

No. 19572

**FRANCE
and
KENYA**

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

Authentic texts: French and English.

Registered by France on 20 February 1981.

**FRANCE
et
KENYA**

**Accord relatif aux services aériens entre leurs territoires
respectifs et au-delà de ceux-ci (avec annexe). Signé à
Nairobi le 3 novembre 1978**

Textes authentiques : français et anglais.

Enregistré par la France le 20 février 1981.

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

The Government of the Republic of Kenya and the Government of the Republic of France,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of 7 December 1944² 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. 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 France, the General Direction of Civil Aviation or any person or body authorised to perform any of the functions presently exercised by the said General Direction;

(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

¹ Applied provisionally from 3 November 1978, the date of signature, and came into force definitively on 9 June 1980, the date of the last of the notifications (effected on 6 February 1979 and 9 June 1980) by which the Contracting Parties informed each other of the completion of their constitutional procedures, in accordance with article 21.

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.

(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 the provisions of the Convention insofar 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. 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 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 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 applied to the operation of international air service 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. 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 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. TRANSIT FORMALITIES

(1) Passengers and baggage in direct transit and cargo including mail in 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 II of this Agreement, passengers, baggage and cargo including mail in transit shall be exempt from duty and taxes including customs duties.

Article 8. 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 9. 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 10. PRINCIPLES GOVERNING OPERATION OF THE 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 the agreed services. They shall take into account their mutual interests so as not to affect unduly their respective services.

(2) For the operation of the agreed services:

(a) The total capacity provided by the designated airlines of the Contracting Parties on the specified routes shall be determined having regard to the needs of public for transportation and the provision, at an appropriate load factor, of capacity adequate to carry the current and reasonably anticipated traffic requirements;

(b) The designated airlines of the Contracting Parties may, within the limits of the total capacity provided under paragraph 2(a) of this Article, make provision for meeting the traffic requirements to/from third states lying on the specified routes to/from the territory of either Contracting Party;

(c) The designated airlines of both Contracting Parties shall be entitled to an equal share of the total capacity offered for the purpose of carrying passengers and cargo including mail between the respective territories of both Contracting Parties;

(d) In order to meet seasonal fluctuations or unexpected traffic demands of a temporary character, the designated airlines of both Contracting Parties shall agree between themselves on suitable measures to meet this temporary increase in traffic. Any agreement concluded between the designated airlines and any

amendments thereto shall be submitted for approval to the aeronautical authorities of both Contracting Parties:

(e) If a designated airline of either Contracting Party does not wish to use, on one or more routes, part or all 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 mutually agreed terms, 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 it at the end of the agreed period. Any agreement concluded between the designated airlines and any amendments thereto shall be submitted for approval to the aeronautical authorities of both Contracting Parties.

*Article 11. EXEMPTION FROM CHARGES ON EQUIPMENT,
FUEL, LUBRICANTS, 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 exception 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, for use on board outbound 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 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 12. 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 13. 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. 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 for more than twelve (12) months after the date on which it would otherwise have expired.

Article 14. PROVISION OF STATISTICS

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, periodic statistics or other similar information relating to the traffic carried on agreed services.

Article 15. 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.

(2) If payments between Contracting Parties are governed by special agreement, that agreement shall apply in respect of the transfers referred to in this Article.

Article 16. 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 17. AMENDMENT

(1) If either Contracting Party considers it desirable to modify any provision of this Agreement such modification, if agreed between the Contracting Parties after, if necessary, consultations in accordance with Article 16 of this Agreement, shall come into effect after its confirmation by an exchange of notes.

(2) The present Agreement shall be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

Article 18. REGISTRATION OF AGREEMENT

The present Agreement shall be registered with the International Civil Aviation Organization.

Article 19. 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 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 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 20. 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 simulta-

neously 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 21. ENTRY INTO FORCE OF AGREEMENT

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.

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

DONE at Nairobi this day of 3 November 1978, in duplicate, in the English and French languages both texts being equally authentic.

For the Government
of the Republic of Kenya:

[Signed]

HON. ISAAC OMOLO OKERO
Minister for Power and
Communications, Nairobi

For the Government
of the Republic of France:

[Signed]

CHRISTIAN GIRARD
Ambassador of the Republic of France
in the Republic of Kenya

ANNEX

I. Route to be served by the designated airline of the Republic of Kenya in both directions:

Points in Kenya, Entebbe, Cairo, Athens, Paris, London, Copenhagen, New York, Montreal.

II. Route to be served by the designated airline of the Republic of France in both directions:

Points in France, Athens, Cairo, Khartoum, Nairobi, Entebbe, Kigali, Bujumbura, Reunion, Tananarive or Mauritius.

Notes:

(1) The designated airline of either Contracting Party shall have the right not to serve one or more points on the specified route in part or the whole of its services.

(2) The designated airline of either Contracting Party shall have the right to terminate its service in the territory of the other Contracting Party or on any point beyond this territory.

(3) The designated airline of either Contracting Party shall have the right on part or the whole of the agreed services to modify the order of service of the points.