

No. 9236

**AUSTRIA
and
AFGHANISTAN**

**Agreement relating to air services (with annex). Signed at
Vienna, on 21 July 1958**

Official text: English.

Registered by the International Civil Aviation Organization on 18 September 1968.

**AUTRICHE
et
AFGHANISTAN**

**Accord relatif aux services aériens (avec annexe). Signé à
Vienne, le 21 juillet 1958**

Texte officiel anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 18 septembre 1968.

No. 9236. AGREEMENT¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF AFGHANISTAN RELATING TO AIR SERVICES. SIGNED AT VIENNA, ON 21 JULY 1958

The Republic of Austria and the Kingdom of Afghanistan, hereinafter described as the Contracting Parties,

Being Contracting Parties to the Convention on International Civil Aviation, signed at Chicago on the seventh day of December 1944² (hereinafter referred to as the "Convention"), the terms of which Convention are binding on both Parties,

In the intention to further the development of the economic and cultural relations between the two Countries,

Desiring to conclude to this end an Agreement for the operation of air transport services between and beyond their respective territories,

Have agreed as follows :

Article I

Each Contracting Party grants to the other Contracting Party the right to operate the air services specified in the Annex to this Agreement (hereinafter referred to as the "specified air services") on the routes specified in the said Annex (hereinafter referred to as the "specified air routes").

Article II

(A) Each of the specified air services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, on condition that :

1. The Contracting Party to whom the rights have been granted shall have designated one or more airlines (hereinafter referred to as the "designated airlines") for the specified air routes.

2. The Contracting Party which grants the rights shall have given the appropriate operating permission to the airline or airlines, which it shall do with

¹ Came into force on 11 July 1959, by the exchange of the instruments of ratification, which took place at Kabul, in accordance with article XIV (B).

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, and Vol. 514, p. 209.

the least possible delay, provided that the airline or airlines have, if called upon complied with the requirements of paragraph (B) of this Article.

(B) The designated airline or airlines may be required to satisfy the Aeronautical Authorities of the Contracting Party granting the rights that they are qualified to fulfill the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operation of International air services.

(C) Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall normally be recognized as valid by the other Contracting Party for the purpose of operating the routes and services specified in the Annex. Each Contracting Party reserves the right, however, to refuse to recognise, for the purpose of flight over its own territory, certificates of competency and licenses granted to its own nationals by another State.

(D) The laws, regulations and instructions of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in International air navigation or to the operation of such aircraft while within its territory shall apply to aircraft of the designated airline or airlines of the other Contracting Party.

(E) The laws, regulations and instructions of each Contracting Party relating to the entry into, stay at or departure from its territory of passengers, crew or cargo or aircraft (such as regulations relating to entry, exit, immigration, passport, customs and quarantine) shall be applicable to the passengers, crew and senders of air cargo as well as to their representatives.

Article III

The airlines designated by each Contracting Party shall enjoy, while operating the specified air services, the rights :

- (i) to fly their aircraft across the territory of the other Contracting Party;
- (ii) to make stops in the said territory for technical landing purposes; and
- (iii) subject to the provisions of Article IV to make stops in the said territory at the points specified in the Annex to this Agreement for the purposes of setting down and picking up International traffic in passengers, cargo and mail.

Nothing in this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article IV

In order to maintain equilibrium between the capacity of the specified air services and the requirements of the public for air transport on the specified air routes and in order to maintain proper relationship between the specified air services and other air services operating on the specified air routes or sections thereof, the Contracting Parties agree as follows :

(A) In the operation by the airlines of either Contracting Party of the specified air services the interest of the airlines of the other Party shall be taken into consideration so as not to effect unduly the services which the latter provide on all or part of the same route.

(B) The air transport offered by the air lines of each Contracting Party on different sections of specified air routes shall bear a close relationship to the needs of the public for air transport and to the traffic interests of the airlines concerned as defined in this Agreement.

(C) The services provided by a designated airline under this agreement shall retain as their primary objective the general principle that capacity shall be related :

1. to the requirements of traffic between the country of origin of the air services and the country of destination on the specified air routes;
2. to the air transport needs of the area through which the airline passes; and
3. to the adequacy of other air transport services established by air lines of the States concerned between their respective territories.

Article V

(A) The Aeronautical Authorities of both Contracting Parties shall exchange information as promptly as possible concerning the current authorizations extended to their respective designated airlines to render service to, through and from the territory of the other Contracting Party. This will include copies of current certificates and authorizations for service on the specified air routes, together with amendments, exemption orders and authorized service patterns.

(B) Each Contracting Party shall have the right to ask the designated airlines of the other Contracting Party to provide to the Aeronautical Authorities of the former Contracting Party, as long in advance as practicable, copies of time tables, traffic schedules including any modification thereof, and all other relevant information concerning the operation of the specified air services including

information about the capacity provided on each of the specified air routes and any further relevant and reasonable information as may be required to satisfy the Aeronautical Authorities of the other Contracting Party that the requirements of this Agreement are being duly observed.

(C) Each Contracting Party shall have the right to ask the designated airlines of the other Contracting Party to provide to the Aeronautical Authorities of the former Contracting Party statistics relating to the traffic carried on their air services to, from or over the territory of the other Contracting Party showing the origin and destination of the traffic.

Article VI

(A) Rates shall be fixed at reasonable levels, due regard being paid to all relevant factors, including cost of comparable economic operation, reasonable profit and differences of characteristics of service.

(B) The Rates to be charged by the designated airlines of each Contracting Party in respect of traffic carried under this Agreement to or from the territory of the other Contracting Party shall be agreed in the first instance between the designated airlines of both the Contracting Parties and shall have regard to relevant rates adopted by the International Air Transport Association. Any rates so agreed shall be subject to the approval of the Aeronautical Authorities of both the Contracting Parties. In the event of disagreement between the airlines and/or the Aeronautical Authorities, the Contracting Parties themselves shall endeavour to reach agreement and will take all necessary steps to give effect to such Agreement. Should the Contracting Parties fail to agree, the dispute shall be dealt with in accordance with article XI. Pending settlement of any disagreement, the rates already established shall prevail.

Article VII

Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores introduced into the territory of one Contracting Party, or taken on board aircraft in that territory, by or on behalf of the other Contracting Party or its designated airline or airlines and intended solely for use by or in the aircraft of those airlines shall be accorded the following treatment by the first Contracting Party in respect to customs duties, inspection fees and other similar national or local duties and charges :

- (a) in the case of fuel and lubricating oils remaining on board aircraft at the last airport of call before departure from the said territory, exemption; and

- (b) in the case of fuel and lubricating oils not included under (a) and spare parts, regular aircraft equipment and aircraft stores, treatment not less favourable than that accorded to similar supplies introduced into the said territory, or taken on board aircraft in that territory, and intended for use by or in the aircraft of a national airline of the first Contracting Party, or the most favoured foreign airline, engaged in international air services.

Article VIII

Each Contracting Party reserves the right to itself to withhold, or revoke, or impose appropriate conditions as it may deem necessary with respect to an operating permission, in case it is not satisfied that substantial ownership and effective control of the airlines are vested in the other Contracting Party or in nationals of that Contracting Party, or in case of failure by a designated airline of the other Contracting Party to comply with the laws and regulations of the former Contracting Party. In case, in the judgement of the former Contracting Party, there is a failure to comply with laws and regulations, such action shall be taken only after consultation between the Contracting Parties. In the event of action by one Contracting Party under this Article the rights of the other Contracting Party under Article XI shall not be prejudiced.

Article IX

(A) In a spirit of close collaboration, the Aeronautical Authorities of the two Contracting Parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in this Agreement.

(B) Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of the Agreement which it may deem desirable. Such consultation shall begin within a period of sixty days from the date of the request. Any modification of this Agreement agreed to as a result of such consultation shall come into effect when it has been confirmed by an exchange of diplomatic notes.

(C) Changes made by either Contracting Party in the specified air routes, except those which change the points served by the designated airlines in the territory of the other Contracting Party, shall not be considered as modifications of this Agreement. The Aeronautical Authorities of either Contracting Party may, therefore, proceed unilaterally to make such changes, provided, however, that notice of any change shall be given without delay to the Aeronautical Authorities of the other Contracting Party. If such latter Aeronautical Authorities

find that, having regard to the principles set forth in this Agreement, the interests of any of their airlines are prejudiced by the carriage by a designated airline of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the latter Party may request consultation in accordance with the provisions of paragraph (B) of this Article.

Article X

Either Contracting Party may at any time give notice to the other of its desire to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. This Agreement shall terminate one year after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by Agreement before the expiration of this period. In the absence of acknowledgement of receipt by the other Contracting Party notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

Article XI

(A) If any dispute arises between the Contracting Parties relating to the interpretation of application of the present Agreement, the Contracting Parties shall in the first place endeavor to settle it by negotiation between themselves.

(B) If the Contracting Parties fail to reach a settlement by negotiation,

- (i) They may agree to refer the dispute for decision to an arbitral tribunal or some other person or body appointed by agreement between them; or
- (ii) If they do not so agree or if, having agreed to refer the dispute to an arbitral tribunal they cannot reach agreement as to its composition, either Contracting Party may submit the dispute for decision to any tribunal competent to decide it, established within the International Civil Aviation Organization, or, if there be no such tribunal, to the International Court of Justice.

(C) The Contracting Parties undertake to comply with any decision given, including any interim recommendation made, under paragraph (B) of this Article.

(D) If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with the requirements of paragraph (C) of this Article, the other Contracting Party may limit, withhold or revoke any rights which it has granted by virtue of the present Agreement.

Article XII

In the event of conclusion of a multilateral convention or an agreement concerning air transport to which both Contracting Parties adhere, this Agreement shall be modified to conform with the provisions of such convention or agreement.

Article XIII

For the purpose of this Agreement :

(A) The terms “territory”, “air service”, “International air service” and “airline” have the meanings specified in the Convention.

(B) The term “Aeronautical Authorities” means, in the case of Austria, the Federal Ministry of Communications and of Electric Power Development and the Federal Office of Civil Aviation, and in the case of Afghanistan, the President, Afghan Air Authority, and in both cases any person or body authorized to perform the functions presently exercised by the above mentioned authorities.

(C) The term “capacity” in relation to an aircraft means the payload of that aircraft available on the route or section of a route.

(D) The term “capacity” in relation to a specified air service means the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and route or section of a route.

(E) The term “designated airline” means an airline or airlines designated by one Contracting Party to the other Contracting Party in accordance with Article II of this Agreement.

Article XIV

(A) The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the “Agreement” shall include references to the Annex, except where otherwise expressly provided.

(B) This Agreement is subject to ratification by both Contracting States. The Instruments of Ratification shall be exchanged at Kabul as early as possible and the Agreement shall become operative from the date such exchange takes place.

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

DONE this 21st day of July, 1958, in duplicate at Vienna in the English language.

For the Republic of Austria :

MARQUET m. p.
(Dr. A. Marquet)

For the Kingdom of Afghanistan :

HAKIMI m. p.
(A. K. Hakimi)

ANNEX

(A) The airline or airlines designated by the Royal Government of Afghanistan shall be entitled to operate air services in both directions on routes as specified hereafter :

Points in Afghanistan—via intermediate points, if desired—to points in Austria—and to points beyond, if desired.

(B) The airline or airlines designated by the Austrian Federal Government shall be entitled to operate air services in both directions on routes as specified hereafter :

Points in Austria—via intermediate points, if desired—to points in Afghanistan—and to points beyond, if desired.

(C) Points on any of the specified routes may, at the option of the designated airlines, be omitted on any or all flights.
