right to take on and put down in the said territory, at points specified in the annex, international traffic in passengers, cargo and mail.

Article 11. 1. Each Contracting Party shall have the right to designate an airline to operate the agreed services. Such designation shall form the subject of a written notification between the aeronautical authorities of the two Contracting Parties.

2. The Contracting Party which has received the notification of designation shall, subject to the provisions of paragraphs 3 and 4 of this article, without delay, grant to the airline designated by the other Contracting Party the necessary authorization to operate.

3. The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to furnish proof that it is able to fulfil the conditions prescribed by the laws and regulations normally applied by the said authorities to the operation of international air services in accordance with the provisions of the Convention.

4. Each Contracting Party shall have the right not to grant the operating authorization provided for in paragraph 2 of this article or to impose such conditions as it may deem necessary for the exercise, by the designated airline, of the rights specified in article 10 of this Agreement, when the said Contracting Party is not satisfied that substantial ownership and effective control of such airline is vested in the Contracting Party which has designated the airline or its nationals.

5. Upon receipt of the operating authorization provided for in paragraph 2 of this article, the designated airline may, subject to article 16, paragraph 1, of this Agreement, begin at any time to operate any agreed service, provided that a tariff established in accordance with the provisions of article 17 of this Agreement is in force in respect of such service.

Article 12. 1. Each Contracting Party shall have the right to revoke the operating authorization or to suspend the exercise of the rights specified in article 10 of this Agreement by the airline designated by the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of such rights if:

(*a*) it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals, or

(*b*) that airline has failed to comply with the laws and regulations of the Contracting Party which has granted those rights, or

(*c*) that airline fails to operate the agreed services in accordance with the conditions prescribed in this Agreement and its annex.

2. Unless the revocation, suspension or imposition of conditions referred to in paragraph 1 of this article is immediately imperative in order to prevent further infringement of the laws and regulations, such right may be exercised only after consultation with the other Contracting Party.

Article 13. Notwithstanding the provisions of article 11, paragraph 4, and article 12, paragraph 1 (*a*), of this Agreement, either Contracting Party may designate a joint airline constituted in accordance with articles 77 and 79 of the Convention, and such airline shall be accepted by the other Contracting Party.

Article 14. 1. The operation of the agreed services between the territories of the two Contracting Parties constitutes a fundamental and primary right of the two countries.

2. The airlines designated by the two Contracting Parties shall be assured of fair and equitable treatment in order to enjoy equal opportunity to operate the agreed services.

3. They shall take account of their mutual interests on shared routes so as not to affect unduly their respective services.

Article 15. 1. On any of the specified routes, the agreed services shall have as their primary objective the provision, at a reasonable load factor, of a capacity adapted to the normal and reasonably foreseeable requirements of international air traffic to or from the territory of the Contracting Party which has designated the airline operating the said services.

2. However, the airline designated by one Contracting Party may satisfy traffic requirements between the territories of third States along the specified routes and the territory of the other Contracting Party, taking into account local and regional services.

3. In order to satisfy unforeseen or temporary traffic requirements on these same routes, the designated airlines shall consult with each other regarding appropriate measures to meet the temporary increase in traffic. The result of such consultations shall be submitted to the Aeronautical Authorities of the two Contracting Parties for their approval.

4. Should the airline designated by one of the Contracting Parties not wish to operate, on one or more of the routes, all or part of the transport capacity that it could provide under paragraphs 1, 2 and 3 of this article, it shall consult with the airline designated by the other Contracting Party with a view to transferring to the latter, for a definite period, all or part of the transport capacity in question.

Article 16. 1. The designated airlines shall communicate to the Aeronautical Authorities of both Contracting Parties, not later than thirty (30) days prior to the inauguration of the agreed services, the type of service, the types of aircraft to be used and the anticipated flight schedules. This rule shall likewise apply to later changes.

2. The Aeronautical Authorities of the Contracting Parties shall communicate to each other, on request, periodic statistics or other similar information relating to the volume of traffic carried on the agreed services according to points of embarkation and disembarkation.

Article 17. 1. The tariffs on all agreed services shall be fixed at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, the characteristics of each service and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this article shall, if possible, be agreed by the designated airlines of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route concerned. The designated airlines shall, where possible, reach such agreement through the rate-fixing machinery established by the international agency which puts forward proposals in this respect.

3. The tariffs so established shall be submitted to the Aeronautical Authorities of the Contracting Parties for approval not less than thirty (30) days before the date proposed for thier introduction. In special cases, this period may be reduced, subject to the agreement of the said Authorities.

4. If the designated airlines are unable to reach agreement or if the tariffs are not approved by the Aeronautical Authorities of one Contracting Party, the Aeronautical Authorities of both Contracting Parties shall endeavour to fix the tariff by agreement between themselves.

5. Failing agreement, the dispute shall be settled by arbitration as provided in article 9 above.

6. Tariffs already established shall remain in force until new tariffs are fixed in accordance with the provisions of this article or of article 9 of this Agreement, but no longer than twelve (12) months from the date on which the Aeronautical Authorities of one of the Contracting Parties refused approval.

III. Final provisions

Article 18. This Agreement and its annex shall be registered with the International Civil Aviation Organization.

Article 19. This Agreement and its annex shall be brought into harmony with any multilateral convention which may in future bind the two Contracting Parties.

Article 20. This Agreement shall be applied provisionally from the date of its signature; it shall enter into force when the Contracting Parties have notified each other of the completion of their respective constitutional procedures concerning the conclusion and entry into force of international agreements.

In witness whereof the plenipotentiaries of the two Contracting Parties have signed this Agreement.

Done at Bern on 27 January 1972, in two copies, in the French language.

For the Swiss Federal Council:	For the Government of the Gabonese Republic:
Dr. Werner Guldimann	Marcel Sandoungout

ANNEX

A

SCHEDULE OF ROUTES

I

Routes on which air services be operated by the airline designated by the Gabonese Republic

From points in Gabon to a point in Switzerland, at the option of the designated airline, in both directions.

II

Routes on which air services may be operated by the airline designated by the Swiss Confederation

From points in Switzerland to a point in Gabon, at the option of the designated airline, in both directions.

B

The airline designated by one of the Contracting Parties may, at its option, make stops at one or more intermediate points and points beyond the territory of the other Contracting Party other than those specified in the schedule of routes, but without the right to carry traffic between such point or points and the territory of the latter Contracting Party, unless such rights have been granted specifically by the aeronautical authorities of that Contracting Party.