

No. 18936

**SPAIN
and
KUWAIT**

**Agreement for air services (with annex). Signed at Kuwait
on 3 December 1979**

*Authentic texts: Spanish, Arabic and English.
Registered by Spain on 18 June 1980.*

**ESPAGNE
et
KOWEÏT**

**Accord relatif aux transports aériens (avec annexe). Signé à
Koweït le 3 décembre 1979**

*Textes authentiques : espagnol, arabe et anglais.
Enregistré par l'Espagne le 18 juin 1980.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF SPAIN AND THE GOVERNMENT OF THE STATE OF KUWAIT

The Government of the Kingdom of Spain and the Government of the State of Kuwait, desiring to foster the development of Air Services between the Kingdom of Spain and the State of Kuwait, and to promote in the greatest possible measure international co-operation in this field,

Desiring to apply to these services the principles and provisions of the Convention on International Civil Aviation² and of the International Air Services Transit Agreement³ opened for signature at Chicago on the seventh day of December 1944, Have agreed as follows:

Article I. DEFINITIONS

For the purpose of this Agreement, unless the text otherwise requires:

- a) "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 and amendment adopted under Articles 90 and 94 of that Convention, approved by both Contracting Parties;
- b) "Aeronautical Authorities" means, in the case of the Kingdom of Spain, the Ministry of the Air (Subsecretaría de Aviación Civil); in the case of the State of Kuwait, the Directorate General of Civil Aviation, or in both cases any other person or agency authorised to perform the functions exercised by the said Authorities;
- c) "Designated Airline" means an airline that one Contracting Party has designated in writing to the other Contracting Party in accordance with Article III of this Agreement as being an airline which is to operate the agreed air services on the routes specified in accordance with paragraph (1) of Article II of this Agreement and its Annex;
- d) "Territory," "Air Service," "International Air Service," and "Stop for non-traffic purposes" shall, for the purpose of this Agreement, have the meaning laid down in Articles 2 and 96 of the Convention;
- e) "Capacity" means:
 - 1) In relation to an aircraft, the payload of that aircraft available on a route or section of a route;
 - 2) In relation to a specified air service, the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or a section of a route;
- f) The term "tariff" means the prices to be paid for the carriage of passengers, baggage and freight and the conditions under which those prices apply, including

¹ Applied provisionally from 3 December 1979, the date of signature, and came into force definitively on 21 March 1980, i.e., the date of the last of the notifications (effected on 9 January and 21 March 1980) by which the Governments informed each other of the fulfilment of their respective constitutional requirements, in accordance with article XVIII.

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; vol. 1008, p. 213, and vol. 1175, No. 1-18810.

³ *Ibid.*, vol. 84, p. 389.

prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail;

g) "Route Schedule" means the schedule annexed to this Agreement or as amended in accordance with the provisions of paragraph (3) of Article XI of this Agreement. The route schedule forms an integral part of this Agreement and all references to the Agreement shall include reference to the route schedule except where otherwise provided;

h) The term "specified routes" means the routes established or to be established in the Annex to the present Agreement;

i) The term "agreed services" means the international air services which can be operated according to the provisions of the present Agreement in the specified routes.

Article II. GRANTING OF RIGHTS AND PRIVILEGES

1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate international air services on the routes specified in the appropriate section of the Route Schedule thereto (hereinafter called "agreed services" and "specified routes" respectively).

2) Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges:

- a) To fly without landing across the territory of the other Contracting Party;
- b) To make stops in the said territory for non-traffic purposes;
- c) To make stops in the said territory at the point or points specified for that route in the schedule for the purpose of discharging and of taking on international traffic in passengers, mail and cargo in accordance with the provisions of the Annex to this Agreement, to or from the territory of the other Contracting Party or to or from the territory of [the] other State;
- d) Nothing in this Agreement shall be deemed to confer on the designated airline of one Contracting Party the privilege of taking up in the territory of the other Contracting Party passengers, cargo or mail, with or without remuneration or hire and destined for another point in the territory of the other Contracting Party.

Article III. DESIGNATION AND AUTHORISATION

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 other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline designated the appropriate permissions.

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 on International Civil Aviation (Chicago, 1944).

4) Each Contracting Party shall have the right to refuse to grant the operating permissions 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 II 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 authorized, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with provisions of Article X of the present Agreement is in force in respect of those services.

Article IV. REVOCATION, LIMITATION AND IMPOSITION OF CONDITIONS

1) Each Contracting Party shall have the right to suspend the exercise by the designated airline of the other Contracting Party of the privileges specified in Article II of this Agreement or to impose such conditions as it may deem necessary on the exercise by that airline of those privileges where the airline fails to comply with the laws or regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in this Agreement; provided that, unless immediate suspension or imposition of conditions is considered necessary to prevent further infringement of laws or regulations or is in the interest of aviation safety, this right shall be exercised only after consultation with the other Contracting Party.

2) In the event of action by one Contracting Party under this Article, the rights of both Contracting Parties shall not be prejudiced.

Article V. EXEMPTIONS FROM CUSTOMS AND OTHER DUTIES AND CHARGES

1) Aircraft operated on international air services by the designated airline of one Contracting Party, as well as their regular equipment, spare parts, 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 duties or taxes 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.

2) Supplies of fuels, lubricants, spare parts, regular equipment and aircraft stores introduced in the territory of each Contracting Party by or on behalf of the designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use in the operation of international air services shall be exempt from all national duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party, even when those supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are taken on board. The materials referred to above may be required to be kept under customs supervision or control.

3) The regular airborne equipment, spare parts, aircraft stores and supplies of fuels and lubricants 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 Contracting Party, who may require that those materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article VI. FINANCIAL PROVISIONS

Either Contracting Party undertakes to grant the other Contracting Party free transfer, at the official rate of exchange, of the excess of receipts over expenditure achieved on its territory in connection with the carriage of passengers, baggage, mail shipments and freight by the designated airline of the other Contracting Party. Whenever the payments system between Contracting Parties is governed by a special agreement, that agreement shall apply.

Article VII. ENTRY AND CLEARANCE REGULATIONS

1) The laws and regulations of each Contracting Party, relating to the admission to or departure from its own territory of aircraft engaged in international air navigation, or relating to the operation of such aircraft while within its territory, will be enforced to the aircraft of the airline designated by the other Contracting Party.

2) The laws and regulations controlling the entry, stay and departure of passengers, crew, baggage, mail and cargo, over the territory of each Contracting Party, and also the regulations relating to the entry and departure from the country such as immigration, customs and sanitary rules will be enforced in such territory to the operations of the airline designated by the other Contracting Party.

3) For military reasons or public security, each Contracting Party shall have the right to restrain or forbid the flights of the aircraft belonging to the airline designated by the other Contracting Party above certain zones of its territory provided that such restrictions or prohibitions are applied equally to the aircraft of the airline designated by the first Contracting Party or the airlines of other State[s] which operate on international scheduled air services.

4) Passengers in transit across the territory of a Contracting Party shall be subject to a simplified form of customs and immigration control. Baggage and freight shall be exempt from customs duties, inspection fees and other national duties and charges if in direct transit.

Article VIII. CAPACITY PROVISIONS

1) There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate air services on any route specified in accordance with paragraph (1) of Article II of this Agreement between their respective territories.

2) In the operation of agreed air services on the routes specified in accordance with paragraph (1), Article II, of this Agreement, the designated airline of either Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the whole routes or part thereof.

3) The agreed air services provided by a designated airline shall retain as their primary objective the provision at a reasonable load factor of capacity adequate to current and reasonably anticipated requirements for the carriage of passengers, mail and cargo, originating from or destined for the territory of the Contracting Party designating the airline. The right of the designated airline of either Contracting Party to embark or to disembark at the point in the territory of the other Contracting Party international traffic destined for or coming from third countries shall be in accordance with the principles that such traffic will be of a supplementary character and capacity shall be related to:

a) Traffic demands between the territory of the Contracting Party designating the airline and the points on the specified routes;

- b) Traffic requirements of the areas through which the airline passes for the economic operation of the route;
- c) The requirements of through airline operation.

Article IX. INFORMATION AND STATISTICS

The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline of the first Contracting Party on the routes specified in accordance with paragraph (1) of Article II of this Agreement. Such data shall include all information required to determine the amount of traffic carried.

Article X. ESTABLISHMENT OF TARIFFS

1) The tariffs to be charged by the airline of one Party for carriage to or from the territory of the other 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 airlines concerned of both 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 the approval of the aeronautical authorities of both Parties at least ninety (90) 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) In the event of the period for submission being reduced, as provided 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 the designated airlines cannot agree on any of these tariffs or if for some reason a tariff cannot be 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.

6) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this Article or on the determination of any tariff under paragraph (5), the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of Article XII of this Agreement.

7) 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 for more than twelve months after the date on which it otherwise would have expired.

Article XI. CONSULTATIONS

1) Exchange of views shall take place as needed between the aeronautical authorities of the Contracting Parties in order to achieve close cooperation and agreement in all matters pertaining to the application of this Agreement.

2) Each Contracting Party may at any time request consultations with the other Contracting Party for the purpose of amending this Agreement or the Annex.

Such consultations shall begin within a period of 60 days from the date of receipt of such request. Any amendments to this Agreement agreed to as a result of such consultation shall be approved by each Contracting Party in accordance with its constitutional procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval.

3) If the amendment relates only to the Annex, the consultations shall be between the aeronautical authorities of both Contracting Parties. When these authorities agree on a new or revised Annex, the agreed amendments shall come into force as soon as they have been confirmed by an exchange of diplomatic notes.

Article XII. SETTLEMENT OF DISPUTES

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

2) If the Contracting Parties fail to reach within 60 days a settlement by negotiations they shall refer the dispute for decision to a person or body or at the request of one of the Contracting Parties to an arbitration tribunal. The arbitration tribunal shall be composed as follows:

- a) Each Contracting Party shall nominate an arbitrator; if one Contracting Party fails to nominate its arbitrator within 60 days such arbitrator shall be nominated by the President of the Council of the International Civil Aviation Organization at the request of the other Contracting Party.
- b) The third arbitrator, who shall be a national of a third State and who shall preside the arbitral tribunal, shall be nominated either:
 - i) By agreement between the Contracting Parties; or
 - ii) If within 60 days the Contracting Parties do not so agree, by appointment [of] the President of the Council of the International Civil Aviation Organization by the request of either Contracting Party.
- 3) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member as well as of its representative in the arbitral proceedings; the cost of the Chairman and any other costs shall be borne in equal parts by the Contracting Parties. In all other respects the arbitral tribunal shall determine its own procedure.

Article XIII. CONFORMITY WITH MULTILATERAL CONVENTIONS

In the event of a general multilateral air transport convention accepted by the Contracting Parties entering into force, the provisions of such convention shall prevail.

Article XIV. TERMINATION

Either Contracting Party may at any time notify the other of its decision to terminate this Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. If such notice is given this Agreement shall terminate twelve months after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiry of that period. If the Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received four-

teen days after the date of receipt by the International Civil Aviation Organization of its copy.

Article XV. CERTIFICATES AND LICENSES

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services provided for in the Annex to the present Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the conventions on International Civil Aviation.

Each Contracting Party reserves the right, however, of refusing to recognize the validity of the certificates of competency and the licenses granted to its own nationals by the other Contracting Party, for the purpose of overflying its own territory.

Article XVI. REGISTRATION

This Agreement and the Annex and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article XVII. TITLES

Titles are inserted in this Agreement at the head of each Article for the purpose of reference and convenience and in no way to define, limit or describe the scope or intent of this Agreement.

Article XVIII. ENTRY INTO FORCE

The present Agreement shall enter into force provisionally on the date of signature and definitively after the date on which both Governments give written notification to each other by exchange of Diplomatic Notes that their respective constitutional requirements for definitive entry into force have been fulfilled.

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

DONE in three copies, in [the] Arabic, Spanish and English languages, being all [of] them equally valid. In Kuwait on the third of December, one thousand nine hundred seventy-nine.

For the Government
of the Kingdom of Spain:

[Signed]

FERNANDO SCHWARTZ GIRÓN
Spain Ambassador at Kuwait

For the Government
of the State of Kuwait:

[Signed]

YACUB Y. AL SAQUER
Deputy Director General
of Civil Aviation

ANNEX TO THE AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF KUWAIT AND THE GOVERNMENT OF THE KINGDOM OF SPAIN, FOR THE SCHEDULED AIR TRANSPORT BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

1. Specified routes. The agreed services on the specified routes referred [to] in the present Agreement [are] determined as follows:

A) *Route to be operated by the designated airline of the State of Kuwait in both directions:*

Kuwait – two intermediate points – Madrid – Casablanca.

B) *Route to be operated by the designated airline of the Kingdom of Spain in both directions:*

Points in Spain – Kuwait – two points beyond.

NOTE. The two points beyond, in the Spanish route, to be selected from the following three: Bangkok, Manila and Tokyo.

2. Each designated airline of either Contracting Party may omit one point or points of the route indicated in Part 1 of this Annex, in whole or in part of its services, provided that the departure point of the route is located in the territory of the Contracting Party which designated this airline.

3. In the routes indicated in Part 1 of this Annex, the airline designated by either Contracting Party may serve, if they wish so, one or several points other than those specified without exercising traffic rights between these points and the territory of the other Contracting Party.

4. The designated airlines shall communicate to the Aeronautical Authorities of the Contracting Party not later than thirty days prior to the initiation of air services on the routes specified in accordance with paragraph (1) of Article 2 [II] of this Agreement, the type of service, the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes as well as before each summer and winter schedules.

5. The Aeronautical Authorities receiving such flight schedules shall normally approve the schedules or suggest modifications thereto. In any case the designated airlines shall not commence their services before the schedules are approved by the Aeronautical Authorities concerned. This provision shall likewise apply to later changes.
