

No. 13222

NETHERLANDS
and
UNITED REPUBLIC OF TANZANIA

Agreement for air services between and beyond their respective territories (with annex). Signed at Dar es Salaam on 23 May 1969

Exchange of notes constituting an agreement modifying the above-mentioned Agreement. Dar es Salaam, 13 November 1971

Authentic texts: English.

Registered by the International Civil Aviation Organization on 11 April 1974.

PAYS-BAS
et
RÉPUBLIQUE-UNIE DE TANZANIE

Accord relatif aux services aériens entre les territoires des deux pays et au-delà (avec annexe). Signé à Dar es-Salam le 23 mai 1969

Échange de notes constituant un accord modifiant l'Accord susmentionné. Dar es-Salam, 13 novembre 1971

Textes authentiques : anglais.

Enregistrés par l'Organisation de l'aviation civile internationale le 11 avril 1974.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of the Netherlands and the Government of the United Republic of Tanzania,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,² and

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1. For the purpose of the present Agreement, unless the context otherwise requires:

(a) The term “the Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under article 90 of that Convention and any amendment of the Annexes or Convention under articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;

(b) The term “aeronautical authorities” means, in the case of Tanzania, the East African Community by virtue of article 43 of the Treaty for East African Co-operation, 1967, and any person or body which that Community has authorised to perform any of its functions or which has been authorised by Tanzania to perform any of the functions presently exercised by that Community, and in the case of the Kingdom of the Netherlands the Director General of Civil Aviation in the Netherlands or any person or body authorised to perform any of his functions;

(c) The term “designated airline” means an airline which has been designated and authorised in accordance with article 3 of the present Agreement;

(d) The term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, protection or trusteeship of that State;

(e) The term “the Kingdom of the Netherlands” means the territory of the Kingdom of the Netherlands in Europe only;

(f) The terms “air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in article 96 of the Convention;

(g) The term “East Africa” means Uganda, Kenya and Tanzania;

(h) The term “tariff” means the fares or cargo rates to be charged and any conditions upon which those fares or cargo rates depend.

¹ Applied provisionally from 23 May 1969, the date of signature, and came into force definitively on 24 February 1970 by the exchange of the instruments of ratification, which took place at Dar es Salaam, in accordance with article 17.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; and vol. 740, p. 21.

Article 2. (1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate section of the schedule annexed to the present Agreement. Such services and routes are hereafter called “the agreed services” and “the specified routes” respectively. The airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

- (a) to fly without landing across the territory of the Contracting Party;
- (b) to make stops in the said territory for non-traffic purposes; and
- (c) to make stops in the said territory at the points specified for that route in the Schedule to the present Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail.

(2) Nothing in paragraph (1) of 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.

(3) The provisions of the International Air Services Transit Agreement done at Chicago on the seventh day of December, 1944¹ shall apply as if Tanzania has accepted that Agreement.

Article 3. (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

(2) On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

(3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

(4) The aeronautical authorities of each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in article 2 of the present Agreement, in any case where the said (aeronautical authorities) Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

(5) When an airline has been so designated and authorised, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of article 9 of the present Agreement is in force in respect of that service.

Article 4. (1) The aeronautical authorities of each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in article 2 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as they may deem necessary on the exercise of these rights:

- (a) in any case where they are not satisfied that substantial ownership and effective

¹ United Nations, *Treaty Series*, vol. 84, p. 389.

control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or

- (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

(3) Recognizing that the structure of East African Airways Corporation is such that the substantial ownership and effective control of the Corporation is not vested in the Government of Tanzania or its nationals alone, the Government of the Kingdom of the Netherlands agrees that, provided it is satisfied that any substantial ownership and the effective control of East African Airways Corporation is and remains vested in the Governments or nationals of the countries comprising East Africa, no objection will be raised:

- (a) by reason of articles 3 (3) and 3 (4) of the present Agreement to the designation of East African Airways Corporation to operate the route specified in the route schedule to the present Agreement, or by reason of article 4 (1) of the present Agreement to the exercise by East African Airways Corporation of the rights specified in article 2 (1) of the present Agreement, and
- (b) by reason of section 5 of article 1 of the International Air Services Transit Agreement in so far as that section relates to substantial ownership and effective control to the application for a certificate or permit by East African Airways Corporation or to the exercise of the rights referred to in article 2 (3) of the present Agreement by East African Airways Corporation.

Article 5. (1) Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

(2) There shall also be exempt from the same duties, fees and charges, with the exception of charges corresponding to the services performed:

- (a) aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board outbound aircraft engaged in an international service of the other Contracting Party;
- (b) spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party;
- (c) fuel and lubricants destined to supply outbound aircraft operated on international services by the designated airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraph (a), (b), (c) above may be required to be kept under customs supervision or control.

Article 6. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that territory. In such cases, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 7. (1) There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services, the airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, or capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline.

(4) Provision for the carriage of passengers, cargo and mail both taken up or put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

Article 8. In operating any agreed service on any specified route a designated airline of one Contracting Party may substitute one aircraft for another at a point in the territory of the other Contracting Party only on the following conditions:

- (a) That it is justified by reason of economy of operation;
- (b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is not larger in capacity than that used in the nearer section;
- (c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- (d) that there is an adequate volume of through traffic;
- (e) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where the change of aircraft is made;

- (f) that the provisions of article 7 of the present Agreement shall govern all arrangements made with regard to change of aircraft;
- (g) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

Article 9. (1) The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels due regard being paid to all relevant factors including cost of operation, reasonable profit and the tariffs of other airlines.

(2) The tariffs referred to in paragraph (1) of this article, together with the rates of agency commission applicable, shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

(3) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the agreement of the said authorities.

(4) If the designated airlines cannot agree on any of these tariffs, or if for some reason a tariff cannot be fixed in accordance with the provisions of paragraph (2) of this article, or if during the first fifteen (15) days of the thirty (30) days period referred to in paragraph (3) of this article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph (2) of this article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

(5) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (3) of this article or on the determination of any tariff under paragraph (4), the dispute shall be settled in accordance with the provisions of article 13 of the present Agreement.

(6) Subject to the provisions of paragraph (5) of this article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

(7) The tariffs established in accordance with the provisions of this article shall remain in force until new tariffs have been established in accordance with the provisions of this article.

Article 10. The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statement of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services.

Article 11. (1) Each Contracting Party grants to the designated airlines of the other Contracting Party the right of free transfer at the official rate of exchange of the excess of receipt over expenditure earned by those airlines in its territory in connection with the carriage of passengers, mail and cargo.

(2) The excess of receipts over expenditure referred to in paragraph 1 of this article shall be exempt from income tax and corporation tax.

Article 12. (1) In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the schedules annexed thereto and shall also consult when necessary to provide for modification thereof.

(2) Either Contracting Party may request consultation which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of the date of the request, unless both Contracting Parties agree to an extension of this period.

Article 13. (1) 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 endeavour to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to a competent person or body; if they do not so agree, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

(3) The Contracting Parties shall comply with any decision given under paragraph (2) of this article.

Article 14. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement including the Schedules annexed thereto, such modification, if agreed between the Contracting Parties, and if necessary after consultation in accordance with article 12 of the present Agreement, shall come into effect when confirmed by an exchange of notes.

Article 15. The present Agreement and its schedules shall be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

Article 16. Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 17. The present Agreement shall be provisionally applicable from the date of signature and shall come into force on the date of the exchange of instruments of ratification which shall take place as soon as possible in Dar es Salaam.

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

DONE at Dar es Salaam on 23rd May 1969 in duplicate in the English language.

For the Government of the Kingdom of the Netherlands:
A. M. E. BRINK

For the Government of the United Republic of Tanzania:
J. M. LUSINDE

ANNEX

ROUTE SCHEDULE

1. The Government of the Kingdom of the Netherlands grants to the designated airline of the Government of the United Republic of Tanzania the right to operate scheduled international air services in both directions on the following route:

Points in East Africa/Intermediate Points/Amsterdam/Points beyond.

2. (a) The Government of the United Republic of Tanzania grants to the designated airline of the Government of the Kingdom of the Netherlands the right to operate scheduled international air services in both directions on the following route:

Points in the Netherlands/Munich/Tunis/Entebbe/Nairobi/Dar es Salaam.

(b) The designated airline of the Kingdom of the Netherlands may operate to points beyond East Africa provided that no traffic rights are exercised between points in East Africa and points in Zambia, Malawi and Mauritius respectively.

3. The designated airline of either Contracting Party may omit any intermediate point on the agreed route.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA MODIFYING THE AGREEMENT OF 23 MAY 1969² FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

I

ROYAL NETHERLANDS EMBASSY

No. 4523

The Royal Netherlands Embassy presents its compliments to the Ministry of Foreign Affairs and, with reference to article 14 of the Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Republic of Tanzania for air services between and beyond their respective territories, signed at Dar es Salaam on 23 May 1969, has the honour to confirm the agreement between both Governments that the words "provided that no fifth freedom traffic rights shall be exercised by the designated airline of the Netherlands between points in East Africa" be added to the paragraph of the route schedule which reads:

"The Government of the United Republic of Tanzania grants to the designated airline of the Government of the Kingdom of the Netherlands the right to operate scheduled international air services in both directions on the following route: Points in the Netherlands/Munich/Tunis/Entebbe/Nairobi/Dar es Salaam".

The Embassy would appreciate receiving the same confirmation from the Ministry of Foreign Affairs.

The Royal Netherlands Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the United Republic of Tanzania the assurances of its highest consideration.

Dar es Salaam, 13th November, 1971.

The Ministry of Foreign Affairs
of the United Republic of Tanzania
Dar es Salaam

¹ Came into force on 13 November 1971 by the exchange of the said notes.

² See p. 28 of this volume.

II

THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF FOREIGN AFFAIRS
DAR ES SALAAM

The Ministry of Foreign Affairs of the United Republic of Tanzania presents its compliments to the Royal Netherlands Embassy and has the honour to confirm in reply to the latter's note No. 4523 of 13th November, 1971 and in accordance with article 14 of the Agreement between the Government of the United Republic of Tanzania and the Government of the Kingdom of the Netherlands for air services between and beyond their respective territories, signed at Dar es Salaam on 23rd May, 1969, its agreement that the words "provided that no fifth freedom traffic rights shall be exercised by the designated airline of the Netherlands between points in East Africa" be added to the paragraph of the route schedule which reads:

[*See note I*]

The Ministry of Foreign Affairs of the United Republic of Tanzania avails itself of this opportunity to renew to the Royal Netherlands Embassy the assurances of its highest consideration.

Dar es Salaam, 13th November, 1971.

The Royal Netherlands Embassy
Dar es Salaam
