



Treaty Series No. 88 (1979)

Agreement ✓

between the Government of the
Republic of Kenya and the Government of the
United Kingdom of Great Britain and Northern Ireland
for Air Services between and beyond
their respective Territories

Nairobi, 5 July 1979

[The Agreement entered into force on 5 July 1979]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 1979*

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HER MAJESTY'S STATIONERY OFFICE

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA
AND THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
FOR AIR SERVICES BETWEEN AND BEYOND
THEIR RESPECTIVE TERRITORIES**

The Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944⁽¹⁾, 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

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

- (a) the term "aeronautical authorities" means, in the case of the Republic of Kenya, the Minister in charge of Civil Aviation or any person or body authorised to perform a particular function to which this Agreement relates; and, in the case of the United Kingdom, the Secretary of State for Trade and any person or body authorised to perform any functions at present exercisable by him or similar functions;
- (b) the term "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⁽²⁾, 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 become effective for or been ratified by both Contracting Parties⁽³⁾;
- (d) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;

⁽¹⁾ Treaty Series No. 8 (1953) Cmd. 8742.

⁽²⁾ Treaty Series No. 26 (1957), Cmd. 107; Treaty Series No. 24 (1958), Cmd. 482; Treaty Series No. 63 (1961), Cmd. 1448; Treaty Series No. 59 (1962), Cmd. 1826; Treaty Series No. 62 (1973), Cmd. 5310; Treaty Series No. 98 (1975), Cmd. 6117; Treaty Series No. 27 (1976), Cmd. 6447.

- (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;
- (f) the term "territory" has the meaning assigned to it in Article 2 of the Convention; and
- (g) the term "Agreement" means this Agreement, its Annex and any amendments thereto.

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 rights to fly across its territory without landing; and
- (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 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 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 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 10 of this Agreement is in force in respect of that service.

ARTICLE 5

Revocation or Suspension of Operating Authorisations

(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 the 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

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 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, and 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; and
- (c) fuels and lubricants supplied to an aircraft of the designated airline of a Contracting Party engaged on an international air service in the territory of the other Contracting Party and used on an inward flight until that flight is completed, on an outward flight from the time that flight commences or on a through-transitting flight, notwithstanding that on all such flights aircraft may make intermediate landings in that territory.

(3) Materials referred to in sub-paragraphs (a), (b) and (c) of paragraph (2) of this Article may be required to be kept under Customs supervision or control.

ARTICLE 7

Unloading of Equipment, etc.

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 8

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 the agreed services. In operating these services, the 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 other provides on the whole or part of the agreed routes.

(2) The primary objective of the Contracting Parties shall be the provision of capacity adequate for the current and reasonably anticipated requirements for the carriage, at a reasonable load factor, of passengers and cargo including mail originating from the territory of one Contracting Party and destined for the territory of the other Contracting Party.

(3) The capacity referred to in paragraph (2) of this Article shall be divided between the designated airlines of the two Contracting Parties in accordance with the principle of equal entitlement.

(4) Provision shall also be made for the carriage of passengers and cargo including mail taken on board or discharged at points on the specified routes in the territories of States other than the Contracting Parties. In so doing the following factors among others shall be taken into account:

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) traffic requirements of the area through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

(5) The aeronautical authorities of the two Contracting Parties shall from time to time agree on the manner in which the provisions of this Article shall be implemented. If the aeronautical authorities fail to agree the matter shall be referred to the two Contracting Parties for decision.

ARTICLE 9

Change of Gauge

In operating any agreed service on any specified route the designated airline of one Contracting Party may substitute one aircraft for another at a point in the territory of the other Contracting Party on the following conditions only:

- (a) that it is justified by reason of economy of operation;
- (b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is not larger in capacity than that used on the nearer section;

- (c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- (d) that there is an adequate volume of through traffic;
- (e) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at a point where the change of aircraft is made;
- (f) that the provisions of Article 8 of this Agreement shall govern all arrangements made with regard to change of aircraft; and
- (g) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

ARTICLE 10

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 concerned 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 the approval of the aeronautical authorities of both Contracting 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) This approval 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) of this Article 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:

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

ARTICLE 11

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 purposes 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 service and the origins and destinations of such traffic.

ARTICLE 12

Transfer of Earnings

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

ARTICLE 13

Airline Representation.

(1) Each Contracting Party grants to the designated airline of the other Contracting Party the right to maintain in its territory offices and managerial, technical, operational and other specialist 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 paragraphs (1) and (3) 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 nationals of other States and their residence and employment in the territory of the Contracting Party concerned.

(3) Subject to paragraph (2) of this Article, a Contracting Party may withdraw the right of employment under this Article of a particular person if the other Contracting Party shall have refused under its laws the right of employment in its territory of a person performing or to perform corresponding duties for the designated airline of the first Contracting Party.

ARTICLE 14

Aviation Security

The Contracting Parties reaffirm their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services and undermine public confidence in the safety of civil aviation. The Contracting Parties agree to provide maximum aid to each other with a view to preventing hijackings and sabotage to aircraft, airports and air navigation facilities and threats to aviation security. They reaffirm their commitments under and shall have regard to the provisions of the Convention on Offences and certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963⁽³⁾, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970⁽⁴⁾, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971⁽⁵⁾. The Contracting Parties shall also have regard to applicable aviation security provisions established by the International Civil Aviation Organization. When incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications intended to terminate such incidents rapidly and safely. Each Contracting Party shall give sympathetic consideration to any request from the other for special security measures for its aircraft or passengers to meet a particular threat.

ARTICLE 15

Consultation

(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 to this Agreement and shall consult when necessary to provide for modifications thereof.

⁽³⁾ Treaty Series No. 126 (1969), Cmnd. 4230.

⁽⁴⁾ Treaty Series No. 39 (1972), Cmnd. 4956.

⁽⁵⁾ Treaty Series No. 10 (1974), Cmnd. 5524.

(2) Either Contracting Party may request consultation, which may be either oral or in writing and shall begin within a period of sixty (60) days of the date of receipt of the request, unless both Contracting Parties agree to an extension of this period.

ARTICLE 16

Amendment

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement such modification, if agreed between the Contracting Parties and if necessary after consultation in accordance with Article 15 of this Agreement, shall come into effect when confirmed by an Exchange of Notes.

ARTICLE 17

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 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. 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 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 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 18

Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation

Organization. In such case 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 19

Entry into Force

This Agreement shall enter into force on the date on which it has been signed on behalf of both Contracting Parties.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Nairobi this 5th day of July 1979.

For the Government of Kenya:

ISAAC OMOLO

For the Government of the United Kingdom of Great Britain and Northern Ireland:

S. J. G. FINGLAND

ANNEX

SECTION 1

Kenyan Routes

Routes to be operated by the designated airline of the Republic of Kenya.

- I. Points in Kenya—intermediate points in Africa to be agreed—intermediate points in Europe to be agreed—London—Points beyond to be agreed.
- II. Points in Kenya—intermediate points to be agreed—Hong Kong—a point in Japan to be agreed.

Notes

(1) The designated airline of the Republic of Kenya may on any or all flights omit calling at any of the above-mentioned points provided that the agreed services on the specified route begin at a point in the territory of the Republic of Kenya.

(2) No traffic rights (including own stop-over) may be exercised between intermediate points in the territory of the United Kingdom, or between points in the territory of the United Kingdom and points beyond, except as may be from time to time jointly determined by the aeronautical authorities of the two Contracting Parties.

SECTION 2

United Kingdom Route

Route to be operated by the designated airline of the United Kingdom.

Points in United Kingdom—intermediate points in Europe to be agreed—intermediate points in Africa to be agreed—Nairobi—points to be agreed.

Notes

(1) The designated airline of the United Kingdom may on any or all flights omit calling at any of the above-mentioned points provided that the agreed services on the specified route begin at a point in the territory of the United Kingdom.

(2) No traffic rights (including own stop-over) may be exercised between intermediate points and points in the territory of the Republic of Kenya, or between points in the territory of the Republic of Kenya and points beyond, except as may be from time to time jointly determined by the aeronautical authorities of the two Contracting Parties.