

No. 19943

**SWITZERLAND
and
KENYA**

Agreement for air services between and beyond their respective territories (with annex). Signed at Nairobi on 21 November 1978

Authentic texts: English and French.

Registered by the International Civil Aviation Organization on 19 June 1981.

**SUISSE
et
KENYA**

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec annexe). Signé à Nairobi le 21 novembre 1978

Textes authentiques : anglais et français.

Enregistré par l'Organisation de l'aviation civile internationale le 19 juin 1981.

AGREEMENT¹ BETWEEN THE FEDERAL COUNCIL OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF THE REPUBLIC OF KENYA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Swiss Federal Council and the Government of the Republic of Kenya desiring to conclude an Agreement supplementary to the Convention on International Civil Aviation signed at Chicago on the 7th day of December 1944² 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 and its Annex, unless the context otherwise requires:

a. The term “aeronautical authorities” means, in the case of Switzerland, the Federal Air Office and in the case of the Republic of Kenya, the Minister in charge of Civil Aviation and in both cases any person or body authorised to exercise the functions presently assigned to the said authorities;

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, baggage 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;

f. The term “territory” in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty of that state.

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

Article 2. APPLICABILITY OF CHICAGO CONVENTION

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

¹ Applied provisionally from 21 November 1978, the date of signature, and came into force definitively on 25 March 1980, the date on which the Contracting Parties had notified each other that their constitutional procedures had been completed, in accordance with article 22 (1).

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, p. 297.

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 schedule annexed to this Agreement.

Such services and routes are hereafter called “the agreed services” and “the specified routes” respectively. 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.

3. Nothing in paragraph 2 of 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, baggage and cargo including mail carried for hire or reward and 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 applicable to the operation of international air services by such authorities in conformity with the provisions of the Convention.

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 13 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 infringements 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. PRINCIPLES GOVERNING OPERATION OF AGREED SERVICES

1. The designated airlines of the two Contracting Parties shall be afforded fair and equitable treatment in order that they may enjoy equal opportunity in the operation of 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 Agreed Services:

- a. The total capacity provided on each of the routes shall be adapted to reasonably anticipated traffic requirements;
- b. The designated airlines of both Contracting Parties shall be entitled to an equal share of the capacity referred to in sub-paragraph 3a of this Article;
- c. 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 the temporary increases 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;
- d. If either Contracting Party does not wish to use, on one or more routes, part or all of the capacity to which it is entitled it may consult the other Contracting Party with a view to transferring to the latter, for a fixed period, the whole or part of the capacity at its disposal within the agreed limits. The Contracting Party which has transferred all or part of its rights may recover them at the end of the above period.

Article 7. EXEMPTION FROM CHARGES ON EQUIPMENT, FUEL, STORES, ETC.

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 part of the journey performed over that territory.

2. There shall also be exempt from the same duties, fees and charges, with the exemption of charges corresponding to the service 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 out-bound aircraft engaged on an international air 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 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-transiting flight, notwithstanding that on all such flights aircraft may make intermediate landing in that territory.

3. 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 supervision or control of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 8. TRANSIT FORMALITIES

1. Passengers, baggage and cargo including mail in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such purpose shall be subject to simplified formalities.

2. Subject to the provisions of Article 7 of this Agreement passengers, baggage and cargo including mail in direct transit shall be exempt from duties and taxes including customs duties.

Article 9. AIRPORT AND SIMILAR CHARGES

When using the airports and other air navigation facilities, including radio and meteorological services, offered by one Contracting Party, the designated airline of either Contracting Party shall not pay, in respect of its aircraft used for the operation of the agreed services, charges higher than those payable by the national aircraft of the same class of the other Contracting Party.

Article 10. 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, baggage 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, baggage 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 11. AIRLINE REPRESENTATION

1. Each Contracting Party grants to the designated airline of the other Contracting Party, on the basis of reciprocity, the right to maintain in its territory offices and administrative, commercial and technical personnel as may be necessary for the requirements of the designated airline concerned.

2. The establishment of the offices and the employment of the personnel referred to in paragraph 1 of this Article shall be subject to the laws and regulations of the Contracting Party concerned, such as the laws and regulations relating to the admission of foreigners and their stay in the territory of the Contracting Party concerned.

Article 12. RECOGNITION OF CERTIFICATES AND LICENCES

1. Certificates of airworthiness and certificates of competency and licences issued or rendered valid by the state of registry of the aircraft used by either Contracting Party shall, during the period of their validity, be recognised as valid by the other Contracting Party.

2. Either Contracting Party reserves the right not to recognise as valid, for the purpose of flight into or over its territory, certificates of airworthiness, certificates of competency and licences granted to or rendered valid for its nationals by the other Contracting Party or by any other state.

Article 13. 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 their proposed timetables to the aeronautical authorities of the other Contracting Party for their approval.

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

Article 14. TARIFFS

1. The tariffs to be charged by the designated 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, the characteristics of each service 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. Such agreement shall, whenever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs or any other international body accepted by both Contracting Parties and formulating proposals in this matter.

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, after consultation with the aeronautical authorities of any other state whose advice they consider useful, 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 for more than twelve (12) months after the date on which it would otherwise have expired or the date of giving the notice of disapproval of that tariff under paragraph 5 of this Article, whichever shall be the earlier.

Article 15. PROVISION OF STATISTICS

The aeronautical authorities of the Contracting Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on the agreed services.

Article 16. TRANSFER OF EARNINGS

1. 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.

2. If payments between the Contracting Parties are regulated by special agreement, this special agreement shall apply.

Article 17. CONSULTATIONS

1. In a spirit of close co-operation the aeronautical authorities of the Contracting Parties shall consult with 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 thereto and shall consult when necessary to provide for modification thereof.

2. Either Contracting Party may request consultations which may be oral or in writing 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 18. 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. 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. 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 nominated 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 case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

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

4. The Contracting Parties shall comply with any decision given under paragraph 2 of this Article.

Article 19. 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 20. REGISTRATION OF AGREEMENT AND AMENDMENTS

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

Article 21. TERMINATION

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the 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 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 22. ENTRY INTO FORCE OF AGREEMENT AND AMENDMENTS

1. The present Agreement or any amendments thereof shall be applied provisionally from the date of signature and shall enter into force on the date when the Contracting Parties have notified one another that their constitutional procedures have been completed.

2. Any modification of the Annex to this Agreement agreed by the aeronautical authorities of the Contracting Parties shall be applied provisionally from the date of signature and shall come into force when confirmed by an exchange of diplomatic notes.

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

DONE at Nairobi this twenty-first day of November 1978 in duplicate in the English and French languages both texts being equally authentic.

For the Swiss Federal
Council:
The Ambassador of Switzerland

[Signed — Signé]
Dr. HANS MIESCH

For the Government
of Kenya:
Minister for Power
and Communications

[Signed — Signé]
Mr. ISAAC OMOLO OKERO

ANNEX

ROUTE SCHEDULE

Part 1

The Route to be operated by the designated airline of Kenya in both directions:

<i>Points of origin</i>	<i>Intermediate points</i>	<i>Points in Switzerland</i>	<i>Points beyond</i>
Points in Kenya	Entebbe Cairo Athens	Zurich	Copenhagen

Part 2

The Route to be operated by the designated airline of Switzerland in both directions:

<i>Points of origin</i>	<i>Intermediate points</i>	<i>Points in Kenya</i>	<i>Points beyond</i>
Points in Switzerland	Athens Khartoum Entebbe	Nairobi	Johannesburg

NOTES. 1. Unless otherwise stipulated either designated airline may, in operating the agreed services, omit calling at any intermediate or beyond point on any or all flights.

2. Points on any of the agreed routes need not necessarily be served in the order in which they are specified provided that the service in question is flown on a reasonably direct route.

3. Each designated airline may terminate any of its services in the territory of the other Contracting Party at the points specified in the appropriate part of the Route Schedule.

4. Each designated airline may serve any points not mentioned in the Route Schedule provided that no traffic rights are exercised between these points and points in the territory of the other Contracting Party.

5. On sectors where no fifth freedom traffic rights have been granted no stop-over rights may be exercised.