

No. 25201

**AUSTRIA
and
SEYCHELLES**

**Air Transport Agreement (with annex). Signed at Victoria
on 16 September 1985**

Authentic text: English.

*Registered by the International Civil Aviation Organization on 17 August
1987.*

**AUTRICHE
et
SEYCHELLES**

**Accord relatif au transport aérien (avec annexe). Signé à
Victoria le 16 septembre 1985**

Texte authentique : anglais.

*Enregistré par l'Organisation de l'aviation civile internationale le 17 août
1987.*

AIR TRANSPORT AGREEMENT¹ BETWEEN THE AUSTRIAN FEDERAL GOVERNMENT AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES

The Austrian Federal Government and the Government of the Republic of Seychelles,

Hereinafter called in this Agreement the Contracting Parties,

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

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

Have agreed as follows:

Article 1. DEFINITIONS

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

(a) The term "Contracting Party" means the Austrian Federal Government on the one hand and the Government of the Republic of Seychelles on the other.

(b) The term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago, on the seventh day of December, 1944, and includes any Annex adopted under Articles 90 of that Convention and any amendment of the Annex or Convention under Articles 90 and 94 thereof insofar as these have become effective for both Contracting Parties.

(c) The term "aeronautical authorities" means, in the case of the Austrian Federal Government, the Federal Minister for Public Economy and Transport and, in the case of the Government of the Republic of Seychelles, the Minister for the time being in charge of Civil Aviation, or any other authority legally empowered to perform the functions exercised now by the said authorities.

(d) The term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of the present Agreement.

(e) The term "territory" in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty of that State.

(f) The term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

(g) The term "international air service" means an air service which passes through the air space over the territory of more than one State.

(h) The term "airline" means any air transport enterprise offering or operating an international air service.

(i) The term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

¹ Came into force on 1 November 1985, i.e., the first day of the second month following the date on which the Contracting Parties had informed each other (on 16 September 1985) of the completion of the constitutional procedures, in accordance with article 18.

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.

(j) The term “capacity” means:

- (i) In relation to an aircraft, the payload of that aircraft available on a route or section of a route;
- (ii) 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.

Article 2. TRAFFIC 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 Annex. 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 schedule 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 and cargo including mail carried for hire or reward and destined for another point in the territory of that other Contracting Party.

Article 3. NECESSARY AUTHORIZATIONS

(1) Each Contracting Party shall have the right to designate through diplomatic channels 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, subject to the provision of paragraphs 4 and 5 of this Article, without delay grant to the designated airline the appropriate operating authorizations.

(3) Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw the designation of any such airline and to designate another one.

(4) The airline designated by either Contracting Party may be required to satisfy the other Contracting Party that it is qualified to fulfill the conditions prescribed by the laws and regulations normally and reasonably applied by this Contracting Party to the operation of international air services in conformity with the provisions of the Convention.

(5) Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of the present Agreement, in any case where the said 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.

(6) When an airline has been so designated and authorized, it may at any time begin to operate the agreed services, provided that a tariff established in accordance with the provision of Article 10 of the present Agreement is in force and an agreement in accordance with the provision of Article 5 of the present Agreement has been reached in respect of that service.

Article 4. SUSPENSION AND REVOCATION

(1) Each Contracting Party shall have the right to suspend the exercise of the rights specified in Article 2 of the present Agreement by the airline designated by the other Contracting Party or to revoke the operating authorization 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 nationals of such Contracting Party, or
- (b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights, or
- (c) In case the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

(2) Unless immediate suspension, revocation or imposition of the conditions mentioned in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultations with the other Contracting Party. In such a case consultations shall begin within a period of sixty (60) days from the date of request made by either Contracting Party for consultations.

Article 5. PRINCIPLES GOVERNING THE OPERATIONS OF AGREED SERVICES

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

(2) In order to achieve a fair and equal treatment of the designated airlines, the airlines have to agree in time the frequencies of their scheduled services, the types of aircraft to be used and the flight schedules, including the days of operation as well as the estimated times of arrival and departure.

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

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

(5) The schedules so agreed shall be submitted for approval to the aeronautical authorities of both Contracting Parties at least thirty (30) days before the proposed date of their introduction. In special cases, this time limitation may be reduced subject to the consent of the said authorities.

(6) If the designated airlines cannot agree on the schedules mentioned above, the aeronautical authorities of the Contracting Parties shall endeavour to settle the problem.

(7) Subject to the provisions of this Article, no schedules shall come into force, if the aeronautical authorities of the Contracting Parties have not approved it.

(8) The schedules established for one season in accordance with the provisions of this Article shall remain in force for corresponding seasons until new schedules have been established in accordance with the provisions of this Article.

Article 6. RECOGNITION OF 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 agreed services. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals or rendered valid by another State.

Article 7. EXEMPTION FROM CUSTOMS AND OTHER DUTIES

(1) Aircraft operated on international services by the airline designated by each Contracting Party, as well as their regular equipment, supplies of fuel and lubricants and the 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 shall remain on board the aircraft up to such time as they are re-exported.

(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 either Contracting Party, within limits fixed by the authorities of said Contracting Party, and for use on board the aircraft engaged on a specified route of the other Contracting Party;
- (b) Spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on a specified route by the designated airline of the other Contracting Party;
- (c) Fuel and lubricants destined to supply aircraft on a specified route by the designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

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

(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 the customs authorities of that territory. In each case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 8. TAXATION

(1) Profits from the operation of aircraft in international traffic shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.

(2) Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.

(3) Where a special Agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

Article 9. APPLICATION OF LAWS, REGULATIONS AND PROCEDURES

Passengers, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence and air piracy, be subject to no more than a simplified control. Cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

Article 10. TRANSPORT TARIFFS

(1) The tariffs to be charged by the airline of one Contracting Party for the 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 characteristics of service such as standards of speed and accommodation.

(2) The tariffs referred to in paragraph 1 of this Article shall be agreed upon by the designated airlines of both Contracting Parties.

(3) Agreements according to paragraph 2 above may, when possible, be reached through the rate-fixing machinery of the International Air-Transport Association.

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

(5) If the designated airlines cannot agree on any of these tariffs, or if for some other reasons a tariff cannot be fixed in accordance with paragraph 2 of this Article, or if during the first fifteen (15) days of the thirty (30) day's period referred to in paragraph 4 of this Article, the aeronautical authorities of one Contracting Party give the aeronautical authorities of the other Contracting Party notice of its dissatisfaction with any tariff agreed upon in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to agree upon the tariffs.

(6) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 4 above or on the determination of any tariff under paragraph 5, the Contracting Parties shall endeavour to agree upon the tariffs.

(7) No tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

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

Article 11. TRANSFER OF NET REVENUES

(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 on its territory in connection with the carriage of passengers, baggage, mail and freight by the designated airline of the other Contracting Party in a free convertible currency at the prevailing rate of exchange. Transfers shall be effected immediately, at the latest within sixty (60) days after the date of request.

(2) Where a special payment agreement exists between the Contracting Parties, payments shall be effected in accordance with the provisions of that Agreement.

Article 12. REPRESENTATION, TICKETING AND SALES PROMOTION

(1) The designated airline of each Contracting Party shall have an equal opportunity to employ, subject to the laws and regulations of the other Contracting Party, its own representatives together with the technical and commercial personnel for the performance of the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party.

(2) The designated airline of each Contracting Party shall further have an equal opportunity to issue all kinds of documents of carriage and to advertise and to promote sales in the territory of the other Contracting Party.

Article 13. PROVISION OF STATISTICS

The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be necessary for the purpose of reviewing the capacity provided on the agreed services by the designated airline of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by that airline on the agreed services and the origins and destination of such traffic.

Article 14. CONSULTATIONS AND MODIFICATIONS

(1) In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of the present Agreement and the Annex thereto.

(2) If either of the Contracting Parties considers it desirable to modify any provisions of the present Agreement, it may request consultation with the other Contracting Party. Such consultation (which may be prepared by discussion between the aeronautical authorities), shall begin within a period of sixty (60) days of the date of request, unless both Contracting Parties agree to an extension of this period. Modifications so agreed upon shall be approved by each Contracting Party in accordance with its constitutional procedures.

(3) Modifications to the Annex shall be agreed upon between the appropriate authorities of the Contracting Parties.

Article 15. SETTLEMENT OF DISPUTES

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

(2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may at the request of either Contracting Party be admitted 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 and the third arbitrator shall be appointed within a further period of sixty [(60)] days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In any case, the third arbitrator shall be a national of a third State and shall act as president of the arbitral body.

(3) The Contracting Parties undertake to comply with any decisions given under paragraph 2 of this Article.

(4) If and for so long as either Contracting Party fails to comply with a decision given under paragraph 2 of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

Article 16. TERMINATION

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

Article 17. REGISTRATION

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

Article 18. ENTRY INTO FORCE

This Agreement shall enter into force on the first day of the second month following the date on which the two Contracting Parties have notified each other in an exchange of diplomatic notes that the requirements for its entry into force under their respective constitutional procedures have been fulfilled.

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

DONE at Victoria this 16th day of September 1985 in the English language.

For the Austrian Federal Government:

ERICH BINDER m.p.

For the Government of the Republic of Seychelles:

JAMES FERRARI m.p.

ANNEX

A. The airline designated by the Government of the Republic of Seychelles shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

| | |
|--------------------------------------|--------------------------|
| <i>Points of departure</i> | <i>Points of arrival</i> |
| Points in the Republic of Seychelles | Vienna |

B. The airline designated by the Austrian Federal Government shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

| | |
|-----------------------------------|--------------------------|
| <i>Points of departure</i> | <i>Points of arrival</i> |
| Points in the Republic of Austria | Mahé |

C. Any intermediate points and points beyond may be served by the designated airline of each Contracting Party without exercising fifth freedom traffic rights.

The eventual exercise of fifth freedom traffic rights may be agreed upon by the aeronautical authorities of the two Contracting Parties.
