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Case of the State of El Dorado v. the State of Mikewa

Concerning the Arrival of Blade Runner in El Dorado.

It involves public international law, including international air law as well as international law governing treaties. The case also affects questions of State responsibility and liability, and enforcement of international safety rules.

A. BACKGROUND

1. For the purposes of this case, all of the States relevant to the problem, namely, El Dorado, Mikewa, and San Saria, are parties to the following multilateral agreements:
 - a) The United Nations Charter (U.N. Charter, 1945)
 - b) The Convention on International Civil Aviation (Chicago Convention, 1944)
 - c) The Vienna Convention on the Law of Treaties (1969), also referred to as VCLT (1966).
2. El Dorado is an island State in the Coraly Ocean, in which one international air carrier, Dorado Airways, has its principal place of business (PPoB). Dorado Airways is 100% owned and controlled by the State of El Dorado, and its citizens.
3. The Government of El Dorado intends to privatise its international air carrier, Dorado Airways. El Dorado's economy is dependent on tourism because of the island's flora and fauna, including mysterious and huge jungles.
4. About 4,000 miles (6,400 kilometres) from El Dorado is located Mikewa, another island State in which one international air carrier, Mikewa Airlines, has its PPoB. Unlike Dorado Airways, Mikewa Airlines is entirely owned and controlled by private citizens of Mikewa, while offering passenger and cargo services.
5. As opposed to El Dorado, Mikewa is marked by its industrialised environment, producing polluting substances in the air, and busy cities. That stated, Mikewa's citizens possess a high standard of living caused by its economic and financial development. The citizens of Mikewa embark flights of Dorado Airways and Mikewa Airlines to El Dorado in order to get away from the busy atmosphere of Mikewa and enjoy the peaceful nature of El Dorado.
6. Desirous to facilitate travel between their territories, El Dorado and Mikewa signed an Air Services Agreement (ASA), as to which see Annex 1. Both States have designated their international air carriers, that is, Dorado Airways and Mikewa Airlines, to operate the agreed international services under the ASA. The designations were made and accepted in accordance with the provisions contained in Article 3 of the said ASA. Both airlines adopted and executed excellent safety and security standards complying with those drawn up in and under the Chicago Convention (1944), including its Annexes. The relevant Standards and Recommended Practices (SARPs) are correctly implemented in their national legislations.
7. While the ASA referred to in section 6 does not contain capacity restrictions regarding on the number or percentage of passengers which the designated airlines of the two States are entitled to embark and transport, air passenger traffic data which were registered in the period 2017 – 2022 show the following:
 - a) 75% of passengers traveling between points in El Dorado and points in

Mikewa are citizens of Mikewa; 20% are citizens of El Dorado; and 5% are nationals of other States;

- b) Due to their similar cost structures, route planning, and pricing, Dorado Airways and Mikewa Airlines each carry 50% of the traffic between their respective territories;
 - c) The annual earnings of these air carriers have remained comparable for the last decade.
8. El Dorado and Mikewa have also engaged into ASAs with a sparsely populated third island State, named San Saria, which is situated as between them. San Saria hosts a corporation named Boogie Woogie Corporation, which has its PPOB in the capital of San Saria.
9. In 2022, three events affected the operation of international air services between El Dorado and Mikewa. These are the appearance of the Blade Runner in El Dorado (section B), the introduction of the Green Aviation Tax by El Dorado (section C) and the privatisation of El Mikewa Airways (section D).

B. THE APPEARANCE OF BLADE RUNNER IN EL DORADO

10. On July 5, 2022, a virus called Blade Runner infected alimnts, and, consequently, people, at the marketplace of the capital of El Dorado. Blade Runner is an extremely dangerous virus, affecting people rapidly, and causing deceases and deaths of the local population.
11. As a consequence of the appearance of Blade Runner, the agency of El Dorado which is responsible for Air Traffic Management in El Dorado's airspace, that is, the Dorado Air Traffic Management Services (DATMS) instantly closed the airspace above the territory of El Dorado. Simultaneously, research has been conducted in El Dorado on the effects of the spreading van Blade Runner, resulting in the adoption of Decision ALX-1210.
12. On July 6, 2022, the Dorado Ministry of Transport (DMOT) published Decision ALX-1210, henceforth also referred to as the Decision, to regulate the usage of its airspace in light of the presence of Blade Runner on its territory.
13. Decision (ALX-1210) encompassed the following measures:
- a) All scheduled commercial flights to, from, or within the territory of El Dorado are prohibited for a period of 14 days, that is, until 20 July 2022, or until such time as DMOT cancels the Decision;
 - b) DMOT shall be entitled to re-introduce this Decision after the elapse of the mentioned 14-day period if DMOT esteems that such a measure would serve the public interest, including safety of aviation and health of the people using air transport;
 - c) Nothing in this Decision shall be interpreted as contravening the international obligations of El Dorado engaged into in its ASAs and the Chicago Convention

(1944), including its Annexes;

d) This Decision shall be conveyed to the Secretariat of the International Civil Aviation Organization (ICAO), the Government of Mikewa, and other governments whose designated airlines are affected by this Decision.

14. On July 19, 2022, the El Dorado Government issued its conclusions on the spreading of Blade Runner in an announcement, containing the following conclusion:

“While Blade Runner seriously threatened the public health and safety of aviation in El Dorado, the threat was not so serious that it was impossible to safely operate flights from, into and above the territory of El Dorado for limited periods of time.”

15. During period in which Dorado Airways was not allowed to operate flights because of the presence of Blade Runner, Dorado Airways lost massive, unidentified income, pursuant to which it was obliged to dismiss 45 % of its pilots and operating staff. Due to the stranding of three aircraft in El Dorado during the prohibition period, Dorado Airways had to cancel 30% of its domestic air cargo operations. Dorado Airways also postulated that an extension of the prohibition clause drawn up in Decision ALX-1210 would like lead to the insolvency of the airline, causing it to dismiss pilots and staff.

16. On 20 July, 2022, the prohibition clause of Decision ALX-1210 expired. DMOT allowed Dorado Airways to recommence the operation of operating its flights.

17. On July 22, 2010, Mikewa sent an official communiqué to DMOT requesting that Decision ALX-1210 be entirely revoked in order for Mikewa Airlines to resume the operation of its services. DMOT has not followed up this request from Mikewa.

C. THE GREEN AVIATION TAX

18. On July 20, 2022, the El Dorado Government published the Green Aviation Tax (GAT). The GAT has been drawn up as follows:

a) All flights departing from the territory of El Dorado must pay 1.5 SDRs (Special Drawing Rights) per passenger carried onboard the aircraft.

b) All airlines landing in the territory of El Dorado must pay 1.25 Special Drawing Right (SDR) per mile of the flight calculated from the time of departure to the time of landing.

c) All revenues generated by the GAT are transferred to the State Resources of El Dorado.

19. On behalf of the El Dorado Government, the DMOT explained that the revenues of the GAT were designed to preserve the treasures of the island, protect public health, and compensate the expenses incurred by the appearance of Blade Runner. The announcement of the DMOT also stated that El Dorado was obliged to exercise its sovereign responsibility, and, in that context, to adopt

“extraordinary measures” to limit the impact of Blade Runner on the public health of its population, and safeguard safety of aviation.

20. On the same day the GAT had been issued, Mikewa Airlines publicly announced that it had suffered, and continued to suffer, losses which were significantly higher than those sustained by Dorado Airways during the 14-day prohibition of the operation of its air services in El Dorado. Dorado Airways also observed that, as it would benefit from the income generated by the GAT, it could continue the stable operation of its air services.
21. On July 25, 2022, the State of Mikewa formally objected the subsidies in a formal letter of protest to the DMOT, and demanded that Mikewa Airlines be exempted from the GAT. Mikewa asserted that Mikewa Airlines would definitely be insolvent without being exempted from the GAT.
22. However, the DMOT has not reacted to the allegations made by the State of Mikewa, and went on to tax Mikewa Airlines with the specified GAT amounts.

D. PRIVATISATION SPURRED BY FOREIGN INVESTMENT

23. On 29 July 2022, the government of the State of El Dorado publicly proclaimed its *Principles of Air Transport Policy*. This Proclamation includes, but is not limited to, the following:
 - a) The DMOT acknowledges that international air transport should be effectuated on the basis of economic principles, pursuant to which designated air carriers should be free to engage into commercial transactions which they esteem will optimise their profitability. One of the tools in achieving this objective pertains to enhanced access to foreign investment.
 - b) Accordingly, the DMOT will construe its ASAs in light of the acknowledgement laid down in its Principles of Air Transport Policy as concisely alluded to under 1) of this section.
24. The following day, that is, on 30 July 2022, representatives of Boogie Woogie Corporation approached the Government of El Dorado about the possibility of taking “a significant stake” in Dorado Airways. After a series of intense negotiations, the two sides announced the following on 15 August, 2022:
 - a) Boogie Woogie Corporation purchased 49.3 % of the voting equity of Dorado Airways.
 - b) The PPOB of Dorado Airways will remain in El Dorado.
 - c) Three members of Dorado Airways’ five-person Board of Directors would be representatives from Boogie Woogie Corporation, all of whom are citizens of San Saria.
 - d) Dorado Airways would begin code-sharing with Boogie Woogie Corporation and “fully integrate” all of its consumer perquisite programs with those of Boogie Woogie Corporation.

- e) Dorado Airways would enter into a 30-year licensing contract with Boogie Woogie Corporation to use the Boogie Woogie Corporation name and logo on all of its aircraft, personnel uniforms, and official publications and products.
- 25. On August 1, 2022, the Mikewa Government notified DMOT that it was invoking Article 4(1)(b) of their ASA, that it could not accept anymore the designation of Dorado Airways as the designated carrier of Mikewa, and that Dorado Airways was no longer authorized to provide air services to, from, behind or beyond points in El Dorado.
- 26. Despite an official protest from the El Dorado Government, the MAM has refused to reauthorize the flights of Dorado Airways to this day.

E. CONSEQUENT STEPS

- I. After initiating consultations in conformity with Article 13 of their ASA, El Dorado and Mikewa agreed that their differences were “irreconcilable.” At the same time, the two States instituted dispute settlement procedures in accordance with Article 84 of the Chicago Convention.
- II. Due to the complexity of the issues, the ICAO Council determined that it could not make a determination in the matter, and authorized El Dorado and Mikewa to submit their dispute arising under the Chicago Convention (1944) and their ASA to the International Court of Justice (ICJ).
- III. Following the decision from the ICAO Council, both States agreed in writing on 15 February, 2023 to invoke Article 15 of their ASA and bring the case before the ICJ.
- IV. The State of El Dorado has asked the ICJ to rule that:
 - A. Decision ALX-1210 is consistent with the rights and obligations of the State of El Dorado under international law.
 - B. In light of the exceptional circumstances surrounding the case, and its sovereign responsibilities, El Dorado is entitled to provide special treatment to its international air carrier, Dorado Airways.
 - C. The GAT is consistent with El Dorado’s obligations rights and obligations under international law.
 - D. Mikewa must continue to authorize Dorado Airways to provide air services to, from, behind or beyond points in El Dorado’s territory.

F. CONSEQUENT IN ITS RESPONSE, THE STATE OF MIKEWA HAS ASKED THE ICJ TO RULE THAT:

- A. El Dorado must annul Decision ALX-1210, because it is not anymore in compliance with international law, and must guarantee non-repetition.
- B. El Dorado must repeal the GAT, or exempt Mikewa Airways from the GAT.
- C. El Dorado infringes Article 11(1) of the ASA between El Dorado and Mikewa, because Mikewa Airlines does not have “a fair and equal

opportunity ... to compete in providing the international air transportation” under this ASA.

- D. With reference to Article 3(1) of the ASA between El Dorado and Mikewa, the revocation of the authorization granted by Mikewa to Dorado Airways to provide air services to, from, behind or beyond points in its territory is consistent with Mikewa’s rights and obligations under international law.

The two States, namely, El Dorado and Mikewa, respectfully request the International Court of Justice to determine its decisions on the above submissions.

ANNEX I

AIR SERVICES AGREEMENT (ASA) BETWEEN THE STATES OF EL DORADO AND MIKEWA

The Government of El Dorado and the Government of Mikewa (hereinafter, "the Parties");

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and

Being Parties to the Convention on International Civil Aviation, done at Chicago December 7, 1944;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a) "Aeronautical authorities" means, in the case of the El Dorado, the El Dorado Department of Transportation and in the case of Mikewa, the Mikewa Department of Transportation, and any person or agency authorized to perform functions exercised by the El Dorado Department of Transportation or said Mikewa Department of Transportation;
- b) "Agreement" means this Agreement and any amendments thereto;
- c) "Air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, scheduled or charter, for remuneration or hire;
- d) "Airline of a Party" means an airline that is licensed by and has its principal place of business in the territory of that Party;
- e) "Convention" means the Convention on International Civil Aviation, done at Chicago December 7, 1944, and includes:
 - i. any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Parties, and
 - ii. any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;
- f) "Full cost" means the cost of providing service plus a reasonable Tax for administrative overhead;
- g) "International air transportation" means air transportation that passes through the airspace over the territory of more than one State;
- h) "Price" means any fare, rate, or Tax for the carriage of passengers, baggage, or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, Taxd by airlines, including their agents, and the conditions governing the availability of such fare, rate, or Tax;
- i) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo, or mail in air transportation;
- j) "Territory" means the land areas, internal waters, and territorial sea under the sovereignty of a Party; and
- k) "User Tax" means a Tax imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.

Article 2 Grant of Rights

- 1) Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:
 - a) the right to fly across its territory without landing;
 - b) the right to make stops in its territory for non-traffic purposes;
 - c) the right to perform international air transportation between points on the following routes:
 - i. for airlines of the El Dorado, from points behind the El Dorado via the El Dorado and intermediate points to any point or points in Mikewa and beyond; and for all-cargo service, between Mikewa and any point or points;
 - ii. for airlines of Mikewa, from points behind Mikewa via Mikewa and intermediate points to any point or points in the El Dorado and beyond; and for all-cargo service, between the El Dorado and any point or points; and
- 2) the rights otherwise specified in this Agreement.
- 3) Each airline of a Party may, on any or all flights and at its option:
 - a) operate flights in either or both directions;
 - b) combine different flight numbers within one aircraft operation;
 - c) serve behind, intermediate, and beyond points and points in the territories of the Parties in any combination and in any order;
 - d) omit stops at any point or points;
 - e) transfer traffic from any of its aircraft to any of its other aircraft at any point;
 - f) serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
 - g) make stopovers at any points whether within or outside the territory of either Party;
 - h) carry transit traffic through the other Party's territory; and
 - i) combine traffic on the same aircraft regardless of where such traffic originates; without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that, with the exception of all-cargo services, the transportation is part of a service that serves a point in the homeland of the airline.
- 4) On any segment or segments of the routes above, any airline of a Party may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that, [with the exception of all-cargo services,] in the outbound direction, the transportation beyond such point is a continuation of the transportation from the homeland of the airline and, in the inbound direction, the transportation to the homeland of the airline is a continuation of the transportation from beyond such point.
- 5) Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to take on board, in the territory of the other Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.
- 6) If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each airline of the other Party shall be subject to the least restrictive of such criteria. Neither Party shall require an airline of the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a notice that it is complying with the applicable laws, regulations, and rules referred to in this paragraph or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.

Article 3 Authorization

Each Party, on receipt of applications from an airline of the other Party, in the form and manner prescribed for operating authorizations and technical permissions, shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

- 1) substantial ownership and effective control of that airline are vested in the other Party,

- nationals of that Party, or both, and the airline so designated has its Principle Place of Business in the designating State;
- 2) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
 - 3) the other Party is maintaining and administering the provisions set forth in Article 6 (Safety) and Article 7 (Aviation Security).

Article 4 Revocation of Authorization

- 1) Either Party may revoke, suspend, limit, or impose conditions on the operating authorizations or technical permissions of an airline where:
 - a) that airline is not an airline of the other Party under Article 1(4);
 - b) that airline does not have its Principal Place of Business in the designating State;
 - c) substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both; or
 - d) that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement.
- 2) Unless immediate action is essential to prevent further non-compliance with subparagraph 1c of this Article, the rights established by this Article shall be exercised after consultation with the other Party.
- 3) This Article does not limit the rights of either Party to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 6 (Safety) or Article 7 (Aviation Security).

Article 5 Application of Laws

- 1) The laws and regulations of a Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be complied with by such aircraft upon entering, when departing from, or while within the territory of the first Party.
- 2) While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.

Article 6 Safety

- 1) Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.
- 2) Either Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrews, aircraft, and operation of airlines of that other Party. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in

the event the other Party does not take such appropriate corrective action within a reasonable time and to take immediate action, prior to consultations, as to such airline or airlines if the other Party is not maintaining and administering the aforementioned standards and immediate action is essential to prevent further non-compliance.

Article 7 Aviation Security

- 1) The Parties affirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal February 24, 1988.
- 2) The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.
- 3) The Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, operators of aircraft that 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.
- 4) Each Party agrees to observe the security provisions required by the other Party for entry into, for departure from, and while within the territory of that other Party and to take adequate measures to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading.
- 5) Each Party shall also give positive consideration to any request from the other Party for special security measures 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 or 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.
- 7) When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

Article 8 Commercial Opportunities

- 1) The airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation.
- 2) The airlines of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation.
- 3) Each airline shall have the right to perform its own ground-handling in the territory of the other Party ('self-handling') or, at the airline's option, select among competing agents for

such services in whole or in part. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines.

- 4) Taxes shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.
- 5) An airline of a Party may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
- 6) Each airline shall have the right to convert and remit to its country and, except where inconsistent with generally applicable law or regulation, any other country or countries of its choice, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.
- 7) The airlines of each Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.
- 8) In operating or holding out the authorized services under this Agreement, any airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing, or leasing arrangements, with
 - a) an airline or airlines of either Party;
 - b) an airline or airlines of a third country; and
 - c) a surface transportation provider of any country;provided that all participants in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.
- 9) Airlines of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including to and from all airports with customs facilities and to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities.
- 10) Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

Article 9 Customs Duties and Charges

- 1) On arriving in the territory of one Party, aircraft operated in international air transportation by the airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco, and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and Taxes that are
 - a) imposed by the national authorities, and
 - b) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

- 2) There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees, and Taxes referred to in paragraph 1 of this Article, with the exception of Taxes based on the cost of the service provided:
 - a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;
 - b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transportation;
 - c) fuel, lubricants, and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board; and:
 - d) promotional and advertising materials introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these materials are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.
- 3) Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.
- 4) The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

Article 10 User Charges

- 1) User Charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user Charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the Charges are assessed.
- 2) User Charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such Charges may include a reasonable return on assets, after depreciation. Facilities and services for which Charges are made shall be provided on an efficient and economic basis.
- 3) Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the Charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user Charges to enable users to express their views before changes are made.
- 4) Neither Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article, unless
 - (a) it fails to undertake a review of the Tax or practice that is the subject of complaint by the other Party within a reasonable amount of time; or
 - (b) following such a review it fails to take all steps within its power to remedy any Tax or practice that is inconsistent with this Article.

Article 11 Fair Competition

- 1) Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.
- 2) Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
- 3) Neither Party shall impose on the other Party's airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency, or traffic that would be inconsistent with the purposes of this Agreement.
- 4) Neither Party shall require the filing of schedules, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on airlines of the other Party.

Article 12 Pricing

- 1) Each Party shall allow prices for air transportation to be established by airlines of both Parties based upon commercial considerations in the marketplace.
- 2) Prices for international air transportation between the territories of the Parties shall not be required to be filed. Notwithstanding the foregoing, the airlines of the Parties shall provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities.

Article 13 Consultations

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.

Article 14 Settlement of Disputes

Any dispute arising under this Agreement, except those that may arise under Article 12 (Pricing), that is not resolved within 30 days of the date established for consultations pursuant to a request for consultations under Article 13 may be referred, by agreement of the Parties, for decision to some person or body. If the Parties believe their dispute to be irreconcilable, either Party may give written notice to the other Party through diplomatic channels that it is requesting that the dispute be submitted to the ICAO Council for resolution in accordance with Article 84 of the Convention.

Article 15 International Court of Justice

If the Parties cannot solve their dispute through the procedures established under the Convention, both Parties may agree in writing to submit their dispute to the International Court of Justice.

Article 16 Termination

Either Party may, at any time, give notice in writing to the other Party of its decision to terminate this

Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination, unless the notice is withdrawn by agreement of the Parties before the end of this period.

Article 17 Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

Article 18 Entry into Force

This Agreement shall enter into force on the date of signature.

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

DONE at El Dorado, the 9th June, 2005.
