

No. 18801

**BELGIUM
and
KENYA**

Agreement for air services between and beyond their respective territories (with annex). Signed at Nairobi on 14 June 1979

Authentic text: English.

Registered by Belgium on 7 May 1980.

**BELGIQUE
et
KENYA**

Accord relatif aux services aériens entre les territoires des deux pays et au-delà (avec annexe). Signé à Nairobi le 14 juin 1979

Texte authentique : anglais.

Enregistré par la Belgique le 7 mai 1980.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Republic of Kenya and the Government of the Kingdom of Belgium,

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944², and

Desiring to conclude an agreement for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1. DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) The term “aeronautical authorities” means, in the case of the Republic of Kenya, the Minister in charge of Civil Aviation, or any person or body authorised to perform a particular function to which this Agreement relates and, in the case of the Kingdom of Belgium, the Administration of Aeronautics, Ministry of Communications, or any person or body which is authorised to perform the functions at present exercised by the said Administration;

(b) 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;

(c) The term “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 the Convention under articles 90 and 94 thereof so far as those annexes and amendments have been adopted by both Contracting Parties;

(d) The term “designated airline” means an airline which has been designated and authorised in accordance with article 4 of this Agreement;

(e) The term “tariff” means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply including prices and conditions of agency, and other auxiliary services but excluding remuneration and conditions for the carriage of mail; and

(f) The term “territory” has the meaning assigned to it in article 2 of the Convention.

2. The annex to this Agreement shall form an integral part of the Agreement and all references to this Agreement, unless otherwise expressly provided, shall apply to the annex.

¹ Applied provisionally from 14 June 1979, the date of signature, and came into force definitively on 19 November 1979, date when the Contracting Parties informed each other through diplomatic channels that their constitutional procedures had been completed, in accordance with article 20.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217, and vol. 1008, p. 213.

Article 2. APPLICABILITY OF CHICAGO CONVENTION

The provisions of this Agreement shall be subject to the provisions of the Convention in so far as those provisions are applicable to international air services.

Article 3. GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

- (a) The right to fly across its territory without landing;
- (b) The right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate section of the annex to this Agreement. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively.

3. While operating an agreed service on a specified route the airline designated by each Contracting Party shall enjoy, in addition to the rights specified in paragraph (1) of this article, the right to make stops in the territory of the other Contracting Party at the points specified for that route in the annex to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

4. Nothing in this article shall be deemed to confer on the airline of one Contracting Party, the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail destined for another point in the territory of the other Contracting Party.

Article 4. DESIGNATION OF AIRLINES

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall without delay, subject to the provisions of paragraphs (3) and (4) of this article, grant to the airline designated in accordance with paragraph (1) of this article the appropriate operating authorisation.

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

4. Each Contracting Party shall have the right to refuse to grant the operating authorisation 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 3 of this Agreement, in any case where the said 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 operate the agreed services for which it is designated provided that a tariff established in accordance with the provisions of article 11 of this Agreement is in force in respect of that service.

Article 5. REVOCATION OR SUSPENSION OF OPERATING AUTHORISATION

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights granted under this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) In any case where it 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; or
- (b) In the case of failure by that airline to comply with the laws or the regulations in force in the territory of the Contracting Party granting these rights; or
- (c) In case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

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

Article 6. APPLICATION OF LAWS AND REGULATIONS

1. The laws and regulations of one Contracting Party relating to admission to, flight within or departure from its territory of aircraft of its designated airline engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the designated airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.

2. The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo including mail, such as regulations relating to entry, exit, emigration, immigration, passports as well as customs and sanitary measures, shall apply to passengers, crew and cargo including mail carried by the aircraft of the designated airline of the other Contracting Party upon entrance into or departure from or while within the territory of the said Contracting Party.

Article 7. APPROVAL OF TIMETABLES

1. The designated airline of either Contracting Party shall, not later than thirty days prior to the date of operation of any agreed service, submit its proposed timetables to the aeronautical authorities of the other Contracting Party for their approval. Such timetables shall include all relevant information, including the type of service and aircraft to be used, the flight schedules, etc.

2. If either designated airline wishes to operate supplementary or additional flights besides those covered in the approved timetable, it shall first seek the prior permission of the aeronautical authorities of the Contracting Party concerned.

Article 8. PRINCIPLES GOVERNING OPERATING OF AGREED SERVICES

1. The designated airline of the two Contracting Parties shall be afforded fair and equitable treatment in order that they may enjoy equal opportunity in the operation of the agreed services. They shall take into account their mutual interests so as not to affect unduly their respective services.

2. The operation of the agreed services between the territories of the Contracting Parties in both directions along the specified routes constitutes a basic and primary right of the two Contracting Parties.

3. For the operation of the agreed services:

- (a) The total capacity provided on each of the specified routes shall be determined having regard to the actual and reasonably anticipated traffic requirements;
- (b) The capacity referred to in sub-paragraph (a) of this paragraph shall be divided equally between the designated airlines of the two Contracting Parties;
- (c) Provision may also be made by the Contracting Parties for the carriage of passengers and cargo including mail taken on board or discharged at points on the specified routes in the territories of States other than the Contracting Parties; in doing so, the following factors shall be taken into account:
 - (i) Traffic requirements between such points and the territory of the Contracting Party whose designated airline desires to operate a service on that route;
 - (ii) Traffic requirements of the area through which the agreed service passes, after taking account of other transport services established by airlines of the State comprising the area;
 - (iii) The requirements of through airline operation, if any.

4. In order to meet seasonal fluctuations or unexpected traffic demands of a temporary character, the designated airlines of the two Contracting Parties shall agree between themselves on suitable measures to meet this temporary increase in traffic. Any Agreement concluded between the airlines and any amendments thereto shall be submitted for approval to the aeronautical authorities of the two Contracting Parties.

5. If the designated airline of one Contracting Party does not wish to use, on one or more specified routes, part or all of the capacity allocated to it, it may consult the designated airline of the other Contracting Party with a view to transferring to the latter, for a fixed period and on terms to be mutually agreed, the whole or part of the capacity at its disposal within the agreed limits. The designated airline which has transferred all or part of its capacity may recover the same at the end of the agreed period. Any agreement concluded between the airlines and any amendments thereto shall be submitted for approval to the aeronautical authorities of both Contracting Parties.

6. Pursuant to the provisions of article 14 of this Agreement the aeronautical authorities shall from time to time agree on the manner in which the provisions of this article shall be implemented.

Article 9. EXEMPTION FROM CUSTOMS DUTIES, INSPECTION FEES
AND OTHER SIMILAR CHARGES

1. Aircraft operated on international air services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuel 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 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 Customs authorities of the said territory and for use on board outbound aircraft of the other Contracting Party engaged on an international air service;
- (b) Spare parts introduced into the territory of either Contracting Party for maintenance or repair of aircraft used on international air services by the designated airline of the other Contracting Party;
- (c) Fuels and lubricants supplied to an aircraft of the designated airline of a Contracting Party, engaged on an international air service, in the territory of the other Contracting Party and used on an inward flight until that flight is completed, on an outward flight from the time that flight commences or on a through-transitting flight, notwithstanding that on all such flights the aircraft may make intermediate landings in that territory.

3. Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under Customs supervision or control.

Article 10. UNLOADING OF EQUIPMENT, MATERIALS AND SUPPLIES

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 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 11. TARIFFS

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 shall, if possible, be agreed by the designated airlines of both Contracting Parties after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

3. The tariffs so agreed shall be submitted for approval of the aeronautical authorities of both Contracting Parties at least sixty (60) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.

4. The approval referred to in paragraph (3) of this article may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission in accordance with paragraph (3) of this article, these tariffs shall be considered as approved. In the event of the period for submission being reduced as provided for in paragraph (3), the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

5. If a tariff cannot be agreed in accordance with paragraph (2) of this article or if, during the period applicable in accordance with paragraph (4) of this article,

one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph (2) of this article, the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual agreement.

6. A tariff established in accordance with the provisions of this article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph:

- (a) Where a tariff has a terminal date, for more than 12 months after that date;
- (b) Where a tariff has no terminal date, for more than 12 months after the date on which the designated airline of one Contracting Party proposes in writing a new tariff to the aeronautical authorities of the Contracting Parties.

Article 12. TRANSFER OF EARNINGS

Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by each designated airline in the territory of the other Contracting Party. Such transfers shall be effected on the basis of the official exchange rates for current payments, or where there are no official exchange rates, at the prevailing foreign exchange market rates for current payments.

Article 13. PROVISION OF STATISTICS

The aeronautical authorities of a Contracting Party shall supply the aeronautical authorities of the other Contracting Party on request with periodic statistics or other similar information relating to the traffic carried on the agreed services by the respective designated airlines.

Article 14. CONSULTATIONS

1. In a spirit of close cooperation 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 this Agreement and the annex hereto and shall consult when necessary to provide for modification thereof.

2. Either Contracting Party may request consultations which may be oral or in writing. Such consultations 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 15. SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Governments of the Contracting Parties shall, in the first place, endeavour to settle it by negotiation.

2. If the Governments fail to reach a settlement by negotiations, they may agree to refer the dispute for decision to some 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.

3. 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 specified period 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 a case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

4. The arbitral tribunal shall determine its own procedure and decide on the apportionment of the costs of the arbitration.

5. The Contracting Parties shall comply with any decision given under paragraphs (3) and (4) of this article.

Article 16. AMENDMENTS

Any amendment of this Agreement and/or its annex agreed to by the Contracting Parties shall come into force when confirmed by an Exchange of Notes.

Article 17. AMENDMENT OF AGREEMENT TO CONFORM TO MULTILATERAL TREATIES

The present Agreement shall be amended so as to conform to any multilateral agreement which may become binding on both Contracting Parties.

Article 18. REGISTRATION OF AGREEMENT AND AMENDMENTS

The present Agreement and any subsequent amendments thereto shall be registered with the International Civil Aviation Organization.

Article 19. TERMINATION

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this Agreement shall terminate twelve (12) months after the date when the notice has been received 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 20. ENTRY INTO FORCE

This Agreement shall apply provisionally from the date of signature and shall enter into force on the date when the Contracting Parties have notified one another through diplomatic channels that their constitutional procedures have been completed.

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

DONE in duplicate at Nairobi this 14th day of June, 1979.

For the Government
of Kenya:

[Signed]

I. E. OMOLO OKERO
Minister for Power
and Communications

For the Government
of the Kingdom of Belgium:

[Signed]

VISCOUNT VILAIN XIII
Ambassador to Kenya

ANNEX

ROUTE SCHEDULE

Section I. Route to be operated by the designated airline of Kenya: points in Kenya-Khartoum-Cairo-Athens-Vienna-Brussels-three points beyond to be notified later and vice versa.

Section II. Route to be operated by the designated airline of Belgium: points in Belgium-Athens-Khartoum-Nairobi-Entebbe-Bujumbura-Kigali-a point to be agreed later and vice versa.

NOTE. In operating an agreed service on the specified route the designated airline of either Contracting Party may, on any or all flights, omit calling at any point provided that the services originate or terminate at a point in the territory of that Contracting Party.
