

THE ORC AIRWAYS FLIGHT 123 CASE

Case of Gondor v. Mordor

I. Background

1. For the purposes of this Case, all of the States relevant to the problem—Mordor, Gondor, and Rohan—are parties to the following multilateral agreements:
 - a. 1945 United Nations Charter (U.N. Charter)
 - b. 1944 Convention on International Civil Aviation (Chicago Convention)
 - c. 1944 International Air Services Transit Agreement (Two Freedoms Agreement)
 - d. 1969 Vienna Convention on the Law of Treaties
 - e. 1984 Protocol Amending the Chicago Convention (Article 3 *bis*) [Mordor and Rohan only]
 - f. 2010 Trilateral Air Services Agreement (TASA) [*see* Annex I]
2. Mordor is a land-locked State on the continent of Middle Earth with a single all-passenger international air carrier, Orc Airways. Orc Airways is 100% owned and controlled by the Mordorian Government and operates in conformity with all of the relevant Chicago Convention articles and annexes covering licensing, registration, safety, and security.
3. Gondor, another land-locked State on the continent of Middle Earth, borders Mordor to the south. Like Mordor, the Gondorian Government 100% owns and controls a single all-passenger international air carrier, Isildur Airlines. Isildur Airlines operates in conformity with all of the relevant Chicago Convention articles and annexes covering licensing, registration, safety, and security.
4. In the five centuries preceding the signing of the U.N. Charter, Mordor and Gondor were involved in numerous armed conflicts of varying scale. The most devastating armed conflict between the two parties, the so-called War of the Ring, occurred between 1933 and 1945. During that period, both sides incurred over a million military and civilian casualties, along with untold amounts of economic damage. Following their respective ratifications of the U.N. Charter in 1945, neither State has officially declared war on the other. However, since 2000, five separate border skirmishes involving the official armies of both sides have transpired, resulting in a total of 100 military deaths on each side. No civilians were harmed during these skirmishes and property damage was minimal. The U.N. Security Council has never taken any action on the skirmishes. Not surprisingly, each State has publicly blamed the other for instigating hostilities.

5. A third land-locked State, Rohan, is situated on the eastern border of both Mordor and Gondor. Despite its close social, political, and economic ties with Gondor, Rohan has maintained a policy of neutrality during all of the Mordor/Gondor armed conflicts. Rohanian citizens 100% own and control the country's only international air carrier, Eowyn Air. Like Orc Airways and Isildur Airlines, Eowyn Air operates in conformity with all of the relevant Chicago Convention articles and annexes covering licensing, registration, safety, and security.
6. Despite the centuries of martial conflict and political tensions between Gondor and Mordor, Rohan convinced the two States to enter into a Trilateral Air Services Agreement ("TASA"). The Agreement (attached as Appendix I), which entered into force on January 1, 2011, provides liberal market access concessions for all three parties' airlines. Various international organizations, including the U.N. and the International Civil Aviation Organization, publicly heralded the agreement as a "great step" for international air transport liberalization and the improving of relations between Gondor and Mordor. Rohan's King and Head of State, Theoden, has openly expressed his hopes that the TASA will serve as a stepping-stone to a comprehensive regional trade agreement.
7. On January 2, 2011, Orc Airways began offering daily roundtrip air service from Mordor's largest city, Minas Morgul, to Gondor's second-largest city, Pelargir. In a press release issued on the same day, Orc Airways stated that it planned to institute a second daily roundtrip service from Minas Morgul to Gondor's largest city, Minas Tirith, "no later than May 1, 2011." On the same day, Rohan's carrier, Eowyn Air, launched a daily roundtrip service from Rohan's largest city, Edoras, to Minas Morgul.
8. Meanwhile, on January 3, 2011, Isildur Airlines began offering daily roundtrip flights from both Minas Tirith and Pelargir to Minas Morgul. In an official press release posted on its website on February 1, 2011, Isildur Airlines stated that it was only operating at "fractional capacity" on the Pelagir/Minas Morgul route, but enjoyed 100% capacity on the Minas Tirith/Minas Morgul route. Isildur Airlines also stated that it was "hemorrhaging money" from the Pelagir/Minas Morgul service and that without its "market dominance" on the Minas Tirith/Minas Morgul route, the Pelagir/Minas Morgul service would be "unsustainable." The statement went on to outline the air carrier's Cross-Subsidization Plan ("Plan") whereby Isildur Airlines' "windfall profits" would be used to provide "financial assistance" for the maintenance of the Pelagir/Minas Morgul service. The Plan noted that even a "minor decrease" in Isildur Airlines' market share of the Minas Tirith/Minas Morgul would undermine the plan and "likely" force the airline to cancel its daily Pelagir/Minas Morgul service altogether.

9. On February 2, 2011, Gondor's Department of Transportation ("DOT")—an official government agency—promulgated its Official Statement of Gondorian International Aviation Policy ("Statement"). Among its many hortatory claims concerning the advancement of Gondor's international aviation market, Paragraph 10 of the Statement read: "Gondor is committed to maintaining uninterrupted daily roundtrip service between Pelargir and Minas Morgul. As such, the Gondorian DOT will enact any measures necessary to ensure this service is not compromised."

II. Border Skirmish

1. On March 1, 2011, a new border skirmish broke out between Mordor and Gondor. While both sides dispute the relevant facts, an official U.N. Report, entitled *Here They Go Again* ("Report"), stated that 1,000 foot soldiers from Mordor's armed forces had crossed the border into Gondor and proceeded to set fire to three Gondorian villages situated within 30 miles (48.2 kilometers) of the Gondor/Mordor border. The Report estimated that 25 Gondorian civilians were killed and an additional 100 wounded. The Report indicated that after fighting sporadically with Gondor's army on March 2, 2011, Mordor's soldiers retreated back across the border on March 3. The Report concluded that 100 Mordorian soldiers had been killed during the fighting and an additional 50 Gondorian soldiers were killed as well.
2. On March 4, 2011, Gondor's President, Denethor, sent an official communiqué to the U.N. Security Council stating that Gondor considered the March 1–3, 2011 actions of the Mordorian army to be "an act of war" which entitled Gondor to "engage in acts of self defense consistent with its obligations under the U.N. Charter and international law." A carbon copy of the communiqué was also delivered to Sauron, President of Mordor.
3. Despite Denethor's pleading, the U.N. Security Council took no action on the matter. Rohan's Head of State, King Theoden, delivered a public address to the U.N. General Assembly where he condemned Mordor's "reckless acts of hostility" and noted his fear that Mordor's "foolish actions" could jeopardize the TASA and any future trade negotiations between the three parties. In concluding his address, Theoden called on both parties to behave "reasonably and responsibly" and to undertake no action which would "violate international law."
4. On March 5, 2011, Sauron issued his own official communiqué. In it, he stated that "the events of March 1–3, 2011 were the result of a military drill gone awry. The military officials in charge of the operation are currently under review and may be punished in accordance with Mordorian law. The State of Mordor now considers the matter closed."

III. Airspace Closure

1. On April 1, 2011, Gondor's DOT enacted Regulation 867/5309 ("Regulation") in accordance with Gondor's rules of administrative procedure. The brief Regulation read as follows: "Until a subsequent DOT regulation states otherwise, the airspace above the city of Minas Tirith is hereby closed to non-Gondorian airlines for national security purposes."
2. On April 2, 2011, Orc Airways—which had been preparing to launch its daily roundtrip service between Minas Tirith and Minas Morgul on May 1, 2011—sent a letter of protest to the DOT. In it, the airline called the Regulation a "blatantly protectionist measure."
3. On April 3, 2011, Eowyn Air began its own daily roundtrip service from Rohan's largest city, Edoras, to Pelargir. The service's flight path includes entering and exiting Gondor by flying over Minas Tirith. On April 15, 2011, however, Eowyn Air sent a public note to the DOT inquiring whether or not it could begin performing a comparable daily service from Edoras to Pelargir. The DOT issued a one-word reply on official state letterhead: "No." Even so, the daily Edoras/Pelargir service has continued uninterrupted.
4. On May 1, 2011, the Mordor Aviation Administration (MAA)—an official government body—sent an official note to Gondor's DOT inquiring whether or not the airspace above Minas Tirith was now open. The note specifically mentioned the fact that Eowyn Air was operating services between Edoras and Pelargir which included overflying Minas Tirith. In the note, the MAA stated that unless it was informed otherwise by June 1, 2011, the MAA would authorize Orc Airways to begin operating a new service from Minas Tirith to Minas Morgul.
5. On June 2, 2011, Orc Airways informed both the MAA and the Gondorian DOT that it had "temporarily suspended" its plans to begin performing a daily roundtrip Minas Tirith/Minas Morgul service, though it "understood that the airspace above Minas Tirith was now accessible to non-Gondorian air carriers." Gondor's DOT did not respond.

IV. Orc Airways Flight 123

1. On July 1, 2011, at approximately 12:00:00 local time, Orc Airways Flight 123, originating from Minas Morgul and destined for Pelargir, entered Gondorian airspace. In addition to the five crew members who were citizens of Mordor, the aircraft carried 55 Mordorians and 40 Gondorians. Due to poor weather conditions earlier that day, Pelargir Airport was experiencing a series of delays. Air Traffic Management (ATM) officials from Gondor—an official organ of Gondor's DOT—radioed Flight 123 to state

that the aircraft would need to “circle the territory of Gondor until 12:30:00 local time and then wait for permission to land.” In its last recorded transmission, Orc Airways informed the ATM officials that it would “circle the airspace above Minas Tirith and wait for instructions.” The ATM officials radioed back, “Affirmative.”

2. At 12:15:00 local time, Orc Airways Flight 123 began circling the airspace above Minas Tirith. At 12:20:00 local time, two fighter jets from Gondor’s Air Force began flying alongside Flight 123. Both fighter jets radioed Flight 123 to inform the aircraft that it “must vacate the airspace above Minas Tirith immediately” and that its presence above Minas Tirith “was considered hostile.” Flight 123 did not reply and continued to fly above Minas Tirith’s airspace for the next ten minutes.
3. At approximately 12:30:00 local time, ATM officials radioed Flight 123 to inform the aircraft that it was “all clear” to land at Pelargir Airport. At 12:31:00 local time, while Orc Airways Flight 123 was still above Minas Tirith’s airspace, the two fighters opened fire on the aircraft. At 12:32:00 local time, Flight 123 crashed into the Pelennor Fields just outside Minas Tirith’s city walls. All aboard were killed.
4. On July 2, 2011, President Sauron of Mordor sent an official communiqué to both Gondor and Rohan informing them that “the deal is off” with respect to the TASA on the grounds that Gondor’s actions toward Orc Airways Flight 123 constituted “an act of brutal aggression against a peaceful people” and had “permanently altered the state of Mordor’s trade relationship with Gondor.” Sauron also informed the two States that all talks for a regional trade agreement “were over.”

V. Flights to Mordor

1. In the wake of the July 1, 2011 downing of Orc Airways Flight 123 and the statement of President Sauron issued on July 2, 2011, Orc Airways ceased conducting any services to or from Gondor. On July 3, 2011, the MAA notified Gondor’s DOT that Isildur Airlines “was not to enter Mordorian airspace for any reason whatsoever.” Isildur Airlines immediately protested the notice to the DOT, stating that it was planning to launch a new daily roundtrip service from Minas Tirith to Edoras in Rohan “no later than December 1, 2011.” Moreover, Isildur Airlines complained that the “most efficient route” from Minas Tirith to Edoras including flying over part of the far western border of Mordor.
2. Despite President Sauron’s July 2, 2011 statement, Eowyn Air performed its daily roundtrip service from Edoras to Minas Morgul without incident. On August 1, 2011, Eowyn Air announced that it was ending its daily service to Minas Morgul, but informed passengers that Orc Airways would begin conducting services between the city pairs “no later than September 1, 2011.”

3. On August 2, 2011, President Denethor of Gondor sent an official communiqué to King Theoden of Rohan asking “by what right” Eowyn Air and Orc Airways were conducting services between Rohan and Mordor. In his reply communiqué of August 3, 2011, King Theoden stated: “By virtue of the TASA.” When Gondor’s DOT attempted to follow-up on this statement with a similar inquiry to the MAA, it was met with silence.

VI. Action

1. After attempting to initiate independent consultations on the status of the TASA, the closure of Mordor’s airspace to Isildur Airlines, the closure of the airspace above Minas Tirith, and the downing of Orc Airways Flight 123, upon which the parties agreed that their differences were irreconcilable, Gondor and Mordor initiated a dispute settlement procedure in accordance with Article 84 of the Chicago Convention. However, due to the complexity of the issues involved, including matters which the ICAO Council deemed “beyond the express purview of the Chicago Convention,” the two parties agreed to bring the matter before the International Court of Justice (ICJ). As such, the State of Gondor has asked the ICJ to rule that:
 - a. Regulation 867/5309 is consistent with Gondor’s rights and obligations under international law.
 - b. The shooting down of Orc Airways Flight 123 was consistent with Gondor’s rights and obligations under international law.
 - c. The TASA, which entered into force on January 1, 2011, is still in effect and therefore Isildur Airlines can still perform air services to, from, or beyond Mordor’s territory in accordance with the market-access rights contained in the TASA.
 - d. Mordor must open its airspace to allow Isildur Airlines to perform service between Minas Tirith in Gondor and Edoras in Rohan.
2. In its response, the State of Mordor has asked the ICJ to rule that:
 - a. Regulation 867/5309 is inconsistent with Gondor’s rights and obligations under international law.
 - b. The shooting down of Orc Airways Flight 123 was inconsistent with Gondor’s rights and obligations under international law.
 - c. Mordor’s decision to bar Isildur Airways from performing air services to, from, or beyond points within Mordorian territory is consistent with international law, regardless of the status of the TASA.
 - d. Mordor is within its rights and obligations under international law to close its airspace to Isildur Airways.

Annex I

GONDOR/ROHAN/MORDOR

TRILATERAL AIR SERVICES AGREEMENT (TASA)

The Governments of Gondor, Rohan, and Mordor (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:

1. "Aeronautical authorities" means any person or agency authorized to perform functions exercised by the Parties related to air transport;
2. "Agreement" means this Agreement and any amendments thereto;
3. "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;

4. "Airline of a Party" means an airline that is licensed by and has its principal place of business in the territory of that Party;
5. "Convention" means the Convention on International Civil Aviation, done at Chicago December 7, 1944, and includes:
 - a. any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by the Parties, and
 - b. 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 the Parties;
6. "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;
7. "International air transportation" means air transportation that passes through the airspace over the territory of more than one State;
8. "Party" means the State of Gondor, the State of Mordor or the State of Rohan;
9. "Price" means any fare, rate, or charge for the carriage of passengers, baggage, or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate, or charge;
10. "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;
11. "Territory" means the land areas, internal waters, and territorial sea under the sovereignty of a Party; and
12. "User charge" means a charge 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. Parties grant each other the following rights for the conduct of international air transportation by the airlines of the other Parties:

(a) the right to fly across its territory without landing;

(b) the right to make stops in its territory for traffic and non-traffic purposes;

2. 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 any Party;

h. carry transit traffic through the other Parties' 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.

3. 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.

4. 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 another Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

5. Any airline of a Party performing charter international air transportation originating in the territory of any Party, whether on a one-way or round-trip basis, shall have the option of

complying with the charter laws, regulations, and rules either of its homeland or of the other Party. 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 Parties shall be subject to the least restrictive of such criteria. Nothing in this paragraph shall limit the rights of a Party to require airlines of the other Parties to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights. Except with respect to the consumer protection rules referred to in this paragraph, none of the Parties shall require an airline of the other Parties, in respect of the carriage of traffic from the territory of the other Parties 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

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

- a. substantial ownership and effective control of that airline are vested in the other Party, nationals of that Party, or both;
- b. 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
- c. 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. substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both; or

c. 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 noncompliance with subparagraph 1c of this Article, the rights established by this Article shall be exercised only after consultation with the other Party or Parties.

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 another 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. All Parties 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. All Parties 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. All Parties 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 noncompliance.

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. The Parties 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. The Parties shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.

5. 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.

6. 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 the Parties 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 the Parties 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; charges 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.

4. 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.

5. 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.

6. The airlines of the Parties 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 the Parties may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.

7. 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.

8. Airlines and indirect providers of cargo transportation of the 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. 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 charges 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 charges referred to in paragraph 1 of this Article, with the exception of charges 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 one of the other Parties 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 one of the other Parties 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 one of the other Parties 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 one of the other Parties 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 the Parties 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 favorable than the most favorable 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. All Parties 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. All Parties 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 charge 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 charge or practice that is inconsistent with this Article.

ARTICLE 11

FAIR COMPETITION

1. All Parties shall allow a fair and equal opportunity for the airlines of the other Parties to compete in providing the international air transportation governed by this Agreement.
2. All Parties 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 or Parties, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
3. No 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. No Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party or Parties 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 or Parties.

ARTICLE 12

PRICING

1. All Parties shall allow prices for air transportation to be established by airlines of the 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

Any 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 this Agreement or the Convention, they 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 Parties 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 will enter into force on January 1, 2011.