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THE NATIONAL ASSEMBLY
Tabled by: chair, Transport & Public Works (Hon Philip David)

TABLED BY:	chair, Transport & Public Works (Hon Philip David)
CLERK-AT-THE-TABLE:	

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**REPORT OF
THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC
WORKS AND HOUSING**

ON

**THE RATIFICATION OF THE BILATERAL AIR SERVICES
AGREEMENT BETWEEN KENYA AND THE HELLENIC REPUBLIC;
KENYA AND BURKINA FASO; KENYA AND CAMBODIA; KENYA
AND SEYCHELLES AND KENYA AND FINLAND**

Directorate of Committee Services
Clerk's Chambers
Parliament Buildings
NAIROBI

June, 2019

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PREFACE

A. Mandate of the Committee

The Departmental Committee on Transport, Public Works and Housing is mandated, pursuant to the Standing Order 216 (5), to;

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c) study and review all legislation referred to it;
- d) study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- g) examine treaties, agreements and conventions;
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- j) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- k) Examine any questions raised by Members on a matter within its mandate.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public works;
- d) Construction and maintenance of roads, rails and buildings;
- e) Air and seaports; and
- f) Housing.

In executing this mandate, the Committee oversees various State Departments, namely:

- i. The State Department of Transport;
- ii. The State Department of Infrastructure;
- iii. The State Department of Housing and Urban Development;
- iv. The State Department of Public Works; and
- v. The State Department of Shipping and Maritime Affairs.

Membership of the Committee

The Departmental Committee on Transport, Public Works & Housing was constituted by the House on Thursday 14th December 2017 comprising of the following Members:-

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Oi Kalou
13.	Hon. Johnson Many Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central
18.	Hon. Savula Ayub Angatia	ANC	Lugari
19.	Hon. Vincent Kemosi Mogaka	Ford K	West Mugirango

B. Committee Secretariat:

- | | | |
|----|--------------------------|-----------------------|
| 1. | Ms. Chelagat Tungo Aaron | First Clerk Assistant |
| 2. | Mr. Ahmed Salim Abdalla | Third Clerk Assistant |
| 3. | Ms. Mercy Wanyonyi | Legal Counsel |
| 4. | Mr. James Muguna | Research Officer |
| 5. | Mr. Abdinasir Moge Yusuf | Fiscal Analyst |
| 7. | Mr. Collins Mahamba | Audio Officer |
| 8. | Ms. Zainab Wario | Sergeant-at-Arms |

C. EXECUTIVE SUMMARY

On 22nd November, 2018 the Cabinet Secretary approved a Cabinet Memorandum on the Ratification of the following bilateral air service agreements:

- a) Kenya and the Hellenic Republic;
- b) Kenya and Burkina Faso;
- c) Kenya and Cambodia;
- d) Kenya and Seychelles; and
- e) Kenya and Finland.

Pursuant to section 8 of the Treaty Making and Ratification Act, 2012 they were committed to the Departmental Committee on Transport Public Works and Housing on 12th March, 2019 for consideration and reporting to the House. Once ratified, the Agreement shall become part of our Kenyan laws as provided for in Article 2(6) of the Constitution which provides that *“any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution”*. The purpose of the instrument is to approve Bilateral Air Services Agreements between Kenya and various Countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market.

Such bilateral agreements and their related understandings and arrangements generally regulate the rules for airline ownership and the routes, frequency and capacity of flights by national carriers between the States Parties (and sometimes beyond those states). They may also include issues such as the provision of ground handling services, the procedure for approving tariffs, the designation of national carriers, and aviation security and safety. This bilateral system has its basis under the Chicago Convention which was signed in December 1944 and has regulated international air services since then.

Pursuant to Article 118 (1) (b) of the Constitution on Public Participation and section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies, on the 24th of March 2019, (see Annex) requesting for submissions of memoranda on the subject matter.

The report concludes that the National Assembly approves the ratification of the Agreements as it is in Kenya’s national interest.

The Committee received a comprehensive brief from the Ministry of Transport Public Works and Housing on Tuesday, 23rd April, 2019, in a meeting that was held in Parliament.

The Ministry officials were directed to submit written submissions to enable the Committee members have a better understanding of the Agreements and their benefit toward the country.

F. Acknowledgement

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.

On behalf of the Committee, it is therefore my pleasant duty and privilege, to lay this report on the Ratification of the bilateral air services agreement between Kenya and the Hellenic Republic; Kenya and Burkina Faso; Kenya and Cambodia; Kenya and Seychelles and Kenya and Finland for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

1.0 INTRODUCTION

An air service agreement also known as an air transport agreement is an agreement which two States sign to allow for international commercial air transport services between their territories. These Agreements were negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways and other local airlines. Stakeholders were consulted including the Kenya Association of Air Operators.

The Cabinet approved the signing of Agreements between Kenya and the various States during the ICAO Air Services Negotiation Event (ICAN 2018) in Nairobi, and thereafter subject them to ratification process as per the provisions of the Treaty Making and Ratification Act, 2012. The various States were ready to sign the respective Agreements and it was prudent to save on costs by having them signed during ICAN.

The Bilateral Air Services Agreements between Kenya and the Kingdom of Cambodia was negotiated, concluded and signed on 19th September, 2014, Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 and signed on 14th December, 2018, Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 and signed on 14th December, 2018 and Kenya and Seychelles Bilateral Air Services Agreement was negotiated on 13th December, 2013 and Kenya and the Hellenic Republic Bilateral Air Services Agreement was negotiated on 5th December, 2016 and signed on 14th December, 2018.

The five (5) Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories.

I. OUTLINE OF THE FIVE AGREEMENTS

(1) Bilateral Air Services Agreements common Articles

1. **Definition of terms** - this article defines the technical terminologies as used in the Air Services Agreement;
2. **Grant of rights** - Provides for grants of rights by the parties. The airlines of the parties shall enjoy the right to fly without landing across the territory of the other party, the right to make stops in the other territory for non-traffic purposes, and the right to make stops in the other territory to offload and take passengers on board;
3. **Designation and authorization** - Provides for designation and authorization. In terms of this Article, each party may designate through diplomatic channels, one or more airlines to operate the agreed services in accordance with the agreement, and such grant of authorization should be done with minimum procedural delay;

4. **Withholding, revocation and limitation of authorization** - gives a party state the right to withhold , revoke and limit an authorisation granted due to failure to have “substantial ownership and effective control” or “principal place of business”;
5. **Application of laws** - Provides for applicability of laws and regulations. It reaffirms the applicability of the laws and regulations governing entry into, remaining and departure from the parties’ territory. The laws and regulations apply to the designated airlines of the other party, passengers, crew, mail and cargo. Such laws shall apply each party while in the territory of the other party;
6. **Fair Competition** - In terms of this Article, each party shall ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete, in providing air transport services within their respective territories;
7. **Customs duties, taxes and charges** - Provides for exemption from customs duties and taxation. It provides that each party shall be guided by national laws and regulations in granting exemption from paying customs duty to the other party for regular equipment, spare parts, supplies of fuel and lubricants as well as aircraft stores on board the aircraft and being used on the flight. Inspection fees and other similar charges are also exempted for any aircraft operating international services. Such equipment and materials may be unloaded only with the approval of the customs authority of the other party, and must be placed under the supervision of the customs authorities.
8. **User charges** - Provides for fair competition. In terms of this Article, each party shall ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete, in providing air transport services within their respective territories.
9. **Recognition of certificates** - Provides for recognition of certificates and licenses. It reaffirms the parties’ obligations to recognize the validity of certificates of airworthiness, competency and licenses issued by the other party, so long as they meet the minimum standards under the convention;
10. **Tariffs (pricing)** - Provides for the establishment of Air Transport Tariffs. It provides that the applicable tariffs between the territories shall be at reasonable levels. In establishing the tariffs regard shall be had to the cost of operation, interests of users, reasonable profit and class of service. The parties may engage in consultations in respect of any tariff charged by the other party, and such consultations shall be held within 30 days of request.
11. **Direct transit** - it provides for a standard facilitation measure for simplified transit found in most air services agreements;
12. **Safety** - Provides for aviation safety provisions. It provides for the procedure to be followed when safety standards being maintained by the other party relating to

aeronautical facilities, aircrew, aircraft and the operation aircraft are inadequate. The consultations concerning the safety standards should take place within 30 days of request, and the parties should outline the steps necessary to be taken so as to conform to the ICAO standards. This Article grants the right of a party to conduct a search on the aircraft of the other party within its territory, but this shall be done without causing unreasonable delay;

13. **Aviation Security** - Provides for aviation security. The Article reaffirms the parties' obligation to each other to protect the security of international civil aviation against acts of unlawful interference. The parties shall act in conformity with the international conventions dealing with aviation security. In case of any threats, parties shall assist each other by facilitating communications and any other appropriate measures intended to terminate such threat;
14. **Currency conversion and remittance of earnings**-provision to facilitate currency conversion and remittance;
15. **Representation** - Provides for the designated carriers to establish offices in the territory of the other party for promotion of air transport and sale of air tickets and other facilities necessary for the provision of air transportation;
16. **Cooperative arrangements** - provides for cooperative marketing arrangements such as joint venture with any airline of a third country provided that parties shall ensure that consumers are informed and protected with respect or code-shared flights operating to and from their territory. Further, aeronautical authorities are to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements;
17. **Environmental protection** - this provides that States take into account the impact of air transport industry on the environment;
18. **Statistics** - Provides for supply of statistics. In terms of this Article, the parties shall supply on request to the other party's aeronautical authorities, periodic or other statements of statistics;
19. **Approval of schedules** - Provides for capacity regulations and approval of timetables. It provides that the primary objective of each party shall be provision of capacity adequate for carriage of passengers, cargo and mail between the territory of the contracting party and designating the airline;
20. **Consultations**- Provides for consultations and modifications. It provides that parties shall consult from time to time to ensure the effective implementation and satisfactory compliance with the agreement;

21. **Settlement of disputes** - Provides for settlement of disputes. In case of disputes, the parties shall first try to settle the dispute through negotiation. In the event of failure to agree after negotiation, the matter shall be referred to an arbitration tribunal;
22. **Amendments (Modifications)** - The amendment or modification provision in an agreement may be in the context of a consultation provision since the negotiation of an amendment may be seen as merely another matter for consultation. The amendments shall come into force once contracting parties confirm an exchange of diplomatic notes;
23. **Multilateral agreements** - Provides for conformity with multilateral agreements. The agreement shall be deemed to have been amended by the provisions of any multilateral air transport agreement which may become binding on both parties;
24. **Termination**- Either party may in writing, both to the other party and to the ICAO, give notice of termination of the agreement. The agreement shall terminate 12 months after the date of receipt of the termination notice, or at a shorter period as may be determined by the parties;
25. **Registration with ICAO** - Provides for registration. Registration shall be done by the International Civil Aviation Organization;
26. **Entry into force** - Provides for the entry into force. The agreement shall enter into force between the parties immediately upon signature and notification by exchange of diplomatic notes.

**(2) COMPLIANCE WITH THE PROCEDURE FOR APPROVAL OF A TREATY
AS STIPULATED UNDER THE TREATY MAKING AND RATIFICATION
ACT, 2012**

1. The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as “the Act”).
2. Section 8 (1) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
3. Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.
4. Section 7 of the Act provides as follows—
 7. *Where Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—*
 - (a) *the objects and subject matter of the treaty;*
 - (b) *any constitutional implications including—*

- (i) any proposed amendment to the Constitution; and*
- (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;*
- (c) the national interests which may be affected by the ratification of the treaty;*
- (d) obligations imposed on Kenya by the treaty;*
- (e) requirements for implementation of the treaty;*
- (f) policy and legislative considerations;*
- (g) financial implications;*
- (h) ministerial responsibility;*
- (i) implications on matters relating to counties;*
- (j) the summary of the process leading to the adoption of the treaty;*
- (k) the date of signature;*
- (l) the number of states that are party to the treaty;*
- (m) the views of the public on the ratification of the treaty;*
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;*
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and*
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.*

(1) Purpose of the Agreements

The purpose of the instruments is to approve Bilateral Air Services Agreements between Kenya and various Countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market.

(2) Constitutional Implications

In accordance with the Constitution of Kenya and the Treaty Making and Ratification Act, once the Agreement is signed and ratified it shall form part of the Laws of Kenya.

(3) National Interest (advancement of economic prosperity of Kenya and her people)

The Bilateral Air Services Agreements between Kenya and the various States will enable Kenyan air operators such as Kenya Airways and others to provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access to the Kenyan market.

(4) Obligations imposed by the Agreements

Grant of Rights - Each Contracting Party grants to the other Contracting Party the following rights in respect of international air services:

- i. the right to fly across its territory without landing;
- ii. the right to make stops in its territory for non-traffic purposes;

Designation and Authorization - Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating the agreed services and to withdraw or alter such designations.

Revocation of Authorization - Either Contracting Party may revoke, suspend or limit the operating authorization or technical permissions of an airline designated by the other Contracting Party where:

Application of Laws and Regulations

National Laws - The laws and regulations of one Contracting Party governing entry into, or departure from its territory of aircraft engaged in international air services or to the operation and navigation of such aircraft while within the said territory shall apply to the designated airline(s) of the other Contracting Party.

Exemption from Taxes, Customs Duties and other Charges - Aircraft operated on international air services by a designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuel and lubricants, aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all taxes, customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment, spare parts, supplies and stores remain on board the aircraft up to such time as they are re-exported or are used or consumed by such aircraft on flights over that territory.

Airline Representation and Sales - The designated airline(s) of each Contracting Party shall have the right to freely establish and maintain in the territory of the other Contracting Party, within the scope of the laws and regulations in force therein, such offices and facilities, as well as administrative, commercial, technical, operational, and other specialist personnel as may be necessary for the requirements of the designated airline concerned.

Aviation Security - Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

(5) Requirements for implementation of the Treaties

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing the concerned States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

(6) Policy and legislative considerations

The Ministry of Transport, Infrastructure, Housing and Urban Development negotiates and reviews Bilateral Air Services Agreements between Kenya and various Countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market. These Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

The Cabinet approved the signing of Agreements between Kenya and the various States during the ICAO Air Services Negotiation Event (ICAN 2018) in Nairobi, and thereafter subject them to ratification process as per the provisions of the Treaty Making and Ratification Act, 2012. The various States were ready to sign the respective Agreements and it was prudent to save on costs by having them signed during ICAN.

The Bilateral Air Services Agreements between Kenya and the Kingdom of Cambodia was negotiated, concluded and signed on 19th September, 2014, Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 and signed on 14th December, 2018, Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 and signed on 14th December, 2018 and Kenya and Seychelles Bilateral Air Services Agreement was negotiated on 13th December, 2013 and Kenya and the Hellenic Republic Bilateral Air Services Agreement was negotiated on 5th December, 2016 and signed on 14th December, 2018

The Agreements are negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for Countries within Africa and on the basis of fair and equal opportunity and reciprocity for other Countries.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing the concerned States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

(7) Implications on matters relating to Counties

Civil aviation falls under National Government functions as provided for in section 18 of the Fourth schedule of the Constitution which deals with the distribution of functions between the National and County Government therefore it's not a matter concerning counties.

(8) The Summary of the Process Leading to the Adoption of the Agreements

The five (5) Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories.

(i) The Kenya/Cambodia Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and the Kingdom of Cambodia was negotiated, concluded and initialled on 9th and 10th September, 2014 in Phnom Penh, Kingdom of Cambodia. It was operationalized by the signing of a Memorandum of Understanding on 10th September, 2014.

The Agreement provides for multiple designation of airlines, limits the number frequencies to seven (7), no restriction on aircraft capacity and an open and liberal route schedule. The exercise of the fifth freedom traffic rights for designated airlines to be exchanged on reciprocal basis subject to approval by the aeronautical authorities of the respective Parties.

Currently, no Kenyan airline operates scheduled air services to/from Cambodia. Similarly, there is no airline from Cambodia operating scheduled air services between the two States. The Cambodia authorities requested through diplomatic channels for the initialled Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi. Consequently, the Agreement was formally signed on 10th December, 2018 in Nairobi.

(ii) The Kenya/Burkina Faso Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 in Burkina Faso. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. With regard to exercise of 5th freedom Traffic rights, designated airlines can operate two (2) frequencies with full 5th freedom traffic rights on any four (4) intermediate points and two (2) beyond points.

Currently, no Kenyan carrier operates scheduled air services to/from Burkina Faso. Similarly, there is no airline from Burkina Faso operating scheduled air services between the two States. However, the Burkina Faso authorities requested through diplomatic channels for the Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi.

(iii) The Kenya/Finland Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 in Colombo, Sri Lanka. It was signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 14 frequencies per week, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Republic of Finland. Similarly, there is no airline from Finland operating scheduled air services to Kenya.

(iv) Kenya/the Hellenic Republic (Greece) Bilateral Air Services Agreement

The Kenya/the Hellenic Republic Bilateral Air Services Agreement was negotiated in 1978. It was reviewed and initialled on 5th December, 2016 in Nassau, the Bahamas and finally signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 7 frequencies for passenger services, no restrictions on aircraft capacity, no restrictions on all cargo operations and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States.

(v) Kenya and Seychelles Bilateral Air Services Agreement

The Kenya and Seychelles Bilateral Air Services Agreement was negotiated and initialled on 13th December, 2013 in Durban, South Africa. It was signed on 14th December, 2018.

The Agreement provides for unlimited frequencies and capacity, multiple designation and a liberal Route Schedule. Exercising 5th Freedom Traffic Rights is on reciprocal basis. Kenya Airways is operating daily to Seychelles.

(9) The date of Signature

The Bilateral Air Services Agreements between Kenya and Cambodia was initialed on 10th September, 2014; Kenya and Burkina Faso initialed on 28th August, 2008; Kenya and Finland was initialed on 5th December, 2017; Kenya and Seychelles was initialed on 13th December, 2013; and Kenya and the Hellenic Republic was negotiated and initialed on 5th December, 2016

(10) Proposed text of any reservation

Reservations are not contemplated in these Agreement.

3.0 MEETING BETWEEN THE COMMITTEE AND THE MINISTRY

On Tuesday, 23rd April, 2019, the Departmental Committee held a meeting with officials from the State Department of Transport.

The Ministry officials were directed to submit written submissions to enable the Committee members have a better understanding of the Agreements and their benefit toward the country.

Presentation by the Ministry of Transport Public Work and Housing

The Kenya/Cambodia Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and the Kingdom of Cambodia was negotiated, concluded and initialled on 9th and 10th September, 2014 in Phnom Penh, Kingdom of Cambodia. It was operationalized by the signing of a Memorandum of Understanding on 10th September, 2014.

The Agreement provides for multiple designation of airlines, limits the number frequencies to seven (7), no restriction on aircraft capacity and an open and liberal route schedule. The exercise of the fifth freedom traffic rights for designated airlines to be exchanged on reciprocal basis subject to approval by the aeronautical authorities of the respective Parties.

Currently, no Kenyan airline operates scheduled air services to/from Cambodia. Similarly, there is no airline from Cambodia operating scheduled air services between the two States. The Cambodia authorities requested through diplomatic channels for the initialled Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi. Consequently, the Agreement was formally signed on 10th December, 2018 in Nairobi.

The Kenya/Burkina Faso Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Burkina Faso was negotiated and initialled on 28th August, 2008 in Burkina Faso. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule. With regard to exercise

of 5th freedom Traffic rights, designated airlines can operate two (2) frequencies with full 5th freedom traffic rights on any four (4) intermediate points and two (2) beyond points.

Currently, no Kenyan carrier operates scheduled air services to/from Burkina Faso. Similarly, there is no airline from Burkina Faso operating scheduled air services between the two States. However, the Burkina Faso authorities requested through diplomatic channels for the Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi.

The Kenya/Finland Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Finland was negotiated and initialled during ICAN 2017 on 5th December, 2017 in Colombo, Sri Lanka. It was signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 14 frequencies per week, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Republic of Finland. Similarly, there is no airline from Finland operating scheduled air services to Kenya.

Kenya/the Hellenic Republic (Greece) Bilateral Air Services Agreement

The Kenya/the Hellenic Republic Bilateral Air Services Agreement was negotiated in 1978. It was reviewed and initialled on 5th December, 2016 in Nassau, the Bahamas and finally signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 7 frequencies for passenger services, no restrictions on aircraft capacity, no restrictions on all cargo operations and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States.

Kenya and Seychelles Bilateral Air Services Agreement

The Kenya and Seychelles Bilateral Air Services Agreement was negotiated and initialled on 13th December, 2013 in Durban, South Africa. It was signed on 14th December, 2018.

The Agreement provides for unlimited frequencies and capacity, multiple designation and a liberal Route Schedule. Exercising 5th Freedom Traffic Rights is on reciprocal basis. Kenya Airways is operating daily to Seychelles.

4.0 COMMITTEE OBSERVATIONS

1. The Constitution in Article 2 (6) provides for the entrenchment of this Agreement into the laws of Kenya.
2. The Agreements provide for multiple designations of airlines, unlimited number of frequencies, no restriction on aircraft capacity and an open and liberal route schedule.
3. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.
4. The five Agreements are modelled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories without any restrictions.
5. Currently, no Kenyan airline operates scheduled air services to/from Cambodia. Similarly, there is no airline from Cambodia operating scheduled air services between the two States.
6. Currently, no Kenyan carrier operates scheduled air services to/from Burkina Faso. Similarly, there is no airline from Burkina Faso operating scheduled air services to Kenya.
7. Currently, no Kenyan carrier operates scheduled air services to/from the Republic of Finland. Similarly, there is no airline from Finland operating scheduled air services to Kenya.
8. Currently, no Kenyan carrier operates scheduled air services to/from the Hellenic Republic (Greece). Similarly, there is no airline from the Hellenic Republic (Greece) operating scheduled air services to Kenya.
9. Currently Kenya Airways is operating daily to Seychelles.

5.0 COMMITTEE RECOMMENDATION

The Committee recommends that the House approves the ratification of the Bilateral Air Services Agreement between Kenya and the Kingdom of Cambodia, Kenya and Burkina Faso, Kenya and Finland, Kenya and Seychelles and Kenya and the Hellenic Republic as the approvals are in Kenya's national interest.

SIGNED



HON. DAVID PKOSING, CBS, M.P

CHAIRPERSON


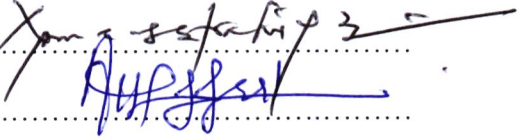



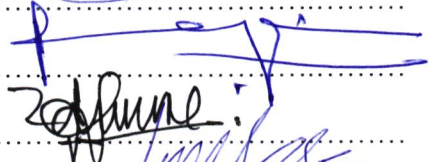

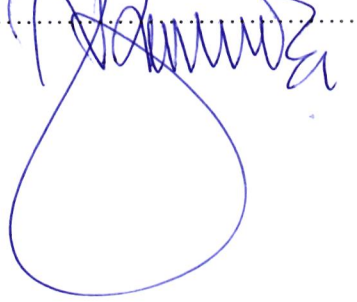
DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING

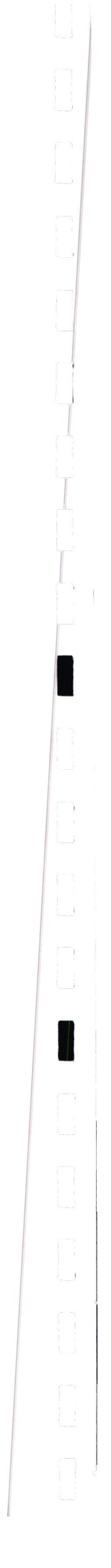
DATE.....

6/6/2019

Adoption of the Report

We, the members of the Departmental Committee on Transport, Public Works and Housing have today 4th June, 2019 adopted this Report on the Ratification of the bilateral air services agreement between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and Kenya and the Hellenic Republic for consideration and approval by the House Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199.

1. Hon. David Pkosing, M.P. -Chairperson 
2. Hon. Moses Kuria, M.P. -Vice Chairperson
3. Hon. Samuel Arama, M.P.
4. Hon. Johnson Many Naicca, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Savula Ayub Angatia, M.P.
7. Hon. Suleiman Dori Ramadhani, M.P.
8. Hon. Ahmed Abdisalan Ibrahim, M.P. 
9. Hon. Ahmed Bashane Gaal, M.P.
10. Hon. David Njuguna Kiaraho, M.P.
11. Hon. Dominic Kipkoech Koskei, M.P. 
12. Hon. Gideon Mutemi Mulyungi, M.P.
13. Hon. Kulow Maalim Hassan, M.P. 
14. Hon. Mugambi M. Rindikiri, M.P. 
15. Hon. Rehema Dida Jaldesa, M.P.
16. Hon. Rigathi Gachagua, M.P. 
17. Hon. Shadrack John Mose, M.P. 
18. Hon. Tom Mboya Odege, M.P.
19. Hon. Vincent Kemosi Mogaka, M.P. 



Annexure 1:
Minutes of Committee sittings



MINUTES OF THE FOURTY SEVENTH (47TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON FRIDAY, 24TH MAY 2019 AT 2.30 P.M. IN MEETING ROOM 2, HILTON GARDEN INN AIRPORT HOTEL, NAIROBI

MEMBERS PRESENT

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Ahmed Abdisalan Ibrahim, M.P.
4. Hon. Gideon Mutemi Mulyungi, M.P.
5. Hon. Johnson Many Naicca, M.P.
6. Hon. Kulow Maalim Hassan, M.P.
7. Hon. Mugambi Murwithania Rindikiri, M.P.
8. Hon. Peris Pesi Tobiko, M.P.
9. Hon. Rehema Dida Jaldesa, M.P.
10. Hon. Shadrack John Mose, M.P.
11. Hon. Savula Ayub Angatia, M.P.
12. Hon. Rigathi Gachagua, M.P.
13. Hon. Dominic Kipkoech Koskei, M.P.
14. Hon. David Njuguna Kiaraho, M.P.
15. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Suleiman Dori Ramadhani, M.P.
3. Hon. Ahmed Bashane Gaal, M.P.
4. Hon. Tom Mboya Odege, M.P.

SECRETARIAT

1. Ms. Chelagat Aaron Tungo - Clerk Assistant I/Lead Clerk
2. Ms. Rose Wanjohi - Clerk Assistant I
3. Mr. Ahmed Salim - Clerk Assistant III

- | | | |
|-------------------------|---|-------------------------|
| 4. Mr. Abdinasir Moge | - | Fiscal Analyst |
| 5. Ms. Christine Maeri | - | Audio Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Mr. Yeziel Jilo | - | Sergeant-at-arm |
| 8. Ms. Pauline Nyambura | - | Executive Assistant |

MIN No. TPWH 210/2019: PRELIMINARIES

The meeting was called to order at thirty minutes past two o'clock, with a word of prayer from the Chairperson. Members confirmed the agenda as confirmation of the minutes of the previous sittings and adoption of the Committee Reports on the 2019/2020 Budget Estimates and the 2018/2019 Supplementary Estimates II.

MIN No. TPWH 211/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

1. The minutes of the 45th sitting held on 22nd May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Vincent Kemosi and Hon. Peris Tobiko respectively.
2. The minutes of the 46th sitting held on 23rd May 2019 were confirmed as true record of the proceedings having been proposed and seconded by Hon. Gideon Mulyungi and Hon. Dominic Koskei.

MIN No. TPWH 212/2019: ADOPTION OF THE REPORT ON THE BUDGET ESTIMATES FOR THE FINANCIAL YEAR 2019/2020

The Report of the Budget Estimates for the Financial Year 2019/2020 was adopted, having been proposed and seconded by Hon. Dominic Koskei and Hon. Ahmed Abdisalan respectively.

MIN No. TPWH 213/2019: ADOPTION OF THE REPORT ON THE SUPPLEMENTARY ESTIMATES II FOR THE FY 2018/2019

The Report of the Supplementary Estimates II for the Financial Year 2018/2019 was adopted, having been proposed and seconded by Hon. Shadrack Mose and Hon. Samuel Arama respectively.

MIN No. TPWH 214/2019:

**ADOPTION OF THE REPORT ON RATIFICATION
OF THE BILATERAL AIR SERVICE
AGREEMENTS BETWEEN KENYA AND
CAMBODIA; KENYA AND BURKINA FASO;
KENYA AND FINLAND; KENYA AND
SEYCHELLES; AND KENYA AND THE HELLENIC
REPUBLIC**

The Report on consideration for Ratification of the Bilateral Air Service Agreements between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and Kenya and the Hellenic Republic was adopted, having been proposed and seconded by Hon. Mugambi Murwithania and Hon. Kulow Hassan respectively.

MIN No. TPWH 215/2019:

ADJOURNMENT

There being no other business, the sitting was adjourned at four o'clock. The next meeting to be held on notice.

Signed.....



(Chairperson)

Date.....

24/5/2019

Annexure 2:

Newspaper advertisement inviting the public
to submit memoranda



Projects. Government given tough conditions and strict timelines

World Bank raises graft worries in Sh120b works

Officials also cite slow pace of projects as reason for concern.

By Moses Michira
newsdesk@standardmedia.co.ke

The World Bank is considering scrapping funding for several water projects across the country over integrity concerns.

At risk includes Sh120 billion in friendly loans for developing arid counties in northern Kenya.

Projects on the chopping block are the Sh14.8 billion Mwache Dam in Kwale, flood mitigation in Budalang'i and hundreds of small water works scattered across Mandera, Wajir, Isiolo and Marsabit.

Scuttling of the projects would come with huge implications down the road for the country, which is even today grappling with famine linked to drought and deaths.

Among the issues that could derail the ambitious water projects are abnormal cost variations of past projects, according to a confidential letter addressed to top officials, including National Treasury Cabinet Secretary Henry Rotich.

Other concerns raised in the March 1 letter, also copied to Water and Sanitation CS Simon Chelugui, relate to the slow implementation of projects due to unwarranted delays despite the release of budgeted funds.

Conditions laid out by the lender to guarantee retention of financial support extend to immediate commitment to address sexual offences allegations against workers at the Northern Collector Tunnel project in Murang'a.

This harsh verdict was returned by top officials of World Bank Practice, the World Bank arm that funds development of water, led by

director Ayat Soliman and manager Catherine Tovey, after their inspection tour of Kenya in the last week of February.

"While the water sector remains an important priority for World Bank support, we are concerned by the slow pace of

Sh120b

Amount to be lent to arid counties that are at risk

implementation of the water portfolio coupled with significant social and governance risks," wrote WB regional director Carlos Felipe Jaramillo.

The officials' visit came in the midst of an ongoing investigation into the development of three mega dams in the Rift Valley by an Italian contractor, CMC di Ravenna, over alleged payment of kickbacks to Kenyan officials as reward for con-

tract award.

Mr Jaramillo's letter spelt out tough conditions and gave strict timelines that have since elapsed.

He directed Mr Rotich to immediately release Sh2.5 billion to fund public participation and other priority activities in the North and North Eastern Development Initiative, which encompasses tens of water projects.

"If the County Participation Agreements are not signed by March 11, 2019, we should need to revisit the viability of the project and assess options for restructuring and cancellation of funds," Jaramillo wrote.

Further, Rotich was told to find Sh600 million this year to resettle people displaced by the Mwache Dam project.

It was not possible to immediately establish whether the tough conditions given were met as yesterday was not an official working day.

Nakuru. A school's loss



File. This is what was left of a dormitory in Njoro Girls' High School after a fire incident on Saturday. The cause of the fire was by yesterday yet to be established. [Kennedy Gachui, Standard]

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the Matters of consideration by the National Assembly:-

1. Ratification of the Bilateral Air Service Agreements between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and
2. Ratification of the Montreal Protocol, 2014

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, Section 8 of the Treaty Making and Ratification Act, 2012 provides for the consideration and Ratification of Treaties by Parliament and subsection(3) states that, "the relevant Parliamentary Committee shall, during its consideration of the Treaty, ensure Public Participation in the ratification process in accordance with laid down parliamentary procedures".

The National Assembly is in receipt of the above mentioned Agreements and Protocol for approval for ratification by the Government of the Republic of Kenya. The main purpose of the Agreements is to approve Bilateral Air Services Agreements between Kenya and various countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers to access the Kenyan market while the Protocol is to amend the Convention on offences and certain other acts committed on board aircrafts (Tokyo Convention, 1963). The protocol will give Kenya jurisdictional power to deal with unruly passengers, while preserving its prosecutorial discretion.

The above Agreements and Protocol have been committed to the Departmental Committee on Transport, Public Works and Housing pursuant to Standing Order 216(5)(fa) for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and section 8 of the Treaty Making and Ratification Act, 2012, the Committee invites members of the public to submit any representations they may have on the said Agreements and Protocol. The Agreements can be accessed from the parliamentary website at www.parliament.go.ke. The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, First Floor, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday, 1st April, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

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With local leaders appealing for close to Sh2 billion

Vocal Leaders tell State to stop intimidating chiefs

Graft to blame for food crisis, Rift MPs claim

They rebuked leaders who are denying people are starving to death

BY FLORAH KOECH
flokoech@gmail.com

as people starve to death," Mr Keter said.

"How can someone loot money meant for construction of dams as locals walk for over 10km to access water, which is not even clean in the first place?"

Mr Keter posed.

He raised concern that there are farmers in the North Rift region whose maize is rotting in stores because the government failed to buy from them as their counterparts in neighbouring counties starve.

"Some people wanted to spoil the maize market and were intimidating for diversification growing of avocados. They now take the avocados they were campaigning for to the starving Kenyans," Mr Keter said.

On his part, Mr Tiren said the government should stop intimidating chiefs who exposed the plight of their people suffering from hunger.

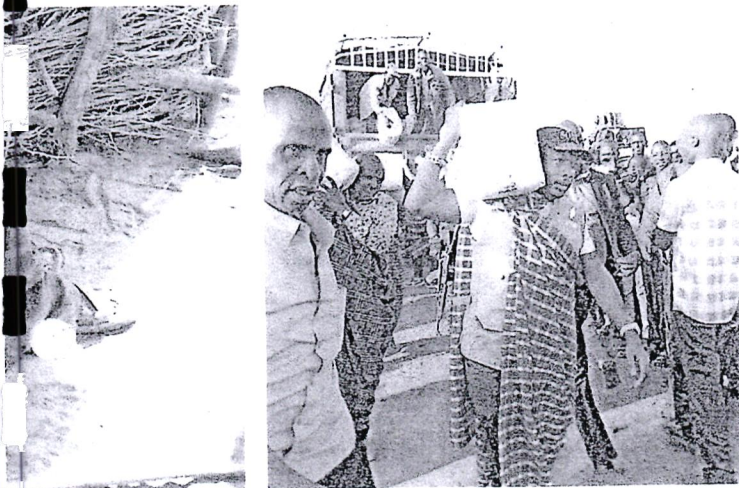
"Why intimidate chiefs and local leaders who were reporting how people are suffering... The government should verify facts instead of being in denial. People are starving to death — that is a fact," Mr Tiren said.

He called on the government to implement long-term development projects in the arid and semi arid areas to end perennial food shortages. "It is sad that when we allocate funds to dams, some people see it as a chance to loot and get kickbacks at the expense of suffering Kenyans."



It is sad that when we allocate funds to dams, some people see it as a chance to loot and get kickbacks at the expense of suffering Kenyans."

Moiben MP Silas Tiren



CHEBOITE KIGEN & OSCAR KAKAI | NATION

hunger-stricken elderly man at Cheptunayo in Tiaty, Baringo County, when some Rift Valley leaders paid him a visit yesterday. Above: Nairobi Governor Mike Sonko helps offload foodstuff he donated to the starving residents of West Pokot County on Saturday.



FILE | NATION

...emu inside her hut at Kamekwi village of Turkana Central on March 17. A week after the 'Nation' published her story of painful want and desolation, she has not received any help.

The starving Baringo residents



Some 1,000 bags of maize at a store in Chemolingot in Tiaty, Baringo County, yesterday. Government officials say they have no money to fuel lorries to take the food to far-flung villages in Tiaty.

CHEBOITE KIGEN | NATION

the headteacher, said he has been borrowing food from the neighbouring Korelach Primary School to feed his pupils, but the 50kg bag of rice he got a week ago is now depleted. "We cooked the last meal (boiled rice) on Friday," he said.

A family in Tugum village risks starving to death. Their three-year-old son can no longer walk due to the biting hunger.

His mother, Cheparwada Nguriatada, said she doesn't

have enough food to feed her four young children. "This boy was well until two weeks ago, but he is now too weak to even talk or cry," Nguriatada said as her five-month-old cried after suckling an empty breast.

Chepilat residents are praying that relief food reaches them before they starve to death.

"We saw several lorries heading to Chemolingot with bags of maize some days ago, but we are yet to receive any," said

Solomon Lochoke who wife died of hunger three weeks ago.

However, Tiaty Deputy County Commissioner Jacob Awuor said food is now available, but they have no funds to fuel vehicles to transport the food to the far-flung areas.

"We have plenty of food at our stores in Chemolingot, but we are yet to get funding from the government to fuel lorries that will distribute the food," Mr Awuor said.

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the Matters of consideration by the National Assembly:-

1. Ratification of the Bilateral Air Service Agreements between Kenya and Cambodia; Kenya and Burkina Faso; Kenya and Finland; Kenya and Seychelles; and
2. Ratification of the Montreal Protocol, 2014

SUBMISSION OF MEMORANDA

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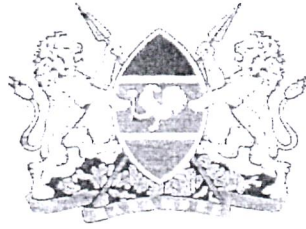
The National Assembly is in receipt of the above mentioned Agreements and Protocol for approval for ratification by the Government of the Republic of Kenya. The main purpose of the Agreements is to approve Bilateral Air Services Agreements between Kenya and various countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers to access the Kenyan market while the Protocol is to amend the Convention on offences and certain other acts committed on board aircrafts (Tokyo Convention, 1963). The protocol will give Kenya jurisdictional power to deal with unruly passengers, while preserving its prosecutorial discretion.

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MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY





**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,
URBAN DEVELOPMENT AND PUBLIC WORKS**

**EXPLANATORY MEMORANDUM TO RATIFICATION OF BILATERAL
AIR SERVICES AGREEMENTS BETWEEN KENYA AND CAMBODIA;
KENYA AND BURKINA FASO; KENYA AND FINLAND; KENYA AND
SEYCHELLES; AND KENYA AND THE HELLENIC REPUBLIC**

Name of the instrument: Bilateral Air Services Agreements

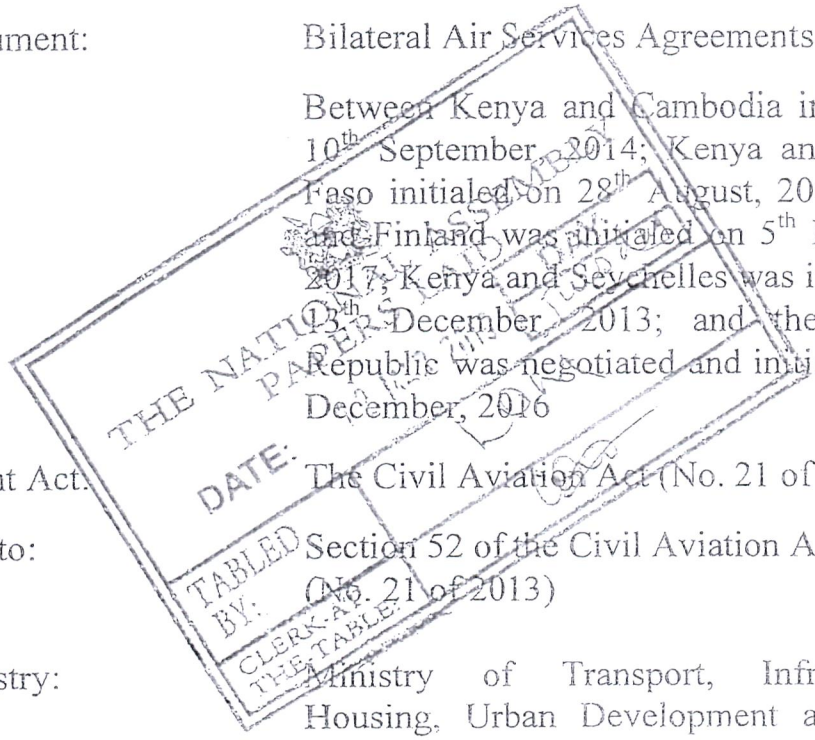
Between Kenya and Cambodia initialed on 10th September, 2014; Kenya and Burkina Faso initialed on 28th August, 2008; Kenya and Finland was initialed on 5th December, 2017; Kenya and Seychelles was initialed on 13th December, 2013; and the Hellenic Republic was negotiated and initialed on 5th December, 2016

Name of the Parent Act: The Civil Aviation Act (No. 21 of 2013)

Enacted Pursuant to: Section 52 of the Civil Aviation Act (No. 21 of 2013)

Name of the Ministry: Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

Approved on: 22nd November, 2018



1. Purpose of the Statutory Instrument

The purpose of the instrument is to approve Bilateral Air Services Agreements between Kenya and various Countries to enable Kenyan air operators such as Kenya Airways provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market.

2. Legislative Context

The Agreements are negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for Countries within Africa and on the basis of fair and equal opportunity and reciprocity for other Countries.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contain standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing ~~the concerned~~ States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

3. Policy Background

The Ministry of Transport, Infrastructure, Housing and Urban Development negotiates and reviews ~~Bilateral Air Services Agreements~~ between Kenya and various Countries to enable ~~Kenyan~~ air operators such as Kenya Airways provide scheduled air ~~services and~~ expand their existing route network. In addition, the Agreements allow foreign carriers access the Kenyan market. These Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways.

The Cabinet approved the signing of Agreements between Kenya and the various States during the ICAO Air Services Negotiation Event (ICAN 2018) in Nairobi, and thereafter subject them to ratification process as per the provisions of the Treaty Making and Ratification Act, 2012. ~~The various States~~ were ready to sign the respective Agreements and it was prudent to save on costs by having them signed during ICAN.

~~The Bilateral Air Services Agreements~~ between Kenya and the Kingdom of Cambodia was negotiated, concluded and signed on 19th September, 2014, Kenya

and Burkina Faso was negotiated and initialed on 28th August, 2008 and signed on 14th December, 2018, Kenya and Finland was negotiated and initialed during ICAN 2017 on 5th December, 2017 and signed on 14th December, 2018 and Kenya and Seychelles Bilateral Air Services Agreement was negotiated on 13th December, 2013 and Kenya and the Hellenic Republic Bilateral Air Services Agreement was negotiated on 5th December, 2016 and signed on 14th December, 2018.

The five (5) Agreements are modeled on the ICAO template and are aimed at enabling designated airlines of either States to operate scheduled services between their territories.

The Kenya/Cambodia Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and the Kingdom of Cambodia was negotiated, concluded and initialed on 9th and 10th September, 2014 in Phnom Penh, Kingdom of Cambodia. It was operationalized by the signing of a Memorandum of Understanding on 10th September, 2014.

The Agreement provides for multiple designation of airlines, limits the number frequencies to seven (7), no restriction on aircraft capacity and an open and liberal route schedule. The exercise of the fifth freedom traffic rights for designated airlines to be exchanged on reciprocal basis subject to approval by the aeronautical authorities of the respective Parties.

Currently, no Kenyan airline operates scheduled air services to/from Cambodia. Similarly, there is no airline from Cambodia operating scheduled air services between the two States. The Cambodia authorities requested through diplomatic channels for the initialed Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi. Consequently, the Agreement was formally signed on 10th December, 2018 in Nairobi.

The Kenya/Burkina Faso Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Burkina Faso was negotiated and initialed on 28th August, 2008 in Burkina Faso. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designation of airlines, unlimited number of frequencies, no restriction on aircraft capacity, and an open and liberal route

schedule. With regard to exercise of 5th freedom Traffic rights, designated airlines can operate two (2) frequencies with full 5th freedom traffic rights on any four (4) intermediate points and two (2) beyond points.

Currently, no Kenyan carrier operates scheduled air services to/from Burkina Faso. Similarly, there is no airline from Burkina Faso operating scheduled air services between the two States. However, the Burkina Faso authorities requested through diplomatic channels for the Agreement between the two States to be formally signed during the ICAN 2018 held from 10th – 14th December, 2018 in Nairobi.

The Kenya/Finland Bilateral Air Services Agreement

The Bilateral Air Services Agreement between Kenya and Finland was negotiated and initialed during ICAN 2017 on 5th December, 2017 in Colombo, Sri Lanka. It was signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 14 frequencies per week, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

Currently, no Kenyan carrier operates scheduled air services to/from the Republic of Finland. Similarly, there is no airline from Finland operating scheduled air services to Kenya.

Kenya/the Hellenic Republic (Greece) Bilateral Air Services Agreement

The Kenya/the Hellenic Republic Bilateral Air Services Agreement was negotiated in 1978. It was reviewed and initialed on 5th December, 2016 in Nassau, the Bahamas and finally signed on 14th December, 2018.

The Agreement provides for multiple designation of airlines, 7 frequencies for passenger services, no restrictions on aircraft capacity, no restrictions on all cargo operations and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights shall be subject to approval by the respective aeronautical authorities.

Currently, no carrier from either party operates scheduled air services on the route between the two States.

Kenya and Seychelles Bilateral Air Services Agreement

The Kenya and Seychelles Bilateral Air Services Agreement was negotiated and initialed on 13th December, 2013 in Durban, South Africa. It was signed on 14th December, 2018.

The Agreement provides for unlimited frequencies and capacity, multiple designation and a liberal Route Schedule. Exercising 5th Freedom Traffic Rights is on reciprocal basis. Kenya Airways is operating daily to Seychelles.

4. Consultation Outcome

These Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board and Kenya Airways and other local airlines. Stakeholders are consulted including the Kenya Association of Air Operators.

5. Impact

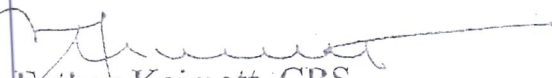
An impact assessment has not been prepared for this statutory instrument.

6. Monitoring and review

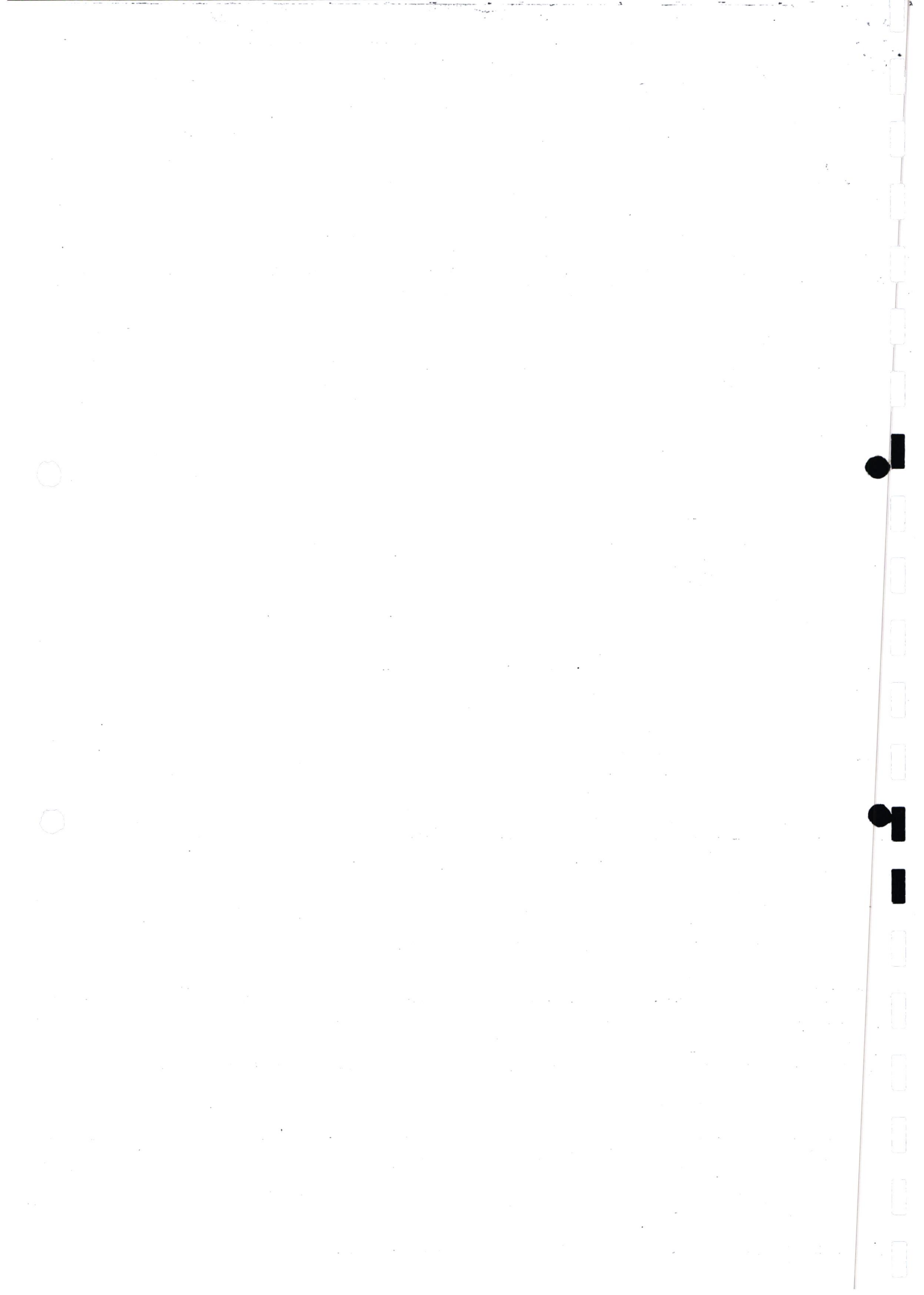
The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the Kenya Civil Aviation Authority monitor and review the implementation of the Bilateral Air Services Agreements.

7. Contact

Nicholas Bodo, Deputy Director Air Transport, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, Telephone No. 2729200, email address bodo@transport.go.ke

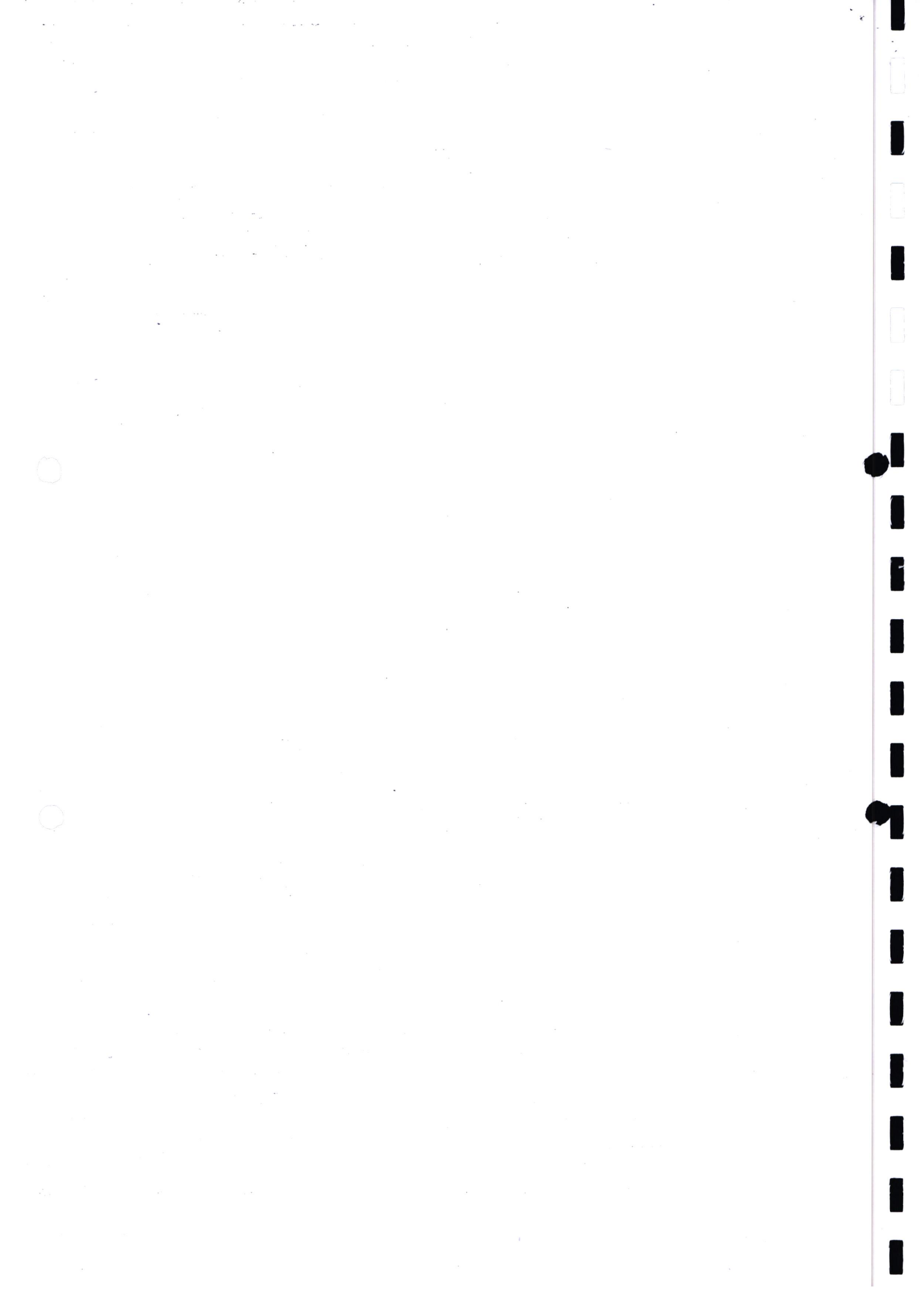

Esther Koimett, CBS

PRINCIPAL SECRETARY





Air Services Agreement
Between
the Government of the Republic of Kenya
and
the Government of the Kingdom of Cambodia





Air Services Agreement

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Preamble

The Government of the Kingdom of Cambodia and the Government of the Republic of Kenya (hereinafter, "the Contracting Parties");

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

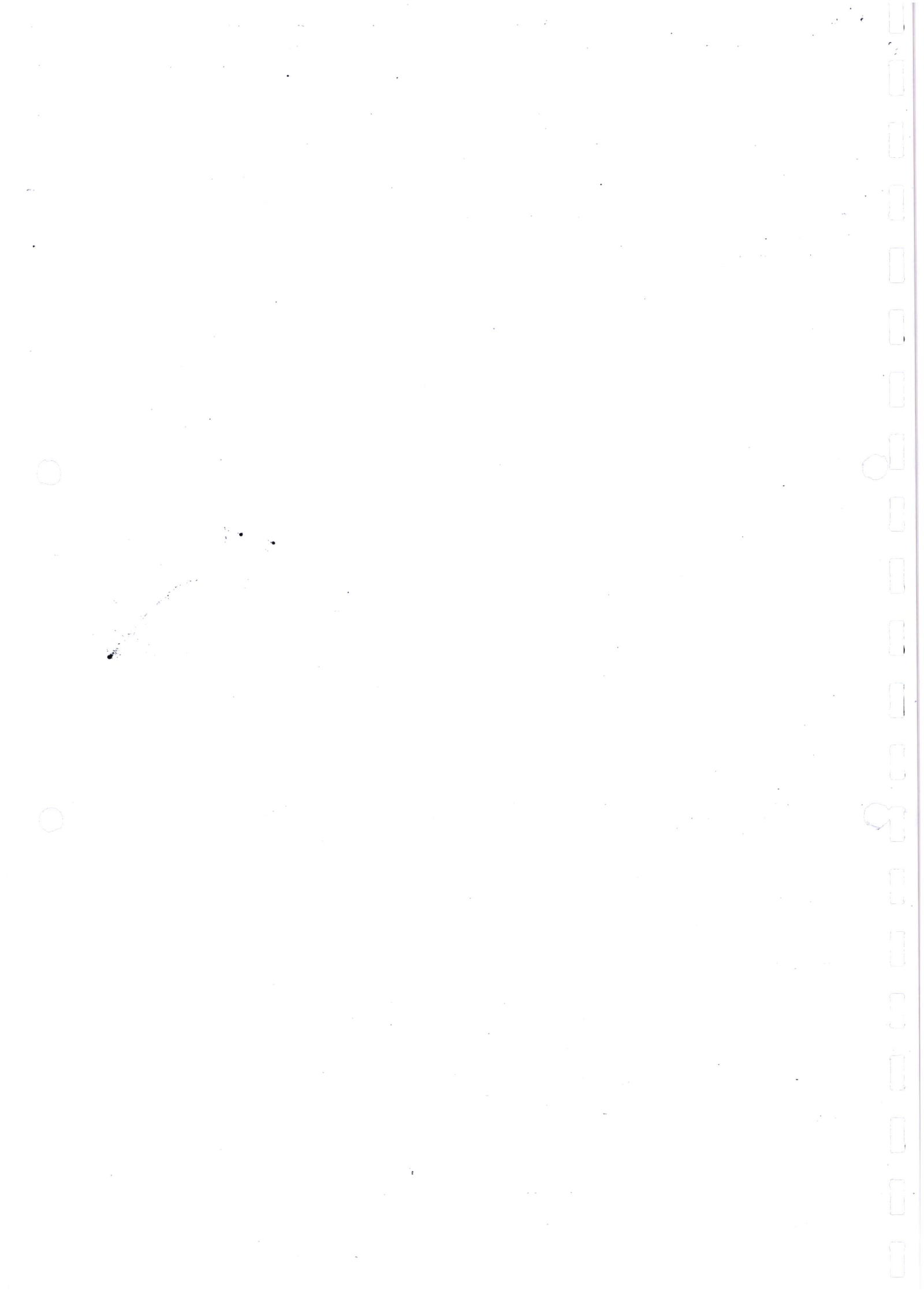
Desiring to facilitate the expansion of international air services opportunities;

Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.

Have agreed as follows:





Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of the Republic of Kenya, , the Cabinet Secretary in charge of civil aviation; in the case of the Government of the Kingdom of Cambodia the State Secretariat of Civil Aviation; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "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 Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- g) "ICAO" means the International Civil Aviation Organization;
- h) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;
- i) "Party" is a State which has formally agreed to be bound by this agreement;
- j) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- k) "territory" in relation to a State [means the land areas and territorial waters adjacent thereto and the airspace above them under the sovereignty of that State] has the meaning assigned to it in Article 2 of the Convention;
- l) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security



facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and

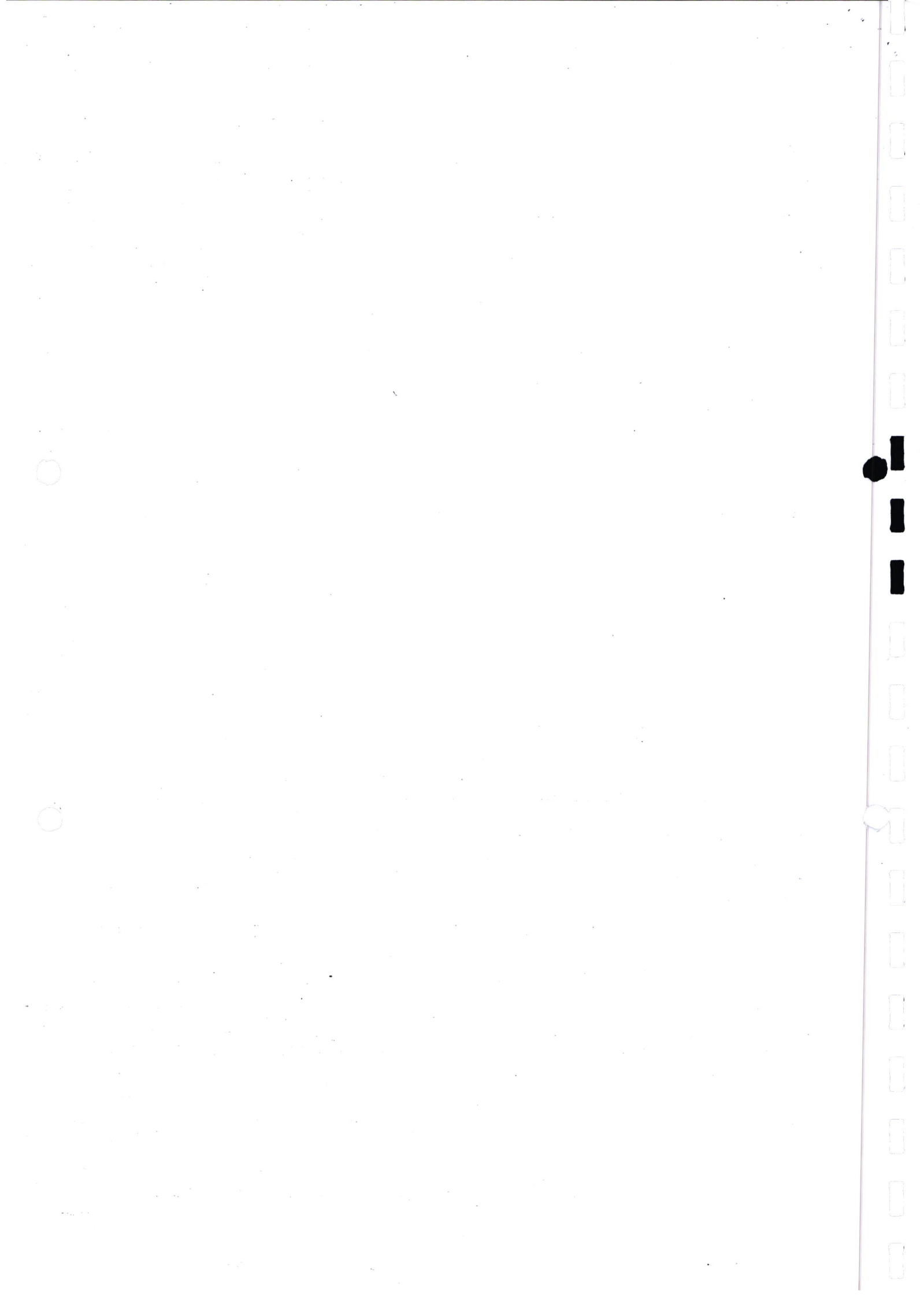
m) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention.

Article 2 Grant of rights

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:
 - a) the right to fly without landing across the territory of the other Party;
 - b) the right to make stops in the territory of the other Party for non-traffic purposes; and
 - c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail separately or in combination.
3. The airlines of each Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.
4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Party.

Article 3 Designation and authorization

1. Each Party shall have the right to designate in writing to the other Party one or more airline(s) to operate the agreed services in accordance with this Agreement. Such designation shall be effected by virtue of written notification through diplomatic channels.
2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:





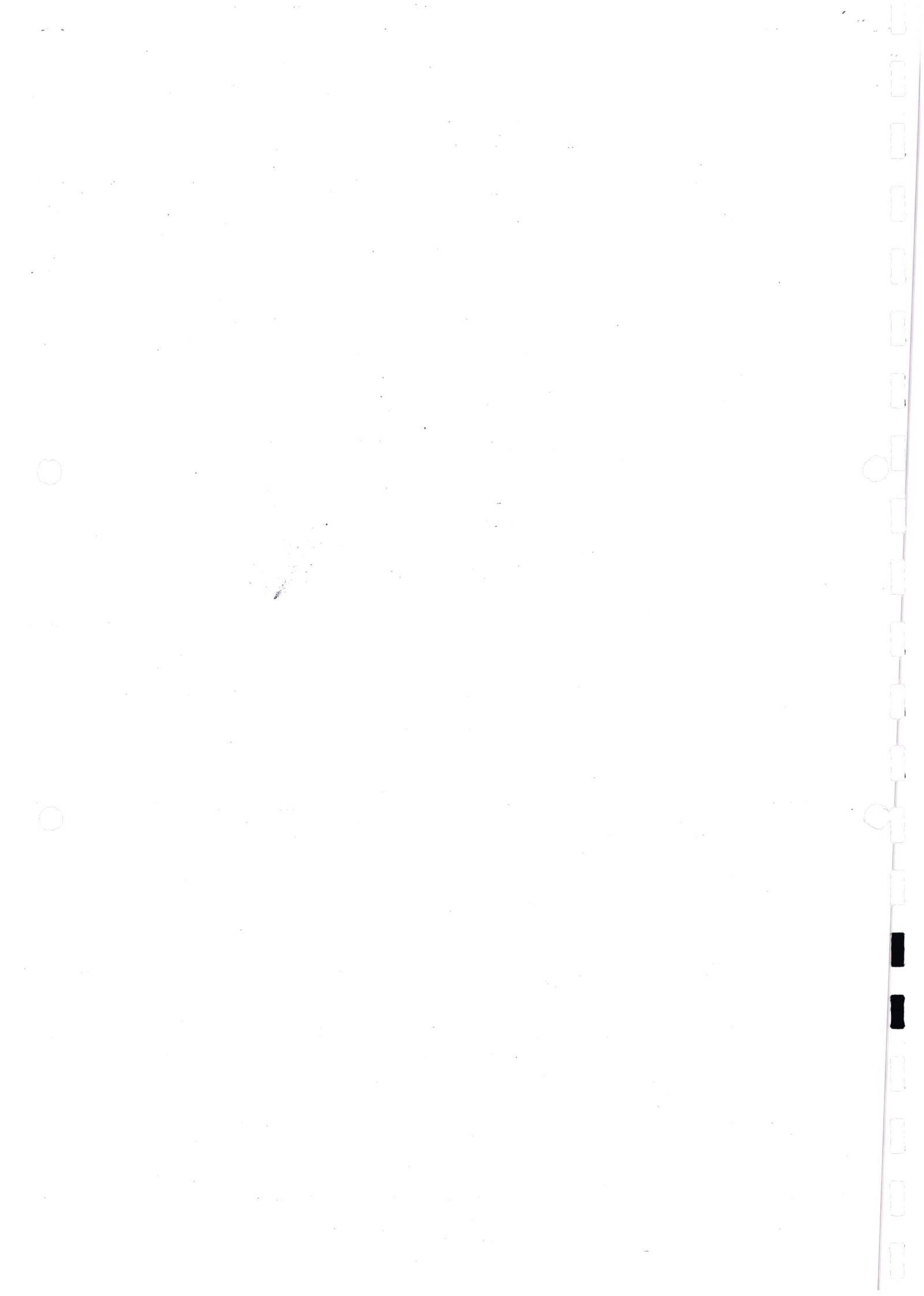
- a) substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;
 - b) the Party designating the airline is in compliance with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
 - c) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.
3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

Article 4 Revocation and suspension of authorization

1. The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:
- a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;
 - b) in the event of failure of the Party designating the airline to comply with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
 - c) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.
2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 8 or 9, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 20 Consultations, of this Agreement.

Article 5 Application of laws

1. The laws and regulations of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party.





2. The laws and regulations of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.

3. Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

Article 6 Direct transit

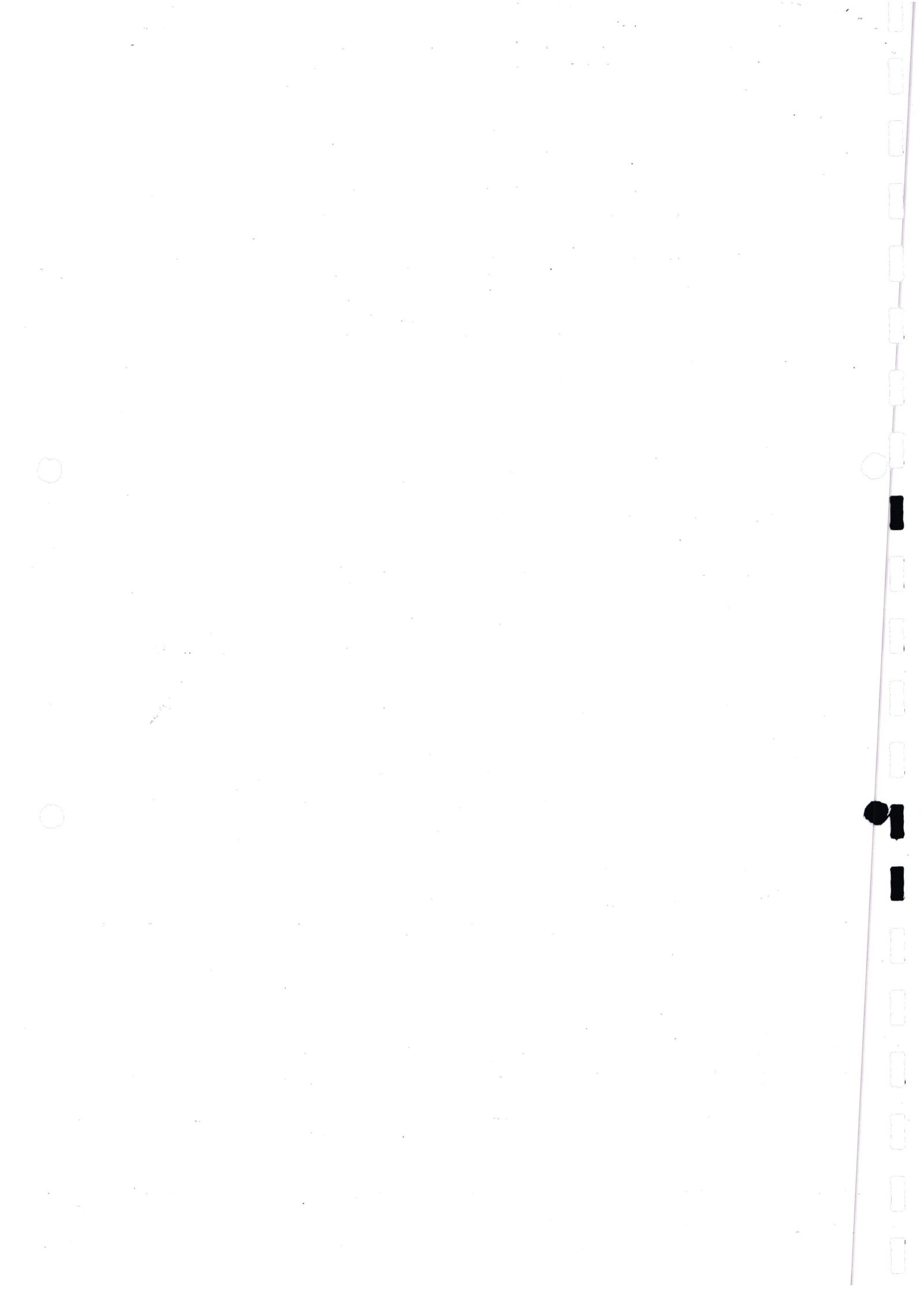
Passengers, baggage, and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.

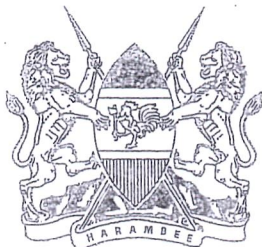
Article 7 Recognition of certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party and still in force shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.

2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.

3. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.





Article 8 Safety

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.
2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention*, the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.
3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.
4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party.
5. Any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.
6. With reference to paragraph 2, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

Article 9 Aviation security

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well



as with any other convention and protocol relating to the security of civil aviation which both Parties adhere to.

2. The Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request immediate consultations with the other Party at any time to discuss any such differences.

4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time.

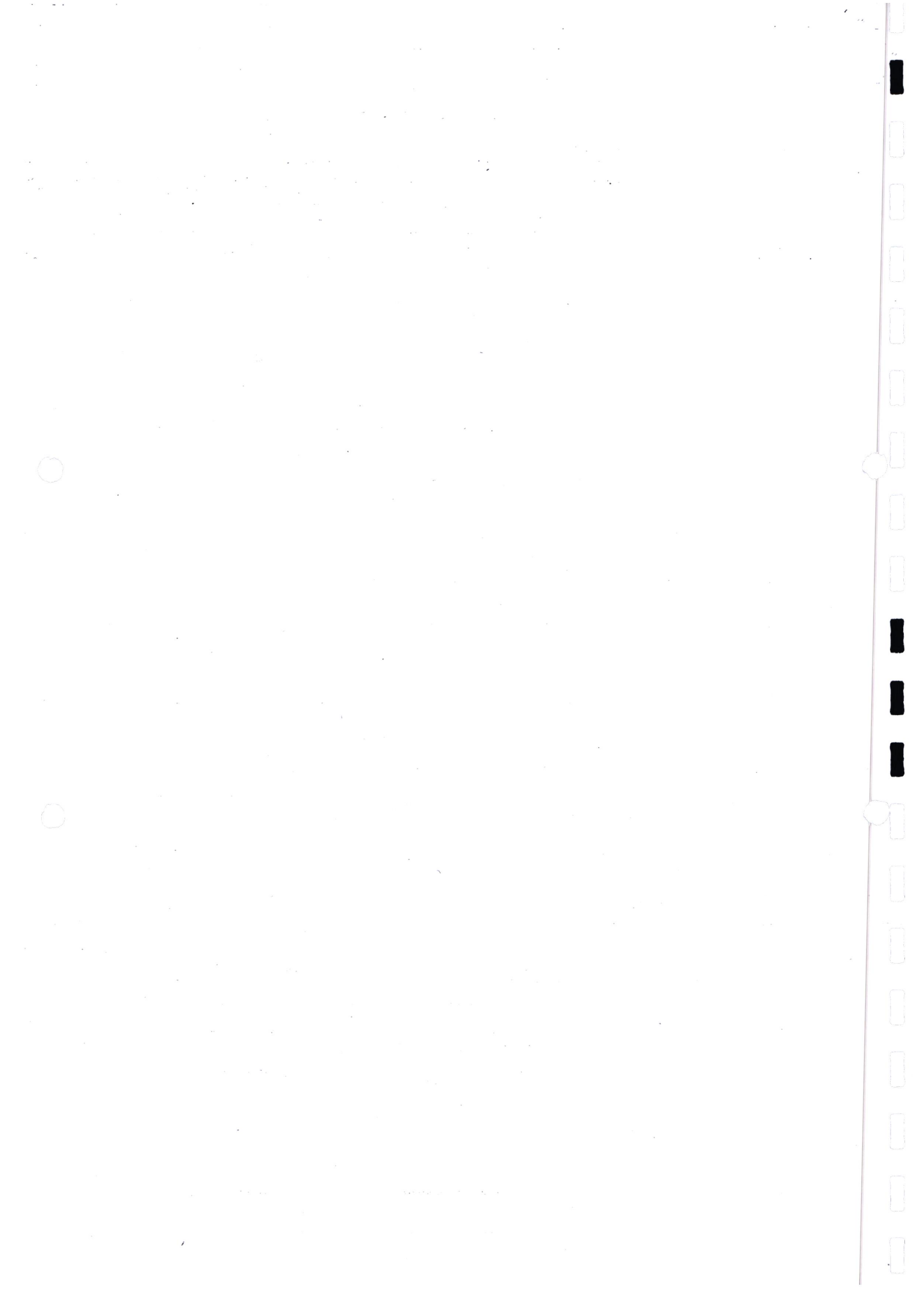


Article 10 User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.
2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.
3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 21 Settlement of Disputes, to be in breach of a provision of this Article, unless:
 - a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or
 - b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.
5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of the other Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.

Article 11 Duties, Taxes and Fees

1. Each Party shall, subject to the National Laws and Regulations, exempt a designated airlines of the other Contracting Party to the fullest extent possible under its national laws, rules and regulations from





import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

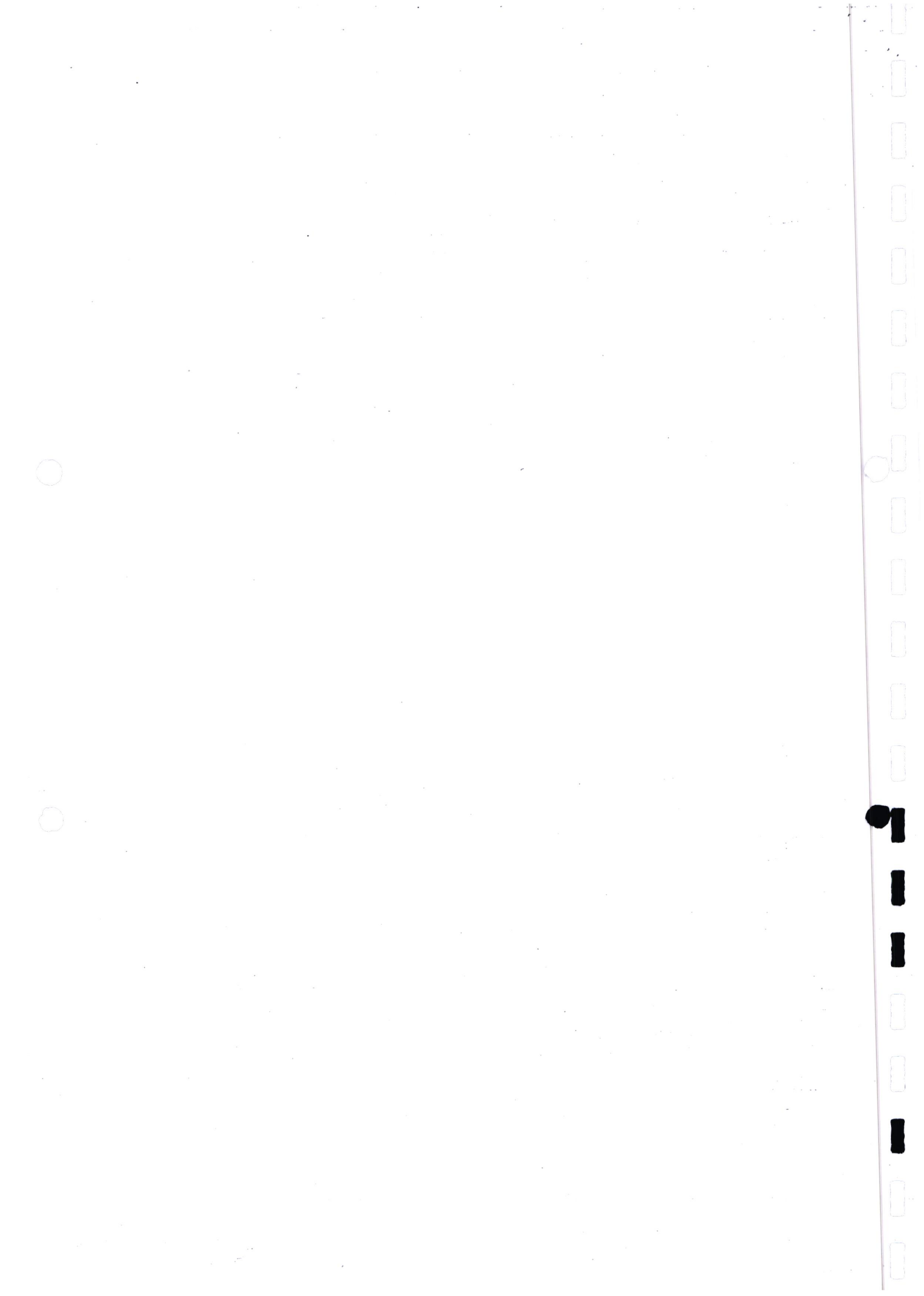
2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:
 - a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of the other Contracting Party provide that such items may be required to be kept under customs supervision or control;
 - b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of the other Contracting Party; or
 - c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

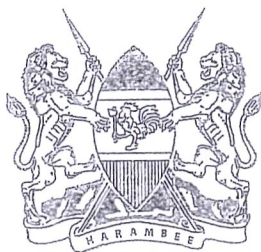
whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, 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 12 Fair competition

1. Each Contracting Party agrees:
 - a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and
 - b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party.
2. Each Contracting Party shall allow each designated airline(s) to determine the frequency and capacity of the international air service it offers, as well as the traffic demand for the air services, based on commercial considerations of the marketplace.





3. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons, consistent with Article 15 of the Convention.

4. Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air services provided for under this Agreement. Intervention by the Contracting Parties shall be limited to;

- a) Prevention of unreasonably discriminatory prices or practices;
- b) Protection of consumers from prices that is unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practice among airlines.
- c) Protection of airlines from prices that are artificially low due to direct or indirect subsidy or support;
- d) Protection of airlines from prices that is artificially low, where evidence exists as to an intent to eliminate competition.

Article 13 Establishment of Tariffs

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.
2. Each Contracting Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Contracting Party. Such notification or filing by the airlines of both Contracting Parties may be required to be made no later than the initial offering of a price.
3. Neither contracting party shall allow its designated airline, in the establishment of tariffs, either in conjunction with any other airline, to abuse market power in a way which has or is likely or intended to have the effect of severely weakening a competitor, being a designated airline of other contracting party, or excluding such a competitor from a route.
4. Without prejudice to the provisions of paragraph (3) of this Article, the aeronautical authorities of either Contracting Party may expressly disapprove tariff submitted by the designated airlines of the other Contracting Party, where such aeronautical authorities find that a tariff proposed to be charged by such





airlines falls within the categories set forth in Article 12 paragraph 4.a), 4.b),4.c) or 4.d). In such event, the concerned aeronautical authority

- a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and
 - b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.
5. The aeronautical authorities of each Contracting Party may request consultations with the aeronautical authorities of the other Contracting Party on any tariff charged by an airline of the other Contracting Party for international air services to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.

Article 14

Currency conversion and remittance of earnings

Each Party shall permit airline(s) of the other Party to convert and transmit freely abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.

Article 15

Sale and marketing of air service products

1. Each Party shall accord airlines of the other Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the airline's choice, including the right to establish offices, both on-line and off-line.
2. Each airline shall have the right to sell air transport services in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.





Article 16 Code sharing/Cooperative arrangements

1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or code sharing arrangements, with:

- a) an airline or airlines of either Party; and
- b) an airline or airlines of a third country.

provided that all airlines in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to code shared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

- a) orally and, if possible, in writing at the time of booking;
- b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and
- c) orally again, by the airline's ground staff at all stages of the journey.

3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Parties at least 30 days before its proposed introduction.

Article 17 Statistics

The aeronautical authorities of each Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Party.



Article 18 Approval of schedules

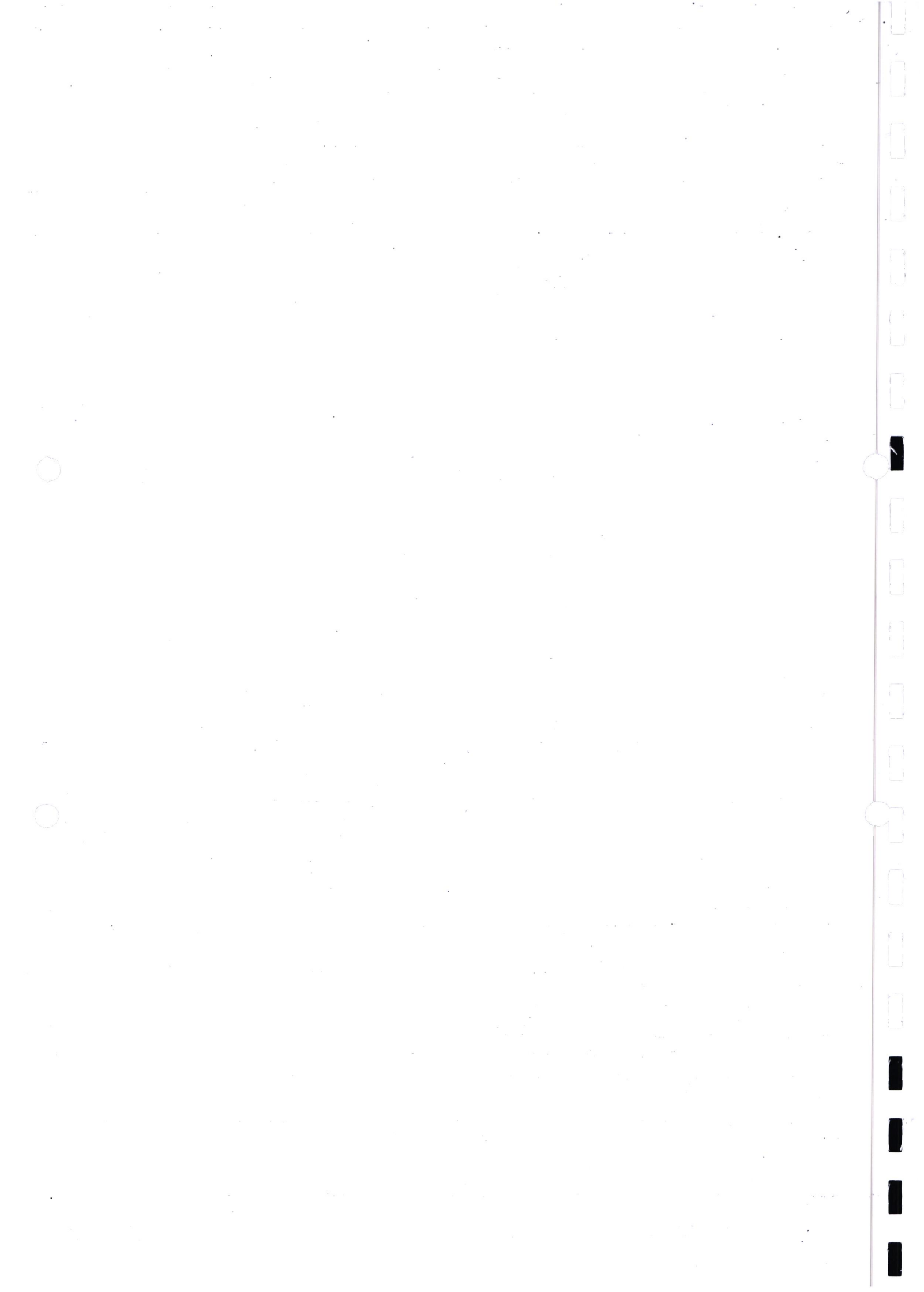
1. The designated airline of each Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.
2. For supplementary flights which the designated airline of one Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Party.

Article 19 Consultations

In the spirit of close cooperation, the aeronautical authorities of the 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.

Article 20 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 endeavor 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 International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the ~~place~~ of arbitration having regard to the ~~circumstances~~ of the case. The tribunal, once formed, may recommend





interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.

4. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.
6. Either Contracting Party or the Designated Airline of either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Contracting party in default hereof.

Article 21 Amendment

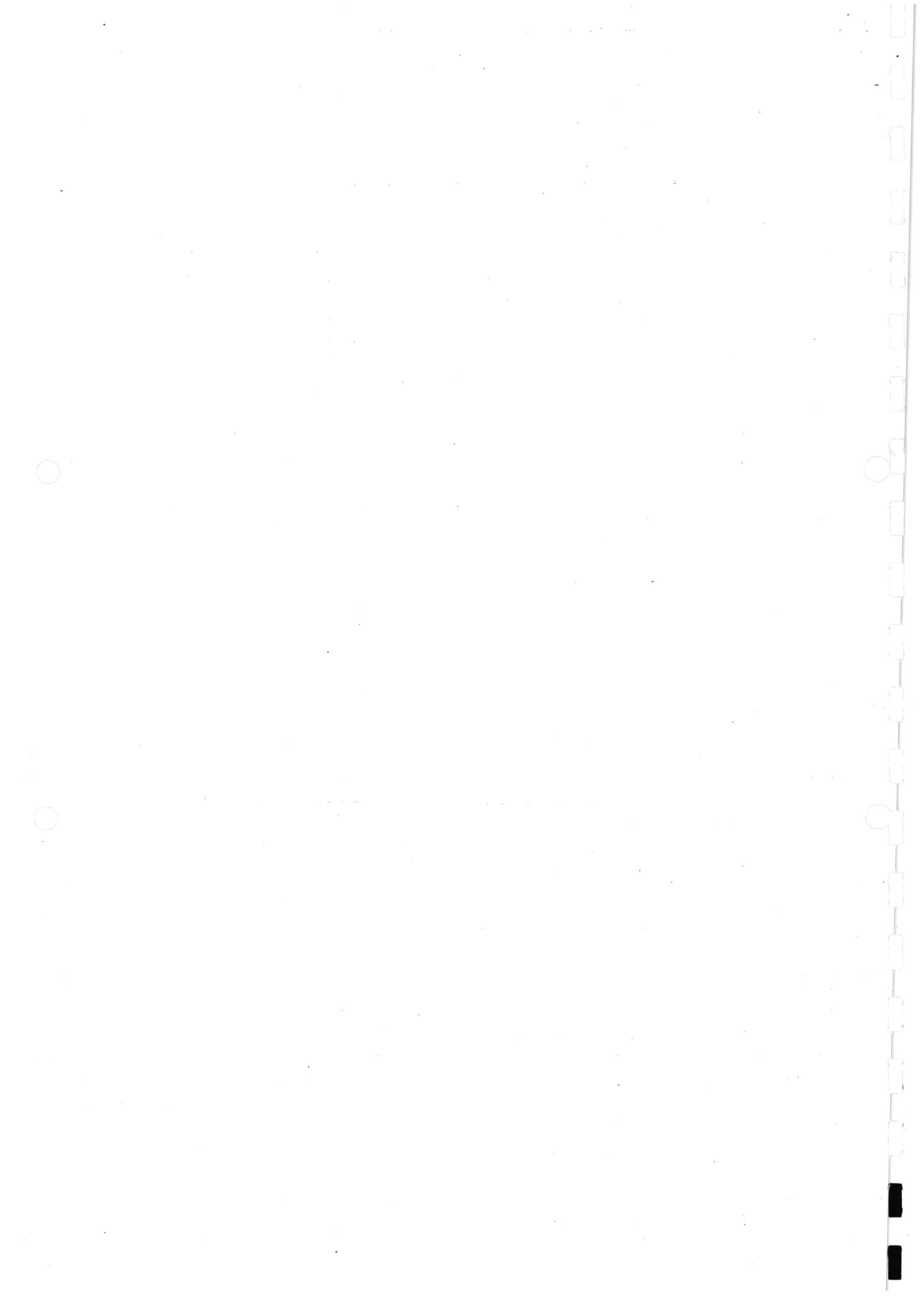
Any amendments of this Agreement agreed by the Parties shall come into effect when confirmed by an exchange of diplomatic notes.

Article 22 Multilateral agreements

If a multilateral agreement concerning air transport comes into force in respect of both Parties, the present Agreement shall be deemed to be amended so as to conform to the provisions of that multilateral agreement.

Article 23 Termination

Either Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Party, or any shorter period of time as may be agreed by both Parties, unless the notice is withdrawn by agreement before the end of the expiry period. In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.





Article 24
Registration with ICAO

This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by the Contracting Parties.

Article 25
Entry into force

This Agreement shall be applied provisionally from the date of its signature and shall enter into force as soon as the two Contracting Parties have notified each other by an exchange of diplomatic notes, that their respective constitutional procedures for the entry into force of this agreement have been completed.

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

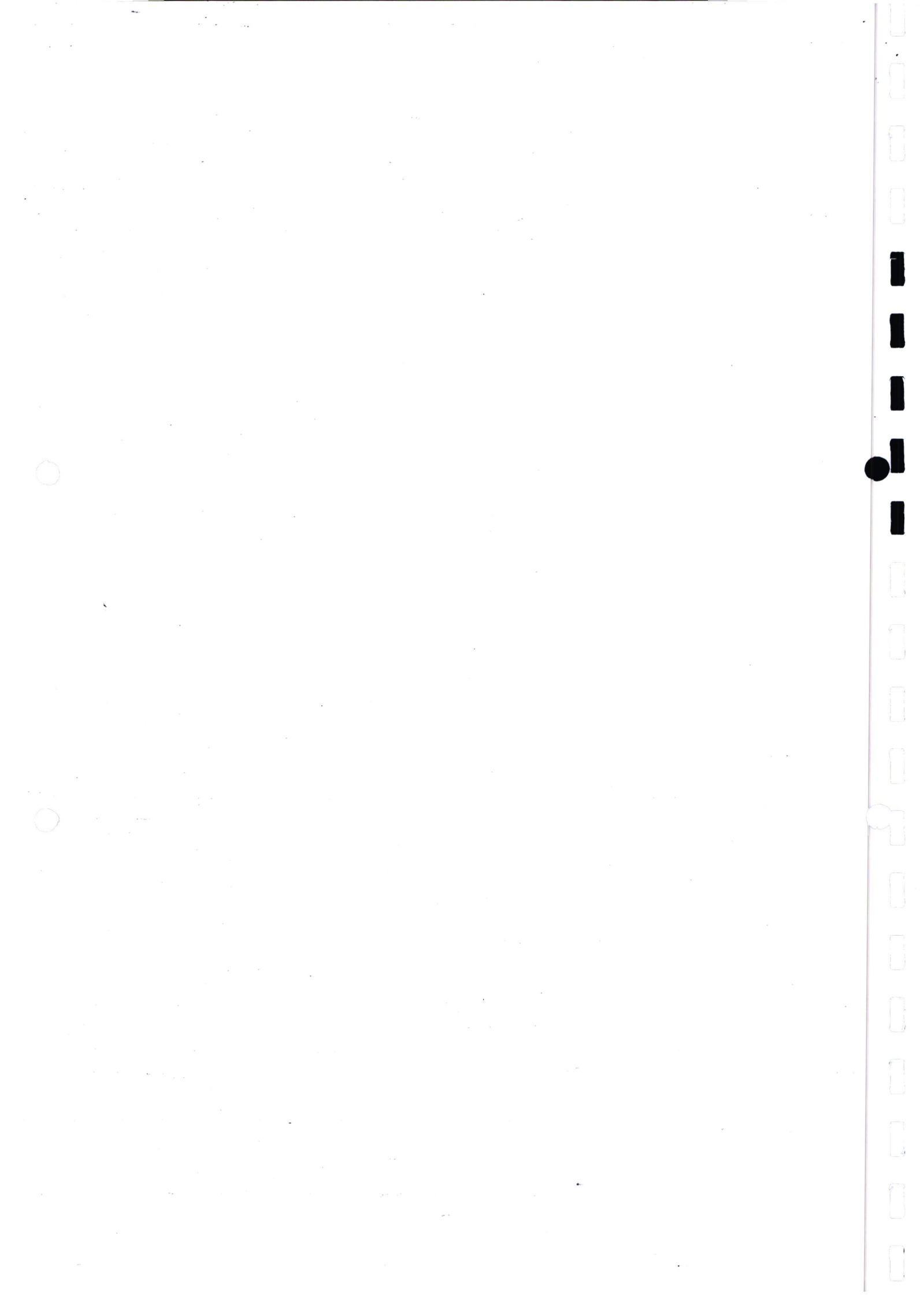
Done at Nairobi, this 10th Day of December 2018 in duplicate original copy in English language.

For the Government of the Republic of
Kenya

JAMES W. MACHARIA, EGH
Cabinet Secretary
Ministry of Transport,
Infrastructure, Housing, Urban
Development and Public Works

For the Government of the Kingdom of
Cambodia

MAO HAVANNALL
Minister in-charge of the State
Secretariat of Civil Aviation





Annex I Route schedules

Section 1

Airlines of each Contracting Party designated under this Agreement shall be entitled to provide air transportation between points on the following routes:

A. Routes to be operated by the designated airline (or airlines) of Cambodia:

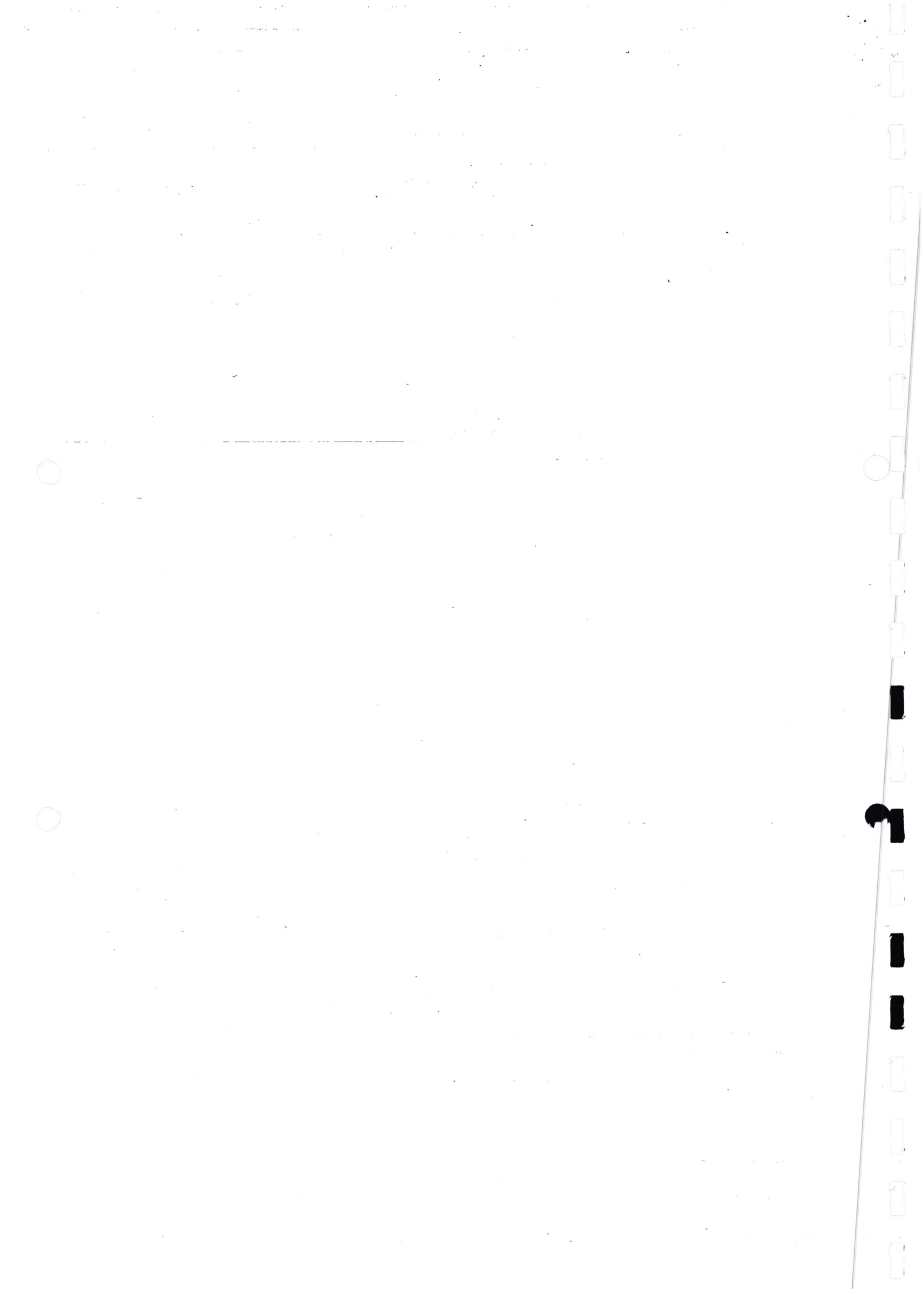
From: Any points in Cambodia; via any intermediate points; to: Any points in Kenya and Any beyond points.

B. Routes to be operated by the designated airline (or airlines) of Kenya:

From: Any points in Kenya; via any intermediate points; to: Any Points in Cambodia and Any beyond points.

Notes:

1. The routes may be operated in either direction.
2. The designated airlines of the Contracting Parties may on any or all flights:
 - (a) omit calling at any of the above mentioned points, provided that the agreed services on these routes begin at the point in the territory of the Contracting Party designating the airline;
 - (b) combine different flight numbers within the one aircraft operation;
 - (c) transfer traffic from any of its aircraft to any of its other aircraft at any point; and
 - (d) serve the intermediate points, beyond points and points in the territories of the Contracting Parties in any order.





AIR SERVICES

AGREEMENT

BETWEEN

THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF BURKINA
FASO

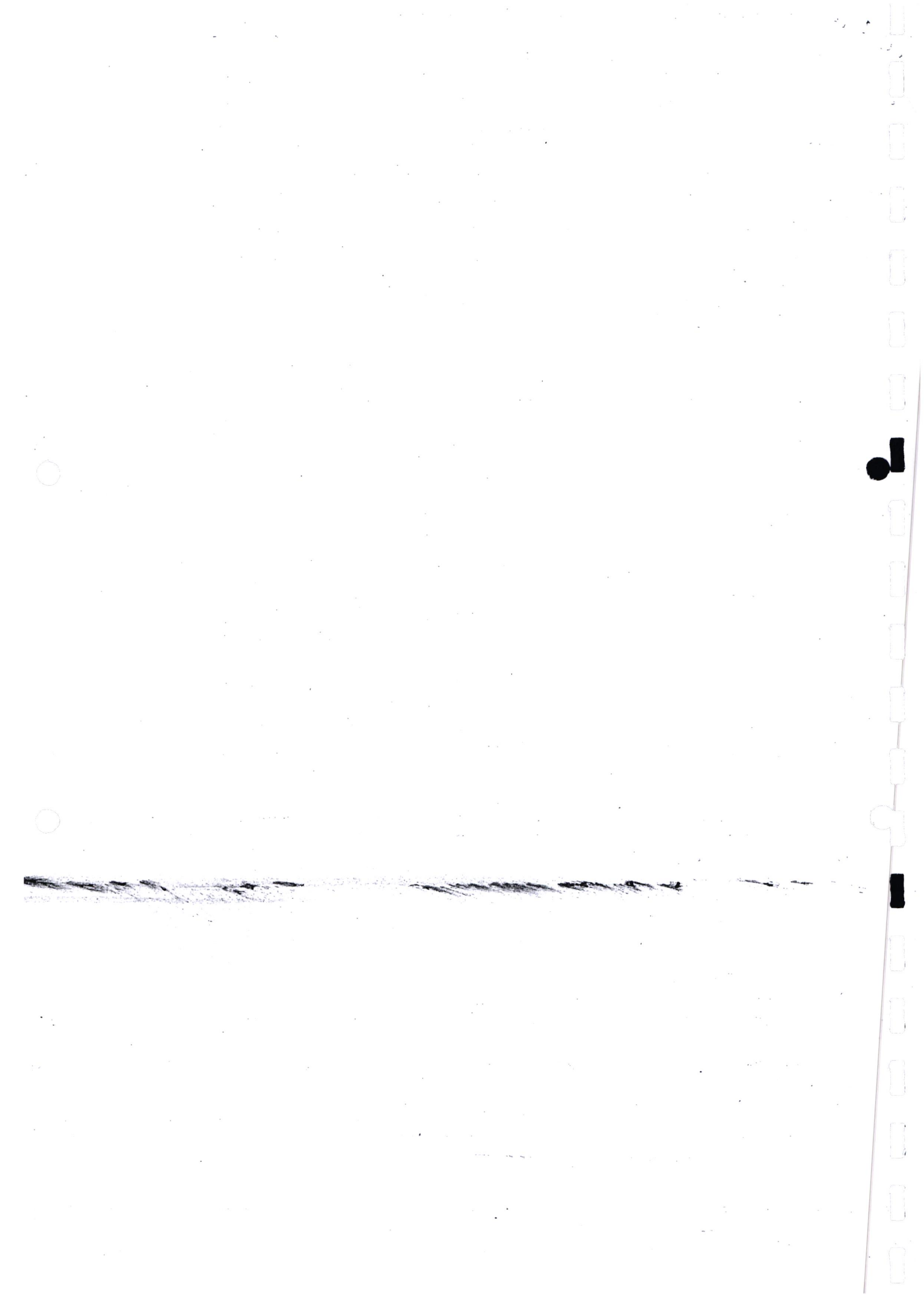
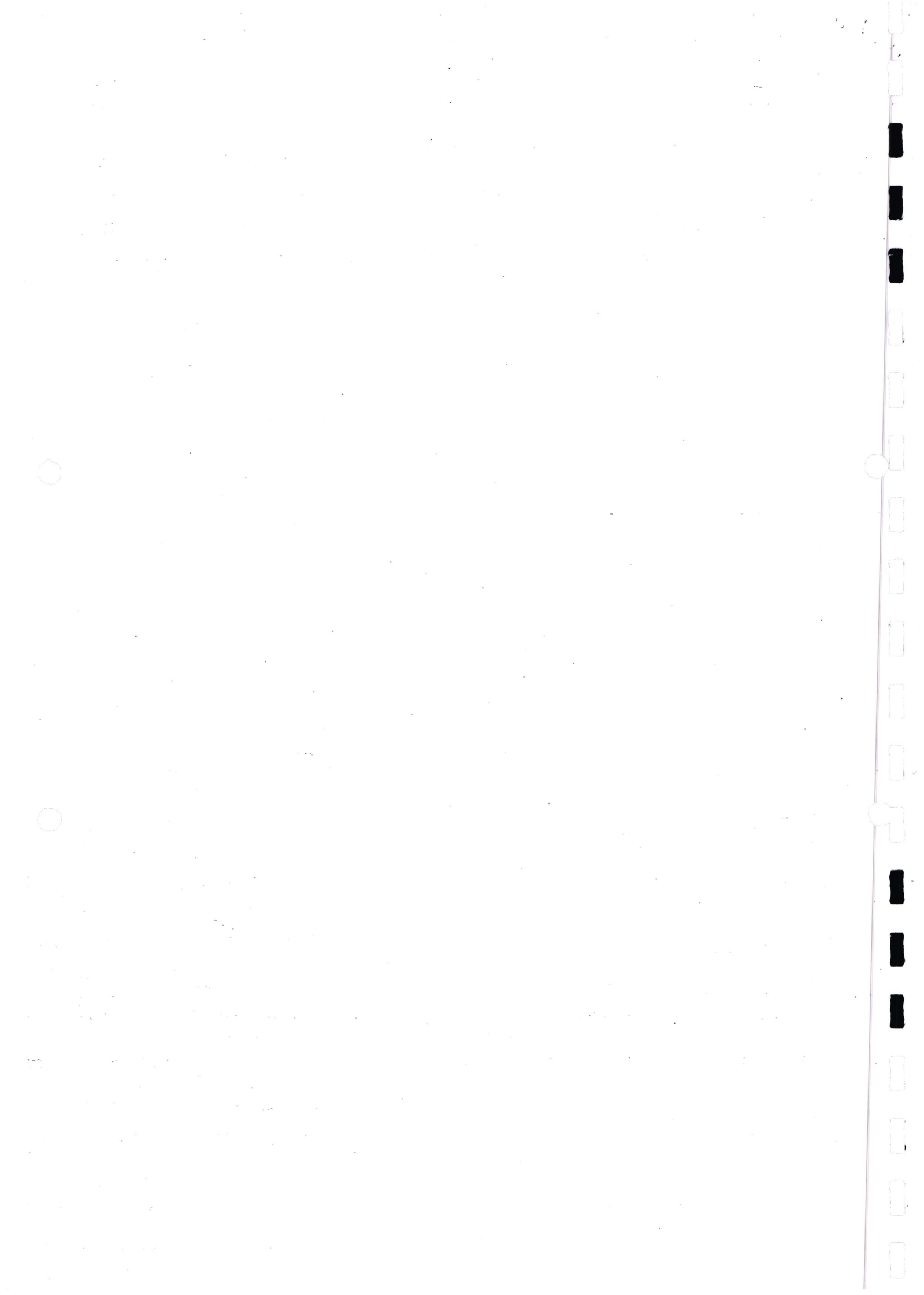




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PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF BURKINA FASO

Hereinafter referred to as "the Contracting Parties",

Being PARTIES to:

The Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December 1944;

The Yamoussoukro Declaration on a New African Air Transport Policy adopted on 7th October 1988;

The Yamoussoukro Decision relating to the implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa of 14th November, 1999 as endorsed by the OAU Heads of State in July 2000 and ;

Desiring to conclude an agreement for the purpose of establishing air services between and beyond their respective territories;

Have agreed as follows:



ARTICLE 1

DEFINITIONS

For the purpose of this Agreement and its Annexes, the following definitions shall apply unless otherwise indicated:

- a) **"Aeronautical Authorities"** means in the case of the Government of Burkina Faso, the Ministry in charge of Civil Aviation and in the case of the Government of the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation and/or, in both cases, any other person or body empowered to perform the functions now exercised by the above mentioned bodies;
- b) **"Agreed services"** means scheduled international air services on the routes specified on the Annex(es) to this Agreement for the transport of passengers, cargo and mail, separately or in any combination ;
- c) **"Agreement"** means this Agreement, its Annexes, and any amendments thereto ;
- d) **"Aircraft Equipment", "Air Supplies", Spare Parts"** have the same meanings ascribed to them in Annex 9 of the Convention ;
- e) **"Air Services", International Air Service", "Stop for non-traffic purposes"** have the meaning ascribed to them in Article 96 of the Convention ;
- f) **"Convention"** means the Convention on International Civil Aviation Organisation signed in Chicago on the 7th December 1944 including all the Annexes approved according to article 90 of the aforementioned Convention and any other amendment to this Convention or to its Annexes reached according to articles 90 and 94, in so far as, these amendments and Annexes were approved by the two Contracting Parties;



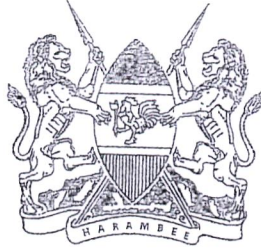


- g) "Decision" means the Decision relating to the Implementation of the Yamoussoukro Declaration concerning the liberalization of the access to Air Transport Markets in Africa;
- h) "Designated Airline" means an airline or airlines designated and Authorized in accordance with Article 3 of this Agreement;
- i) "Tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply including the prices and conditions for agency and other ancillary services but excluding remunerations and conditions for the carriage of mail ;
- j) "Territory" has the same meaning as ascribed to it in Article 2 of the Convention.

ARTICLE 2

GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by a designated airline of the other Contracting Party;
 - (a) To fly without landing across the territory of the first Contracting Party;
 - (b) To make stops in the said territory for non traffic purposes and;
 - (c) to make stops in the said territory for the purpose of embarking and disembarking, while operating the agreed services, international traffic in passengers, cargo and mail, separately or in combination.



2. Nothing in paragraph 1 of this Article shall be deemed to confer on a designated airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

ARTICLE 3

DESIGNATION AND AUTHORISATION

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines to operate the agreed services and to withdraw or alter such designations.
2. Each Contracting Party may also designate an airline from a third state to operate air services on its behalf in accordance with Article 6 of the Yamoussoukro Decision.
3. Each Contracting Party shall have the right to designate a multinational company as it designated airline to exploit the agreed services in accordance with the provisions of Articles 77 and 79 of the Chicago Convention.
4. On receipt of such designation and subject to the provisions of Article 4 of this Agreement, the aeronautical authorities of the other Contracting Party shall grant without delay to an airline so designated the appropriate authorizations for the agreed services for which that airline has been designated.
5. Upon receipt of such authorizations the airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the applicable provisions of this Agreement.



ARTICLE 4

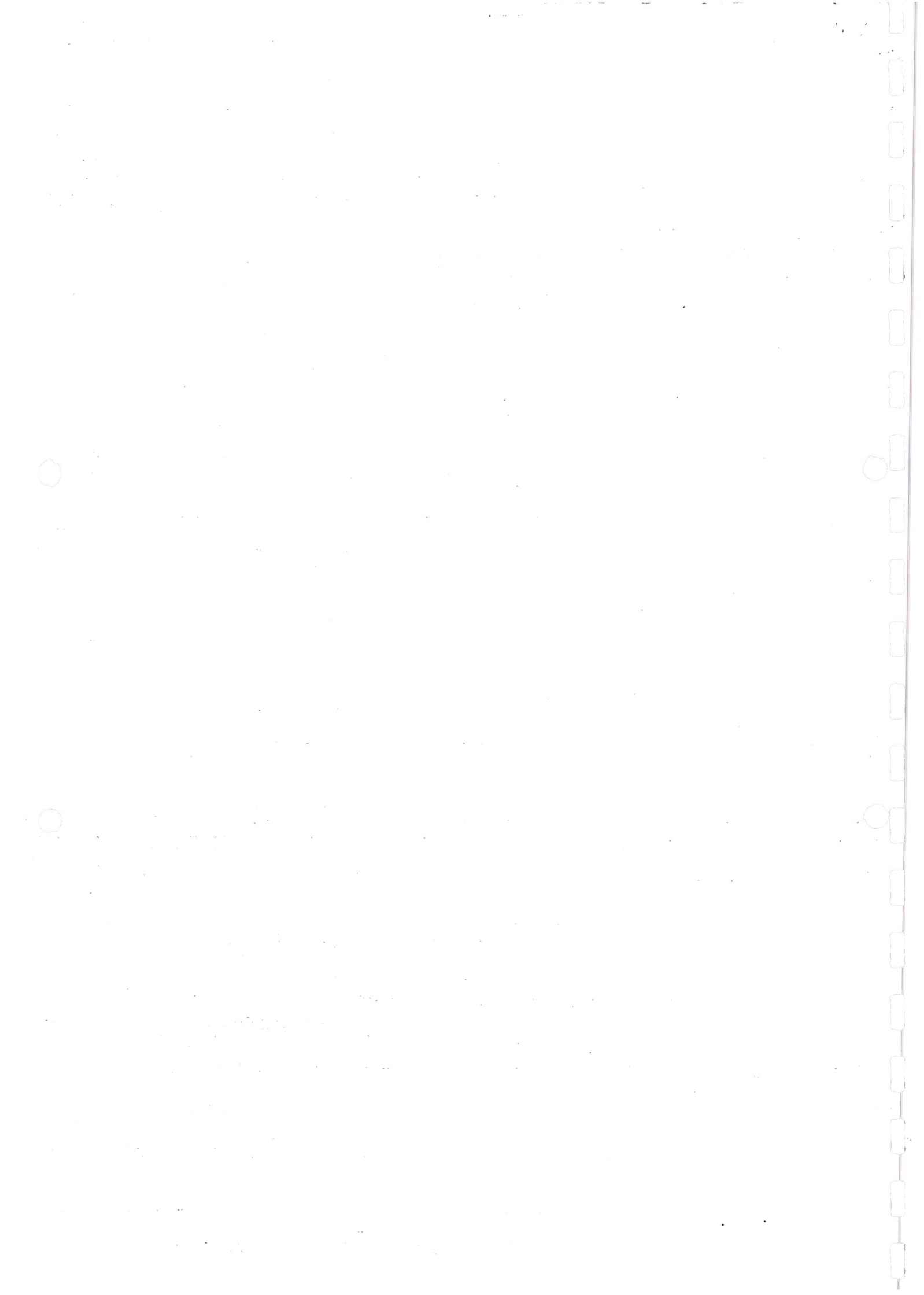
APPROVAL OF SCHEDULES

1. The designated airline of either Contracting Party shall, at least 30 days prior to the date of operation of any agreed service, submit its proposed timetable to the Aeronautical Authorities of the other Contracting Party for their approval. Such timetables shall include all relevant information, including the type of service and aircraft to be used and the flight schedules.
2. If either designated airline wishes to operate supplementary or additional flights besides those covered in the approved timetable, it shall first notify the Aeronautical Authorities of the Contracting Party concerned.
3. Subject to the terms of the current article, no schedule will come into force if it is not approved by the Aeronautical Authorities of each Contracting Party.
4. The schedule approved for the season according to the terms of this article, will remain in force for the corresponding season until further approval of new programmes.

ARTICLE 5

REVOCATION, SUSPENSION AND LIMITATION OF AUTHORISATION

1. The Aeronautical Authorities of each Contracting Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by other Contracting Party to revoke or suspend such authorizations or impose conditions, temporarily or permanently :





- (a) in the event of failure by such airline to qualify before the Aeronautical Authorities of that Contracting Party under the laws, regulations and rules normally and reasonably applied by these authorities in conformity with the Convention ;
 - (b) in the event of failure by such airline to comply with the laws, regulations and rules of that Contracting Party ;
 - (c) in the event that they are not satisfied that the airline is incorporated in and has its principal place of business in the territory of the other Contracting Party and holds a current Air Operators Certificate issued by the Aeronautical Authority of the other Contracting Party ;
 - (d) in the event that they are not satisfied that the airline is eligible in accordance with article 6.9 of the Yamoussoukro Decision ;
 - (e) in the event that the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
2. Unless immediate action is essential to prevent further infringement of the laws, regulations and rules referred to above, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations with the Aeronautical Authorities of the other Contracting Party in conformity with Article 16 of this Agreement.

ARTICLE 6

APPLICABILITY OF LAWS, REGULATIONS AND RULES

1. The laws, regulations and rules of one Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation of such aircraft shall



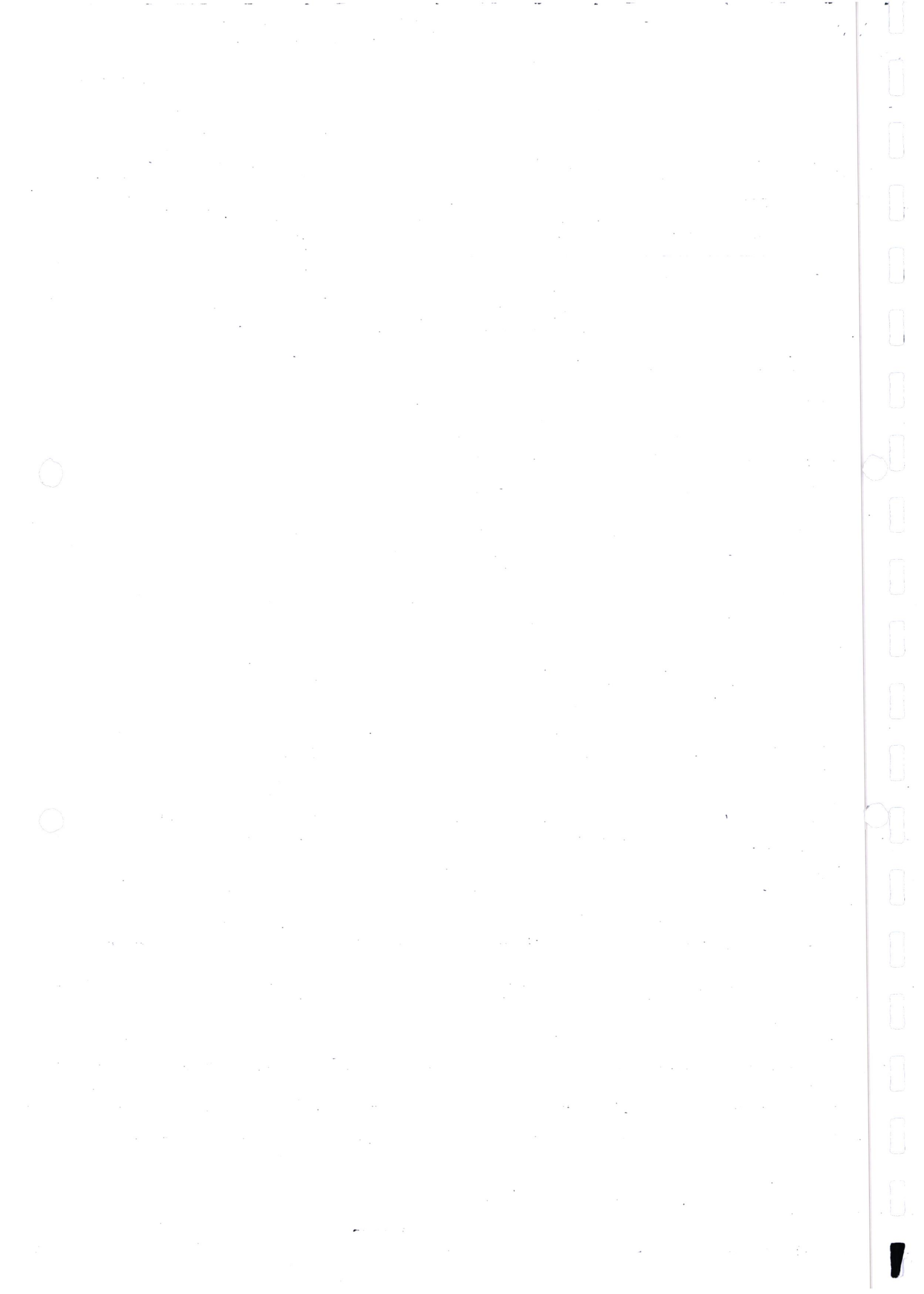
be complied with by a designated airline of the other Contracting Party upon entrance into, departure from and while within the said territory.

2. The laws, regulations and rules of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by a designated airline of the other Contracting Party and by or on behalf of its crew, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.
3. Neither of the Contracting Parties shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air services in the application of its customs, immigration, quarantine and similar regulations.
4. Passengers, baggage and cargo in direct transit through the territory of either Contracting Party or not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances.
5. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 7

RECOGNITION OF CERTIFICATES AND LICENCES

1. Certificates of airworthiness, certificates of competency and licenses, issued or validated 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 provided that such certificate or licenses were issued or validated pursuant to, and in conformity with, the standards established under the Convention.





2. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights over or landing within its own territory certificates of competency and licenses granted to its own nationals by the other Contracting Party.

ARTICLE 8

AVIATION SAFETY

1. Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft and operation of a designated airline.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are least equal to the minimum standards which may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards ; and the other Contracting Party shall take appropriate corrective action.
3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Contracting Party, on service to from the territory of another Contracting party, may, while within the territory of the other Contracting Party be the subject of a search by the authorized representatives of the other Contracting Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft



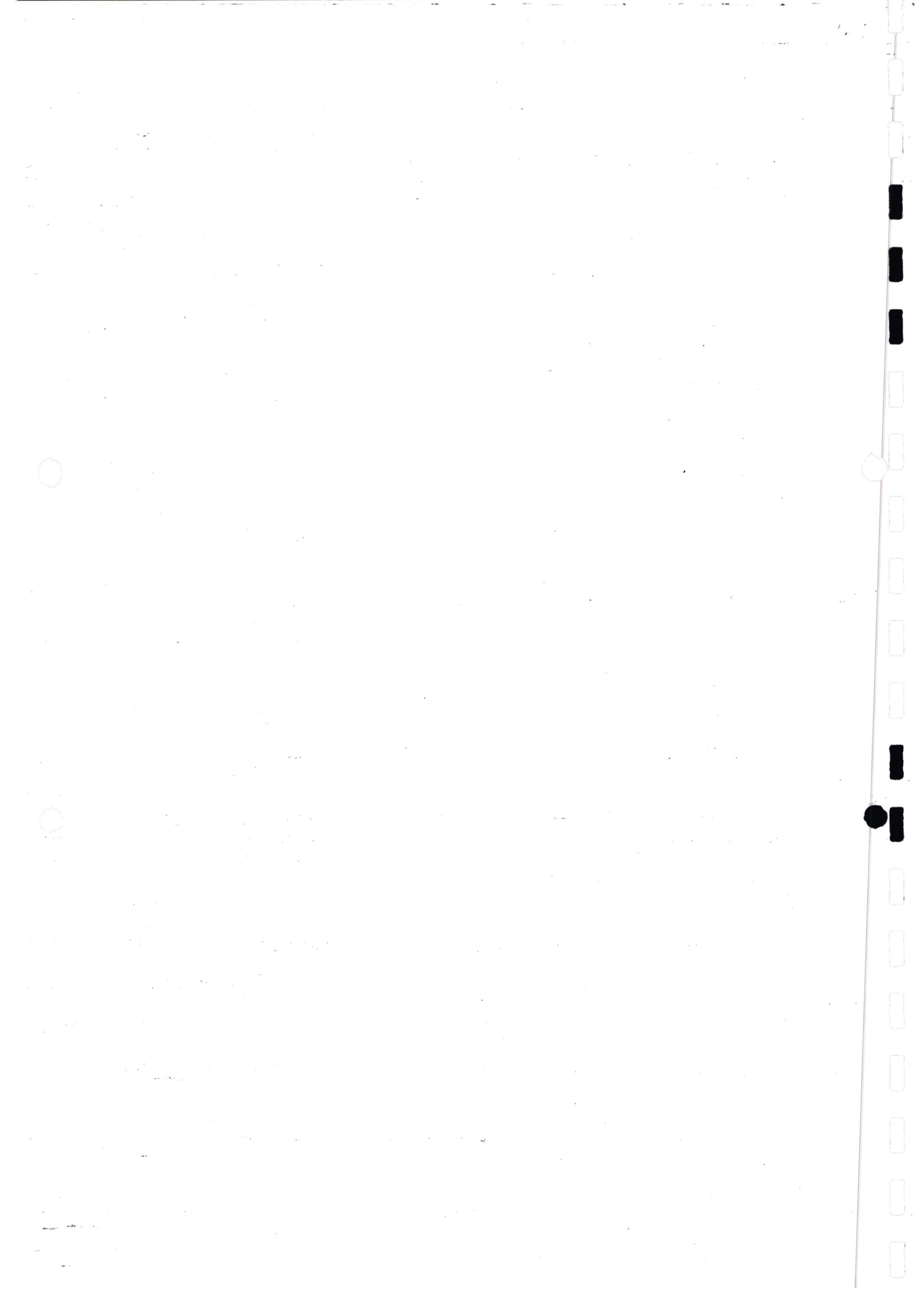
equipment and the condition of the aircraft conform to the standards established at that time pursuant to the Convention.

4. When urgent action is essential to ensure the safety of and airline operation, each Contracting Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Contracting Party.
5. Any action by one Contracting party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist;
6. With reference to paragraph 2, if it is determined that one Contracting party remains in non-compliance with ICAO standards, when the agreed time period has lapsed, the Secretary General of ICAO should be advised there of, the latter should also be advised of the subsequent satisfactory resolution of the situation.

ARTICLE 9

AVIATION SECURITY

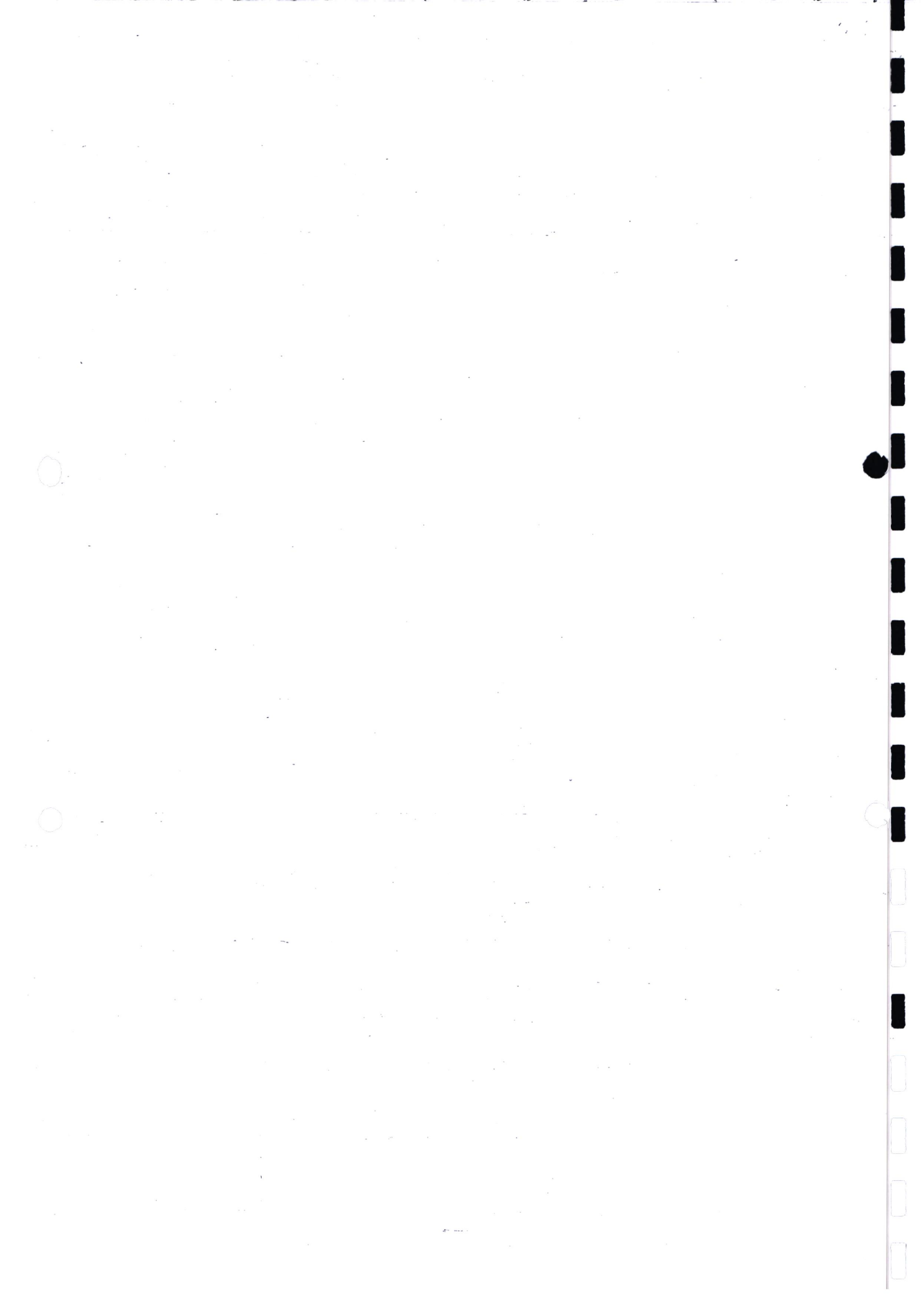
1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on September 23, 1971, and its Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation done at Montreal on February 24, 1988,





the Convention on the Marking of Plastic Explosives for the purposes of Detection signed at Montreal on the 1st of March 1991, and any other convention relating to aviation security to which the Contracting Parties shall become party.

2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.
3. The parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization to the extent that these standards apply to the two parties and designated Annexes to the Convention, they shall require that operators of aircraft of their registry, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provision.
4. Each Party agrees to observe the security provisions required by the other Party for entry into, for departure from, and while within the territory of that other Party and to take adequate measures to protect aircraft and to inspect passengers, crew and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special security measures to meet a particular threat.
5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.





6. When a Party has reasonable grounds to believe that other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permission of an airline or airlines of that Party. When required by an emergency, a party may take interim action prior to the expiry of 15 days.

ARTICLE 10

EXEMPTION FROM CUSTOMS DUTIES & OTHER CHARGES

1. Each Contracting Party shall on a basis of reciprocity exempt a designated airline of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco) and other products destined for sale to passengers in limited quantities during a flight and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.
2. The exemptions granted by this Article shall apply to those referred to in paragraph 1 of this Article:
 - (a) Introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party;



- (b) Retained on board aircraft of a designated airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- (c) Taken on board aircraft of a designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

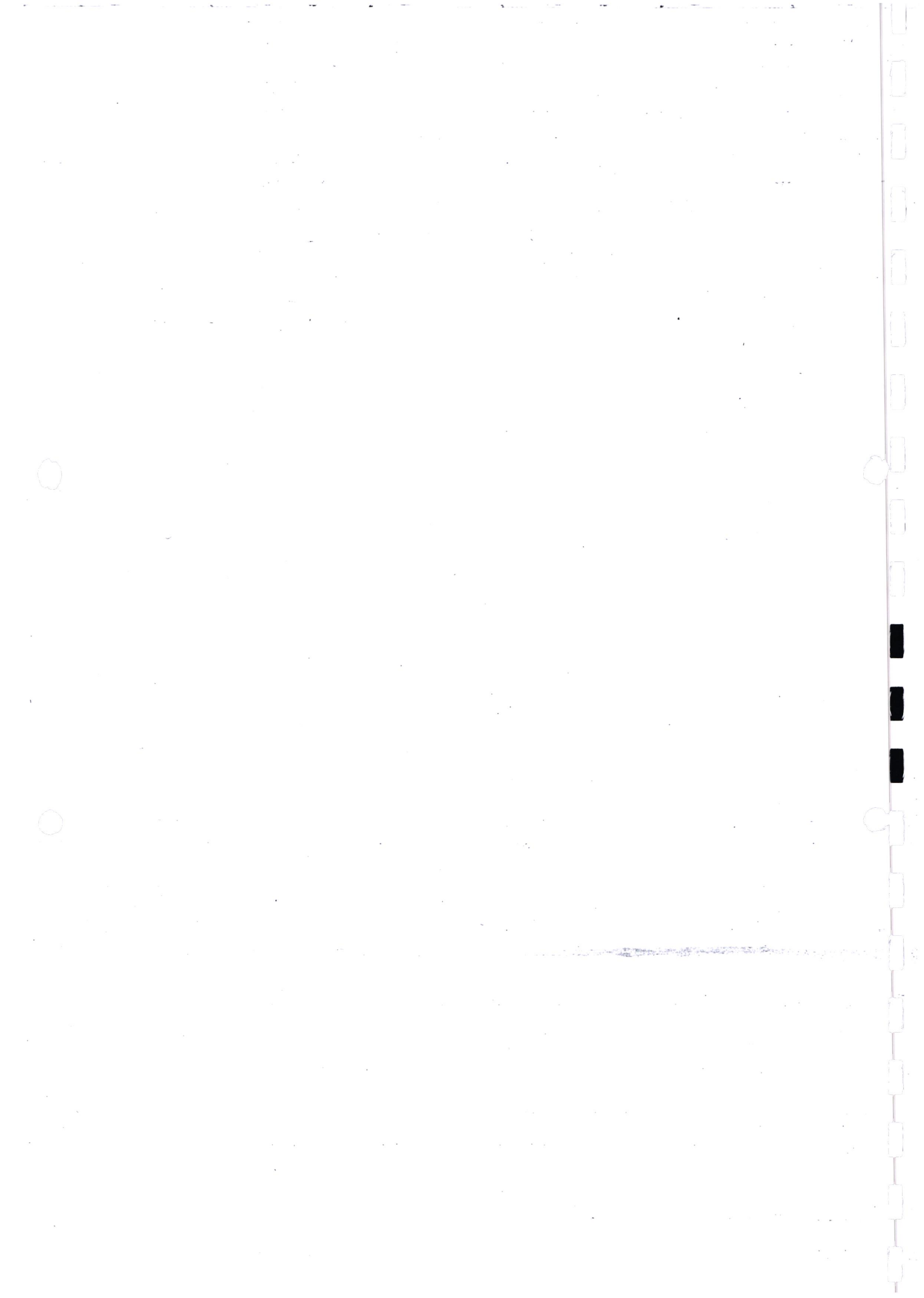
Whether or not such items are or consumed wholly within the territory of the Contracting Party granting the exemption provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline 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 such case, 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.
4. Each Contracting Party shall undertake to exempt the airline designated by the other Contracting Party from payment of any state or local community taxes on its revenues earned while operating international air services.

ARTICLE 11

FAIR COMPETITION

1. Each Party shall allow a fair and equal opportunity for the designated Airline(s) of both Parties to compete in providing the international air transportation covered by this Agreement.



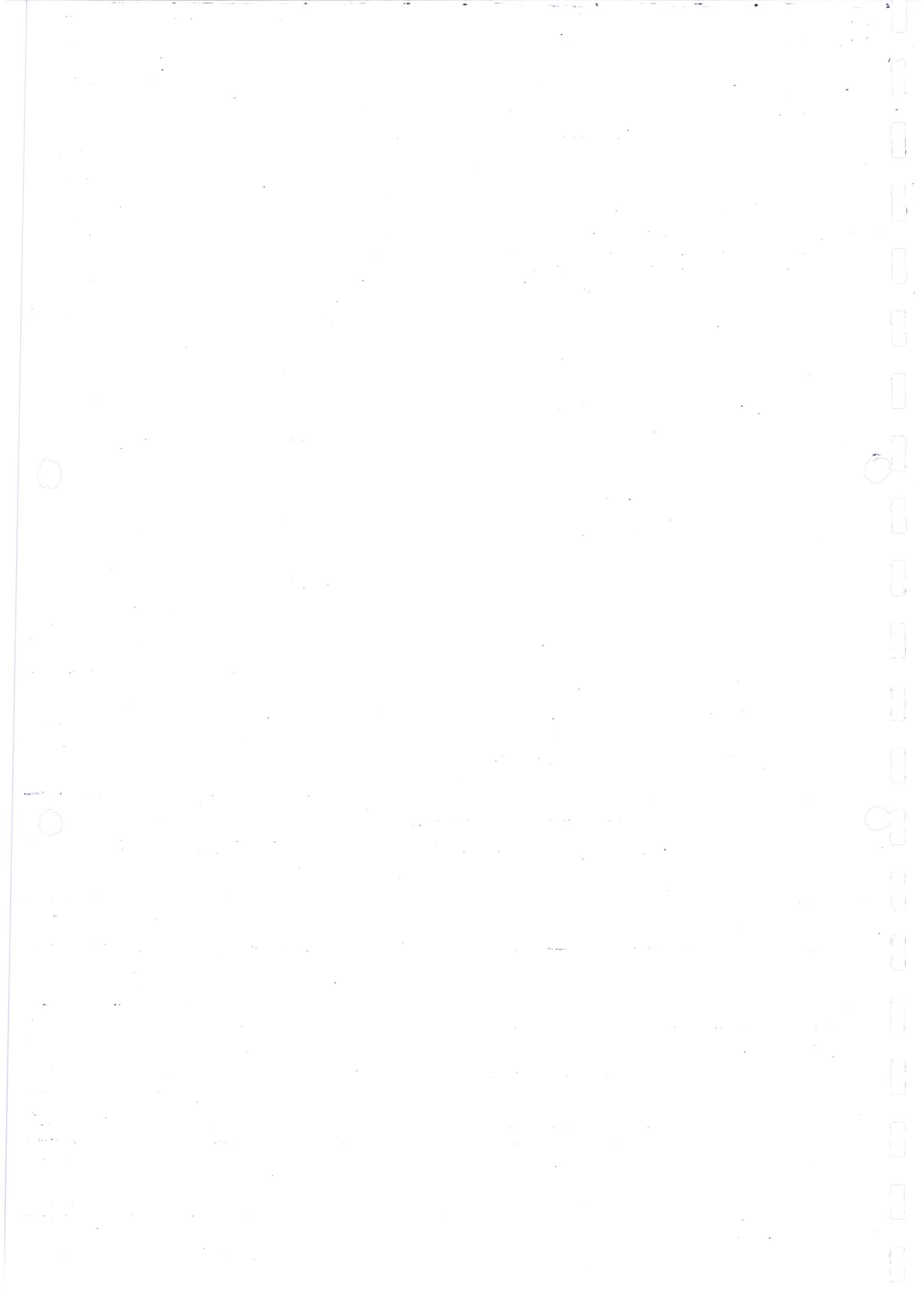


2. Each Party shall take appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the Airline(s) of the other party.
3. Neither Party shall unilaterally limit the volume of traffic frequency or regularity of service, or aircraft type or types operated by the designated Airline(s) of the other Party, in terms of this Agreement, except as may be required for customs, technical, operational or environment reasons under uniform conditions consistent with Article 15 of the Convention.
4. Either Party may require the filing of schedules, Programmes for Charter Flights or operational plans by airlines of the other Party for approval. Provided such a requirement may be on a non-discriminatory basis. If a Party requires filings it shall minimize the administrative burden of filing requirement and procedures on air transportation intermediaries and on designated airlines of the other party.
5. Any restrictions on the operations of the designated Airline(s) of the other Contracting Party shall be in accordance with the terms of this Agreement and its Annexes or by such applicable conditions of the Convention.

ARTICLE 12

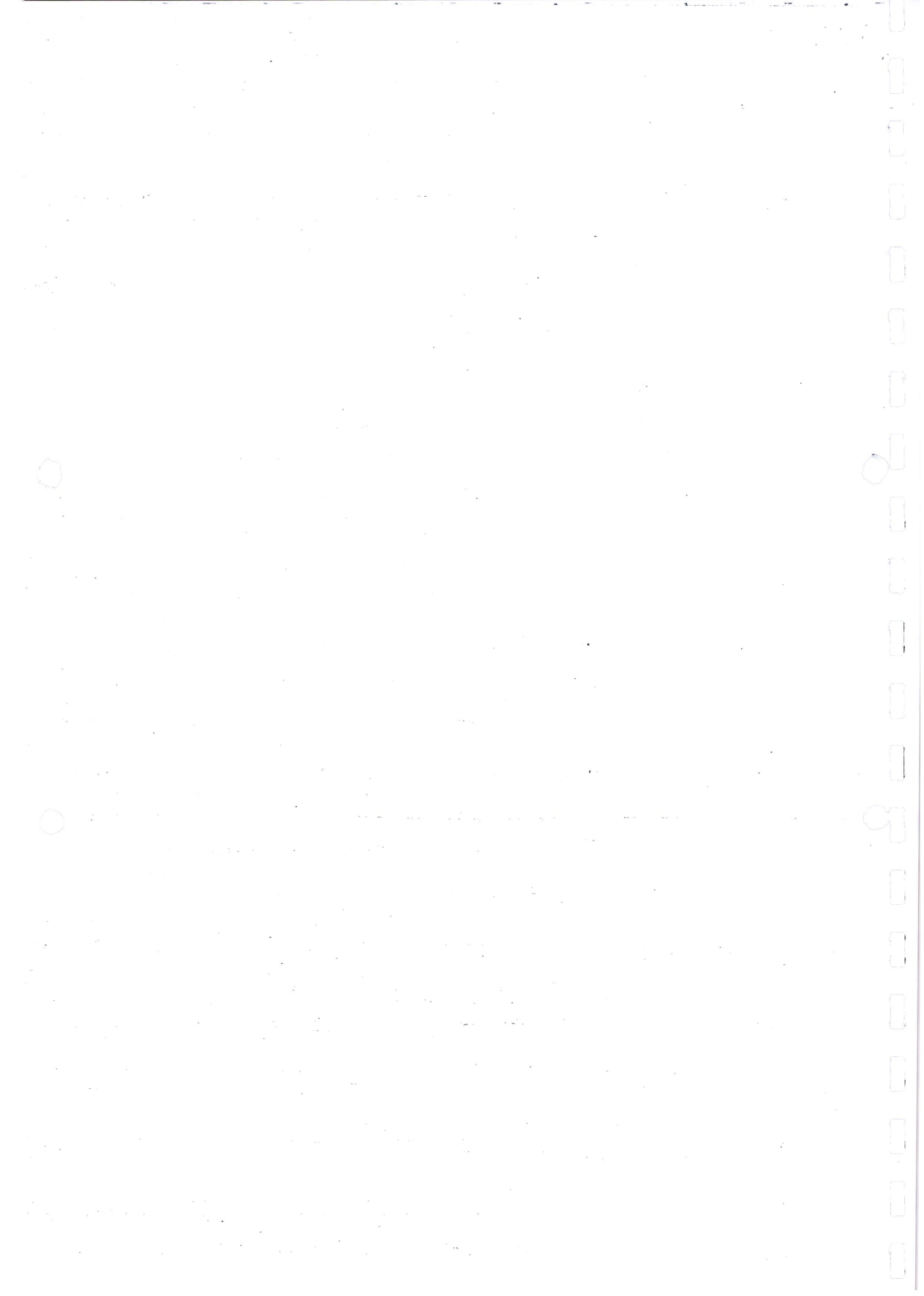
TARIFFS

1. The tariffs applicable between the territories of the two Contracting Parties shall be established at reasonable levels, due regard being paid to all relevant factors, including the cost of operation, the interests of users, reasonable profit, class of service and, when it is deemed appropriate, the tariffs of other airlines operating over whole or part of the routes specified in the Annex.





2. Each Party shall allow prices for air transport to be established by each designated airline based on commercial consideration in the marketplace. Intervention by the Parties shall be limited to:
 - (a) Prevention of unreasonably discriminatory prices or practices;
 - (b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
 - (c) Protection of airlines from prices that is artificially low due to direct or indirect government subsidy or support.
3. Each Party may require notification to or filing with its aeronautical authorities of prices to be charges to or from its territory by airlines of the other Party. Notification or filing by the airlines of both parties may be required not more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification nor filing by airlines of the other may Party of prices charged by chattering to the public, except as be required on a non-discriminatory basis for information purposes.
4. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged by (a) an airline of either Party for international air transport between the territories of the Parties (b) an airline of one Party for international air transport between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the consideration set forth in paragraph 1 of this article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in security information necessary for reasoned resolution of the issue.
5. If the parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each party shall use its best





efforts to put that agreement into effect. Without such agreement the price shall go into effect or continue in effect.

6. In case of tariff increase, there shall be no approval required by the aeronautical authorities of State Parties concerned for tariff to be charged by the designated airlines of State Parties for the carriage of passenger, cargo and mail. The airline shall in this case notify such tariffs before they enter into effect.

ARTICLE 13

AIRLINE REPRESENTATION

1. A designated airline of one Contracting Party shall be allowed, on the basis of reciprocity and subject to paragraph 3 of this article, to bring into and maintain in the territory of the other Contracting Party its representatives and commercial operational and technical staff as required in connection with the operation of the agreed services.
2. These staff requirements may, at the option of the designated airline, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Contracting Party as authorized to perform such services in the territory of that Contracting Party.
3. The representatives and staff referred to in paragraph 1 of this article shall be subject to the law and regulations of the other Contracting Party and, consistent with such law and regulations, each Contracting Party, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the said representatives and staff.



ARTICLE 14

COMMERCIAL OPPORTUNITIES AND TRANSFER OF FUNDS

1. Any designated airline of one Contracting Party shall have the right to engage in the sale of tickets in the territory of the other Contracting Party directly and, at its discretion, through its agents. Such designated airline shall have the right to sell tickets in the currency of that territory, or to the extent permitted by national law, in freely convertible currencies of other countries, and to the same extent any person shall be free to purchase such tickets in currencies accepted for sale by that airline.
2. Each Contracting Party grants to any designated airline of the other Contracting Party the right of free transfer, at the official rate of exchange, of the excess of revenues over expenditure and taxes earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, cargo and mail.
3. In the event there is no official exchange rate, the transfer of earnings shall be effected at a rate equivalent to that at which the receipts were earned.

ARTICLE 15

STATISTICS

The aeronautical authorities of either 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 reasonably required to determine the amount of traffic.





ARTICLE 16

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 of this Agreement, and shall also consult when necessary to provide for amendment thereof.
2. Either Contracting Party may request consultation, which may be conducted and shall begin within a period of sixty (60) days of receipt of a written request, unless both Contracting Parties agree to an extension of this period.

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 endeavor 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 either Contracting Party may submit the dispute 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 arbitrators. 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





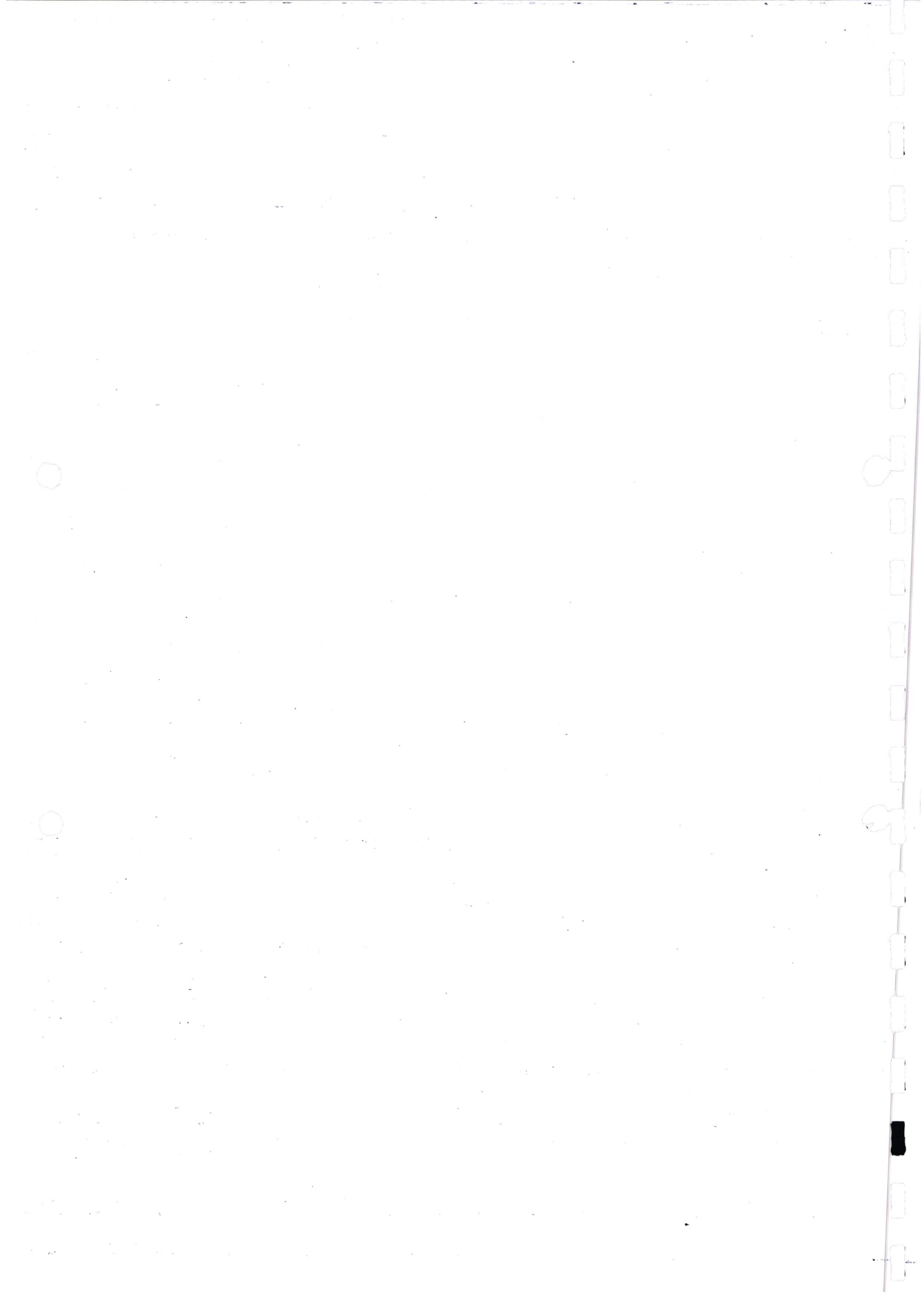
of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision made under paragraph 2 of this Article.
4. If as so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision under paragraph (2) of this Article, the other Contracting Party may limit, withhold or revoke any rights which it has granted by virtue of this Agreement to the Contracting Party in default or to the designated airline or airlines of that Contracting Party.

ARTICLE 18

AMENDMENT OF AGREEMENT

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between the aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of receipt of a written request unless both Contracting Parties agreed to an extension of this period. Any amendments so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.





ARTICLE 19

MULTILATERAL AGREEMENT

This Agreement shall be amended so as to conform to any multilateral agreement on air transport which may become binding on both Contracting Parties.

ARTICLE 20

REGISTRATION

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

ARTICLE 21

TERMINATION

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization.

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 the acknowledgement of the receipt by the other Contracting Party, the 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

This Agreement shall be effective from the date of signature and shall enter into force definitively when both parties have notified each other that all their constitutional procedures required for the entry into force of the Agreement have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, has signed this Agreement.

DONE AT Nairobi, on this 14th day of December 2018 in two originals each in the English and French Languages, both texts being deemed equally authentic.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA

James W. Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure,
Housing, Urban Development and
Public Works

FOR THE GOVERNMENT
OF BURKINA FASO

Vincent Timbindi Dabilgou
Minister for Transports, Urban
Mobility and Road Safety





ANNEX

ROUTE SCHEDULE

For the designated airline(s) of the Republic of Kenya

Point(s) in Kenya	Intermediate Point(s)	Point(s) in Burkina Faso	Point(s) Beyond
Any International Airport	Any points in Africa	Any International Airport	Any points in Africa

For the designated airline(s) of Burkina Faso

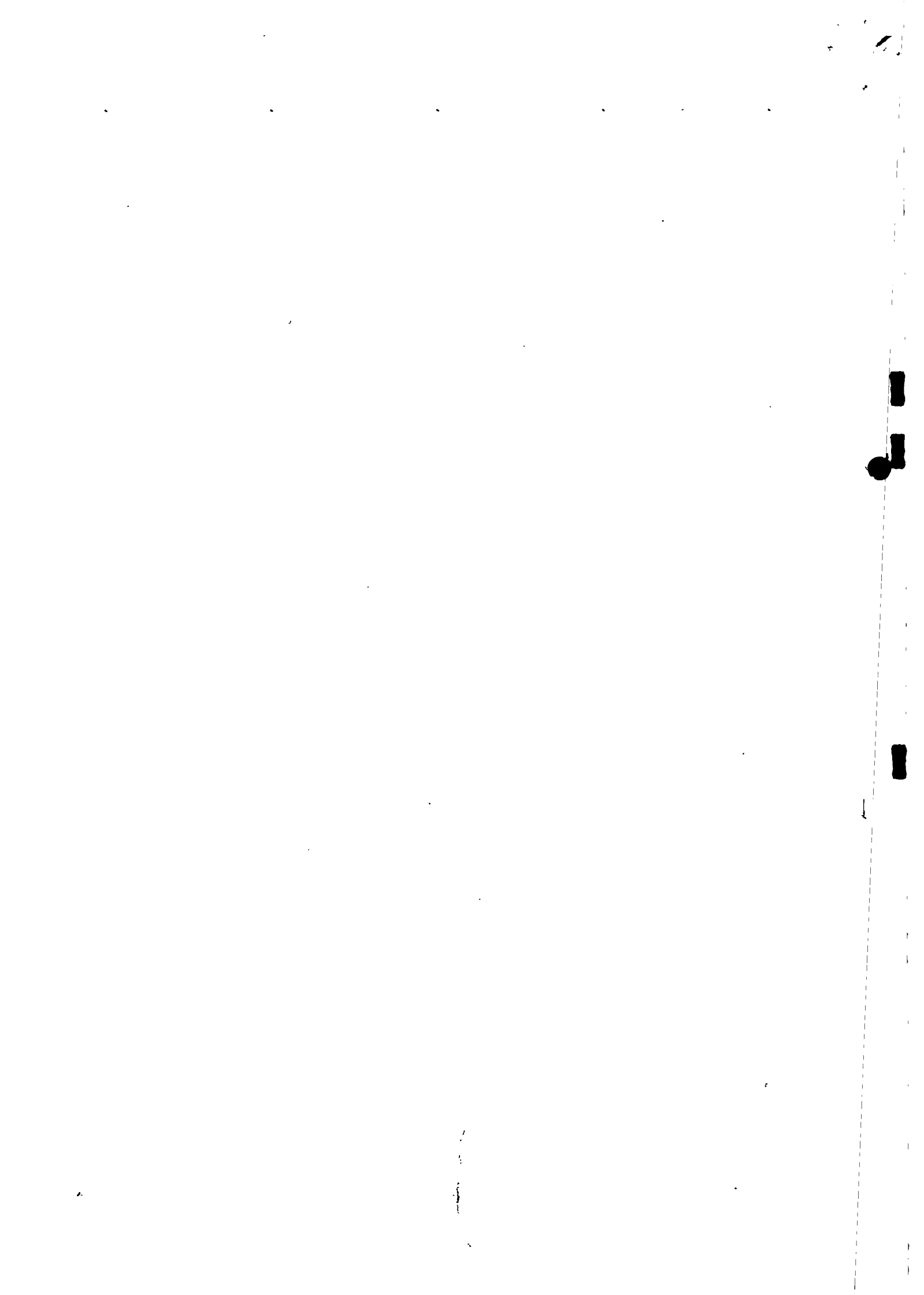
Point(s) in Burkina Faso	Intermediate Point(s)	Point(s) in the Republic of Kenya.	Point(s) Beyond
Any International Airport	Any points in Africa	Any International Airport	Any points in Africa

Notes:

1. Any point on the above routes may at the option of the airline concerned be omitted on any or all flights. Provided that any service either begins or terminates in the territory of the country designating the airline.
2. Designated airlines shall enjoy the 3rd and 4th freedom traffic rights. Exercise of the 5th freedom traffic rights shall be subject to approval by the aeronautical authorities.



AIR SERVICES AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF FINLAND
AND
THE GOVERNMENT OF THE
REPUBLIC OF KENYA





The Government of the Republic of Finland and the Government of the Republic of Kenya (hereinafter referred to as the "Contracting Parties");

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;

Desiring to promote their mutual relations in the field of civil aviation and to conclude an agreement for the purpose of establishing air services between and beyond their respective territories;

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air service opportunities;

Desiring to ensure the highest degree of safety and security in international air services and reaffirming 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;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

1. "Aeronautical authorities" means, in the case of the Republic of Finland, the Civil Aviation Authority, and in the case of the Republic of Kenya, the Cabinet Secretary in charge of civil aviation and any person or body authorised to perform any functions at present exercised by the said aeronautical authorities or similar functions;
2. "Agreement" means this Agreement, its Annex, and any amendments to the Agreement or to the Annex;
3. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes: any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Contracting Parties, and any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Contracting Parties;



4. "Designated airline" means an airline designated and authorised in accordance with Article 3 of this Agreement;
5. "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air service including surface transportation in connection with international air transportation, if applicable, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
6. "Territory", "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meaning specified in Articles 2 and 96 of the Convention;
7. "User charges" means a charge imposed on airlines for the provision of airport, air navigation or aviation security facilities or services including related services and facilities; and
8. "EU Treaties" means the Treaty on European Union and the Treaty on the Functioning of the European Union.

Article 2 *Grant of Rights*

- (1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services by a designated airline or airlines (hereinafter called "agreed services") over the routes specified in the appropriate section of the Annex (hereinafter called "specified routes").
- (2) Subject to the provisions of this Agreement the designated airline(s) of each Contracting Party shall enjoy the following rights:
 - (a) right to fly without landing across the territory of the other Contracting Party;
 - (b) right to make stops in the territory of the other Contracting Party for non-traffic purposes;
 - (c) right to make stops at the point(s) on the route(s) specified in the Annex to this Agreement for the purpose of taking on board and discharging international traffic in passengers, baggage, cargo and mail separately or in combination for remuneration or hire.
- (3) The airlines of each Contracting Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraph (2) (a) and (b) of this Article.



(4) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airline(s) of one Contracting Party the right of taking on, in the territory of the other Contracting Party, passengers, baggage and cargo including mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

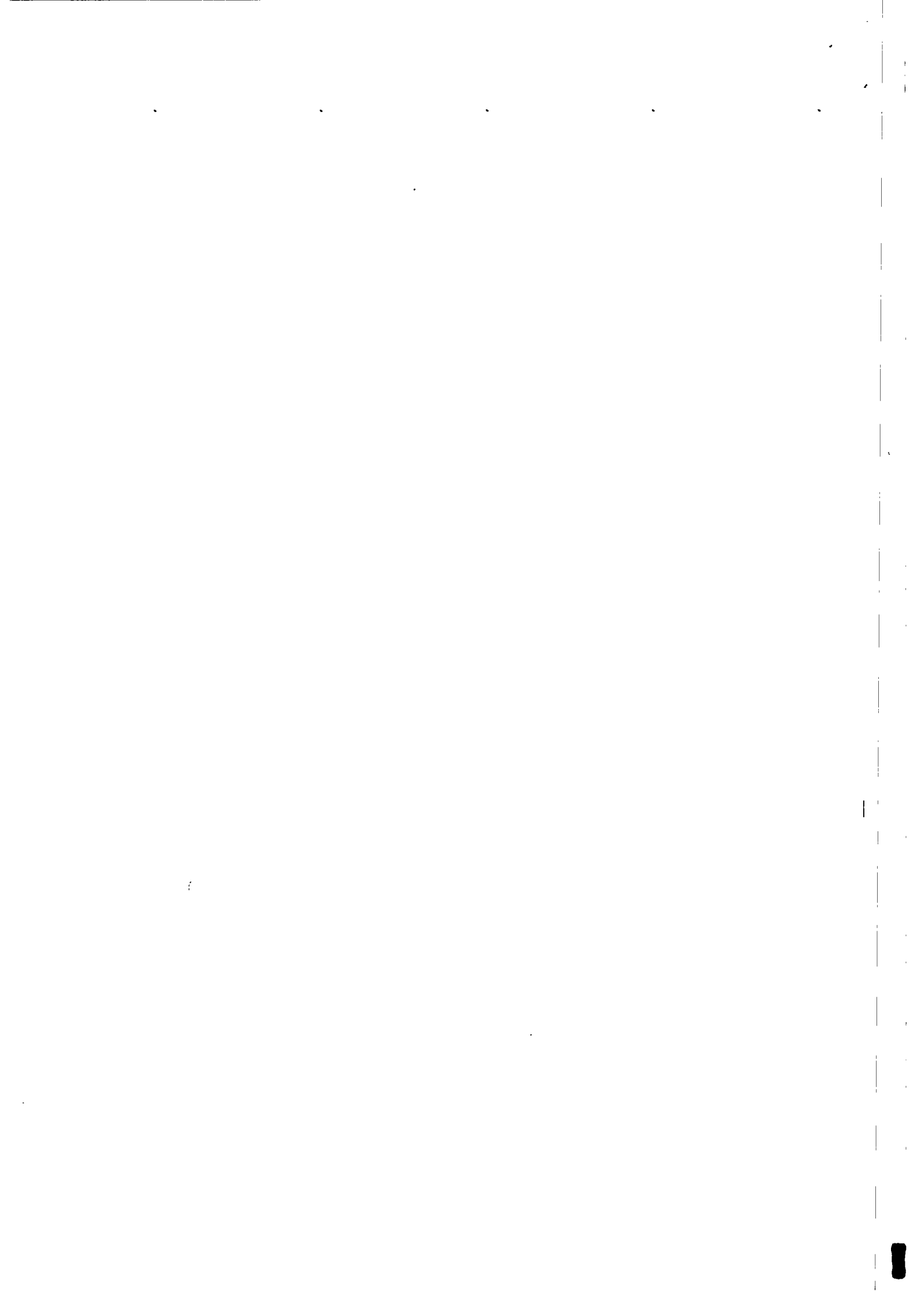
Article 3

Designation and Authorisation

1. Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating the agreed services and to withdraw or alter such designations. Such designations shall be made in writing and transmitted to the other Contracting Party through diplomatic channels.

2. On receipt of ~~such a designation and~~ applications from the designated airline, in the form and manner prescribed for operating authorisations and technical permissions, the other Contracting Party shall grant the appropriate authorisations and permissions with minimum procedural delay, provided:

- a) in the case of an airline designated by **the Republic of Finland:**
 - (i) it is established in the territory of the Republic of Finland under the EU Treaties and has a valid Operating Licence in accordance with European Union law; and
 - (ii) effective regulatory control of the airline is exercised and maintained by the **European Union Member State** responsible for issuing its Air Operator Certificate and the relevant aeronautical authority is clearly identified in the designation; and
 - ~~(iii)~~ the airline is owned, directly or through majority ownership, and it is effectively controlled by Member States of the EU or the European Free Trade Association **and/or** by nationals of such States.
- b) in the case of an airline designated by the Kenya:
 - (i) it is established in the territory of **the Kenya and is** licensed in accordance with **the applicable law of the Kenya**, and
 - (ii) the Republic of Kenya has and maintains effective regulatory control of the airline;
 - (iii) the airline is owned, directly or through majority ownership, and it is effectively controlled by the Republic of Kenya and/or by its nationals.
- c) **the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Contracting Party considering the application or applications.**





3. When an airline has been so designated and authorised it may begin at any time to operate the agreed services, provided that the airline complies with all applicable provisions of the Agreement.

Article 4 *Revocation of Authorisation*

1. Either Contracting Party may revoke, suspend or limit the operating authorisation or technical permissions of an airline designated by the other Contracting Party where:

- a) in the case of an airline designated by the Republic of Finland:
 - (i) it is not established in the territory of the Republic of Finland under the EU Treaties or does not have a valid Operating Licence in accordance with European Union law; or
 - (ii) effective regulatory control of the airline is not exercised or not maintained by the European Union Member State responsible for issuing its Air Operator Certificate, or the relevant aeronautical authority is not clearly identified in the designation;
 - (iii) the airline is not owned, directly or through majority ownership, or it is not effectively controlled by Member State of the European Union or the European Free Trade Association and/or by nationals of such states.
- b) in the case of an airline designated by the Republic of Kenya:
 - (i) it is not established in the territory of the Republic of Kenya and is not licensed in accordance with the applicable law of the Republic of Kenya; or
 - (ii) the Republic of Kenya is not maintaining effective regulatory control of the airline; or
 - (iii) the airline is not owned, directly or through majority ownership, and it is not effectively controlled by the Republic of Kenya and/or by its nationals.
- c) that airline has failed to comply with the laws and regulations referred to in Article 5 of 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 laws and/or regulations, such right shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party. Such consultations shall begin within a period of fifteen (15) days from the date of a request for consultations or as otherwise agreed between the Contracting Parties.



Article 5

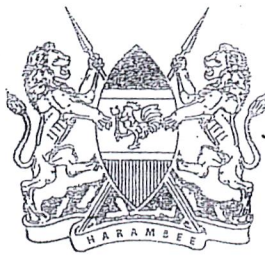
Application of Laws and Regulations

1. The laws and regulations of one Contracting Party governing entry into, or departure from its territory of aircraft engaged in international air services or to the operation and navigation of such aircraft while within the said territory shall apply to the designated airline(s) of the other Contracting Party.
2. The laws and regulations of one Contracting Party governing entry to, stay in or departure from its territory of passengers, crew, cargo or mail, such as formalities regarding entry, exit, emigration and immigration, customs, health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline(s) of the other Contracting Party, while they are within the said territory.
3. Passengers, baggage and cargo in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purposes shall, except in respect of security measures against acts of violence, smuggling of narcotics and air piracy, be subject to no more than a simplified control.
4. Neither Contracting Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air services in the application of its immigration, customs, quarantine and similar regulations.

Article 6

Exemption from Taxes, Customs Duties and other Charges

1. Aircraft operated on international air services by a designated airline of one Contracting Party, as well as their regular equipment, spare parts, supplies of fuel and lubricants, aircraft **stores** (including food, beverages and tobacco) on board such aircraft shall be exempted from all taxes, customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment, spare parts, supplies and stores remain on board the aircraft up to such time as they are re-exported or are used or consumed by such aircraft on flights over that territory.
2. There shall also be exempt from the taxes, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:
 - a) aircraft stores taken on board in the territory of one Contracting Party, within reasonable limits, for use on an outbound aircraft engaged in an international air service of a designated airline of the other Contracting Party;
 - b) spare parts, including engines, introduced into the territory of one Contracting



Party for the maintenance or repair of aircraft engaged in an international air service of a designated airline of the other Contracting Party;

c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of one Contracting Party for use in an international air service of a 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 first mentioned Contracting Party, in which territory they are taken on board.

d) airline documents, such as tickets and air waybills, as well as publicity and promotional material within reasonable limits, intended for use by a designated airline of one Contracting Party and introduced into the territory of the other Contracting Party.

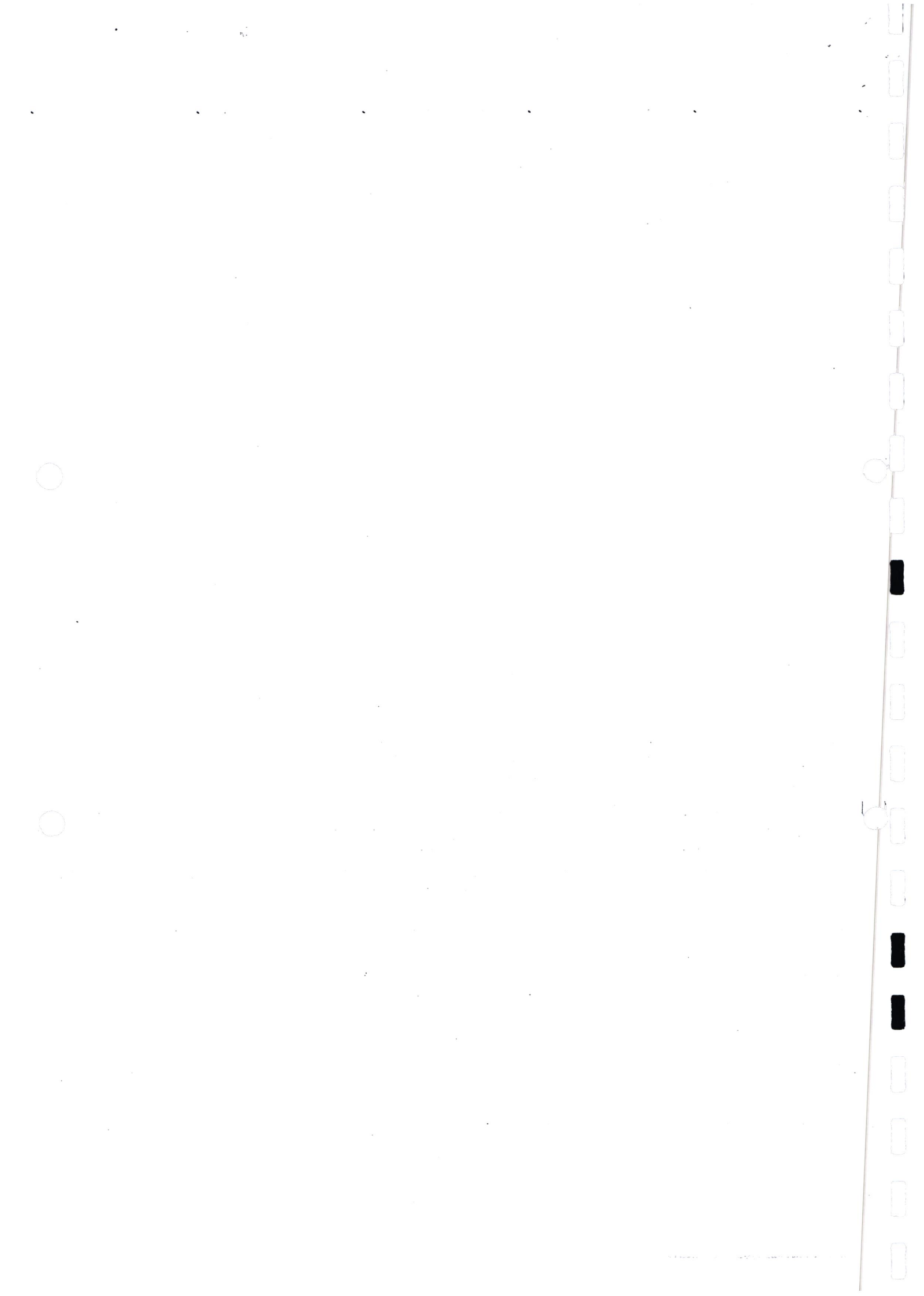
3. Materials referred to in paragraph 2 of this Article may be required to be kept under customs supervision or control.

4. The regular airborne equipment, as well as the materials, supplies and spare parts normally retained on board aircraft operated by a designated airline of one Contracting Party, may be unloaded in the territory of the other Contracting Party **only with the approval** of the customs authorities of that Contracting Party. In such case, 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.

5. Baggage and cargo in direct transit across the territory of a Contracting Party shall be exempt from taxes, customs duties, fees and other similar charges not based on the cost of services on arrival or departure.

6. The exemptions provided by this Article shall also be available where the designated airlines of one Contracting Party have contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article.

7. Nothing in this Agreement shall prevent the Republic of Finland from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of the Republic of Kenya that operates between a point in the territory of the Republic of Finland and another point in the territory of the Republic of Finland or in the territory of another European Union Member State.





Article 7
Capacity provisions

1. There shall be fair and equal opportunity for the designated airlines of each Contracting Party to operate air services on any route specified in the Annex to this Agreement.
2. In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.
3. The agreed services provided by the designated airlines of the Contracting Parties shall bear a 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 to carry the current and reasonably anticipated requirements for the carriage of passengers and cargo, including mail, coming from or destined for the territory of the Contracting Party designating the airline. Provision of the carriage of passengers and cargo, including mail, both taken on board and discharged at points on the specified routes in the territories of States, other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:
 - (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 services established by airlines of the states comprising the area; and
 - (c) the requirements of through airline operation.

Article 8
Pricing

1. Each Contracting Party shall allow prices for air services to be decided by each designated airline based on commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:
 - a) prevention of unreasonably discriminatory prices or practices;
 - b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
 - c) protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.



2. Prices for international air transportation between the territories of the Contracting Parties shall not be required to be filed. Neither Contracting Party shall require the notification or filing by a designated airline of the other Contracting Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes. Notwithstanding the foregoing, the designated airlines of the Contracting Parties shall provide access, on request, to information on existing and proposed prices to the aeronautical authorities of the Contracting Parties in a manner and format acceptable to those aeronautical authorities for the purposes of this Article.

3. Except as otherwise provided in this Article, neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by a designated airline of either Contracting Party for international air transportation.

4. If a Contracting Party believes that a price proposed to be charged by a designated airline of the other Contracting Party for international air transportation is inconsistent with considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement to the contrary, the previously existing price shall continue in effect.

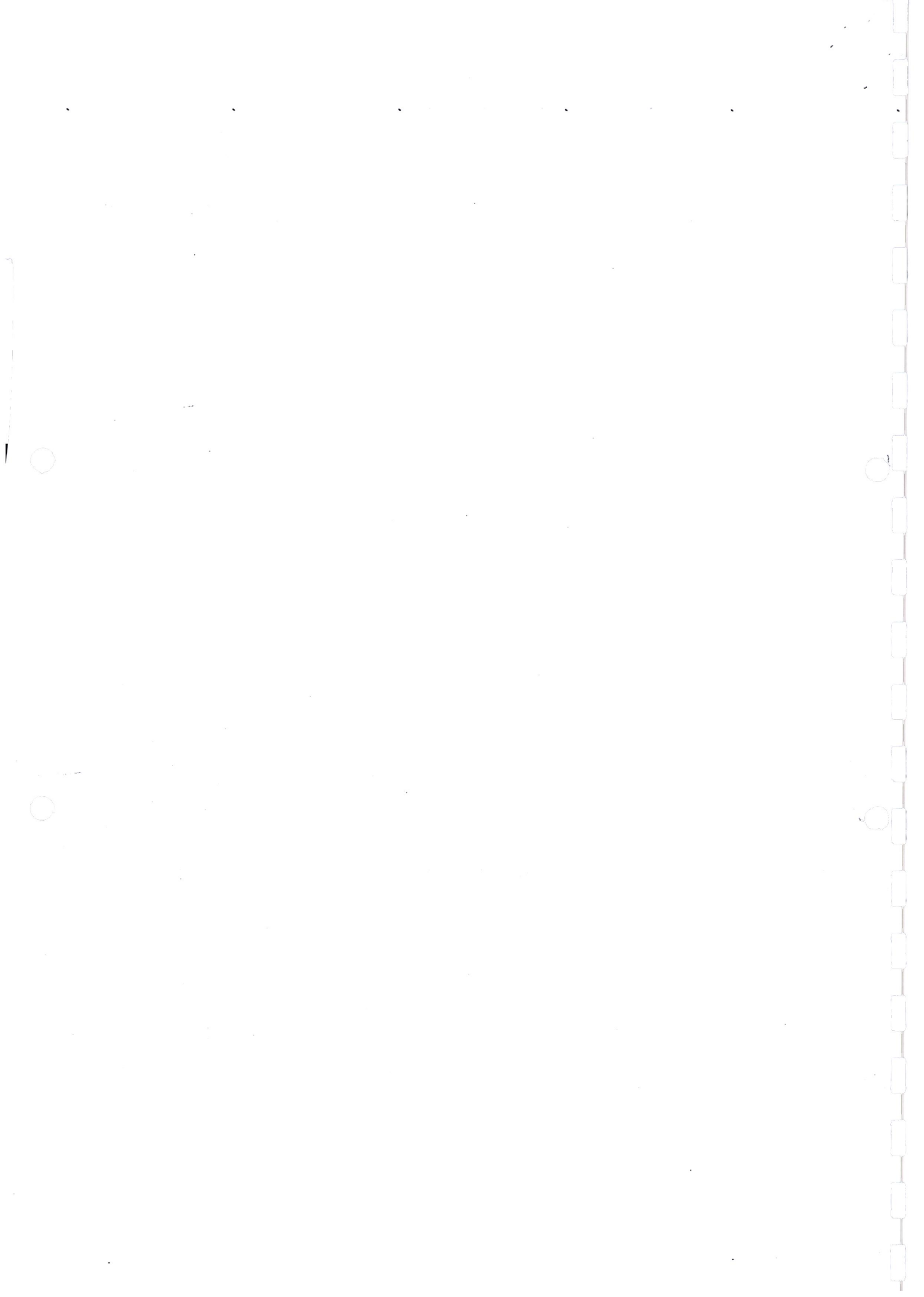
Article 9

Airline Representation and Sales

1. The designated airline(s) of each Contracting Party shall have the right to freely establish and maintain in the territory of the other Contracting Party, within the scope of the laws and regulations in force therein, such offices and facilities, as well as administrative, commercial, technical, operational, and other specialist personnel as may be necessary for the requirements of the designated airline concerned.

2. The designated airlines of the Contracting Parties shall be free to sell air transport and related services on their own transportation documents in the territories of both Contracting Parties, either directly or, at the air carrier's discretion, through an agent, other intermediaries appointed by the air carrier or through the internet or any other available channel in local currency or in any freely convertible other currency. Each Contracting Party shall refrain from restricting the right of a designated airline of the other Contracting Party to sell, and of any person to purchase such transportation.

3. The designated airlines of each Contracting Party shall be permitted to pay for local expenses, including, but not limited to, purchases of fuel, in the territory of the other





Contracting Party in local currency. At their discretion, the designated airlines of each Contracting Party may pay for such expenses in the territory of the other Contracting Party in freely convertible currencies at the **market rate of exchange**.

3. Each Contracting Party shall grant to a designated airline of the other Contracting Party the right to convert into freely convertible currencies and remit at any time, in any way, to the country of its choice on demand local revenues in excess of sums locally disbursed. Such transfers shall be permitted on the date the carrier makes the initial application for remittance at the rate of exchange applicable to current transactions in effect at the time revenues are presented for conversion and remittance, and shall not, with the exception of normal banking charges and procedures, be subject to any charge, limitation or delay.

Article 10 *Ground handling*

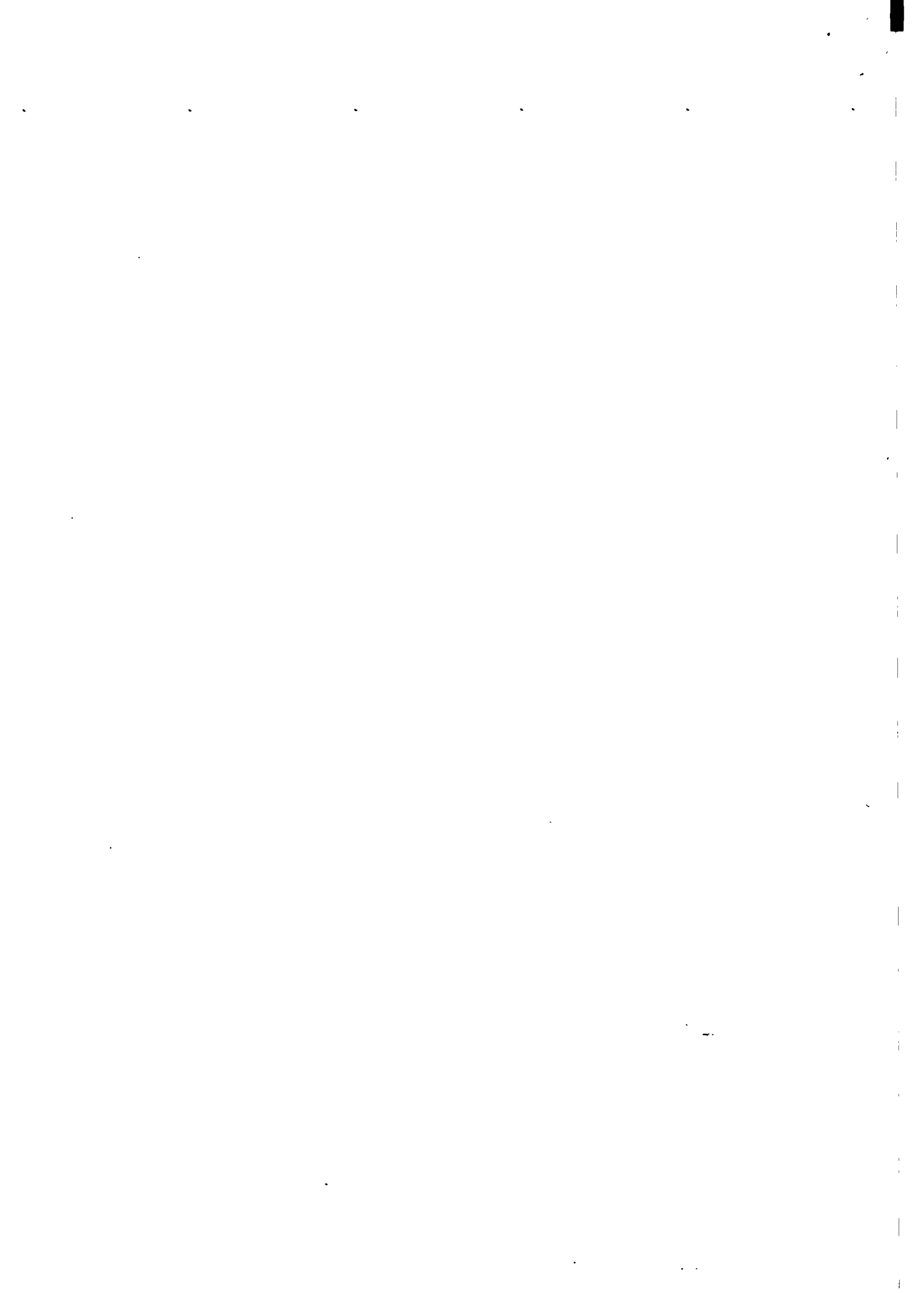
Each designated airline shall have the right to provide their own ground handling services in the territory of the other Contracting Party or otherwise to contract these services out, in full or in part, at its option, with any of the suppliers authorized for the provision of such services. Where or as long as the laws and regulations applicable to ground handling in the territory of one Contracting Party prevent or limit either the freedom to contract these services out or self-handling, each designated airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground handling services provided by a supplier or suppliers.

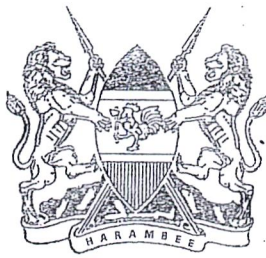
Article 11 *User Charges*

1. User charges that may be imposed by the competent charging authorities or bodies of each Contracting Party on the designated airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the designated airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the designated airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such





information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Contracting Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 16 of this Agreement, to be in breach of a provision of this Article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 12 *Flight Safety*

1. Each Contracting Party may request consultations at any time concerning safety standards maintained by the other Contracting Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of that request.

2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas mentioned in paragraph 1 that meet the standards established at that time pursuant to the Convention, the other Contracting Party shall be informed of such findings and of the steps considered necessary to conform with those standards. The other Contracting Party shall ~~then~~ take appropriate corrective action within an agreed time period.

3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Contracting Party, on service to or from the territory of the other Contracting Party, may, while within the territory of the other Contracting Party be the subject of a search by the authorised representatives of the other Contracting Party, provided that this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the standards established at that time pursuant to the Convention.

4. When urgent action is essential to ensure the safety of an airline operation, each Contracting Party reserves the right to immediately suspend or vary the operating authorisation of an airline or airlines of the other Contracting Party.



5. Any action by one Contracting Party in accordance with paragraph 4 of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

6. With reference to paragraph 2 above, if it is determined that a Contracting Party remains in non-compliance with the standards established at that time pursuant to the Convention when the agreed time period has lapsed, the Secretary General of the International Civil Aviation Organization should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

7. Where one Contracting Party has designated an airline whose regulatory control is exercised and maintained by a third State, the rights of the other Contracting Party under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that third State and in respect of the operating authorisation of that airline.

Article 13 *Aviation Security*

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991, as well as with any other agreement relating to the security of civil aviation which both Parties adhere to.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, as a minimum, act in conformity with the aviation security provisions and technical requirements established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions and requirements are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory or are established in the territory of the Republic of Finland under the EU Treaties and have received an operating licence in accordance with European Union law and the operators of airports in their territory act in conformity with such aviation security provisions.





4. Each Contracting Party agrees that such operators of aircraft shall be required to observe the aviation security provisions and requirements referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. For entry into, departure from, or while within the territory of the Republic of Finland, operators of aircraft shall be required to observe aviation security provisions in conformity with European Union law. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorisation and technical permissions of an airline or airlines designated by that Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of fifteen (15) days. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Contracting Party with the security provisions of this Article.

Article 14 *Intermodal Services*

Notwithstanding any other provision of this Agreement, designated airlines and indirect providers of cargo transportation of both Contracting Parties shall be permitted, without restriction, to employ in connection with international air services any surface transportation for cargo to or from any points in the territories of the Contracting Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air services. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.



Article 15
Fair competition

Each Contracting Party shall, where necessary, take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airline(s) of the other Contracting Party.

Article 16
Consultations and Settlement of Disputes

1. In a spirit of close co-operation the aeronautical authorities of either Contracting Party may at any time request consultations related to the implementation, interpretation, application and satisfactory compliance with the provisions of this Agreement or compliance with this Agreement. Such consultations shall **begin within a period of sixty (60) days** from the date of the receipt of such a request, unless otherwise agreed between the aeronautical authorities.

2. Any dispute which cannot be resolved by consultations may, at the request of either Contracting Party be submitted to a mediator or a dispute settlement panel. Such a mediator or panel may be used for mediation, determination of the substance of the dispute or to recommend a remedy or resolution of the dispute.

3. The Contracting Parties shall agree in advance on the terms of reference of the mediator or of the panel, the guiding principles or criteria and the terms of access to the mediator or the panel. They shall also consider, if necessary, **providing for** an interim relief and the possibility for the participation of any Party that may be directly affected by the dispute, bearing in mind the objective and need for a simple, responsive and expeditious process.

4. A mediator or the members of a panel may be appointed from a roster of suitably qualified aviation experts maintained by the International Civil Aviation Organization (ICAO). The selection of the expert or experts shall be completed within fifteen (15) days of receipt of the request for submission to a mediator or to a panel. If the Contracting Parties fail to agree on the selection of an expert or experts, the selection may be referred to the President of the Council of ICAO. Any expert used for this mechanism should be adequately qualified in the general subject of the dispute.

5. A mediation should be completed within sixty (60) days of engagement of the mediator or the panel and any **determination including**, if applicable, any recommendation, should be rendered within sixty (60) days of engagement of the expert or experts. The Contracting Parties may agree in advance that the mediator or the panel may grant interim relief to the complainant, if requested, in which case a determination shall be made initially.

6. The Contracting Parties shall cooperate in good faith to **advance the mediation and to implement the decision or determination** of the mediator or the panel, unless they otherwise agree in advance to be bound by **decision or determination**. If the Contracting Parties agree in



advance to request only a determination of the facts, they shall use those facts for resolution of the dispute.

7. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of re-apportionment under the final decision.

8. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or termination of the Agreement under Article 19.

Article 17 *Amendments*

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations shall begin within a period of sixty (60) days from the date of the request, unless both Contracting Parties agree to an extension of this period. Any modification agreed in such consultations shall be approved by each Contracting Party in accordance with its legal procedures and shall enter into force on the first day of the second month after the Contracting Parties have notified each other through diplomatic channels that these procedures have been complied with.

2. Notwithstanding the provisions of paragraph 1 of this Article, amendments relating only to the Annex may be agreed upon between the aeronautical authorities of the Contracting Parties and shall become effective as agreed between them subject to the national laws and regulations of the Contracting Parties.

Article 18 *Multilateral Conventions*

If any multilateral convention concerning air transportation enters into force in respect of both Contracting Parties, the provisions of such convention shall prevail. Consultations in accordance with Article 16 of this Agreement may be held with a view to determining the extent to which this Agreement is affected by the provisions of the said multilateral convention.

Article 19 *Termination*

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



2. In such case this Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party unless the notice is withdrawn by agreement of the Contracting Parties prior to the expiry of such 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 20
Registration with ICAO

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

Article 21
Entry into force

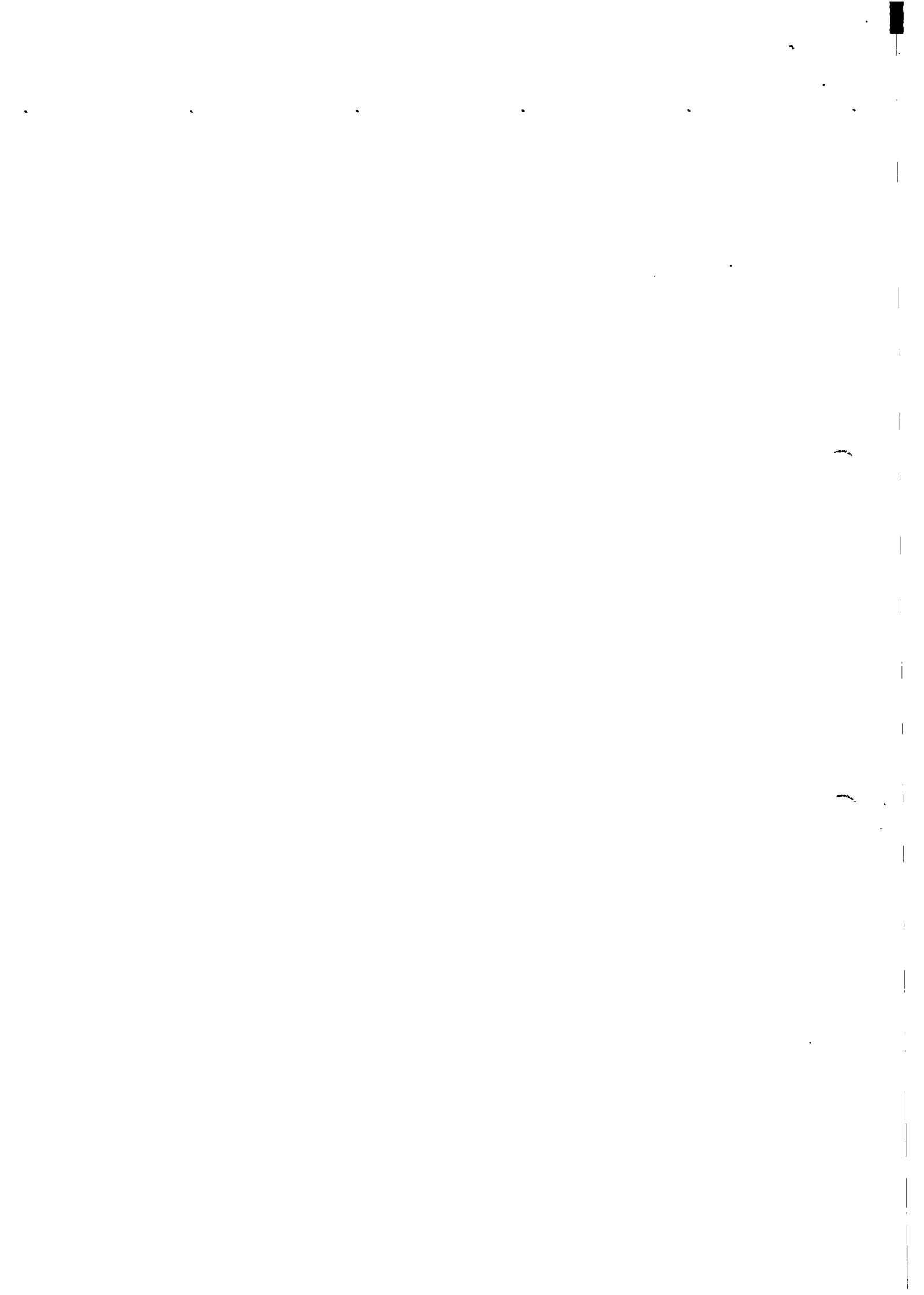
This Agreement shall enter into force on the first day of the second month after the Contracting Parties have notified each other through diplomatic channels that the procedures necessary for the entry into force of this Agreement have been completed.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments, have signed this Agreement in duplicate in the English language.

Done at Nairobi on this 14th day of December 2018 in two original copies in the English language.

For the Government of
the Republic of Finland

For the Government of
the Republic of Kenya





ANNEX

to the Air Services Agreement between the Government of the Republic of Finland and the Government of the Republic of Kenya

1. Routes which may be operated by the designated airlines of the Republic of Kenya, in both directions:

<u>Points of origin</u>	<u>Intermediate points</u>	<u>Points of Destination</u>	<u>Points beyond</u>
Nairobi and Mombasa	Any points	Any points in Finland	Any points

2. Routes which may be operated by the designated airlines of the Republic of Finland, in both directions:

<u>Points of origin</u>	<u>Intermediate points</u>	<u>Points of Destination</u>	<u>Points beyond</u>
Any points in Finland	Any points	Nairobi and Mombasa	Any points

3. The intermediate and beyond points to be operated by the designated airlines of the Contracting Parties have to be agreed upon directly between the aeronautical authorities of the two Contracting Parties.

4. The exercise of fifth freedom traffic rights on specified intermediate and/or beyond points shall be subject to agreement between the aeronautical authorities of the two Contracting Parties

5. Any designated airline of one Contracting Party may subject to the laws and regulations of the Contracting Party designating it, enter into co-operative marketing arrangements such as blocked-space or code sharing arrangements, with:

(a) An airline or airlines established in the territory of either Contracting Party,
or

(b) An airline or airlines of a third Party. Should such third Party not authorise or allow comparable arrangements between the designated airlines of the other Contracting Party and other airlines on services to, from and via such third country, the Contracting Parties have the right not to accept such arrangements.

The above provisions are, however, subject to the condition that:

(a) operating airlines in such arrangements hold the appropriate traffic rights and

(b) all the airlines meet the requirements applied to such arrangements regarding information to customers and filing procedures.



BILATERAL AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES

FOR AIR SERVICES





BILATERAL AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA
AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES FOR AIR SERVICES
BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

PREAMBLE

The Government of the Republic of Kenya and the Government of the Republic of Seychelles;
(jointly referred to as the Contracting Parties)

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

Acknowledging the importance of air transportation as a means of creating and preserving
friendship, understanding and co-operation between the peoples of the two countries;

Desiring to contribute to the progress of international air transport opportunities;

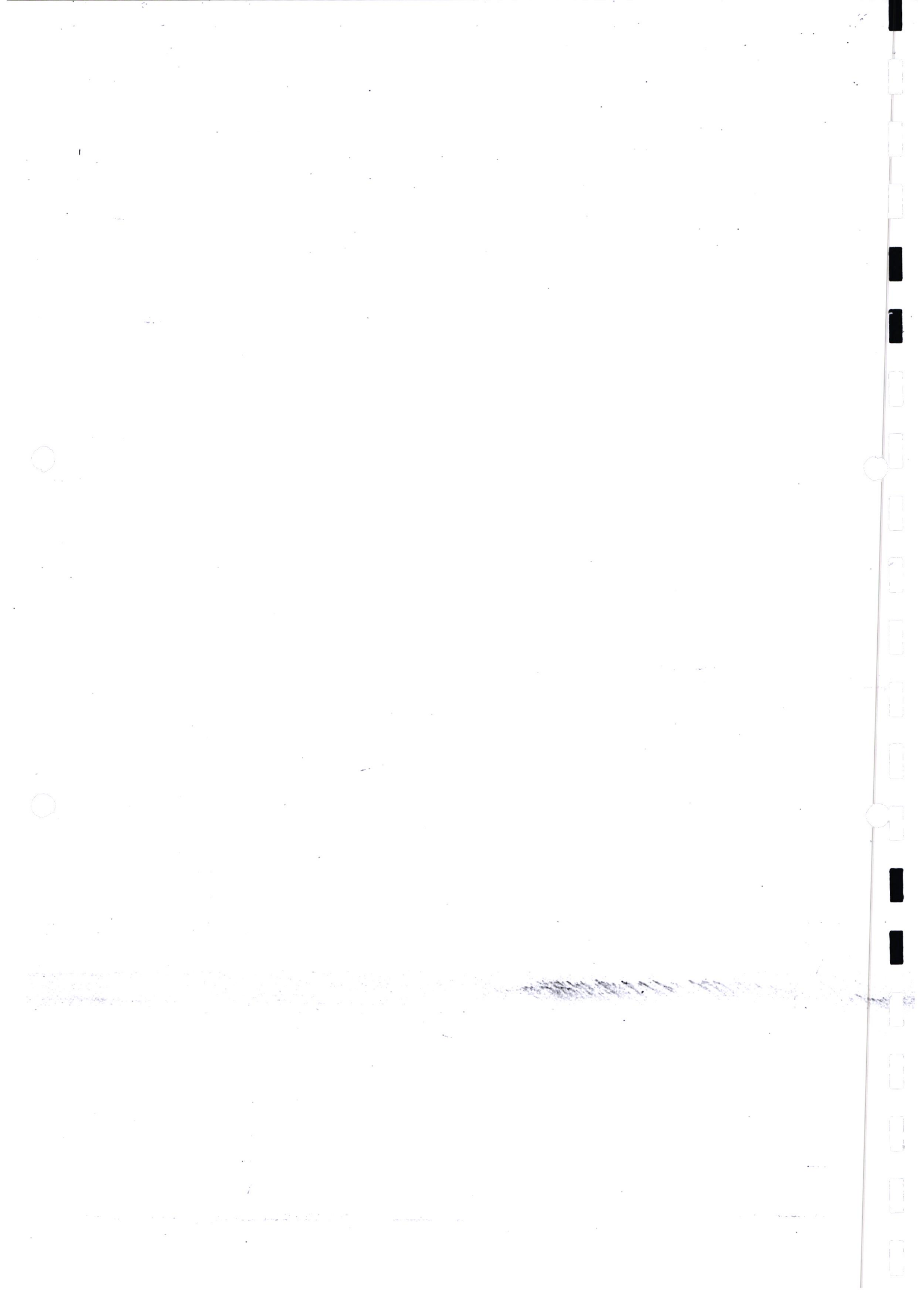
Desiring to facilitate the expansion of international air transport opportunities;

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

Desiring to make it possible for Airlines to offer the traveling and shipping public a variety of
service options at prices that are not discriminatory and do not represent abuse of a dominant
position and wishing to encourage individual Airlines to develop and implement innovative and
competitive prices.

Desiring to ensure the highest degree of safety and security in international air transport and
reaffirming 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 transportation,
and undermine public confidence in the safety of civil aviation and

HEREBY AGREE as follows:-

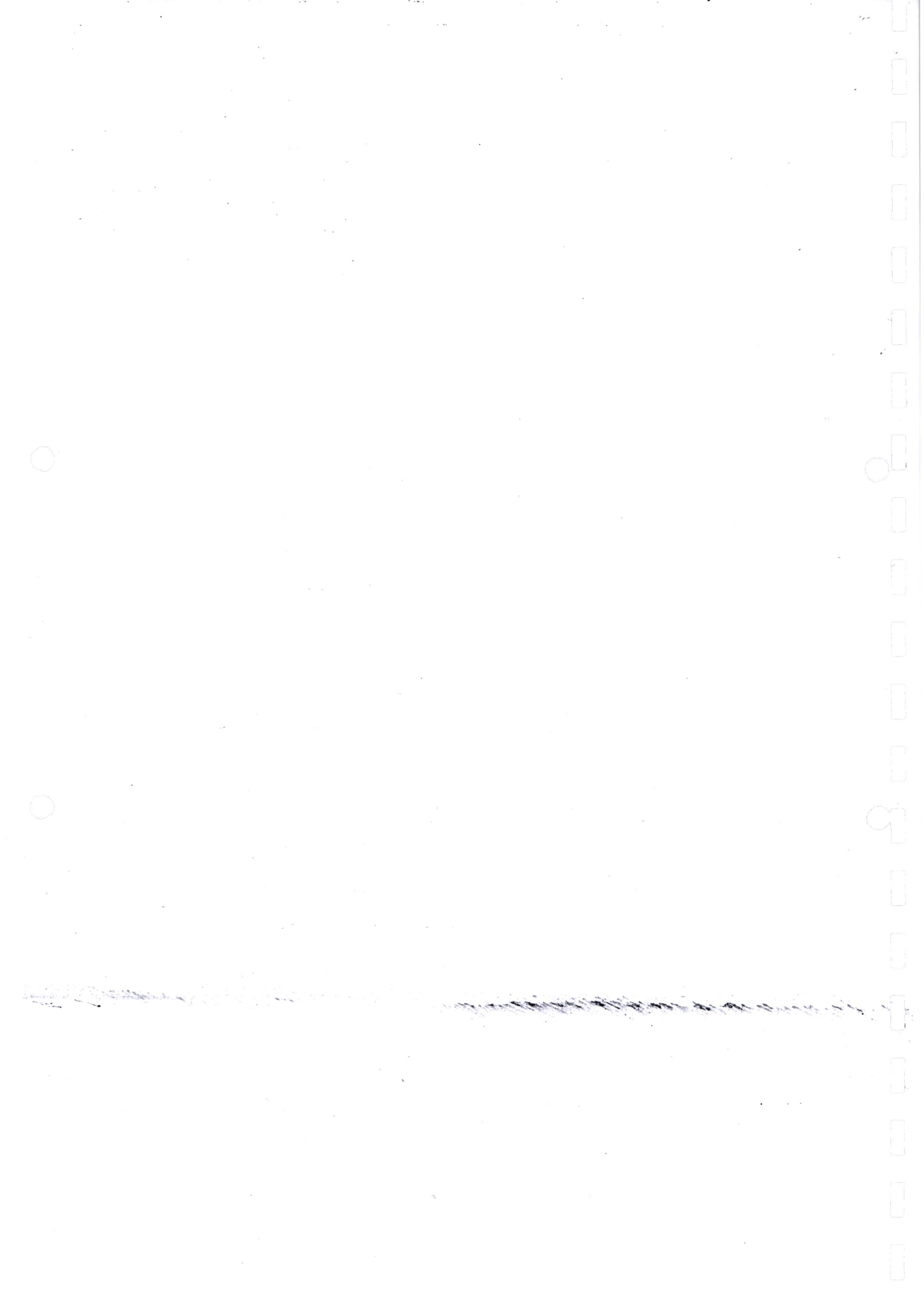




ARTICLE 1 DEFINITIONS

For the purpose of this Agreement and any annex attached hereto, unless the context otherwise requires the term;

- a) "Abuja Treaty" means the Treaty establishing the African Economic Community adopted at Abuja, Nigeria on the 3rd day of June 1991 and which entered into force on 12th May 1994.
- b) "Aeronautical Authorities" means in the case of Kenya, the Cabinet Secretary in charge of Civil Aviation or any person or body authorized under its laws to perform a particular function to which this Agreement relates, in the case of Seychelles its Minister or Ministry responsible for Civil Aviation, Seychelles Civil Aviation Authority;
- c) "Agreed services" means the scheduled international air services which may be operated by virtue of this Agreement;
- d) "Agreement" means this agreement, the Annex thereto and any amendments to the Agreement or to the Annex
- e) "aircraft equipment" "aircraft stores" and "spare parts" have the meanings respectively assigned to them in Annex 9 of the Convention;
- f) "air service", "international air service", "Airline(s)" and "stop for non-traffic purposes" have the meaning respectively assigned to them in Article 96 of the Convention;
- g) "Code-sharing" means a commercial arrangement whereby passengers of two or more Airline(s) travel together on one aircraft bearing the Airline(s) flight code of two or more Airline(s).
- h) "Countries bound by the Yamoussoukro Decision" means
 - i) The African States signatories to the Abuja Treaty and who have not filed formal notification to withdraw from the "Yamoussoukro Decision"; and
 - ii) Any other Country which though not Party to the said Treaty, has declared in writing its intention to be bound by the Yamoussoukro Decision.





- i) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7th December 1944 and includes; (i) any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by both Contracting Parties and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, in so far as such amendment or annex is at the given time effective for both Contracting parties;
- j) "Designated Airline(s)" means the Airline(s) which has/have been designated and authorized in accordance with Article 3 of this Agreement.
- k) "Decision" means the Decision relating to the implementation of the Yamoussoukro Declaration concerning the Liberalization of Access of Air Transport of 14th November 1999 as endorsed by the OAU Heads of State on 11th July 2000 including the Appendices and Amendments
- l) "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead.
- m) "Scheduled services" means those services operated regularly by a designated Airline(s) according to schedules published in advance to cover a time table period;
- n) "Specified routes" means the air routes as set forth in the Annex thereto on which the agreed service may be operated;
- o) "Tariff" means the fare or rate to be paid for the carriage of passengers and their baggage and cargo (other than mail) and the conditions governing the availability or applicability of that fare or rate, including the charges and conditions for services ancillary to the carriage;
- p) "Territory" in relation to a state means the land areas and territorial waters adjacent thereto under the sovereignty or protection of that state;
- q) "Traffic" means the carriage of passengers, cargo and mail;
- r) "User charges" means fees or rates levied for the use of airports, navigational facilities and other related services offered by one contracting Party to the other.

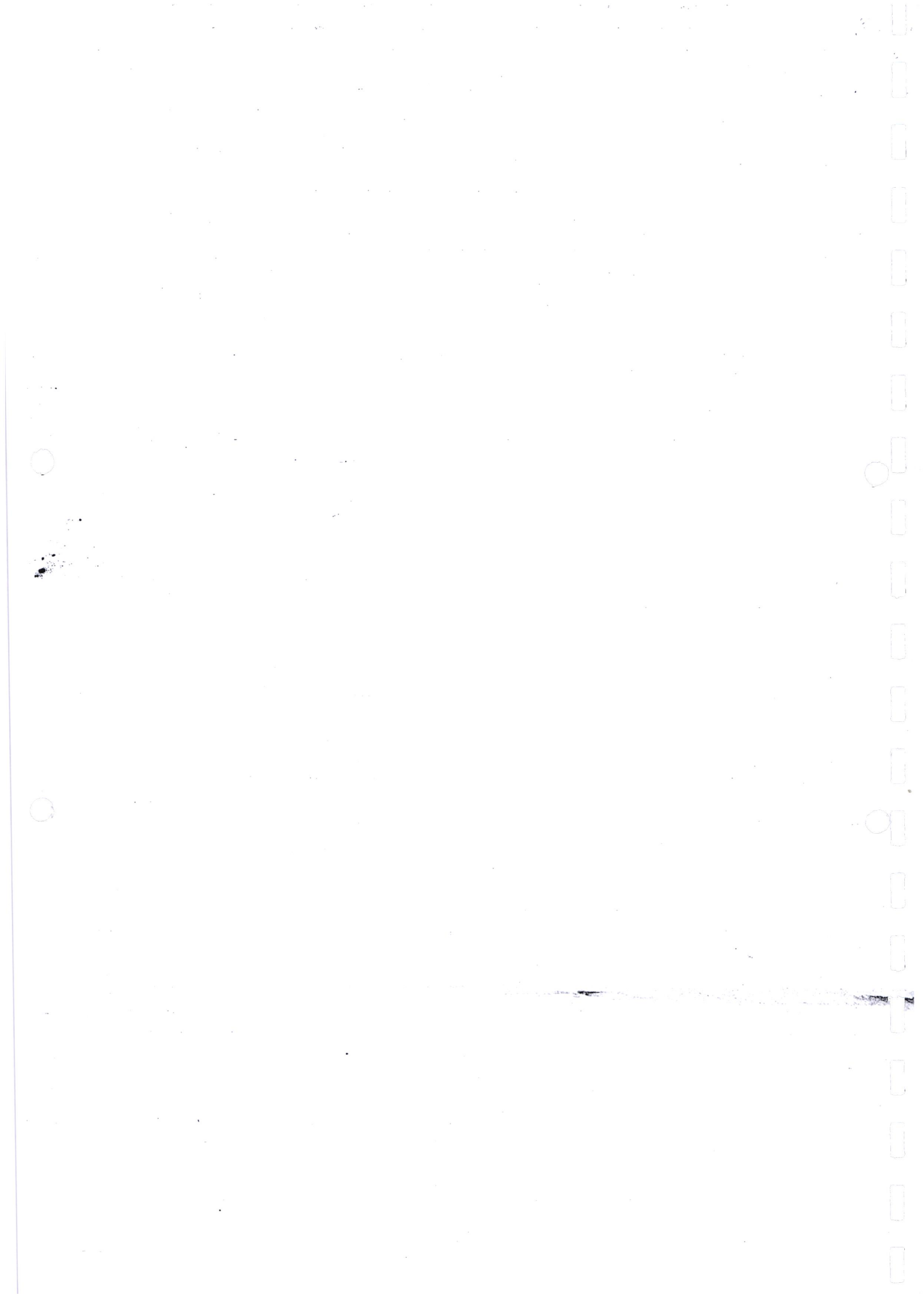


ARTICLE 2
RIGHTS AND PRIVILEGES OF DESIGNATED AIRLINE (S)

1. Each Contracting Party grants to the other Contracting Party, the rights specified in this Agreement for the purpose of establishing the agreed services on the specified routes in the annexes to this Agreement. The Airline (s) designated by each Contracting Party shall enjoy, while operating the agreed services on the specified route, the following rights:
 - a) To fly without landing across the territory of the other Contracting Party;
 - b) To make stops in the said territory for non-traffic purposes;
 - c) To make stops in the said territory at the points specified for that route in the schedules to this Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail, coming from or destined for the territory of the other Contracting Party.
2. Each Party shall enjoy in addition to the rights specified in paragraph 1 of this Article, 5th ~~freedom traffic rights in respect of other~~ African States in accordance with the Yamoussoukro Decision.

ARTICLE 3
DESIGNATION AND AUTHORIZATION OF AIRLINE(S)

1. Each Contracting party shall have the right to designate in writing to the other Contracting Party one or more Airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations through diplomatic channels and shall identify whether the Airline or airlines are authorized to conduct the type of air transportation ~~specified in the Annex.~~
2. On receipt of such designation, the other Contracting party shall, subject to the provisions of paragraph (3) and (4) of this Article, without delay but not later than 30 days, grant to the Airline(s) designated the appropriate operating authorization.
3. The Aeronautical Authority of a Contracting Party may require the Airlines designated by the other Contracting party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of





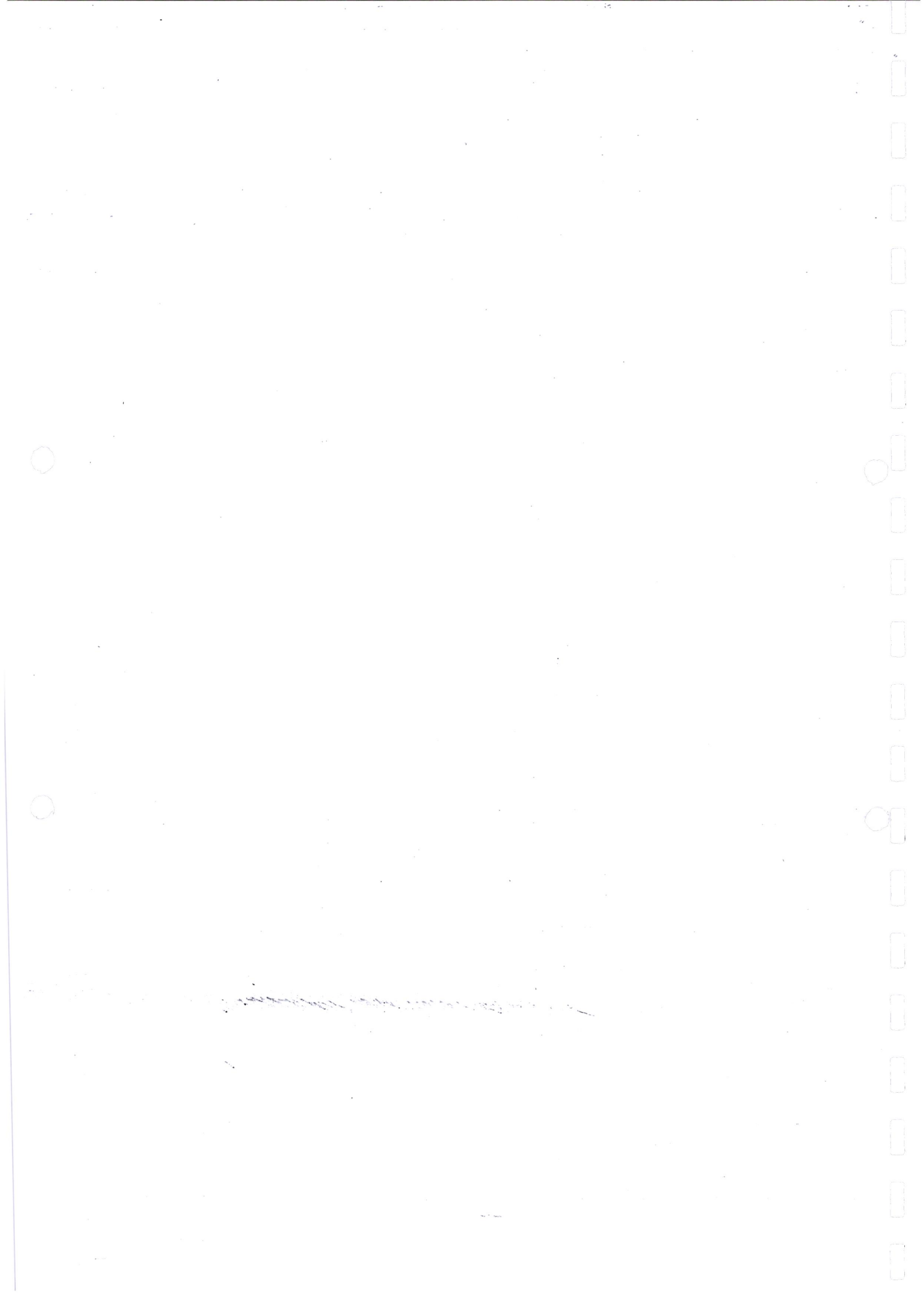
international air services by such authorities in conformity with the provisions of the Convention.

4. 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(s) of the rights specified in Article 2 of this Agreement.
5. The party designating the Airline(s) shall maintain and administer the standards set forth in Article 6 (Safety) and Article 7 (Aviation Security)

ARTICLE 4 REVOCATION AND SUSPENSION OF OPERATING AUTHORIZATION

1. Each Contracting Party shall have the right to revoke or suspend an operating authorization for the exercise of the rights specified in Article 2 of this Agreement by the designated Airline(s) of the ~~other~~ Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights;
 - a) Where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or its nationals.
 - b) Where the airline fails to comply with the laws and the regulations in force in the territory of the Contracting Party granting these rights; or
 - c) Where the Airline(s) otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

The Other party is not maintaining and administering the standards as set forth in Article 6 (Safety)
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 of the provisions of this Agreement, such right of revocation or suspension shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.





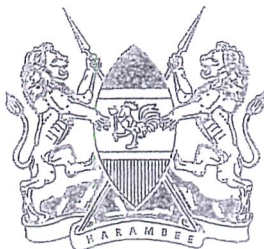
ARTICLE 5 APPLICABILITY OF NATIONAL LAWS AND REGULATIONS

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(s) 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 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 or cargo including mail carried by the aircraft of the designated Airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.
3. Neither Contracting Party may grant any preference to its own Airline with regard to the designated Airlines of the other Contracting Party in the application of the laws and regulations indicated in this Article.

ARTICLE 6 SAFETY

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to air flight crews, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within 30 days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not **effectively** maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Chicago Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and the other Contracting Party to take appropriate corrective action. Failure by the other Contracting Party

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ARTICLE 5 APPLICABILITY OF NATIONAL 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(s) 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 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 or cargo including mail carried by the aircraft of the designated Airline of the other Contracting Party upon entry into or departure from or while within the territory of the said Contracting Party.

3. Neither Contracting Party may grant any preference to its own Airline with regard to the designated Airlines of the other Contracting Party in the application of the laws and regulations indicated in this Article.

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2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Chicago Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and the other Contracting Party to take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within 15 days or such longer period as may be agreed shall be grounds for the application of Article 8 of this Agreement to revoke or suspend operating



authorization.

3. Notwithstanding the obligation mentioned in article 33 of the Chicago Convention it is agreed that any aircraft operated by or, under a lease agreement, on behalf of the airline of one Contracting Party on services to or from the territory of the other Contracting Party, may, while within the territory of the other Contracting Party be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its flight crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections gives rise to:

- a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or
- b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention:

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licenses in respect of that aircraft or in respect of the flight crew of that aircraft had been issued or rendered valid or that the requirements under which that aircraft is operated are not equal to or above the minimum standards established pursuant to the Chicago Convention.

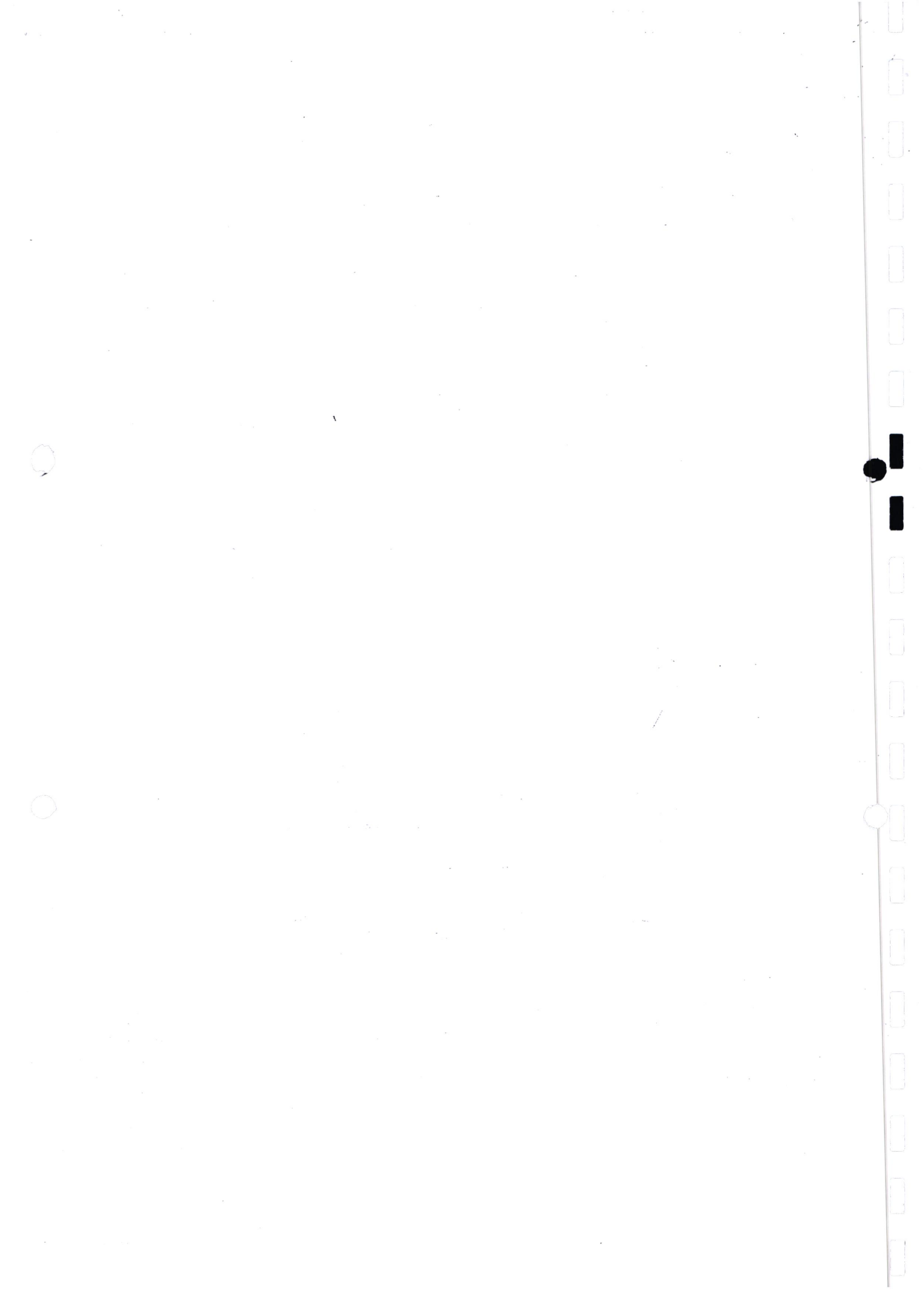
5. In the event that access for the purpose of undertaking a ramp inspection of aircraft operated by an airline of one Contracting Party in accordance with paragraph (3) of this Article is denied by a representative of that airline, the other contracting party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial



of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

7. Any action by one Contracting Party in accordance with paragraphs (2) or (6) of this Article shall be discontinued once the basis for the taking of that action ceases to exist





ARTICLE 7 AVIATION SECURITY

1. Consistent with their rights and obligations under international law, as Signatories or as Parties to the following Conventions, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on offenses and certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991, as well as with any other Convention and Protocol relating to the Security of Civil Aviation which both Contracting Parties adhere to.
2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and flight crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as annexes to the convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.
4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, flight crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request

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from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and flight crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.
6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory Agreement within 30 (thirty) days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permission of an airline of that Contracting Party. When required by an emergency, a Contracting party may take interim action prior to the expiry of 30 (thirty) days.

ARTICLE 8 FAIR COMPETITION

1. Each Party shall allow a fair and equal opportunity for the Designated Airline(s) of both Parties to compete in providing the international air transportation covered by this Agreement.
2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the Airline(s) of the other party.
3. Neither Party shall unilaterally limit the volume of traffic frequency or regularity of service, or aircraft type or types operated by the Designated Airline(s) of the other Party, in terms of this Agreement, except as may be required for customs, technical, operational or environment reasons under uniform conditions consistent with Article 15 of the Convention.
4. Either Party may require the filing of schedules or operational plans by airlines of the other Party for approval. Provided such a requirement may be on a non-discriminatory basis. If a Party requires filings it shall minimize the administrative burden of filing requirement and procedures on air transportation intermediaries and on designated airlines of the other party.



5. Any restrictions on the operations of the Designated Airline(s) of the other Contracting Party shall be in accordance with the terms of this Agreement and its Annexes or by such applicable conditions of the Convention.

ARTICLE 9 PRICING

1. Each Party shall allow prices for air transportation to be established by each Designated Airline based upon commercial considerations in the market place. Intervention by the Parties shall be limited to:-

- a) Prevention of unreasonably discriminatory prices or practices;
- b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c) Protection of Airlines from prices that is artificially low.

2. Each Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by Airlines of the other Party. Notification or filing by the Airline(s) of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notifications for filing may be permitted on shorter notice than normally required. If a Party permits an Airline to file a price on short notice, the price shall become effective on the proposed date for traffic originating in the territory of that Party.

3. If a Party believes that a price proposed to be charged by an Airline of the other Party for international air transportation between the territories of parties is inconsistent with considerations set forth in paragraph 1 of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible.

4. Except as otherwise provided in this Article, neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by an Airline of either Party for international Air transportation between the territories on interline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach Agreement with respect to a price for which a notice of dissatisfaction has been given, each party shall



use its best efforts to put that Agreement into effect. Without such mutual Agreement, the previously existing price shall continue in effect.

ARTICLE 10
EXEMPTION FROM CUSTOMS DUTIES, TAXES INSPECTION FEES AND
OTHER SIMILAR CHARGES

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 exempted from all customs duties, taxes, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the journey performed over that territory.
2. There shall also be exempt from the same duties, taxes, 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 of the other contracting Party engaged on international air services.
 - b) Spare parts introduced into the territory of either Contracting Party for maintenance or repair of aircraft used on international air services by the Designated Airlines of the Contracting Party;
 - c) Fuel and lubricants supplied in the territory of a Contracting Party to an outbound aircraft of the Designated Airlines of the other Contracting Party, engaged on an international air service 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 will have been taken on board.
 - d) Materials referred to in sub-paragraphs a, b, and c above may be required to be kept under Customs supervision or control.
 - e) The regular airborne equipment as well as the material and supplies retained on board



6. In operating or holding out the agreed services on the routes specified in the Annex to this Agreement, the designated airline(s) of each Contracting Party shall be permitted to enter into cooperative marketing arrangements such as blocked-space or code-sharing arrangements, with:

- (a) an airline or airlines of the same Contracting Party;
- (b) an airline or airlines of the other Contracting Party;
- (c) an airline or airlines of a third country; and
- (d) a surface transportation provider of any country,

provided that,

i. all airlines in such arrangements hold the appropriate authority to operate on the routes and segments concerned; and

ii. in respect of any tickets sold, the airline makes it clear to the purchaser at the point of sale which airline will actually operate each sector of the service and with which airline or airlines the purchaser is entering into a contractual relationship.

7. Where a designated airline operates the agreed services under code-sharing arrangements as the operating airline, the operated capacity shall be counted against the capacity entitlements of the Contracting Party designating the said airline. Capacity offered by a designated airline acting as the marketing airline on the code-share services operated by other airlines shall not be counted against the capacity entitlements of the Contracting Party designating the said marketing airline.

ARTICLE 13 AIRCRAFT LEASING

1 Each Contracting Party may prevent the use of leased aircraft for air services under this Agreement, which does not comply with Article 8 (Aviation Security) and Article 9 (Aviation Safety) of this Agreement.



2. Subject to paragraph (1) of this Article, the designated airlines of each Contracting Party may use aircraft (or aircraft and crew) leased (dry or wet) from any company, including other airlines, provided that this will not result in a lessor airline exercising traffic rights it does not have.

ARTICLE 14 SUBMISSION OF TIME TABLE

1. The designated Airline(s) of each Contracting Party shall, not later than thirty (30) days prior to the operation of the agreed services on the specified routes, submit the envisaged time-table for approval to the aeronautical authority of the other Contracting Party. The same procedure shall apply to any modification thereof.
2. For supplementary flights which the Designated Airline(s) of the one Contracting Party wishes to operate on the agreed services on the specified routes outside the approved time-table it has to request prior permission from the aeronautical authority of the other Contracting Party. Such request shall usually be submitted at least two working days before such flights.

ARTICLE 15 SUBMISSION 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 reasonably required for the purpose of reviewing the operations of the Designated Airline of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by the Airline on the agreed services and the origins and destinations of such traffic.

ARTICLE 16 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 International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final



determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.

4. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.
6. Either Contracting Party or the Designated Airline of either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Contracting party in default hereof.

ARTICLE 17 CONSULTATIONS

1. Exchange of views shall take place as needed between the Aeronautical Authorities of the Contracting Parties in order to achieve closer cooperation and agreement in all matters pertaining to the application of this Agreement.
2. Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.

ARTICLE 18 REGISTRATION OF AGREEMENT WITH I.C.A.O

This Agreement, its Annex, as well as any amendments thereto shall be registered with the International Civil Aviation Organization.



ARTICLE 19 AMENDMENTS

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, such modification, if agreed between the Contracting Parties, shall come into effect when confirmed by an Exchange of Diplomatic Notes.
2. In the event of the conclusion of any general multilateral convention concerning air transport by which both Contracting Parties become bound, this Agreement and its Annexes shall be amended so as to conform with the provisions of such Convention.

ARTICLE 20 TERMINATION

1. Either Contracting Party may at any time give notice to the other Contracting Party of its intention to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such cases this 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.
2. 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

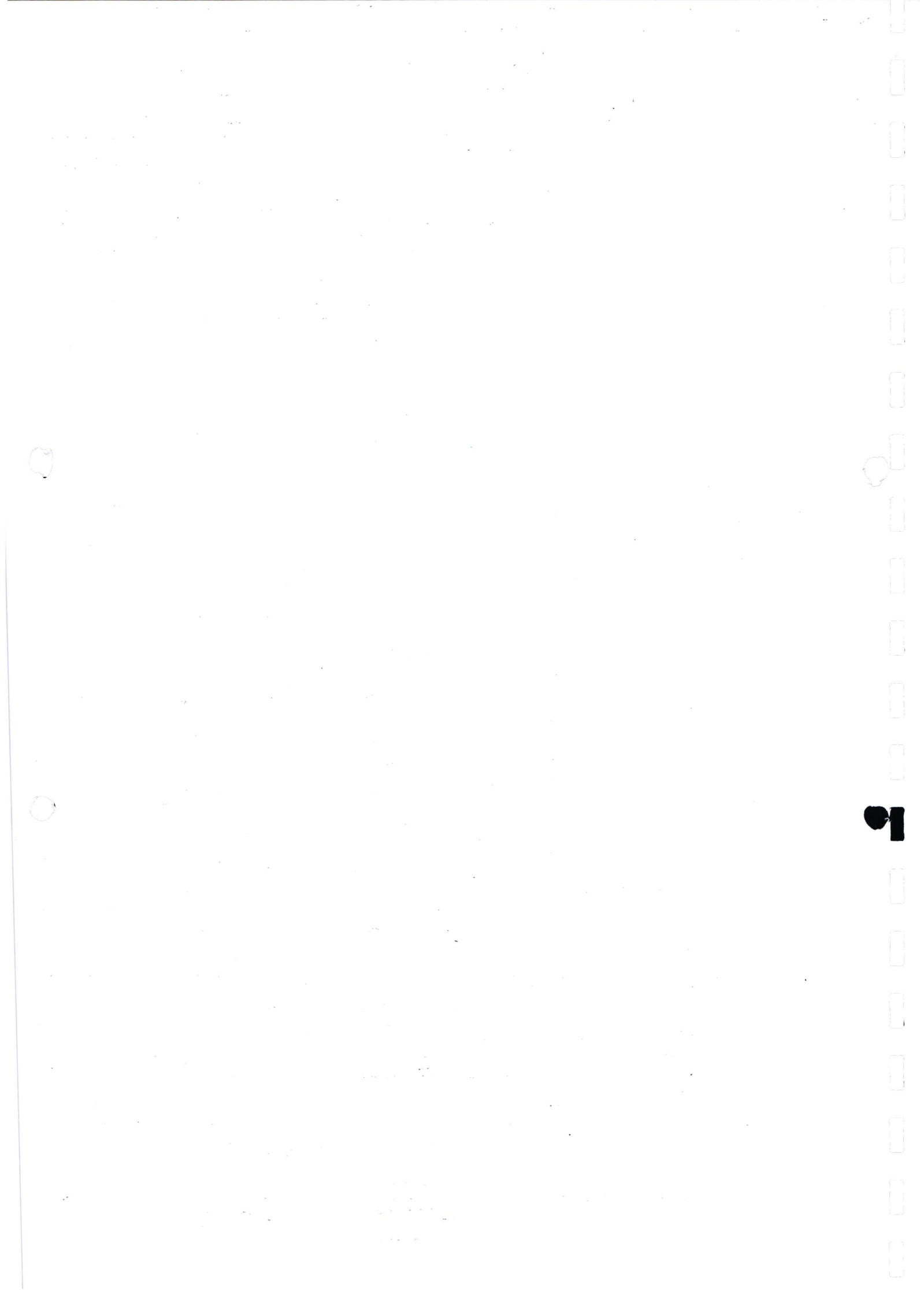
This agreement shall be provisionally applicable from the date of signature and shall enter into force upon an exchange of notes confirming completion of all necessary internal procedures by each party.

IN WITNESS WHEREOF the undersigned being authorized thereto by their respective Governments have signed this Agreement.

DONE at NAIROBI on this 13th day of December 2018 in two originals in the English language.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA

FOR THE GOVERNMENT
OF THE REPUBLIC OF SEYCHELLES





SCHEDULED AIR TRANSPORT

SECTION 1

ROUTES AND TRAFFIC RIGHTS

Airline(s) of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled International Air Transport between points on the following routes:

ROUTE SCHEDULE AND TRAFFIC RIGHTS.

ROUTE SCHEDULE

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF KENYA

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF SEYCHELLES	POINTS BEYOND THE REPUBLIC OF SEYCHELLES
Points in the Republic of Kenya	Any points	Any International points in the Republic of Seychelles	Any points

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF SEYCHELLES

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF KENYA	POINTS BEYOND THE REPUBLIC OF KENYA
Any Points in the Seychelles	Any points	Any International points in the Republic of Kenya	Any points

NOTES ON THE ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINES



SCHEDULED AIR TRANSPORT

SECTION 1

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ROUTE SCHEDULE

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF KENYA

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF SEYCHELLES	POINTS BEYOND THE REPUBLIC OF SEYCHELLES
Points in the Republic of Kenya	Any points	Any International points in the Republic of Seychelles	Any points

FOR THE DESIGNATED AIRLINE OF THE REPUBLIC OF SEYCHELLES

POINTS OF DEPARTURE	INTERMEDIATE POINTS	POINTS IN THE REPUBLIC OF KENYA	POINTS BEYOND THE REPUBLIC OF KENYA
Any Points in the Seychelles	Any points	Any International points in the Republic of Kenya	Any points

NOTES ON THE ROUTES TO BE OPERATED BY THE DESIGNATED AIRLINES

Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights that either begin or terminate in the territory of the country designating the airline.



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2



OPERATIONAL FLEXIBILITY

Each designated Airline(s) may, on any or all flights and at its options;

1. Operate flights in either or both directions
2. Combine different flight numbers within one aircraft operation;
3. Serve intermediate, and beyond points and points in the territories of the parties on the routes in any combination and in any order.
4. Omit stops at any point or points
5. Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes
6. Serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services. Without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services the service serves a point in the territory of the Party designating the Airline(s).



AIR SERVICES AGREEMENT

BETWEEN

THE GOVERNMENT OF THE HELLENIC REPUBLIC

AND

THE GOVERNMENT OF THE REPUBLIC OF KENYA



PREAMBLE

The Government of the Hellenic Republic

and

The Government of the Republic of Kenya

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December 1944;

Being equally desirous to conclude an Agreement for the purpose of establishing and operating scheduled air services between and beyond their respective territories;

Have agreed as follows:

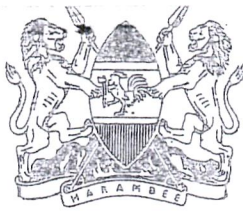
Article 1 Definitions

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

- a. The term "Aeronautical Authorities" means, in the case of the Government of the Hellenic Republic, the Governor of the Civil Aviation Authority and any person or body authorized to perform any functions at present exercised by the said Authority or similar functions and, in the case of the Government of the Republic of Kenya the Cabinet Secretary in charge of Civil Aviation, and any person or body authorized to perform any functions at present exercised by the said Organization or similar functions.
- 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:
 - (i) any amendment thereto which has entered into force under Article 94 (a) thereof and has been ratified by both Contracting Parties; and



- (ii) any Annex or any amendments thereto adopted under Article 90 of that Convention, insofar as such amendment or Annex is at any given time **effective** for those Contracting Parties.
- c. The term "Agreement" means this Agreement, the Annex attached thereto, and any Protocols or similar documents amending the present Agreement or the Annex.
- d. The term "designated airline" means, an airline which has been designated and authorized in accordance with the provisions of Article 3 of the present Agreement.
- e. The term "agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination.
- f. The term "capacity" in relation to an aircraft means, the payload of that aircraft available on a route or section of a **route and** the term "capacity" in relation to "an agreed service" means, the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period and a route or section of a route.
- g. The term "territory" in relation to a State has the meaning of the Article 2 of the Convention.
- h. The terms "air service", "international air service", "airline" and "stop for non-traffic purposes" shall have the meanings respectively assigned to them in Article 96 of the Convention.
- i. The term "tariff" means the price to be charged for the carriage of passengers, baggage and cargo and the **conditions under** which those prices apply, including prices and conditions for agency and other auxiliary services performed by the carrier in connection with the air transportation but excluding remuneration and conditions for the carriage of mail.
- j.** The term "user charge" means a charge made to airlines for the provision of airport, air navigation or aviation security property or facilities.
- k. The term "EU Treaties" means the Treaty on European Union and the Treaty on the Functioning of the European Union.



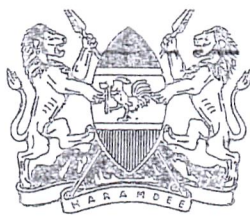
It is understood that the titles given to the Articles of the present Agreement do in no way restrict or extend the meanings of any of the provisions of the present Agreement.

Article 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the conduct of scheduled international air services by the designated airline of the other Contracting Party as follows:
 - a) To fly, without landing, across the territory of the other Contracting Party;
 - b) To make stops in the said territory for non traffic purposes and
 - c) To make stops in the said territory at the points on the route(s) specified in the Route Schedule annexed to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail, separately or in combination.
2. **Nothing** in the provisions of paragraph (1) shall be deemed to confer on the airline of one Contracting Party the right to take on board, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of the other Contracting Party.

Article 3
Designation and Authorizations

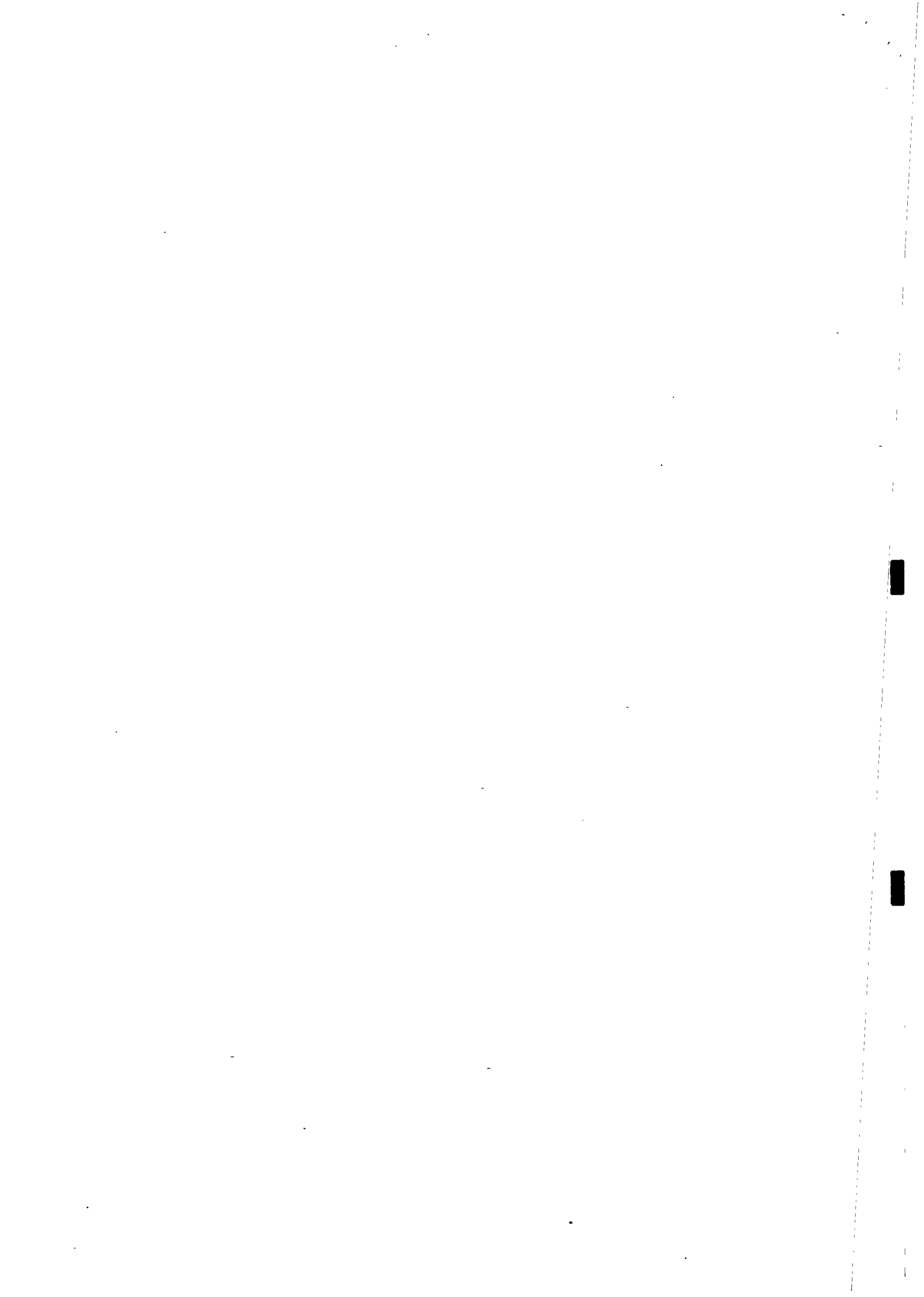
1. Each Contracting Party shall have the right to designate, and inform, through diplomatic channels the other Contracting Party, one or more airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations.
2. On receipt of such a designation the other Contracting Party shall grant the appropriate authorizations and permissions with the minimum procedural delay, provided:
 - a) in the case of an airline designated by the Hellenic Republic:



- i) it is established in the territory of the Hellenic Republic under the EU Treaties and has a valid Operating Licence in accordance with European Union law; and
 - ii) effective regulatory control of the airline is exercised and maintained by the European Union Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation;
 - b) in the case of an airline designated by the Republic of Kenya its substantial ownership and effective control are vested in the Republic of Kenya, its nationals, or both;
 - c) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied - in conformity with the provisions of the Convention - to the operation of international air services by the Contracting Party receiving the designation.
3. On receipt of the operating authorization of paragraph (2), a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

Article 4 Suspension and Revocation

1. Either Contracting Party may revoke, suspend or limit the operating authorization or technical permissions of an airline designated by the other Contracting Party, where:
 - a) in the case of an airline designated by the Hellenic Republic:
 - i) it is not established in the territory of the Hellenic Republic under the EU Treaties or does not have a valid Operating Licence in accordance with European Union law; or
 - ii) effective regulatory control of the airline is not exercised or not maintained by the European Union-Member State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation;
 - b) in the case of an airline designated by the Republic of Kenya its substantial ownership and effective control are not vested in the Republic of Kenya, its nationals, or both;



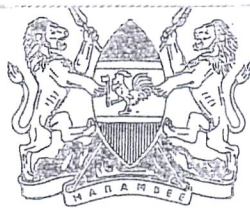


- c) such airline is unable to prove that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied in conformity with the Convention to the operation of international air services by the Contracting Party receiving the designation; or
 - d) the airline fails to comply with the laws and/or regulations of the Contracting Party granting these rights; or
 - e) the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.
2. Unless immediate revocation or suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws and/or regulations, such right shall be exercised only after consultation with the other Contracting Party, in conformity with Article 16 of this Agreement.
 3. This Article does not limit the rights of either Contracting Party to suspend, revoke, limit or impose conditions on the operating authorization of an airline of the other Contracting Party in accordance with the provisions of Article 7 (Aviation Safety Provisions), Article 8 (Aviation Security) and Article 11 (Fair Competition).

Article 5

Applicability of laws and regulations

1. The laws, regulations and procedures of one Contracting Party relating to entering into, remaining in or departing from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the designated airline of the other Contracting Party upon entrance into, while within and departure from ~~the said territory~~.
2. The laws and regulations of one Contracting Party respecting entry, clearance, staying or transit, emigration or immigration, passports, customs and quarantine shall be complied with by the designated airline of the other Contracting Party and by or on behalf of its crew, passengers, cargo and mail upon transit of, admission to, while within and departure from the territory of such Contracting Party.
3. Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such



purpose shall only be subject to a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 6

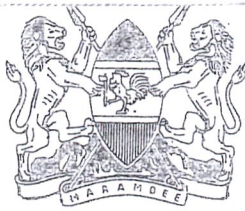
Recognition of Certificates and Licences

1. Certificates of airworthiness, certificates of competency and licences issued or validated in accordance with the laws and regulations of one Contracting Party, including in the case of the Hellenic Republic the laws and regulations of the European Union, and unexpired shall be recognised as valid by the other Contracting Party, for the purpose of operating the agreed services, provided always that the requirements under which such certificates or licences were issued or validated are equal or above the minimum standards established under the Convention. Each Contracting Party reserves the right, however to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals or rendered valid for them by the other Contracting Party or by any other State.
2. If the privileges or conditions of the licences or certificates referred to in paragraph (1) above, issued by the Aeronautical Authorities of one Contracting Party to any person or designated airline or in respect of an aircraft operating the agreed services on the specified routes would permit a difference from the standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the Aeronautical Authorities of the other Contracting Party may request consultations in accordance with Article 16 of this Agreement with the Aeronautical Authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement will constitute grounds for the application of Article 4 of this Agreement.

Article 7

Aviation Safety Provisions

1. Each Contracting Party may request consultations at any time concerning safety standards maintained in respect of an airline designated by the other Contracting Party in any area relating to aircrew, aircraft or their operation. Such consultations shall take place within thirty (30) days of that request.
2. If, following such consultations, one Contracting Party finds that the safety standards in the areas referred to in paragraph (1) that are at least equal to the



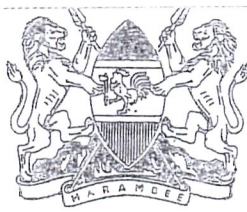
minimum standards established at that time pursuant to the Convention, are not being effectively maintained and administered in respect of airlines designated by the other Contracting Party, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with the ICAO Standards and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement.

3. Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any aircraft operated by or on behalf of the designated airline or airlines of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.
4. If any ramp inspection or series of ramp inspections gives rise to:
 - a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
 - b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificates or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an ~~aircraft operated by~~ the airline or airlines of one Contracting Party in accordance with paragraph (3) above is denied by the representative of that airline or airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (4) above arise and draw the conclusions referred in that paragraph.





6. Each Contracting Party reserves the right to suspend or vary the operating authorisation of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.
7. Any action by one Contracting Party in accordance with paragraphs (2) or (6) above shall be discontinued once the basis for the taking of that action ceases to exist.
8. Where the Hellenic Republic has designated an airline whose regulatory control is exercised and maintained by another European Union Member State, the rights of the other Contracting Party under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other European Union Member State and in respect of the operating authorisation of that airline.

Article 8
Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention of Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and the Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Protocol for the Suppression of Unlawful Acts Against the Safety of International Airports, signed at Montreal on 24 February 1988 the Convention on Marking of Plastic Explosives for the purpose of Detection, done at Montreal on 1 March 1991, and all other international instruments in the same field which may be ratified in the future by the Contracting Parties.
2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew,



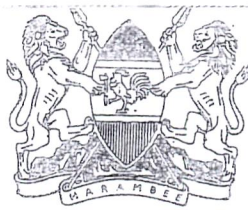
airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft which have their principal place of business or permanent residence in the territory of the Contracting Parties or, in the case of the Hellenic Republic, operators of aircraft which are established in its territory under the Treaty establishing the European Union and have valid Operating Licences in accordance with European Union law, and the operators of airports in their territory act in conformity with such aviation security provisions.
4. Each Contracting Party agrees that its operators of aircraft shall be required to observe, for departure from or while within the territory of the other Contracting Party, aviation security provisions in conformity with the law in force in that country, including, in the case of the Hellenic Republic, European Union law. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to screen passengers and their carry-on items and to carry out appropriate checks on crew, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.
5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 9 Commercial Opportunities

1. The designated airline of one Contracting Party shall have the right to maintain its own representation in the territory of the other Contracting Party.



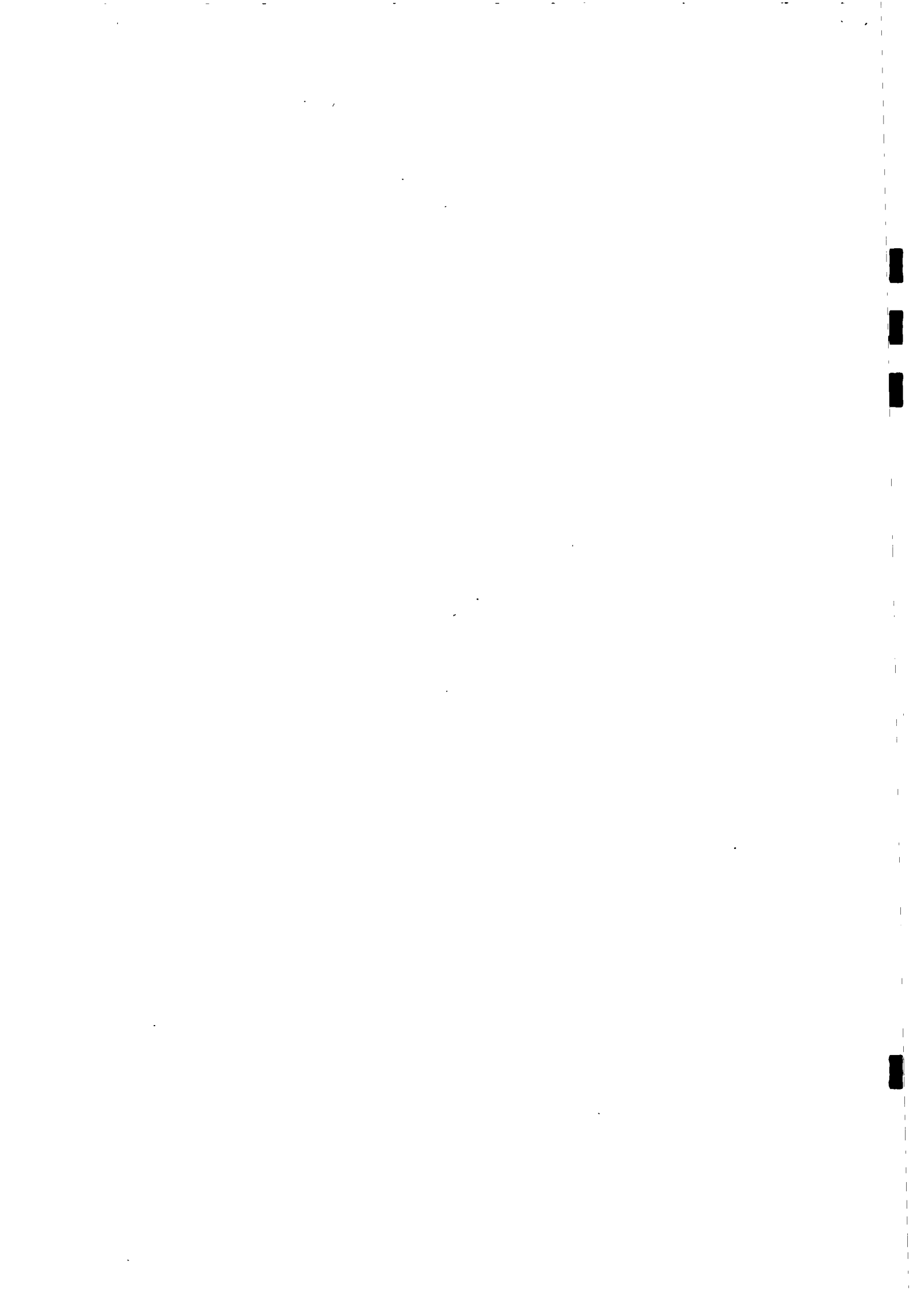


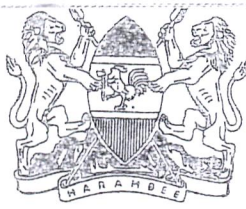
2. The designated airline of one Contracting Party may, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other specialist staff required for the provision of air services.
3. In case of nomination of a general agent or a general sales agent, this agent shall be appointed in accordance with the relevant applicable laws and regulations of each Contracting Party.
4. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly or through its agents and any person shall be able to purchase such transportation in accordance with the relevant applicable laws and regulations.
5. Each Contracting Party shall grant, to the designated airline of the other Contracting Party, the right to transfer to its country on demand, in accordance with the foreign exchange regulations in force, the excess of receipts over expenditure achieved in connection with the carriage of passengers, cargo and mail on the agreed services in the territory of the other Contracting Party.

Article 10

Exemption from customs duties and taxation

1. Each Contracting Party shall, on the basis of reciprocity, exempt the designated airline of the other Contracting Party under its relevant applicable legislation from import restrictions, customs duties, other taxes, excise duties inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services, as well as the ground equipment introduced in the territory of either Contracting Party in order to be used in the offices of the designated airline within the limits of the international airports to which the designated airline operate, ticket stock, air way bills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed without charge by that designated airline under its relevant applicable law.
2. The exemptions granted by this Article shall apply to the items referred to in paragraph (1):





- a) introduced in the territory of one Contracting Party by or on behalf of the designated airline of the other Contracting Party;
- b) retained on board aircraft of the designated airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided that the ownership and/or use of such items is not transferred in the territory of the said Contracting Party without the payment of the relevant customs duties and taxes.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs Authorities of that Contracting Party. In such case, they may be placed under supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with the customs provisions in force.
4. Nothing in this Agreement shall prevent the Hellenic Republic from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated airline of the other Contracting Party that operates between a point in the territory of the Hellenic Republic and another point in the territory of the Hellenic Republic or in the territory of another European Union Member State.

Article 11 Fair Competition

1. Each Contracting Party shall allow a fair and equal opportunity for each Airline to compete in providing the international Air Services governed by this Agreement.
2. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Contracting Party.



3. Each Contracting Party shall allow designated airlines of the other Contracting Party to determine the frequency and capacity of the Agreed Services it offers based on the airline's commercial considerations in the marketplace. Therefore, neither Contracting Party shall impose on the designated airline of the other Contracting Party any requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or of the aircraft type or types operated by the designated airline of the other Contracting Party, except as may be required for customs and other government inspection services, technical, or operational reasons under uniform conditions consistent with Article 15 of the Convention.
4. Neither Contracting Party shall impose on the designated airlines of the other Contracting Party a first-refusal requirement, uplift ratio, no-objection fee, or any other requirements with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

Article 12
User Charges

Each of the Contracting Parties may impose or permit to be imposed just and reasonable charges for the use of airports and other facilities under its control.

Each of the Contracting Parties agree, however, that such charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

Article 13
Capacity Regulations and Approval of Timetables

1. The agreed services provided by the designated airlines of the Contracting Parties shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for carriage of passengers, cargo and mail between the territory of the Contracting Party designating the airline and the territory of the other Contracting Party.
2. Provision for the carriage of passengers, cargo and mail both taken on board and discharged at points on routes to be specified in the territories of states



other than that designating the airline shall be agreed upon between the two Contracting Parties.

3. The capacity to be provided including the frequency of services and the type of aircraft to be used by the designated airlines of the Contracting Parties on the agreed services shall be agreed upon by the Aeronautical Authorities.
4. In case of disagreement between the Contracting Parties, the issues referred to in paragraph (5) above shall be settled in accordance with the provisions of Article 16 of this Agreement. Until such agreement has been reached, the capacity provided by the designated airlines shall remain unchanged.
5. The designated airlines of each Contracting Party shall submit for approval to the Aeronautical Authorities of the other Contracting Party not later than thirty days prior to the introduction of services on the specified routes the flight timetables. This shall, likewise, apply to later changes. In special cases, this time limit may be reduced subject to the approval of the said Authorities.

Article 14 Air Transport Tariffs

1. The tariffs in respect of international air services operated to/from/through the territory of either Contracting Party shall be established by the designated airlines at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit.
2. The tariffs established under paragraph (1) above shall not be required to be filed by the designated airlines of one Contracting Party with the aeronautical authorities of the other Contracting Party. Notwithstanding this, each Contracting Party shall have the right to intervene so as to:
 - a) prevent unreasonably discriminatory prices or practices;
 - b) protect consumers from prices that are unduly high or restrictive due to the abuse of a dominant position; and
 - c) protect airlines from prices that are artificially low due to subsidy or support.
3. For the purposes set out in paragraph (2) of this Article, the Aeronautical Authorities of one Contracting Party may require the designated airlines of the other Contracting Party to provide information relating to the establishment of the tariffs.
4. If one Contracting Party believes that the tariff charged by designated airlines of the other Contracting Party is inconsistent with the considerations set forth in





paragraph (2) of this Article, it shall notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible and request consultations which shall be held not later than thirty (30) days after receipt of the request. If the Contracting Parties reach an agreement with respect to the tariff for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. In the absence of such an agreement, the previously existing tariff shall continue to be in effect.

Article 15 Supply of Statistics

The Aeronautical Authorities of either Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party, at their request, such information and statistics relating to the traffic carried on the agreed services by the designated airline of the first Contracting Party to and from the territory of the other Contracting Party as may normally be prepared and submitted by the designated airlines to their National Aeronautical Authorities. Any additional statistical traffic data which the Aeronautical Authorities of one Contracting Party may desire from the Aeronautical Authorities of the other Contracting Party shall, upon request, be a subject of mutual discussion and agreement between the two Contracting Parties.

Article 16 Consultations and Modifications

1. Each Contracting Party or its Aeronautical Authorities may at any time request consultations with the other Contracting Party or with its Aeronautical Authorities.
2. A consultation requested by one of the Contracting Parties or their Aeronautical Authorities shall begin within a period of sixty (60) days from the date of receipt of the request.
3. Any modification to this Agreement shall enter into force when the two Contracting Parties will have notified each other through diplomatic channels of the fulfilment of their internal legal procedures relating to the conclusion and the entering into force of international agreements.
4. Notwithstanding the provisions of paragraph (3), modifications to the route schedule annexed to this Agreement may be agreed directly between the Aeronautical Authorities of the Contracting Parties. They shall enter into force after having been confirmed by an exchange of diplomatic notes.



Article 17
Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement and its Annex, the Contracting Parties shall in the first place endeavour to settle it by negotiations.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for an advisory opinion to some person or body.
3. If the Contracting Parties fail to reach a settlement pursuant to paragraphs (1) and (2) above, the dispute may be referred by mutual agreement of the Parties to a Tribunal of three arbitrators. 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 two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the President of the Tribunal within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate its arbitrator within the period specified or if the third arbitrator has not been nominated 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 may require; provided that if the President of the Council of the International Civil Aviation Organization is a national of either Contracting Party, the senior Vice-President of the Council or if he is such a national, the Senior Member of the Council who is not such a national may be requested to make the appointments as the case may be. The third arbitrator, however, shall be a national of a third state and shall act as the President of the Tribunal and shall determine the place where arbitration will be held.
4. The Tribunal shall determine its own procedures.
5. The expenses of the Tribunal shall be shared equally between the Contracting Parties.
6. The Contracting Parties undertake to comply with any decision delivered in application of the present Article.
7. If and so long as either Contracting Party or its designated airline fail to comply with a decision given under paragraph (3) of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement.



Article 18
Termination

Either Contracting Party may at any time give written notice to the other Contracting Party of its intention to terminate this Agreement, through diplomatic channels; such notice shall simultaneously be communicated to the International Civil Aviation Organization.

In such case the Agreement shall terminate twelve 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 19
Conformity with Multilateral Conventions

If a general multilateral air transport convention or agreement, comes into force in respect of both Contracting Parties, the present Agreement and its Annex shall be deemed to be amended accordingly.

Article 20
Registration

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

Article 21
Entry into Force

This Agreement shall enter into force on the date of the exchange, through diplomatic channels, of written notifications between the Contracting Parties informing each other of the completion of their relevant internal legal procedures necessary to this end.

In witness thereof, the undersigned plenipotentiaries being duly authorized by their respective Governments, have signed the present Agreement.



ANNEX

ROUTE SCHEDULE

SCHEDULE I

Routes to be operated by the designated airline(s) of the Republic of Kenya:

Points of Origin	Intermediate Points	Points of Destination	Beyond Points
Points in Kenya	Any Points	Any Points in Greece	Any Points

SCHEDULE II

Routes to be operated by the designated airline(s) of the Hellenic Republic:

Points of Origin	Intermediate Points	Points of Destination	Beyond Points
Points in Greece	Any Points	Any Points in Kenya	Any Points

Notes:

1. Intermediate points and points beyond the Contracting Parties may be omitted on any section.
2. Intermediate points and points beyond shall be served by the airlines of Contracting Parties without exercise of traffic rights between points in the territory of third countries and points in the territory of the other Contracting Party.
3. The right of the designated airline of one Contracting Party to operate flights for the carriage of passengers, baggage, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of third countries (5th freedom traffic rights) shall be subject to a separate agreement between the Aeronautical Authorities of the Contracting Parties.





Done at Nairobi in two authentic copies, this 14th day of December 2018 in the English language.

For the Government of
the Hellenic Republic

Mr. Konstantinos Moatsos
Ambassador
of the Hellenic Republic
in Nairobi

For the Government of
the Republic of Kenya

Mr. James Macharia, EGH
Cabinet Secretary
Ministry of Transport
Infrastructure, Housing, Urban
Development and Public Works

11th floor
2
17/10



MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT & PUBLIC WORKS

State Department of Infrastructure
Office of the Principal Secretary

10th Floor,
Works Building
Ngong Road
Email: psinfrastructure@go.ke

WORKS BUILDING
NGONG ROAD
P.O. Box 30260 - 00100
NAIROBI

Tungo Anson/Salim Abdalla
pls TWA
18/10/19

REF: MOTIHUD/1/A24.04

14th October, 2019

The Clerk
National Assembly
Parliament Building
NAIROBI.

Dear *Sir*,

CONSIDERATION OF COUNTY ROADS, WALKWAYS AND PARKING BAYS BILL (SENATE
BILL NO.18 OF 2018)

Reference is made to your letter Ref. NA/DCS/TPWH/CORR/2019/129 dated 2nd October, 2019 inviting us to a discussion of the aforementioned bill which is before the committee of Transport and Public Works which was scheduled for 10th and later rescheduled to 15th October, 2019.

I wish to request that my submission be made by the Infrastructure Secretary **Eng. Francis Gitau** who is my Technical Deputy. My absence has been necessitated by my involvement in preparation for the Presidential Launch for construction of the proposed Nairobi Expressway and the completed Nairobi-Narok SGR which are scheduled for Wednesday the 16th October, 2019.

Please do accept my sincere apologies

Yours *Sincerely*,

Prof. Arch. Paul M. Maringa CBS, (PhD), MAAK(A), MKIP
PRINCIPAL SECRETARY

NATIONAL ASSEMBLY
RECEIVED
17 OCT 2019
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J.W.N
P. O. Box 41842 - 00100, NAIROBI

Copy to:
Hon. David Pkosing
Departmental Chairman
Transport and Public Works Committee



MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT & PUBLIC WORKS

State Department of Infrastructure
Office of the Principal Secretary

10th Floor,
Works Building
Ngong Road
Email: psinfrastructure@go.ke

WORKS BUILDING
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NAIROBI

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National Assembly
Parliament Building
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14th October, 2019

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pls TNA
18/10/19

Dear *Sir*,

CONSIDERATION OF COUNTY ROADS, WALKWAYS AND PARKING BAYS BILL (SENATE
BILL NO.18 OF 2018)

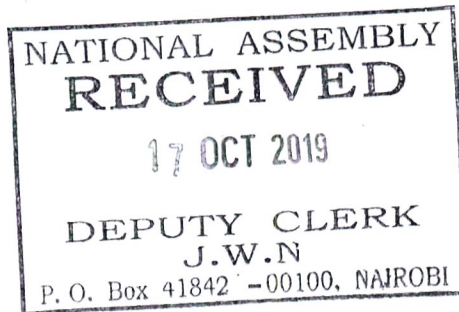
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PRINCIPAL SECRETARY



Copy to:
Hon. David Pkosing
Departmental Chairman
Transport and Public Works Committee

Salon Abicella
pls TAA
18/10/19

Comments of the County Planning (Roads, Pavements and Parking Bays) Bill, 2018	
Proposals in the Bill (Clauses)	Views and Recommendations
<p>1. Purpose of the Bill</p> <p>i. Provide for planning, construction and maintenance of County Roads, streets, lanes, Alleys, parking bays, drainage systems and walkways.</p> <p>ii. Provide planning of access ways to commercial buildings along major roads and for connected purposes</p>	<p>Planning for Roads is guided by standards and specifications provided by the National Government. This is well covered under part 2 of the 4th Schedule of the Constitution, and inbuilt in the Draft Kenya Roads Bill 2017.</p> <p>Spatial Plans inform the Transport Plan, and Commercial Zones are approved and developed, accordingly. Major Roads needs to be defined to avoid conflict with existing institutional framework.</p> <p>It is critical to embrace comprehensive planning and avoid splitting infrastructure into bits of facilities (Walkways, Parking Bays and Drainage)</p>

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<p>Interpretation</p> <p>2. In this Act-</p> <p>i. “county road” means a road classified as class D, E, F,G, K, L, P, R, S, T, U, W, UA or UW under the First Schedule of the Kenya Roads Bill; “major road” means all classified roads except the road classified as class UF under the First Schedule of the Kenya Roads Act;</p> <p>ii. “minor road” means a road classified as class UF under the First Schedule of the Kenya Roads Act 2007; and</p> <p>iii. “National road” means a road classified as class A, B or C under the First Schedule of the Kenya Roads Act.</p>	<p>The proposed definitions and classifications for the ‘Minor’ ‘National’ and ‘County Roads’ differ from those that are contained in the Kenya Roads Bill, 2017 that is undergoing enactment before the house.</p> <p>It is therefore important to await the enactment of the Kenya Roads Act 2017, before consideration of a County statute that may be counter to National Legislation.</p> <p>It is also advisable to note that in metropolitan areas, some county network may serve as Rapid Transit Corridors.</p>
<p>3. The object and purpose of this Act is to:-</p> <p>i. provide a framework for the planning and construction of access ways from major roads in each county in a manner that ensures the safety of road users;</p> <p>ii. provide a framework for the planning of commercial buildings along major roads in a manner that ensures that the buildings are accessible and do not lose their commercial viability; and</p>	<p>i. There is a need to provide a clear distinction of the role of the County Governments and that of the National Government in so far as <i>access ways</i> are concerned.</p> <p>ii. Accessibility and other purposes therewith are the sole responsibility of the National agencies that are mandated to construct such roads as per the Fourth Schedule to the Constitution of Kenya 2010.</p>

<p>iii. Promote the development of a well-planned environment in counties in order to achieve unhindered and adequate access to buildings from major roads by members of the public.</p>	<p>iii. The issue of Access to Major roads (National Roads) lies in the jurisdiction of the National Agency under whose mandate the road lies.</p>
<p>4. This Act shall apply to all county roads and all commercial buildings constructed along major roads.</p>	<p>The Application of the Act seems to allow the County CECs authority over major roads contrary to the Fourth Schedule of the Constitution of Kenya, 2010. It also has no reference to the National Legislation on management of Roads.</p>
<p>5. Duties of the county executive committee member.</p> <p>6. Construction and maintenance of streets, lanes, alleys, etc.</p> <p>7. Construction and maintenance of parking bays by the county</p>	<p>A list of related Duties and Responsibilities are well captured in the Kenya Roads Bill, 2017 which is before the Senate and has undergone wider public consultation processes</p>
<p>8. Construction and maintenance of pavements by the county government.</p> <p>9. Designation of pedestrian crossing.</p>	<p>Existing Roads agencies responsible for the National Roads have the mandate and jurisdiction for the walkways/foot paths, cycle tracks and footbridges on the road networks within their purview.</p>

<p>10. Access ways to commercial buildings.</p> <p>11. Construction and maintenance of pavements by owners of commercial buildings.</p> <p>12. Construction and maintenance of parking bays by owners of commercial buildings.</p> <p>13. Pavements.</p>	<p>The proposed accesses can only be developed with the concurrence, guideline and direction of the National government agency responsible for the road network.</p> <p>A clear definition that distinguishes a pavement from a walkway is necessary to avoid confusion.</p>
<p>14. Parking of motor vehicles.</p> <p>15. Designated parking for heavy commercial vehicles and petroleum tankers</p>	<p>(14). Provisions for parking are best handled by legislation promulgated under County Assemblies.</p> <p>(15). These provisions are best enacted after exhaustive and robust consultations with the members of the Transport Industry (haulage) and the Energy sector otherwise they will move the Judiciary and have these provisions expunged from the Act.</p>

<p>16. Regulations.</p> <p>i. The County Executive Committee may, in consultation with Cabinet Secretary....</p>	<p>It Should read</p> <p>16. (1) The County Executive Committee member shall in consultation with Cabinet Secretary in-charge of Roads...</p> <p><i>In so far as the regulations touch on Standards for the enumerated civil works they are unconstitutional as that is a function of the National Government as per the Fourth Schedule to the Constitution of Kenya, 2010.</i></p>
---	--

- (b) the construction and operation of national trunk roads;
 - (c) standards for the construction and maintenance of other roads by counties;
 - (d) railways;
 - (e) pipelines;
 - (f) marine navigation;
 - (g) civil aviation;
 - (h) space travel;
 - (i) postal services;
 - (j) telecommunications; and
 - (k) radio and television broadcasting.
19. National public works.
 20. Housing policy.
 21. General principles of land planning and the co-ordination of planning by the counties.
 22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—
 - (a) fishing, hunting and gathering;
 - (b) protection of animals and wildlife;
 - (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and
 - (d) energy policy.
 23. National referral health facilities.
 24. Disaster management.
 25. Ancient and historical monuments of national importance.
 26. National elections.
 28. Health policy.
 29. Agricultural policy.
 30. Veterinary policy.
 31. Energy policy including electricity and gas reticulation and energy regulation.
 32. Capacity building and technical assistance to the counties.
 33. Public investment.
 34. National betting, casinos and other forms of gambling.
 35. Tourism policy and development.

FOURTH SCHEDULE (Article 185 (2), 186 (1) and 187 (2))**DISTRIBUTION OF FUNCTIONS BETWEEN THE
NATIONAL GOVERNMENT AND THE COUNTY
GOVERNMENTS**

PART 1—NATIONAL GOVERNMENT

1. Foreign affairs, foreign policy and international trade.
2. The use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. Police services, including—
 - (a) the setting of standards of recruitment, training of police and use of police services;
 - (b) criminal law; and
 - (c) correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular—
 - (a) road traffic;

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SPECIAL ISSUE

Kenya Gazette Supplement No. 184 (National Assembly Bills No. 47)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2017

NAIROBI, 6th December, 2017

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THE KENYA ROADS BILL, 2017
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Object and purpose of the Act.
- 4—Guiding principles.
- 5—Application of the Act.

**PART II—ESTABLISHMENT OF THE PUBLIC
ROADS STANDARDS BOARD**

- 6—Establishment of the Board.
- 7—Composition of the Board.
- 8—Functions of the Public Roads Standards Board.
- 9—Roads Standards.

**PART III—CLASSIFICATION OF NATIONAL
TRUNK AND COUNTY ROADS**

- 10—Classification of national trunk and county roads.
- 11—Inventory on classification and assignment of roads.

**PART IV—ESTABLISHMENT OF ROAD
AUTHORITIES**

- 12—Establishment of the Kenya National Highways Authority.
- 13—Functions of the Kenya National Highways Authority.
- 14—Board of the Kenya National Highways Authority.
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- 16—Functions of the Kenya National Urban Roads Authority.
- 17—Board of the Kenya National Urban Roads Authority.

- 18—Establishment of the Kenya National Secondary Roads Authority.
- 19—Functions of the Kenya National Secondary Roads Authority.
- 20—Board of the Kenya National Secondary Roads Authority.
- 21—Responsibilities of the boards of the Authorities..

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- 23—Considerations on appointment of members of the Board.
- 24—Terms and conditions of service.
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- 26—Vacation of office.
- 27—Committees of a Board.
- 28—Delegation of powers.
- 29—Director- General.
- 30—Functions of Director- General.
- 31—Removal of Director- General.
- 32—Appointment of officers, agents and staff.
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- 93— Protection of name.
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PART X—TRANSITIONAL PROVISIONS

- 102— Transitional provision.
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SCHEDULES

FIRST SCHEDULE—CLASSIFICATION OF PUBLIC ROADS

SECOND SCHEDULE—NOMINATING BODIES

THIRD SCHEDULE— CONSEQUENTIAL AMENDMENTS

THE KENYA ROADS BILL, 2017

A Bill for

AN ACT of Parliament to provide for the classification, management, construction and maintenance of public roads; to establish the Kenya National Highways Authority, Kenya National Urban Roads Authority and Kenya National Secondary Roads Authority; and to provide for their functions and powers; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kenya Roads Act, 2017, and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette* appoint, and different dates may be appointed for different provisions.

Short title and commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“annual roads works programme” means a roads programme prepared by an Authority, or county government for the development, construction, maintenance or management of a road under this Act;

“Authority” means the Kenya National Highways Authority, the Kenya National Urban Roads Authority or the Kenya National Secondary Roads Authority established under sections 12, 15 and 18, respectively;

“Board” means a Board of an Authority established under sections 14, 17 and 20, respectively;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to roads;

“class” in relation to a road, means the categorization assigned to it under the First Schedule of the Act;

“construction” means supervision, inspection, building, and includes locating, surveying, mapping and eliminating road hazards;

“county executive committee member” means the county executive committee member responsible for matters relating to roads in a county government;

“county road” means a county road classified as such under Part B of the First Schedule;

“county roads agency” means a department or division which shall be responsible for the management development and maintenance of county roads under the county executive in charge of roads;

“Director-General” means the Director-General of an Authority;

“Intergovernmental Relations Technical Committee” means the Intergovernmental Relations Technical Committee established under section 11 of the Intergovernmental Relations Act;

No. 2 of 2012.

“Kenya Roads Board” means the Kenya Roads Board established under section 4 of the Kenya Roads Board Act;

No. 7 of 1999.

“national trunk road” means a national trunk road classified as such in Part A of the First Schedule;

“public road” has the same meaning as assigned to it under section 2 of the Public Roads and Roads of Access Act;

Cap. 399.

“road agency” means any legal body for the time being charged with the responsibility of management of roads using proceeds from the Fund established under the Kenya Roads Board Act;

No. 7 of 1999.

“Road Fund” means Kenya Roads Fund established under section 31 of the Kenya Roads Board Act;

No. 7 of 1999.

“roadside development” means a physical structure or facility on land within or adjoining a road reserve;

“toll road” includes a bridge or tunnel;

“toll station” means a structure on a toll road where toll is payable under this Act or any electrical or mechanical device on a toll road for recording the liability to pay toll, or any combination of such structure or device;

“vehicle” shall have the meaning assigned to it in the Traffic Act.

Cap. 403.

3. The purpose of this Act is to give effect to the provisions of the Fourth Schedule to the Constitution in relation to the functions on roads and to review and rationalize the legal and institutional framework for the management of the road network in Kenya.

Object and purpose of the Act.

4. In the performance of their functions and the exercise of their powers, an Authority, shall be guided by the following principles—

Guiding principles.

- (a) the national values and principles of governance specified under Article 10 of the Constitution;
- (b) the principle of co-operation between the national and county governments as envisaged under Article 189 of the Constitution and between the State and non-State actors in the development and management of the road sector;
- (c) the principle of public participation in the development of policies, plans, programmes and budget processes for the development and management of roads;
- (d) transparency, accountability and adoption of sound financial and management principles in the development and maintenance of roads;
- (e) efficiency and effectiveness in the management of the road sector;
- (f) clear assignment of responsibilities between the national and county government in the development, maintenance and management of roads;

5. (1) Subject to subsection (2), this Act shall apply to all public roads managed by the respective Authority and the county governments.

Application of the Act.

(2) Despite subsection (1), this Act shall not apply to national parks and reserves which are under the management and control of Kenya Wildlife Service.

PART II—ESTABLISHMENT OF THE PUBLIC ROADS STANDARDS BOARD

6. There is established a Public Roads Standards Board.

Establishment of the Board.

7. (1) The Board shall consist of a representative from each of the following bodies —

Composition of the Board

- (a) the State Department responsible for public roads;

- (b) the State Department responsible for matters relating to devolution;
- (c) the Inter-governmental Relations Technical Committee;
- (d) the Kenya National Highways Authority;
- (e) the Kenya National Urban Roads Authority;
- (f) the Kenya National Secondary Roads Authority;
- (g) the Kenya Roads Board;
- (h) the Institution of Engineers of Kenya;
- (i) the National Agency responsible for testing and research on roads; and
- (j) the National Transport and Safety Authority.

(2) The Principal Secretary for the State Department responsible for public roads shall be the chairperson of the Board.

(3) The State Department responsible for public roads shall provide the secretariat to the Board.

(4) The Principal Secretary for the State Department responsible for public roads may assign or appoint to the Board such support staff as may be necessary to effectively perform the functions.

(5) The Board shall establish and regulate its own procedures.

(6) The Board may co-opt any person to participate in the deliberations of the Board but the person so co-opted shall have no right to vote.

(7) The Board shall meet at least four times in a calendar year for the transaction of the business.

8. (1) The functions of the Board are to advise the Cabinet Secretary on—

- (a) standards for road and bridge materials, design, construction, maintenance and performance levels;
- (b) standard contract forms for works and consultancy services;
- (c) research and studies necessary for development and updating on public roads standards;

Functions of the
Public Roads
Standards Board.

- (d) the types, sizes and usage of vehicles on roads and maximum vehicle and axle load limits for purposes of protecting roads from damage;
- (e) development and training of human resources required for the development, rehabilitation and maintenance of roads; and
- (f) monitoring system to ensure adherence to the standards.

(2) In the execution of the functions under subsection (1), the Board shall take into account —

- (a) best international practices;
- (b) input from the general public and experts; and
- (c) the capacity of the relevant entities to comply with the standards.

9. (1) The Cabinet Secretary shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads authorities and county roads by county Governments.

Roads Standards.

(2) The Cabinet Secretary shall publish in the *Kenya Gazette* the public roads standards formulated under this section.

(3) Each Authority and county Government shall comply with the public roads standards prescribed by the Cabinet Secretary under this Act.

PART III—CLASSIFICATION OF NATIONAL TRUNK AND COUNTY ROADS

10. (1) A public road shall be classified in the manner set out in the First Schedule.

Classification of national trunk and county roads.

(2) Where a new road is established, the responsible Authority or county government shall submit to the Cabinet Secretary a request for classification of the road, and the Cabinet Secretary shall assign the road in accordance with the classification that accurately reflects the function served by the road for purposes of ensuring that—

- (a) the classification accurately reflects the function served by the road; and
- (b) all parts of the country have reasonable access to a national trunk road or a county road.

(3) The Cabinet Secretary may, from time to time, review the classification and assignment of public roads under subsection (2) for purposes of ensuring that—

- (a) the classification accurately reflects the function served by the road; and
- (b) all parts of the country have reasonable access to a national trunk road or a county road.

11. (1) Each Authority and each county government shall cause to be maintained and kept an up to date inventory of the roads under its management, in such form and with such detail, including categorization and identity details, as prescribed by the Cabinet Secretary.

Inventory on classification and assignment of roads.

(2) The Cabinet Secretary shall at least once in ten years publish the inventory under subsection (1) in the *Kenya Gazette*.

PART IV—ESTABLISHMENT OF ROAD AUTHORITIES

12. (1) There is established the Kenya National Highways Authority.

Establishment of the Kenya National Highways Authority.

(2) The Authority established under subsection (1) shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may be necessary for the furtherance of its purpose and functions.

(3) The headquarters of the Authority shall be in the capital city, but the Authority may establish such administrative offices in each county, as may be necessary for the furtherance of its functions under this Act.

13. (1) The Authority shall be responsible for the management, development, rehabilitation and maintenance of primary national trunk roads Classes S, A and B as specified in Part A of the First Schedule to this Act.

Functions of the Kenya National Highways Authority.

(2) For the purposes of discharging its responsibility, the Authority shall have the following functions and duties—

- (a) constructing, upgrading, rehabilitating and maintaining roads under its jurisdiction ;
- (b) controlling primary national trunk roads and road reserves and access to roadside developments;
- (c) implementing road policies in relation to primary national trunk roads;
- (d) ensuring adherence to the rules and guidelines on axle load control as provided under the Traffic Act;
- (e) ensuring that the quality of road works is in accordance with the standards prescribed by the Cabinet Secretary;
- (f) overseeing the management of traffic and road safety on primary national trunk roads, in collaboration with other agencies;
- (g) collecting and collating all data related to the use of primary national trunk roads as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of national trunk roads;
- (i) planning the development and maintenance of primary national trunk roads;
- (j) advising the Cabinet Secretary on all matters relating to primary national trunk roads;
- (k) preparing the investment programme and the annual road works programmes for all primary national trunk roads;
- (l) liaising and coordinating with other road agencies in planning and on operations in respect of roads; and
- (m) performing such other functions related to the implementation of this Act as may be directed by the Cabinet Secretary.

14. (1) There is established the Board of the Kenya National Highways Authority.

Board of the
Kenya National
Highways
Authority

(2) The Board of the Kenya National Highways Authority shall consist of the following members —

- (a) a non-executive Chairperson to be appointed by the President from amongst the members appointed under paragraph (f) ;
- (b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;
- (c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;
- (d) the Principal Secretary to the National Treasury;
- (e) the Director-General of the Authority, who shall be an *ex officio* member and secretary to the Board;
- (f) five persons, nominated by the following organizations—
 - (i) Institution of Engineers of Kenya;
 - (ii) Institute of certified Public Accountants of Kenya;
 - (iii) Law Society of Kenya;
 - (iv) Institute of Surveyors of Kenya; and
 - (v) Kenya Private Sector Alliance;

(3) The members of the Authority under paragraphs (1) (b) to (d) may designate an officer from their respective Ministry or State department to represent them.

(4) The nominating organizations specified under subsection (1) (f) shall submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary:

Provided that only one candidate shall be eligible for appointment by the Cabinet Secretary in accordance with subsection (1) (f).

(5) Despite subsection (1), the Principal Secretary in the ministry or State department responsible for matters

relating to roads and the Principal Secretary in the ministry or State department responsible for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary.

15. (1) There is established the Kenya National Urban Roads Authority.

Establishment of the Kenya National Urban Roads Authority.

(2) The Authority established under subsection (1) shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.

(3) The headquarters of the Authority shall be in the Capital city, and the Authority may establish such administrative offices in each county, as may be necessary for the furtherance of its functions under this Act.

16. (1) The Authority is responsible for the management, development, rehabilitation and maintenance of primary national trunk roads Classes H and J as described in the First Schedule Part A of this Act.

Functions of the Kenya National Urban Roads Authority.

(2) For the purposes of discharging its responsibility, the Authority shall have the following functions and duties—

- (a) constructing, upgrading, rehabilitating and maintaining roads under its jurisdiction;
- (b) controlling primary national trunk roads Classes H and J and road reserves and access to roadside developments;
- (c) implementing road policies in relation to primary national trunk roads Classes H and J;
- (d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any regulations made under this Act;

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- (e) ensuring that the quality of road works is in accordance with such standards as may be prescribed by the Cabinet Secretary;
- (f) overseeing the management of traffic and road safety on primary national trunk roads Classes H and J, in collaboration with the National Transport and Safety Authority;
- (g) collecting and collating all such data related to the use of primary national trunk roads Classes H and J as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of primary national trunk roads Classes H and J;
- (i) planning the development and maintenance of primary national trunk roads Classes H and J;
- (j) advising the Cabinet Secretary on all matters relating to primary national trunk roads Classes H and J;
- (k) preparing the sector investment programme road works programmes for all primary national trunk roads Classes H and J;
- (l) liaising and coordinating with other road agencies in planning and on operations in respect of roads; and
- (m) performing such other functions related to the implementation of this Act as may be directed by the Cabinet Secretary.

17. (1) The Board of the Kenya National Urban Roads Authority shall consist of the following members—

- (a) a non-executive Chairperson to be appointed by the President from amongst the members appointed under paragraph (f);
- (b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;
- (c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;

Board of the
Kenya National
Urban Roads
Authority.

- (d) the Principal Secretary in the National Treasury;
- (e) the Director-General of the Authority, who shall be an *ex officio* member and secretary to the Board;
- (f) five persons, nominated by the following organizations—
 - (i) Institution of Engineers of Kenya;
 - (ii) Institute of Certified Public Accountants of Kenya;
 - (iii) Law Society of Kenya;
 - (iv) Institute of Surveyors of Kenya; and
 - (v) Kenya Institute of Physical Planners.

(2) The members of the Authority under paragraphs 1 (b) to (d) may designate an officer from their respective Ministry or State department to represent them.

(3) The nominating organizations specified under subsection (1) (f) shall submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary:

Provided that only one candidate shall be eligible for appointment by the Cabinet Secretary in accordance with subsection (1) (f).

(4) Despite subsection (1), the Principal Secretary in the ministry or State department responsible for matters relating to roads and the Principal Secretary in the ministry or State department responsible for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary.

18. (1) There is established the Kenya National Secondary Roads Authority.

Establishment of
the Kenya
National
Secondary Roads
Authority.

(2) The Authority established under subsection (1) shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

- (c) borrowing and lending money; and
 - (d) doing or performing all such other things or acts as may be necessary in furtherance of its purpose and functions.
- (3) The headquarters of the Authority shall be in the Capital city, and the Authority may establish such other administrative offices, as may be necessary for the furtherance of its functions under this Act.

19. (1) The Authority is responsible for the management, development, rehabilitation and maintenance of secondary National Trunk Roads classes C and D as specified in the Part A of the First Schedule to this Act.

Functions of the Kenya National Secondary Roads Authority.

(2) For the purposes of discharging its responsibility, the Authority shall have the following functions and duties—

- (a) constructing, upgrading, rehabilitating and maintaining roads under its jurisdiction;
- (b) controlling secondary national trunk roads and road reserves and access to roadside developments;
- (c) implementing road policies in relation to secondary national trunk roads;
- (d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any regulations made under this Act;
- (e) ensuring that the quality of road works is in accordance with such standards as may be prescribed by the Cabinet Secretary;
- (f) overseeing the management of road usage on secondary roads in collaboration with other agencies;
- (g) collecting and collating all such data related to the use of secondary national trunk roads as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of National Secondary Trunk Roads;
- (i) planning the development and maintenance of national secondary trunk roads;

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- (j) advising the Cabinet Secretary on all matters relating to national secondary trunk roads;
- (k) preparing the sector investment programme road works programmes for all national secondary trunk roads;
- (l) liaising and coordinating with other road agencies in planning and on operations in respect of roads; and
- (m) performing such other functions related to the implementation of this Act as may be directed by the Cabinet Secretary.

20. (1) There is established the Board of the Kenya National Secondary Roads Authority.

Board of the
Kenya National
Secondary Roads
Authority.

(2) The Board of the Kenya National Secondary Roads Authority shall consist of the following members—

- (a) a non-executive Chairperson to be appointed by the President from amongst the members appointed under paragraph (f);
- (b) the Principal Secretary in the ministry or State department responsible for matters relating to roads;
- (c) the Principal Secretary in the ministry or State department responsible for matters relating to transport;
- (d) the Principal Secretary in the National Treasury;
- (e) the Director-General who shall be an *ex officio* member and secretary to the Board;
- (f) five persons, nominated by the following organizations—
 - (i) Institution of Engineers of Kenya;
 - (ii) Institute of Certified Public Accountants of Kenya;
 - (iii) Law Society of Kenya;
 - (iv) Institute of Surveyors of Kenya; and
 - (v) Kenya Institute of Physical Planners.

(3) The members of the Authority under paragraphs (1) (b) to (d) may designate an officer from their respective Ministry or State department to represent them.

(4) The nominating organizations specified under subsection (1) (f) shall submit three names of the candidates approved at their respective annual general meeting for appointment by the Cabinet Secretary:

Provided that only one candidate shall be eligible for appointment by the Cabinet Secretary in accordance with subsection (1) (f).

(5) Despite subsection (1), the Principal Secretary in the ministry or State department responsible for matters relating to roads and the Principal Secretary in the ministry or State department responsible for matters relating to transport or their alternates may both not be members of the Board if they serve under the same Cabinet Secretary.

21. (1) The Boards of the Authorities shall be responsible for overseeing the operations of the Authority for purposes of—

Responsibilities of the boards of the Authorities.

- (a) attaining equity in the development of road network in all parts of Kenya;
 - (b) securing continuing improvements of performance;
 - (c) protecting the long term viability of the Authority;
 - (d) ensuring that financial needs of the Authority are addressed; and
 - (e) any other duties and responsibilities as may be undertaken in furtherance of their mandate in consultation with the Cabinet Secretary.
- (2) Without prejudice to the provisions of subsection (1), the Board shall ensure that—
- (a) appropriate strategic plans consistent with government roads subsector policy and targets are in place;
 - (b) the Authority has management structures and systems for monitoring management performance against plans and targets and that corrective action is taken where necessary;

- (c) appropriate systems and practices are established for management, financial planning and control, including systems and practices for the maintenance of accurate and comprehensive records of all transactions, assets and liabilities and physical and human resources of the Authority;
- (d) all such plans, targets, structures, systems and practices are regularly reviewed and revised as necessary to address changing circumstances and reflect best practices;
- (e) the Authority observes high standards of corporate governance;
- (f) the national government is advised, as soon as practicable, of any material development that—
 - (i) adversely affects the financial or operating capacity of the Authority; or
 - (ii) gives rise to an expectation that the Authority may not be able to meet its debts as and when they fall due; and
- (g) all information furnished by the Authority is accurate and comprehensive.

PART V—ADMINISTRATIVE PROVISIONS

22. (1) A person shall be qualified for appointment as a chairperson or a member of the Board under sections 14, 17 and 20 if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has knowledge and experience of at least ten years in the relevant field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A member of the Authority appointed under sections 14, 17 and 20 may be disqualified from office if the member—

- (a) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

Qualifications for appointment of the chairpersons and members of the Board.

- (b) is convicted of an offence involving dishonesty or fraud;
- (c) otherwise fails to comply with the requirements of Chapter Six of the Constitution;
- (d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
- (e) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board.

(3) The procedure for the appointment of the chairperson and members of the Authority under sections 14, 17 and 20 shall be as set out in Part C of the Second Schedule to this Act.

23. In appointing the chairperson and other members of the Board under this Act, the President and the Cabinet Secretary shall ensure that—

Considerations on appointment of members of the Board.

- (a) the board reflects the regional and ethnic diversity of the people of Kenya; and
- (b) not more than two-thirds of the members are of the same gender.

24. (1) The chairperson and members of each board other than the *ex officio* members and public officers shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

Terms and conditions of service.

(2) The appointment of the members of the Board shall be by notice published in the Gazette.

25. The Chairperson and members of a Board shall be paid such allowances as the Cabinet Secretary may determine in consultation with the Salaries and Remuneration Commission.

Remuneration of chairperson and members.

26. A person shall cease to be the chairperson or a member of the Board, if that person—

Vacation of office.

- (a) resigns in writing to the —
 - (i) President, in case of Chairperson; or
 - (ii) Cabinet Secretary, in case of other members;

- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (d) is declared bankrupt;
- (e) is convicted of an offence involving fraud, dishonesty or moral turpitude;
- (f) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (g) dies.

27. (1) A Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

Committees of a Board.

(2) The Board may co-opt any person whose knowledge and skills are necessary for the performance of the functions of the Board to sit on any committee established under subsection (1).

28. A Board may, by resolution either generally or in any particular case, delegate to any of its committees, or to any of its members, officers or employees, the exercise of any of its powers or the performance of any of its functions under this Act or under any other written law.

Delegation of powers.

29. (1) There shall be a Director-General of each Authority who shall be competitively recruited and appointed by the respective Board on such terms and conditions as the Board shall determine.

Director-General.

(2) A person shall be qualified for appointment as Director-General if that person —

- (a) holds a Bachelor's degree in Civil Engineering, a master's degree from a University recognized in Kenya and is registered by the Engineers Board of Kenya.
- (b) has had at least ten years' experience in a management level in the roads sector; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The Director-General shall be an *ex officio* member of the Board, and shall have no right to vote at any meeting of the Board.

(4) The Director-General shall be appointed for a term of three years and shall be eligible for re-appointment for one further term of three years.

30. (1) The Director-General shall be the chief executive and accounting officer of the Authority and secretary to the Board.

Functions of
Director-General.

(2) The Director-General shall, subject to the direction of the Board—

- (a) be responsible for the day to day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of staff of the Authority;
- (d) implement the policies, programmes and objectives of the Authority;
- (e) cause to be prepared for the approval of the Board—
 - (i) the strategic plan and annual plan of the Board; and
 - (ii) the annual budget and audited accounts of the Board; and
- (f) perform such other duties as may be assigned by the Board.

31. (1) A Board may terminate the appointment of its Director-General in accordance with the terms and conditions of the service, for—

Removal of
Director-General.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehavior; or
- (c) incompetence or neglect of duty.

(2) Before the removal of the Director-General under subsection (1), the Board shall constitute a committee which shall—

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations to the Board.

(3) The committee constituted under subsection (2) shall give the Director-General an opportunity to be heard on the grounds alleged for his removal.

(4) The committee constituted under subsection (2) shall submit to the Board its recommendations on whether or not the Director-General should be removed from office, and the Board shall take such action as it considers appropriate.

(5) Where the Board resolves to remove the Director-General from office, such resolution shall not be valid unless it is supported by at least six members of the Board.

32. (1) The Director-General may, with the approval of a Board, appoint such officers, and staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act.

Appointment of officers, agents and staff.

(2) The officers, and staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

(3) In appointing the officers, and staff of the Board, the Director-General and the Board shall observe the values and principles of public service provided under Article 232 of the Constitution, and shall ensure that no more than two-thirds of the members are of the same gender.

33. A Board shall establish such organizational structures and adopt such rules and procedures for the efficient administration of the activities of the Authority as it may consider appropriate.

Structural organization of the Authority.

34. An act done by the chairperson or member of the Board or an officer, employee or agent of the Authority, shall not if the act is done bona fide for the purpose of executing any provisions of this Act, render the chairperson or member, or that officer, employee or agent personally liable for any action, claim or demand.

Protection from personal liability.

35. The provisions of this Act shall not relieve an Authority of the liability to pay compensation or damages

Liability for Damages.

to any person for any injury to that person caused by the exercise of any power conferred, or by failure, whether wholly or partially, of any action under this Act.

36. (1) A performance agreement shall be executed between the Cabinet Secretary and each Authority in respect of the management and work programme of the respective Authority.

Performance agreement.

(2) The Cabinet Secretary shall make guidelines providing for the manner in which the performance agreement required under subsection (1) shall be made.

37. (1) Each Authority shall, after the end of each financial year but within a period of four months, submit to the Cabinet Secretary an annual report on its activities and operations.

Annual report.

(2) An annual report submitted under subsection (1) shall include—

- (a) information with regard to the progress and policy of the entity;
- (b) a copy of the audited accounts of the entity in respect of that year together with the report of the Auditor-General;
- (c) an overview of the operations of the entity;
- (d) an assessment of the degree to which performance targets have been achieved;
- (e) a general report on the degree in which the objectives of this Act have been realized, and the levels of compliance with the provisions of the Act; and
- (f) such other information as the Cabinet Secretary may request in writing.

38. Each Authority may make Regulations generally relating to the conditions of service of its employees, and in particular, but without prejudice to the generality of the foregoing, relating to—

Power to make Regulations relating to employees.

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given to its staff;
- (b) appeals by officers and staff against dismissal or other disciplinary measures; and

- (c) the establishment and maintenance of medical benefits and loan funds, and the contributions payable thereto and the benefits recoverable therefrom.

39. (1) The affixing of the common seal of an Authority, may be authenticated by the signature of the chairperson and the Director-General.

Common seal.

(2) A document not required by law to be made under seal and all decisions of an Authority, may be authenticated by the signature of the Director-General,

(3) Where the chairperson or the Director-General is absent, the Board may in consultation with the Cabinet Secretary nominate a member to authenticate the seal on their behalf.

(4) The common seal of the Authority shall be kept in such custody as the Board may direct.

(5) The common seal of the Authority when affixed to a document and authenticated shall be officially noticed, and unless the contrary is proved, an order or authorization of the Authority, under this section shall be presumed to have been given.

40. The conduct of business and affairs of the Board shall be conducted in accordance with the Second Schedule.

Conduct of Business and affairs of the Board.

PART VI—GENERAL POWERS OF AN AUTHORITY

41. Where an Authority requires any land for its purposes, the Cabinet Secretary shall submit a request for the acquisition to the National Land Commission, and the provisions of Part VIII of the Land Act, 2012 shall apply, provided that an Authority may in consultation with the National Land Commission pay directly any compensation due to any person whose land or property is acquired under the Land Act, 2012 for purposes of the Authority.

Acquisition of land.
No. 6 of 2012.

No. 6 of 2012.

42. (1) An authorized employee of the Authority may, for the purposes of this Act, enter upon any land and survey such land or any portion thereof.

Power to enter and survey land.

(2) Where any damage on the land is caused by reason of the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to compensation in accordance with this Act.

43. (1) Any authorized employee of the Authority may, for the purposes of preventing the occurrence of an accident, preserving the safety of traffic or the safe operation of any service provided by the Authority, or repairing any damage caused by an accident, enter upon any land and—

Power to enter land to prevent accidents, etc.

- (a) cut down or remove any tree or other obstruction, not being a building, which obscures the view of any traffic sign, which is likely to cause any obstruction or any danger to the safety of traffic or of any such service; or
- (b) execute such other works as may be necessary to prevent the occurrence of an accident or to repair any damage caused as a result of an accident.

(2) If a tree or other obstruction cut down or removed under subsection (1) (a) came into existence subsequent to the erection of a traffic sign or to the service being provided at that place, compensation shall not be payable in respect of the entry, or the cutting down or removal of the tree or other obstruction.

44. (1) Subject to the provisions of this section, an Authority, or any of its authorized employees may, for the purposes of the Authority, enter on any land and alter the position of any electric, telephone, telegraphic, fibre optic or other wire of any nature, or the position of any drain or sewer.

Power to enter, and to alter position of pipes, etc.

(2) Where an Authority intends to exercise any power under subsection (1), it shall give reasonable notice of its intention to do so to the person having control of the pipe, wire, sewer or drain and—

- (a) such person may authorize a representative to superintend such work, and may require the Authority to execute such work to the satisfaction of such representative; and
- (b) the Authority shall make arrangements for the maintenance of the supply of gas, oil, compressed air or electricity, for the continuance of the telephone, telegraph or other wire-borne communications or for the maintenance of the sewer or drainage, as the case may be, during period of execution of such work.

45. (1) For purposes of this section—

Power to remove pipes, etc. from within the road reserve.

- (a) “pipe-borne utilities” refers to any pipes, devices and fittings for the supply or transmission of gas, oil products, water, wastewater, compressed air and any material conveyed by means of piping;
- (b) “wire-borne utilities” refers to wires, devices and fittings for the transmission of electricity, telephone services, telegraph services, data, and any other service conveyed by means of conductive wire, fibre optic cable or other wire or cable of any nature which is placed on the road reserve; and
- (c) “infrastructure utilities” refers to pipe borne utilities, wire-borne utilities, covered or open drains, and any other physical device for the provision, conveying or supply of services.

(2) Where an infrastructure utility is located within a road reserve, the provider or operator of the infrastructure utility shall, on a written request by the respective Authority, relocate such infrastructure utility to a location or alignment approved by the Authority at no cost to that Authority.

(3) Where the Authority intends to exercise any power under subsection (2), it shall give reasonable notice of its intention to do so to the person having control of such infrastructure utility, and such person shall cause to be removed such infrastructure utility within sixty days:

Provided that service of the notice through a newspaper of wide circulation in Kenya shall be considered to be a proper notice under this Act.

(4) Where, under subsection (2) or (3), a person having control of an infrastructure utility fails to remove the infrastructure utility within the time stated in the notice, the Authority may remove such infrastructure utility at the cost of the person who was unable to comply with the notice under subsection (3).

46. (1) A road Authority may—

Occupation of private land.

- (a) in the development, construction, rehabilitation or maintenance of a road;

- (b) in the construction of a temporary road for use by the public pending the carrying out of the road works under paragraph (a); or
- (c) in providing a temporary road for use by the public where a road has become impassable,

use and occupy for such period as may be necessary for the carrying out of the road works, any land along or adjoining the road in relation to which the road works are to be carried out.

(2) A road Authority shall not occupy land under subsection (1) unless it has issued to the registered owner or occupier of the land, a notice of at least thirty days of its intention to occupy the land.

(3) A road authority shall not be required to issue a notice under subsection (2) where—

- (a) in the opinion of the road authority, it is necessary as a matter of urgency to use and occupy land that is more than fifteen metres from a dwelling-house for the purpose of reconstructing or repairing a particular road; and
- (b) the road authority gives the occupier of the land such notice as is practicable in the circumstances and, immediately after giving the notice, reports to the respective Cabinet Secretary the circumstances requiring such a notice to be dispensed with.

(4) A road authority shall not use or occupy land under subsection (1) where the land is located within fifteen metres of a dwelling house unless—

- (a) the occupier of the land has consented in writing to the use or occupation, or
- (b) if that consent is not given, the respective Cabinet Secretary has given written authority for the use or occupation.

(5) The road Authority shall compensate an owner of land for any loss or damage arising from the exercise of powers under this section.

47. An Authority may, for its purposes, take any water from any natural watercourse subject to the Water Act, 2002.

Power to take
water.
No.8 of 2002.

48. (1) Subject to the Constitution an Authority, by its agents and officers, for the purpose of the construction and maintenance of roads or the carrying out of any works which it is empowered under this Act or under any agreement, direction, delegation or transfer entered into, given or made under this Act to carry out, may enter upon land and remove there from any soil, clay, rock, gravel, murrum, lime, sand, shale, shingle, slate or surface soil, and may carry across any land, by a route to be agreed between the owner and in the event of failure to agree, cause to be acquired compulsorily such land, and remove such material, and may provide within the land in connection with such functions labour or other camps, works buildings, access roads, and space for stockpiling, and may erect machinery and other gear for the purpose of quarrying any such material.

Access to material sites etc.

(2) A county exercising its authority under subsection (1) may enter land only within the county.

(3) Before entering upon any land for the purpose of exercising any of the powers conferred by subsection (1), a road authority shall give not less than one month's notice by personal service or by registered post to the last known address of the owner or occupier of such land, of the intention to enter upon such land, the powers which it proposes to exercise, and the area of such land to which it will confine its activities.

(4) If the owner or occupier of such land is aggrieved by the proposed exercise by the road authority of the powers conferred by this section or by the proposed exercise of the powers in the area specified in the notice, he may, within one month from the service upon him of the notice under subsection (3), make representations to the National Land Commission thereon and shall within the same period inform the road authority concerned of the nature of such representations.

(5) Where representations are made to the National Land Commission under subsection (4), the National Land Commission may, after consulting the road authority concerned, give such direction to the road authority thereon as it thinks fit.

(6) Compensation shall be payable by a road authority to the owner or occupier of any land for any damage done

to buildings, roads or crops, or otherwise, in the exercise by it of any of the powers conferred upon it by this section, and for any interference with the rights of occupancy of such land.

(7) If, as a result of the exercise of any of the powers conferred by this section, a danger to persons (other than employees of the road authority or of their agents) or to domestic animals is created, the road authority shall, at the request of the owner or occupier of the land, carry out fencing at its own expense to such an extent as adequately to guard against such danger.

(8) The sites for any labour or other camps to be provided by the road authority and the alignment of any roads of access shall be determined by the road authority only after consultation with the owner and occupier of the land on which the same are to be situated.

(9) Any pit or quarry made in exercise of any of the powers conferred by this section shall, at the request of the owner or occupier of the land, be filled up or, in the discretion of the road authority, fenced, at the expense of the road authority, when the road authority abandons such pit or quarry.

(10) This section shall be subject to the Forests Act and any rules made thereunder, and to the extent of any inconsistency between this section and that Act and any rules thereunder, the latter shall prevail.

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(11) For the purpose of this section, the expression "owner or occupier" means in respect of Government land, the National Land Commission, in respect of Trust land (other than land the title to which is registered under the Land Consolidation Act) means the county, and in respect of forest areas, means the Chief Conservator of Forests.

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49. (1) An Authority may, for its purposes, temporarily close or divert a public road and similarly close or divert a road permanently.

Power to close a public road.

(2) It shall be lawful for a road authority or its authorized representative, for the purpose of preventing damage being caused to any road or for the purpose of carrying out any works which it may consider necessary or desirable in connection with the maintenance or improvement of any road, to close the whole or any part of

such road to all vehicles or any particular type of vehicles at any time for any period it may think fit.

(3) It shall not be lawful for the driver or person in charge of any vehicle to drive or haul the vehicle or cause it to be driven or hauled over any portion of a road which is closed to traffic and where a conspicuous notice is displayed to the effect that the road is closed, unless the driver or person in charge of the vehicle has received permission, in writing, from the relevant Authority.

50. (1) Subject to subsection (2), where a railway has been or is proposed to be constructed so as to cross a road, the Authority shall require the owner or operator of the railway —

Railway crossings.

- (a) to erect such gates and to execute such other works as may be necessary for the safety of the public;
- (b) in the case of national trunk roads, to construct the railway in such a manner that it does not cross the road on the level; and
- (c) the owner or operator of the railway shall comply with such requirements.

(2) The respective Authority shall, before making any requirement under this section, communicate with the owner or operator of the railway and shall take into consideration any representations made by the owner or operator.

(3) Where as a result of a requirement made by the Authority under this section, any works are to be constructed by the owner or operator of the railway, the manner of construction of such works and the apportionment of the cost of construction and maintenance thereof shall be determined by an agreement between the owner or operator of the railway and the Authority, and if no such agreement is made, it shall be determined by an arbitrator appointed by the Cabinet Secretary.

51. An Authority shall have power to require the owner of any land to remove, lower or trim to the satisfaction of the Authority any tree, shrub or hedge overhanging or interfering in any way with the traffic on any road or with any wires or works within the road.

Removing trees, etc.

52. (1) In this section —Inter-county roads
and bridges.

“Inter-county road” includes a bridge, drain and other services associated with a road and that crosses or runs along the boundaries of more than one county government.

(2) Each county government shall be jointly responsible to maintain an inter county road.

(3) Where a county road crosses or runs along the boundaries of more than one county government, the concerned county governments may enter into an agreement stating the manner in which —

- (a) the inter-county road shall be constructed or maintained; or
- (b) costs for constructing or maintaining the road.

(4) Where the relevant county governments are not able to agree as provided under subsection (3), any county government may refer the matter to the Intergovernmental Relations Technical Committee under the Intergovernmental Relations Act for determination by the Council of Governors, on any matter including —

No. 2 of 2012.

- (a) whether a road, bridge, drain or other service is required;
- (b) the standard of construction or maintenance;
- (c) each county government’s share of construction or maintenance costs; or
- (d) which county government should exercise management and control of the road.

53. (1) A driver or a person in charge of a vehicle shall not drive or haul a vehicle or cause it to be driven or hauled over any bridge on or near a conspicuous notice which has been placed to the effect that such bridge is insufficient to carry traffic in excess of a specified weight, unless —

Damage to road or
bridge.

- (a) the gross weight of the vehicle and any trailer attached thereto is less than the weight specified; or
- (b) the driver or person in charge of the vehicle has obtained the consent, in writing, of the relevant Authority.

(2) Where a road or bridge is damaged—

- (a) by reason of a vehicle passing over it in contravention of the provisions of subsection (1) or of the axle load restrictions under the Traffic Act, East African Community Vehicle Load Control Act or the provisions of any regulations made under this Act; or
- (b) by reason of any vehicle passing over a bridge on the road or coming into contact with any portion thereof other than the surface of the road,

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it shall be lawful for the Authority to make good such damage and to recover the cost thereof from the owner of the vehicle, and the person driving or hauling it shall be jointly and severally liable to the Authority for the damage.

(3) A certificate under the hand of any person authorized on that behalf by the concerned Authority stating the amount of the cost of making good such damage under subsection (2) shall be prima facie evidence of such cost.

54. The Cabinet Secretary, in consultation with the Authority may declare a national trunk road or a portion thereof as a national toll road for purposes of this Act, and may make Regulations for the better carrying out of the provisions of this section.

National toll roads.

55. (1) Subject to subsection (2), the Authority may establish and maintain national toll bridges, together with, approaches, ramps and other essential appurtenances, for the passage or carriage of passengers, animals, goods and vehicles on any road in which it is responsible under this Act.

National toll bridges.

(2) The establishment of a ferry boat service under subsection (1) shall require the approval of the Cabinet Secretary and the terms and conditions governing its operation, including the charges for use of the ferry, shall be provided by Regulations made by the Cabinet Secretary.

(3) An agreement in which a private party develops, operates or maintains a ferry boat service on behalf of the Authority or Kenya Wildlife Service shall be approved under the Public Private Partnership Act.

No. 15 of 2013.

56. (1) The Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations in accordance with this section authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads.

Road user charges.

(2) A road user charge shall be a charge levied in respect of the distance travelled by a vehicle on a road—

- (a) for the purpose of recovering the cost of maintaining, repairing and replacing the road; and
- (b) reasonably related to the impact of that vehicle on such cost.

(3) Regulations made under this section shall be tabled before Parliament for approval, and shall not take effect until such approval is obtained.

(4) The Regulations made under this section may provide for—

- (a) charges related to the weight of the vehicle, including exemption from charges for vehicles below a minimum weight;
- (b) exemptions for classes of vehicles whose purpose or design means they are unsuitable for regular road use, or for vehicles used primarily off-road;
- (c) any other provision necessary or desirable for the equitable distribution of the burden of the charge on road users;
- (d) a requirement that road users subject to the charge must be licensed;
- (e) the requirement that vehicles carry distance recorders;
- (f) the allocation by the Roads Fund of the net proceeds of the charges among national and county roads; and
- (g) any other matter necessary or desirable in connection with administration and imposition, collection and enforcement of charges.

PART VII—FINANCIAL PROVISIONS

57. (1) The financial year of each Authority shall be the period of twelve months commencing on the 1st of July in every year and ending on the 30th of June in the next succeeding year.

Financial year.

(2) Without prejudice to subsection (1), the first financial year shall be the period commencing on the appointed date of this Act and ending on the 30th June subsequent to that date.

58. The funds and resources of each Authority shall consist of —

Funds and Resources of the Authority.

- (a) monies paid to it from the Road Fund;
- (b) any other monies appropriated by Parliament;
- (c) funds accruing from investments made by the Authority;
- (d) grants, loans, gifts or donations from the Government or any other source, made with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance;
- (e) revenue earned from the activities of the Authority under this Act; and
- (f) any other funds received by the Authority in the performance of its functions under this Act.

59. The receipts, earnings or accruals of each Authority and the balances at the end of each financial year shall be retained for the purposes for which the respective Authority is established.

Receipts, earnings and accruals for the Authority.

60. Subject to the written approval of the Cabinet Secretary and the National Treasury, an Authority may invest any part of its funds in such a manner as it may consider appropriate.

Investment of the Authority's Fund.

61. An Authority may borrow money required for the exercise of its functions and for meeting its obligations after approval by the Cabinet Secretary.

Borrowing by the Authority.

62. (1) At least three months before the commencement of each financial year, each Authority shall cause to be prepared estimates of revenue and expenditure for that year.

Annual estimates.

(2) The annual estimates prepared under subsection (1) shall make provision for all the estimated expenditure of each Authority, for the financial year concerned, and in particular shall provide for the—

- (a) payment for the infrastructural developments and provision of services;
- (b) payment of salaries, allowances and other charges in respect of the employees and staff of the Authority and the members of the Board;
- (c) payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the Roads Fund;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance and the replacement of buildings or equipment.

(3) The annual estimates under this section shall be approved by the Board at least two months before commencement of the financial year to which they relate, and shall be submitted to the Cabinet Secretary for onward transmission to the National Assembly.

63. (1) Each Authority shall keep proper books of account of its income, expenditure, assets and liabilities which shall be subject to the provisions of the law regulating State Corporations.

Accounts and Audit.

(2) The annual accounts prepared under subsection (1) shall be audited and reported in accordance with the provisions of the law relating to public audit.

64. Each Authority and each county government shall, not later than six months before the end of each financial year, cause to be prepared and submitted to the Kenya Roads Board for approval an annual road works programme based on the approved five-year road investment program in respect of the ensuing financial year, comprising estimates of expected maintenance, development and capital expenditure of the Authority or county government in the said financial year to be financed.

Annual Roads works programme.

65. (1) The Cabinet Secretary shall, once in every five years, in consultation with the national and county government and the Kenya Roads Board, cause to be prepared a road investment program for approval by the Cabinet Secretary responsible for finance.

Road investment programme.

(2) The road investment programme prepared under subsection (1) shall outline development and maintenance priorities costed with respect to stated sections of the road, and also aggregated by class, traffic loading or such other detail as may be specified.

66. Each Authority shall perform its functions in accordance with the financial principles and shall ensure, as far as reasonably practicable, that its expenditure is chargeable on its revenue.

Principles of operation.

67. Each Authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services or for the use of road reserves under their jurisdiction.

Fees and Charges.

68. (1) Where an Authority, pursuant to section 45 imposes levies, charges or fees for any of its services or for use of its facilities, the schedule of charges shall be published in the *Gazette*.

Charges and fees to be Gazetted.

(2) The schedule of charges published under subsection (1) shall come into operation on a date specified on the *Gazette*, which shall be at least thirty days after publication.

(3) If any amount due and payable under this section is not paid by any party after demand by the Authority, and remains unpaid beyond the time specified for payment, the Authority may seize the vehicle or other property of the debtor after giving reasonable notice of such seizure, and may detain such vehicle or property until payment is made.

PART VIII—MISCELLANEOUS

69. Before making or revoking a declaration under section 55, the Cabinet Secretary shall—

Consultation before declaration.

- (a) notify each county government which, in the opinion of the Cabinet Secretary's would be affected by the proposed declaration or revocation; and

- (b) give the county governments a reasonable opportunity to make submissions to the Cabinet Secretary on the proposed declaration or revocation.

70. An Authority may exercise, for a National trunk road in the area of a county government, all of the powers that the county government may exercise for a county road in the area.

Authority to have power of a county government for National trunk roads.

71. (1) An Authority or a county government may transfer any function relating to roads in accordance with the provisions of Article 187 of the Constitution and Part III of the Intergovernmental Relations Act, 2012.

Transfer of functions to either level of government. No. 2 of 2012.

(2) An Authority may, in accordance with the relevant roads implementation program, carry out or enter into contracts on behalf of the National government with other persons including county governments or agencies of the Government for the carrying out of—

- (a) road works on a national trunk road or on land that is intended to become a national trunk road;
- (b) other works that contribute to the effectiveness and efficiency of the road network; or
- (c) the operation of a national trunk road.

(3) The Authority may, carry out road works on a county road in accordance with an agreement between the Authority and the county government.

(4) An agreement between the Authority and a county government under this section on the maintenance and operation of a national trunk road shall comply with the provisions of section 26 of the Intergovernmental Relations Act, 2012 and may include arrangements on the powers of the county government that are to be exercised by the Authority and the powers that are to be exercised by the county government with respect to the national trunk road.

(5) A county government may enter into a contract mentioned in subsection (1) even though the contract relates to works or operation outside the boundaries of that county government.

(6) An Authority may, carry out or enter into contracts for works on or on land adjacent to a national trunk road at

the request of the owner of the land on condition that the owner provides consideration, whether monetary or otherwise, as shall be agreed between the Authority and the owner.

(7) The section does not prevent an Authority from carrying out or entering into contracts for the carrying out of road works of a minor or emergency nature.

72. The Authority may enter into an arrangement with any person including a county government or a national government body or agency for the sharing of the cost of—

Cost sharing arrangements.

- (a) acquisition of land for road transport infrastructure;
- (b) road works on a national trunk road;
- (c) other works that contribute to the effectiveness and efficiency of the road network; or
- (d) the operation of a National trunk road; including all necessary preliminary costs associated with the acquisition, works or operation.

73. (1) An Authority may enter into an agreement with a county government under which the authority supplies funds to the county for road works on a county road, for other works that contribute to the effectiveness and efficiency of the road network or for the operation of a county road.

Funds for works on, or operation of, county roads etc.

(2) The agreement—

- (a) must provide for the works or operation to be carried out in accordance with an agreement between the authority and county government that is designed to ensure value for money in the application of the funds; and
- (b) may be subject to other conditions.

74. If a county government considers that improvements to a national trunk road in its area would be beneficial to the county road network, the county government may make financial arrangements with the relevant/ respective authority for the improvements to be made.

Improvement of National trunk road as an economic alternative to improvement of the county road network.

75. (1) A county government shall obtain the relevant/respective Authority's written approval if—

Impact of certain county government decisions on national trunk roads.

- (a) it intends to carry out road works on a county road or make changes to the management of a county road where
- (b) the works or changes would—
 - (i) require the carrying out of road works on a national trunk road; or
 - (ii) otherwise have a significant adverse impact on a national trunk road; or
 - (iii) have a significant impact on the planning of a national trunk road or a future national trunk road.

(2) Subsection (1) does not apply if the Authority has considered the works or changes as part of consideration of a development application.

(3) An Authority may make guidelines in which county governments must be guided in deciding whether an approval of the authority under subsection (1) is required.

(4) An approval by an Authority under subsection (1) may be subject to conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes shall have.

(5) Subsection (1) does not apply if the conditions applied and enforced by the county government for the road works or changes comply with permission criteria set by the Authority.

(6) The permission criteria may include conditions, including a condition that consideration, whether monetary or otherwise, be given in compensation for the impact that the road works or changes shall have.

(7) A county government must comply with conditions that apply to it under this section.

(8) If a county government contravenes subsection (1) or a condition that applies to it under this section, the county government is liable to compensate the Authority for the cost of road works to national trunk roads that are reasonably required as a result of the contravention.

(9) An approval by the chief executive under subsection (1) must be given—

- (a) within twenty -one days after receiving the application for approval; or
- (b) within a longer period notified to the county government by the Authority within the twenty-one days period.

(10) If—

- (a) a county government applies for an approval under subsection (1); and
- (b) the authority does not respond to the application within twenty-one days after receiving the application; the Authority shall be considered to have given approval at the end of the twenty-one days.

(11) In this section—

future national trunk road means a road or land that the Authority has notified the county government in writing is intended to become a national trunk road.

(12) The authority must cause a copy of each notice under subsection (11) to be published in the gazette.

76. (1) A county government may exercise, for a national trunk road in its area, all the powers that it may exercise for a county road in its area:

Management of particular functions on National trunk roads by county governments.

Provided notification of the actions or powers intended has been provided and consented to by the National Agency with delegated powers over the road.

(2) Despite subsection (1), where there is a contract as specified under section 72 relating to powers of Authority for road works contracts between an Authority and a county government, the exercise of the powers shall be done as required by the contract.

(3) If there is no contract of the kind mentioned in section 72 between the Authority and a county government, an Authority may direct the county government not to exercise any or some of its powers for a national trunk road specified in the direction.

(4) A direction under subsection (3) may be subject to conditions.

(5) A county government must comply with directions or conditions under this section.

(6) The exercise of a power by a county government under this section is not a contravention of this Act.

77. The Cabinet Secretary shall oversee the performance of the activities of each Authority, under this Act and may, in writing, give directions on matters of policy not inconsistent with the provisions of this Act.

Cabinet Secretary's power of direction.

78. (1) Except as provided in subsection (2), a person or body may not do any of the following things without the respective Authority's written permission, or contrary to such permission—

Structures and other works on, over and below roads or certain other land.

- (a) erect, construct or lay, or establish any structure or other thing, on, over or below the surface of a road reserve or land in a building restriction area;
- (b) make any structural alteration or addition to a structure or other thing situated on, over or below the surface of a road or road reserve or land in a building restriction area; or
- (c) give permission for erecting, constructing, laying or establishing any structure or other thing on, over, or below the surface of a road or road reserve or land in a building restriction area or for any structural alteration or addition to any structure or other thing so situated.

(2) The Authority may, in its discretion, give or refuse to give any permission under this section.

(3) When giving permission under this section the Authority may prescribe—

- (a) the specifications with which the structure, other thing, alteration or addition for which permission is requested must comply;
- (b) the manner and circumstances in which, the place where, the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and

- (c) the obligations to be fulfilled by the owner in respect of the land on which the structure, other thing, alteration or addition is to be erected, constructed, laid, established or made.

(4) Where a person, without the permission required by subsection (1), or contrary to any permission given thereof, erects, constructs, lays or establishes a structure or other thing, or makes a structural alteration or addition to a structure or other thing, the Authority may, by notice in writing, direct that person to remove the unauthorized structure, other thing, alteration or addition within a reasonable period which shall be stated in the notice but which may not be shorter than thirty days calculated from the date of the notice.

(5) If the person to whom a notice has been issued in terms of subsection (4) fails to remove the structure, other thing, alteration or addition mentioned in the notice within the period stated therein, such item may be removed by the Authority itself which may recover the cost of the removal from that person.

(6) A person who contravenes any of the provisions under this section commits an offence, and is liable on conviction to a term of imprisonment not exceeding one year or to a fine not exceeding one hundred thousand shillings, or to both.

79. (1) Where a road is damaged—

- (a) by reason of any vehicle passing over it in contravention of the provisions of any regulations made by the respective Authority under this Act; or
- (b) by reason of any vehicle passing over a bridge on the road, or coming into contact with any portion thereof other than the surface of the road, the owner of the vehicle and the person driving or propelling it shall jointly and severally be liable to the Authority for the damage.

(2) A certificate under the hand of any person authorized in that behalf by the concerned Authority stating the amount of the cost of making good such damage under subsection (1) shall be *prima facie* evidence of such cost.

Liability of owner
and driver for
damage.

80. If at any time it appears to the Cabinet Secretary that any Authority, has failed to comply with any of the provisions of this Act, the Cabinet Secretary may, by notice in writing, require the respective Board to make good the default within such time as may be specified in such notice.

Proceedings on failure to comply with the Act.

81. (1) Notwithstanding anything to the contrary in any other law, a county government, a board of a city or a municipality, a town committee or other person shall not in any way interfere with the control, maintenance, development or protection of any national trunk road except where such power has been delegated by the responsible Authority or by the Cabinet Secretary under this Act.

Exercise of certain powers of delegation under the Act.

(2) Notwithstanding subsection (1), an Authority shall encourage community and private sector participation in road construction, maintenance and management under its supervision and guidance.

82. The Director-General may, by notice in writing, authorize any employee of the respective Authority to maintain order upon any premises occupied by the Authority or on a road or vehicle of the Authority.

Authorization of employees.

83. (1) Where, in the exercise of powers under this Act, an Authority constructs a new road, it shall construct and maintain the following accommodation works for the benefit of the owners and occupiers of lands adjoining those on which the road is constructed-

Accommodation works.

- (a) such access facilities or other works as, in the opinion of the Authority, are necessary for the purpose of making good any interruption caused by the construction of the road to the use of the lands through which the road is constructed; or
- (b) such culverts, drains or other works as, in the opinion of the Authority, are necessary to convey water as freely as is practicable from or to such adjoining lands as was the case before the construction of the road.

(2) Nothing in this section shall require the construction or the maintenance of any accommodation works—

- (a) in such a manner as to prevent or obstruct the proper operation of the road; or

- (b) where the owners or occupiers of the lands or their predecessors in title, have received an agreed amount of compensation in consideration of such works not being constructed or maintained.

(3) Where suitable accommodation works for the crossing of roads or watercourses have been constructed under this section, and such road or watercourse is afterwards diverted by some person other than the Authority, the Authority shall not be required to construct other accommodation works for the crossing of such road or watercourse.

84. Any person who unlawfully—

Major offences.

- (a) does any act which obstructs, or is likely to obstruct the working of any equipment or vehicle belonging to any Authority and used in its operations, and which act endangers or is likely to endanger the life of any person therein;
- (b) damages, or in any way interferes with any road or other property of any Authority in such a manner as to endanger the life of any person;
- (c) does any act which obstructs, or is likely to obstruct the operation of vehicles on any road, or the use of any weighbridge; or
- (d) exceeds axle load limit,

commits an offence, and is liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred thousand shillings, or to both.

85. Any person who—

Other offences.

- (a) not being specifically authorized in that behalf, or an employee or agent of any Authority, or occupant of a vehicle with justifiable cause to be present, is found during the hours of darkness on any premises occupied by such Authority;
- (b) being on any premises occupied by any Authority, or in a vehicle of the Authority—
 - (i) refuses when called upon by an employee of the Authority or a police officer to give his

- or her name and address, or gives a false name or address with intent to avoid prosecution;
- (ii) is in a state of intoxication, or behaves in a violent or offensive manner to the annoyance of any other person;
 - (iii) commits any act, or otherwise does anything which may cause injury to any person on such premises, or upon such vehicle;
 - (iv) commits any nuisance or act of indecency, or uses profane, obscene, indecent or abusive language;
 - (v) without lawful excuse, contravenes any lawful direction given by any employees of the Authority; or
 - (vi) except with the express permission of the Director-General of the Authority, hawks, sells or exposes for sale any article or goods or service or applies for, or carries on any other trade or business;
- (c) writes, draws or affixes any profane, obscene, indecent, or abusive words, matter, or representative character upon any premises occupied by any Authority, or upon any vehicle of such Authority;
 - (d) defaces the writing on any notice authorized to be maintained upon any premises occupied by any Authority, or upon any equipment or vehicle of such Authority;
 - (e) damages, or without lawful excuse, interferes with any property of any Authority;
 - (f) without lawful excuse, does any act which obstructs, or is likely to obstruct the free movement of vehicles on any road or the use of any road, parking area or related facility; or
 - (g) being a driver or conductor of any vehicle, disobeys lawful instructions while upon premises occupied by any Authority,

commits an offence, and is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding fifty thousand shillings, or to both.

86. Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required to be made for the purpose of any Authority under this Act, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months, or a fine not exceeding ten thousand shillings, or to both.

Penalty for false returns.

87. Notwithstanding anything in this Act or any other written law, the Cabinet Secretary may, by notice in the Gazette, exempt State vehicles or any category of State vehicles from the provisions of this Act or any regulations made under this Act.

Exemption of state vehicles.

88. No action shall lie in respect of nuisance by reason only of the noise and vibration caused by vehicles or construction plant and equipment on a public road.

Nuisance caused by vehicles on roads.

89. (1) Notwithstanding any other provisions of this Act, the Cabinet Secretary may, upon the recommendation of the respective Authority, by notice in the Gazette and on such terms and conditions as may be appropriate, exempt any vehicle, person, road, service or enterprise from the application of any regulations made under this Act, if such exemption is required in the public interest.

Other Exemptions.

(2) The Cabinet Secretary may by regulations delegate the exercise of the powers under subsection (1) to an Authority.

90. Any notice or other document required to be served on an Authority, under this Act may be served—

Service of notice, etc., on Authority.

- (a) by delivery of the notice or other document to the Director-General;
- (b) by leaving it at the office of the Director-General; or
- (c) by sending it by registered post to the Director-General.

91. Where any action or other legal proceeding lies against any Authority, for any act done in pursuance or execution, or intended execution of an order made pursuant

Limitation of actions.

to this Act or of any public duty, or in respect of any alleged neglect or default in the execution of this Act or of any such duty, the following provisions shall have effect—

- (a) the action or legal proceeding shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim and of intention to commence the action or legal proceedings has been served upon the Director-General by the plaintiff or their agent; and
- (b) such action or legal proceedings shall be instituted within twelve months next after the act, neglect, default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

92. Notwithstanding anything to the contrary in any law—

Restriction on execution against property.

- (a) where any judgment or order has been obtained against any Authority, no execution or attachment, or process in the nature thereof shall issue, but the Director-General shall without delay, cause to be paid out of the revenue of the Authority, such amounts as may, by the judgment or order, be awarded against the Authority; or
- (b) no property of the Authority, shall be seized or taken by any person having by law power to attach or detain property without the prior written permission of the Director-General.

93. A person who, without the written approval of the Authority assumes for the purposes of business, or registers in terms of any written law relating to companies or business names under the names—

Protection of name.

“Roads Authority”, commits an offence, and shall be liable on conviction to imprisonment for a term not exceeding six months, or a fine not exceeding two hundred thousand shillings, or to both.

94. (1) In the performance of its functions or exercise of its powers under this Act, each Authority shall, where appropriate, consult with the Cabinet Secretary, other departments, bodies or persons and users of its facilities and services.

Consultation with departments and users.

(2) An Authority, may establish such consultative mechanism as it considers appropriate under this section to obtain the views of the users of its facilities and services.

95. Each Authority shall be entitled, upon application to the Cabinet Secretary responsible for finance, to exemption from duty chargeable under the law relating to payment of stamp duty in respect of any instrument executed by or on behalf of, or in favour of the Authority, which, but for this section, would be liable to pay.

Exemption from stamp duty.

96. (1) Each Authority shall publish and publicise all important information within its mandate.

Publication and access to information.

(2) A request for information in the public interest by a citizen—

- (a) shall be addressed to the Director-General, such other person as the Authority may for the purpose designate, and may be subject to the payment of a reasonable fee in instances where the Authority, incurs an expense in providing the information; and
- (b) may be subject to confidentiality requirements of the Authority.

(3) Subject to Article 35 of the Constitution, an Authority, may decline to give information to a person where—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Authority;
- (c) failure of payment of the prescribed fee; or
- (d) the person fails to satisfy any confidentiality requirements determined by the Authority.

(4) The right of access of information under Article 35 of the Constitution is limited to the nature and extent specified under this section.

(5) Every employee of each Authority shall sign a confidentiality agreement.

97. A person convicted of an offence under this Act for which no penalty is provided shall be liable on conviction to a fine of not less than one hundred thousand

General penalty.

shillings or to imprisonment for a term not exceeding two years, or to both.

98. (1) The Cabinet Secretary may, in consultation with the respective Authority make Regulations for the better carrying out of the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations may provide for—

- (a) the manner in which all public roads shall be classified;
- (b) guidelines for public-private sector partnerships in development projects including guidelines on ownership of assets, equity, participation, sharing of returns, community participation in future earnings from the project, compensation mechanisms and payment of fees;
- (c) the use, safety or maintenance of the roads falling within its responsibility;
- (d) the erection of structures on, near, over or under the roads falling within its responsibility;
- (e) the drainage of streets, lands, compounds and buildings adjacent to the road;
- (f) the level, width and construction of roads and streets;
- (g) the removal, demolition or alteration of any projection, structure or thing obstructing a road or likely to cause damage or inconvenience to road users;
- (h) the fees payable for services provided by the Authority, or the Roads Board or the manner of their application;
- (i) monitoring and evaluation mechanisms for projects undertaken under this Act;
- (j) the holding of joint meetings of the Boards of the Authorities, or the Roads Board;
- (k) the detention of vehicles; and
- (l) road numbering and signage system.

(3) The power to make Regulations conferred under this Act shall be—

- (a) for the purpose and objective of giving effect to the Constitution and this Act;
- (b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and
- (c) based on the general principles and standards contained in the Constitution and this Act.

(4) Regulations made under subsection (1) may prescribe, in respect of any contravention of any provision thereof, a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year or both, and may also prescribe, in the case of continuing offences, an additional penalty in respect of each day in which the offence continues.

99. The Cabinet Secretary shall review and revoke all legal notices establishing the former authorities, and departments whose functions, by virtue of this Act, falls under the purview of the powers and functions of an Authority, in order to enable the transfer of the functions, assets, and liabilities of the former authorities to the respective Authority, as contemplated under this Act.

Review and revocation of certain legal notices.

PART IX—RESPONSIBILITIES OF COUNTY GOVERNMENTS

100. (1) Each county government shall, within its area of jurisdiction, be responsible for the construction and maintenance of the county roads in accordance with the provisions of Part 2 of the Fourth Schedule to the Constitution and Part B of the First Schedule to this Act.

Respective roles of national and county governments.

(2) For the purposes of discharging its responsibility, each county government shall undertake the following functions and duties —

- (a) constructing, upgrading, rehabilitating and maintaining county roads;
- (b) managing reserves and facilitating access to roadside developments with respect to county roads;
- (c) implementing road policies in relation to county roads;
- (d) ensuring adherence to the rules and guidelines on axle load control as prescribed under the Traffic Act and any Regulations made under this Act;

Cap. 403.

- (e) ensuring that the quality of county road works is in accordance with national standards issued by the Cabinet Secretary;
- (f) overseeing the management of traffic and road safety on county roads in collaboration with the county government;
- (g) collecting and collating all such data related to the use of county roads as may be necessary for efficient planning under this Act;
- (h) monitoring and evaluating the use of county roads;
- (i) planning the development and maintenance of county roads;
- (j) preparing the county investment programme and annual county road works programmes for county roads; and
- (k) co-ordinating with road Authorities or agencies in planning and operations in respect of county roads.

(3) The national government shall, in accordance with Part 1, section 18 of the Fourth Schedule to the Constitution, be responsible for the standards for the construction and maintenance of county roads by county governments.

(4) Each county government shall, for the purposes of ensuring uniformity and national standards in the roads sector, through its legislation and administrative action, implement and act in accordance with the national policy, standards and guidelines issued by the Cabinet Secretary under this Act.

(5) Any action required under this Act to be done by the county government shall be deemed to have been done if done by an officer of the county government authorized by the government in that behalf.

101. For purposes of this Part, each county government shall by county legislation establish a County Roads Agency being either a department or division which shall be responsible for the management, development and maintenance of County Roads under the county executive in charge of roads.

County governments to establish County Roads Agencies.

PART X—TRANSITIONAL PROVISIONS**102. (1) In this Part—**Transitional
provision.

“appointed day” means the day on which this Act comes into force;

“assets” include all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or goodwill of the former institutions whether situated in Kenya or elsewhere;

No. 2 of 2007

“former Authorities” means the following former Authorities established by Kenya Roads Act, 2007, existing immediately before the appointed day —

- (a) Kenya National Highways Authority;
- (b) Kenya Rural Roads Authority; and
- (c) Kenya Urban Roads Authority;

“former boards” means the boards of the following former Authorities, existing immediately before the appointed day —

- (a) Kenya National Highways Authority;
- (b) Kenya Rural Roads Authority; and
- (c) Kenya Urban Roads Authority;

“liabilities” means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether to be observed or performed in Kenya or elsewhere;

“rights” includes all rights, powers, privileges and immunities whether actual, contingent or prospective, whether observed or performed in Kenya or elsewhere;

(2) Notwithstanding the provisions of section 32, persons who immediately before the commencement of this Act were employees of the former Roads Authorities shall, upon the commencement of this Act, be deemed to be the employees of the Kenya National Highways Authority and Kenya National Secondary Roads Authority.

(3) The Board may establish a pension scheme for the staff of the Authority.

(4) Until a Board establishes a pension scheme under this Act or any other written law —

- (a) the members of staff of the former authorities who become members of staff of the Authorities established under this Act shall continue to be governed by the existing pension scheme; and
- (b) where any person whose services are transferred to an Authority, under this section is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Authorities under this Act, shall be deemed to be service in the former authority.

(5) Upon the commencement of this Act —

- (a) the former boards of the Kenya National Highways Authority, the Kenya Rural Roads Authority and the Kenya Urban Roads Authority shall stand dissolved on the appointed date;
- (b) all the rights, duties, obligations, assets, liabilities and staff of the former authorities existing at the commencement of this Act shall be automatically and fully transferred to the respective Authority;
- (c) any reference to any of the former authorities in any written law, contract, document or instrument of any nature shall, on the commencement of this Act, be read and construed as a reference to the respective Authority;
- (d) the consolidated annual estimates of the former Kenya Urban Roads Authority, and the former Kenya National Highways Authority for the financial year in which this Act commences shall be deemed to be the annual estimates of the Kenya National Highways Authority under this Act and the annual estimates of the former Kenya Rural Roads Authority, shall be deemed to be the annual estimates of the Kenya National Secondary Roads Authority for the remainder of that financial year;

- (e) any administrative direction made by any of the former authorities which was in force immediately before the commencement of this Act shall, as long as they are consistent with this Act, have force as if it was a direction made under this Act by the respective Authority, as the case may be;
- (f) all contracts, deeds, bonds, agreements, arrangements, guarantees and other instruments made or entered into, on behalf of, or in relation to the former authorities, shall have effect as if made or entered into by, on behalf of or in relation to, the respective Authority, as the case may be; and
- (g) all actions, claims, arbitrations, applications and other proceedings, including proceedings on appeal or review, pending or existing immediately before the commencement of this Act, by, against, or in relation to any of the former authorities, or former boards shall have effect as if they were proceedings by, against, or in relation to the respective Authority, as the case may be, and may be continued and completed accordingly.

103. The Kenya Roads Act, 2007 is repealed.

104. The Acts specified in the Third Schedule are amended in the manner specified in that Schedule.

Repeals.
Cap.408.
Consequential
amendments to
other Acts

FIRST SCHEDULE

(s .10)

CLASSIFICATION OF PUBLIC ROADS

All public roads in Kenya shall be classified as follows –

PART A—NATIONAL TRUNK ROADS

Category	Class	Description
Primary National Trunk Roads	Class S	Highways connecting two or more cities meant to carry safely a large volume of traffic at the highest legal speed of operation.

	Class A	Roads forming strategic routes and corridors, connecting international boundaries at identified immigration entry and exit points and international terminals such as international air or sea ports.
	Class B	Roads forming important national routes, linking national trading or economic hubs, County headquarters and other nationally important centres to each other and to the national capital or to Class A roads.
	Class H	Urban major arterials highways meant to carry through traffic and relatively long distance traffic between widely separated parts of the city or municipality. They are required to provide mobility within an urban area as opposed to access.
	Class J	Minor arterials meant to carry traffic between different zones of the urban area and include the principal urban bus routes. They shall include, roads within economic zones that are planned by the National Government and roads within State Houses and Lodges including their access roads. They are required to provide mobility as opposed to access.
Secondary National Trunk Roads	Class C	Roads forming important regional routes, linking County headquarters or other regionally important centers, to each other and to Class A or B roads. Required to collect regional and local traffic and channel it to class A and B roads.
	Class D	Roads linking constituency headquarters, Municipal or Town Council Centers and other towns to each other and to higher class roads. Required to collect local traffic from lower class roads and channel it to the higher class roads.

PART B—COUNTY ROADS

Class	Description
Class E	Major Feeder Roads linking important Constituency centres to each other and meant to carry local traffic and to channel it to class D roads.

- Class F** Minor Feeder Roads linking Market Centres to each other. Meant to carry and to channel it to class E roads.
- Class G** Roads linking farms to markets and meant to carry farm produce and farm inputs traffic to and from the markets
- Class K** Urban major collector roads meant to collect traffic from the local roads and channel it to the major and minor arterial roads. The roads are meant to provide for both mobility and access.
- Class L** Urban minor collector roads meant to perform a similar function as the class K roads i.e. to collect traffic from the local roads and channel it to the arterial roads, but in a smaller catchment's area meant to collect traffic from the local roads and channel it to class K roads. The roads are meant to provide both mobility and access.
- Class M** Main business and shopping streets in the urban areas meant to provide access to commercial properties and residential areas and also cater for a high level of pedestrian traffic.
- Class N** Provide direct access to individual or group of properties, and residential areas, or to places of specific social or economic activity, including industrial and commercial areas and government institutions such as school, hospital, prisons and government housing.
- Class P** Provide direct access to groups of residential properties. This is the lowest class of public roads and therefore Class P roads will provide all other public access (e.g. access to social amenities such as schools, hospitals, etc) not provided by higher class roads.

SECOND SCHEDULE

(s. 40)

**PROVISIONS RELATING TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF A BOARD**

Meetings.

1. (1) The Board shall have at least four meetings in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Meetings shall be convened by the secretary to the Board in consultation with the Chairperson, and shall be held at such times and such places as the Chairperson shall determine.

(3) The Chairperson shall preside over all meetings, and in the absence of the Chairperson, by a person elected by the Board, at the meeting for that purpose.

(4) The Chairperson may at any time convene a special meeting of the Board or shall do so within one month of receipt by the Chairperson of a written request signed by at least five other members.

(5) Unless five members of the board otherwise agree, at least seven days' notice of a meeting shall be given to every member.

Quorum. 2. The quorum of a meeting of the Board shall be five members.

Voting. 3. A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes; the person presiding at the meeting shall have a second or casting vote.

Minutes. 4. Minutes of all meetings shall be kept and entered in records kept for that purpose.

Application of the State Corporations Act 5. The provisions of this Act shall apply on the conduct of business of the Board where such provisions are not provided for under this Schedule.

Disclosure of interest by members. 6. (1) If a person is present at a meeting of the Board or any committee thereof at which any matter is the subject of consideration, and in which matter that person is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest.

(2) The person making the disclosure of interest under subparagraph (1) shall not, take part in any consideration or discussion of, or vote on any question relating to that matter, unless the Board as the case may be, or the committee otherwise directs.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes sub paragraph (1) commits an offence under this Act, and is liable on conviction to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding seven years, or to both.

(5) Any member of the Board, or any employee of the Authority, shall not transact any business or trade with the Board, an Authority, as the case may be.

THIRD SCHEDULE

(s.104)

CONSEQUENTIAL AMENDMENTS

The Kenya Roads Board Act
No. 7 of 1999.

s.2 Delete the definition of “Highways Authority”, “Rural Roads Authority” and “Urban Roads Authority” and substitute therefor the following new definitions in their proper alphabetical order—

“Highways Authority” means the Kenya National Highways Authority;

“Secondary Roads Authority” means the Kenya National Secondary Roads Authority; and

“Urban Roads Authority” means the Kenya National Urban Roads Authority.

S. 6(2)(d) Delete and substitute therefor with the following;—

Determine the allocation of the Fund to ensure that not more than—

(1) Thirty five (35%) per centum is allocated to the Kenya National Highways Authority in such proportions as the Board may determine with the approval of the Cabinet Secretary in respect of primary national trunk roads Classes S,A and B;

(2) Thirty (30%) per centum is allocated to the Kenya National Secondary Roads Authority in respect of secondary national trunk roads and the said per centum shall be equally distributed to the Constituencies;

(3) Ten (10%) per centum is allocated to the National Urban Roads Authority

(4) Fifteen (15%) per centum is allocated to the county governments equally in respect of county roads;

(5) One (1%) per centum is allocated to the Kenya Wildlife Services in respect of roads in national parks and reserves;

(6) Six (6%) per centum is allocated annually by the Board with the approval of the Cabinet Secretary to priority projects derived from the road investment programmes including support road standards, technical assistance and shall include—

- (a) One (1%) per centum for material development; and
- (b) One (1%) per centum for research and testing.

(7) One (1%) per centum to be allocated to the National Transport and Safety Authority to support road safety programmes; and

(8) Two (2%) per centum to the Kenya Roads Board in respect of the recurrent expenditure of the Board.

s.6(2)(e) Delete

s.6(6)(2)j Delete and substitute therefor with the words “With the approval of the Cabinet Secretary set the Fuel levy rate.

s6(2)(i) Delete and replace with the following —

Each Authority may utilize such portion of monies received from the Fund for operational and administrative expenses as may be recommended by the Board and approved by the Cabinet Secretary.

s. 6
(2)(1)(ii) Delete the words Kenya Rural Roads Authority and substitute therefor with the words “Kenya National Secondary Roads Authority”.

s.6(2) Insert the following immediately after subsection (2) (1)—

- (j) co-ordinate the implementation of all policies relating to road maintenance in Kenya;
- (k) develop and maintain an updated road network register;
- (l) advise the Cabinet Secretary on —
- (i) road classification;

(ii) research and studies necessary for promoting road maintenance and development; and

(iii) road network performance.

s.17 Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.17
(2)(c) Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.17
(2)(e) Delete the word “District” and substitute therefor with the word “County”

s.17
(3)(4) Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.17A Delete the word “Kenya Rural Roads Authority” wherever it appears and substitute therefor with “Kenya National Secondary Roads Authority”.

s.32 Insert the following—

(1) The Board may with the approval of the Cabinet Secretary and the Cabinet Secretary for National Treasury borrow such monies as may be required by it for proper discharge of its functions under this Act.

The Board may in consultation with the Cabinet Secretary and with the approval of the Cabinet Secretary for National Treasury, where it may be necessary to meet the financial demands for road maintenance set aside a portion of the fund for purposes of securing additional income.

Third
Schedule Delete and Substitute therefor with the following—

(1) Kenya National Highways Authority

(1A) Kenya National Urban Roads Authority

(2) Kenya National Secondary Roads Authority

(3) Kenya Wildlife Services

(4) such body or department established by each county government to maintain county roads with the Fund.

The Physical
Planning Act, 1996
No. 6 of 1996.

s.2

Delete the definition of "Kenya National Highways Authority", "Kenya Rural Roads Authority" and "Kenya Urban Roads Authority" and substitute therefor the following—

"Highways Authority" means the Kenya National Highways Authority established under section 12 of the Kenya Roads Act;

"Secondary Roads Authority" means the Kenya National Secondary Roads Authority established under section 19 of the Kenya Roads Act;

"Urban Roads Authority" means the Kenya National Urban Roads Authority established under section 17 of the Kenya Roads Act.

s.8(1)

Delete paragraphs (na), (nb) and (nc) and substitute therefor with the following new paragraphs—

(na) the Director-General of the Kenya National Highways Authority established under section 14(2)(e) of the Kenya Roads Act;

(nb) the Director-General the Kenya National Secondary Roads Authority established under section 20(2)(e) of the Kenya Roads Act.

(nc) the Director-General of the Kenya National Urban Roads Authority established under section 17 (1) (e) of the Kenya Roads Act.

s. 8 (2)

Delete paragraph (k)

s.8 (3)

insert the following new paragraph immediately after paragraph (e)—

(ea) a representative of the Kenya National Urban Roads Authority;

Delete paragraph (f) and substitute therefor the following new paragraph—

(f) a representative of the Kenya National

Highways Authority;

s. 8(4) Delete paragraph (f) and substitute therefor the following—

“(f) a representative of the Kenya National Secondary Roads Authority .”

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to the Fourth Schedule to the Constitution in relation to the roads subsector. It is proposed to review, consolidate and rationalize the legal and institutional framework for management of the road network and roads sub sector in a more efficient and effective manner. With this object it is also proposed to amend the Kenya Roads Board Act, 1999(Cap. 408A), repeal the Kenya Roads Act 2007 (Cap. 408), and the Public Roads and Roads of Access Act, 1920 (Cap. 399).

Part I — provides for the short title and commencement, interpretation, the purpose of the Act and guiding principles.

Part II — provides for the establishment of the Public Roads Standards Board.

Part III— provides for classification of national trunk and county roads and assignment of roads.

Part IV — provides for the establishment and composition of the Kenya National Highways Authority, Kenya National Secondary Roads Authority, and the managing Boards of these Authorities, powers and functions of these Boards.

Part V—provides for procedure for appointment of Chairperson, other members and Director-General, qualifications and appointment of Chairperson and members. It also includes provisions for committees of the Board, term of office, remuneration of members, meetings of the Board, removal from office, vacation of office and filling of vacancy of office of members, etc. of the Authority. This Part includes provisions on board of directors, removal of the Director-General, employees of the Authority, power of the Authority to make regulations relating to employees, regulations on employees by the Board and common seal of the Authority.

Part VI— relates to the general powers of the Authority, and provides for acquisition of land for the purposes of the Authority, power to enter land and survey land, power to enter land to prevent accidents etc., power to enter and alter position of pipes etc. from within road reserve, power to take water and compensation where such acquisition is made by or on behalf of the Authority.

Part VII— provides for financial matters. It includes provisions on the financial year, annual estimates, accounts and audits of the Authority. It also provides provisions for development and implementation of a roads sector investment programme and annual works programme. Further, it provides for restriction on expenditure outside the budget, principles for

operation, of levy of fees and charges and their gazettelement, recovery of debts, and annual reports.

Part VIII—deals with miscellaneous matters. It provides for performance agreement, Cabinet's Secretary power of direction, classification of roads, inventory of roads, structures and other works on, over and below roads on certain other land, liability of owner and driver for damage, proceedings on failure of Authority to comply with the Act, exercise of certain powers of delegation under the Act, authorization of employees etc., accommodation works, additional accommodation works, major offences, other offences, false returns, application of regulations to state vehicles, detention of vehicles, nuisance caused by vehicles on roads, exemption, service of notice, etc., on the Director-General, service of notice, etc., by Authority, limitation of actions, restriction on execution against property of Authority, protection of name, consultation with departments and users, protection from personal liability, exemption from stamp duty, publication and access to information, general penalty, regulations rules making power of the Cabinet Secretary, review and revocation of certain legal notices, and repeals.

Part IX—provides for responsibilities of County Governments.

Part X—provides for transitional provisions in relation to former Authorities.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This law when enacted will confer the Cabinet Secretary for the time being responsible for matters relating to roads and each Authority the authority to make provisions having the force of law in Kenya.

Under section 38 of this Act, each Authority is given powers to make regulations relating to the conditions of service of its employees.

Section 54 of this Act bestows powers to the Cabinet Secretary for the time being responsible for matters relating to roads to make regulations for the better carrying out of the provisions of section 54 of this Act.

Under section 56 of this Act, the Cabinet Secretary responsible for finance may, in consultation with the Cabinet Secretary, make Regulations authorizing the imposition and collection of road user charges by the Authority in respect of roads, including national and county roads.

Under section 98 of this Act, the Cabinet Secretary responsible for roads has been given powers, in consultation with the respective Authority, to make regulations for the better carrying out of the provisions of this Act.

Limits of Delegated Authority

The regulations made under section 38 of this Act shall be limited to—

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given to its staff;
- (b) appeals by officers and staff against dismissal or other disciplinary measures; and
- (c) the establishment and maintenance of medical benefits and loan funds, and the contributions payable thereto and the benefits recoverable there from.

The regulations made under section 56 of this Act shall be limited to—

- (a) charges related to the weight of the vehicle, including exemption from charges for vehicles below a minimum weight;
- (b) exemptions for classes of vehicles whose purpose or design means they are unsuitable for regular road use, or for vehicles used primarily off-road;
- (c) any other provision necessary or desirable for the equitable distribution of the burden of the charge on road users;
- (d) a requirement that road users subject to the charge must be licensed;
- (e) the requirement that vehicles carry distance recorders;
- (f) the allocation by the Roads Fund of the net proceeds of the charges among national and county roads; and
- (g) any other matter necessary or desirable in connection with administration and imposition, collection and enforcement of charges.

The regulations made under section 98 of this Act shall be limited to—

- (a) the manner in which all public roads shall be classified;
- (b) guidelines for public-private sector partnerships in development projects including guidelines on ownership of assets, equity, participation, sharing of returns, community participation in future earnings from the project, compensation mechanisms and payment of fees;
- (c) the use, safety or maintenance of the roads falling within its responsibility;

- (d) the erection of structures on, near, over or under the roads falling within its responsibility;
- (e) the drainage of streets, lands, compounds and buildings adjacent to the road;
- (f) the level, width and construction of roads and streets;

Statement as to whether the Bill concerns county governments

This Bill is a Bill concerning county governments, and is an ordinary Bill.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will not occasion additional expenditure of public funds as the interventions are provided for in the estimates.

Dated the 24th November, 2017.

ADEN DUALE,
Leader of Majority Party.





REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 18 of 2018)



**THE COUNTY ROADS, WALKWAYS AND
PARKING BAYS BILL, 2018**

(A Bill published in the Kenya *Gazette* Supplement No. 81 of 22nd June, 2018 and passed by the Senate, with amendments, on 19th June, 2019.)

**THE COUNTY ROADS, WALKWAYS AND PARKING BAYS BILL,
2018**

ARRANGEMENT OF CLAUSES

Clause

- 1 — Short title.
- 2 — Interpretation.
- 3 — Object and purpose of the Act.
- 4 — Application.
- 5 — Duties of the county executive committee member.
- 6 — Construction and maintenance of streets, lanes, alleys, etc.
- 7 — Construction and maintenance of parking bays by the county government.
- 8 — Construction and maintenance of walkways by the county government.
- 9 — Designation of pedestrian crossing.
- 10 — Access ways to commercial buildings.
- 11 — Construction and maintenance of walkways by owners of commercial buildings.
- 12 — Construction and maintenance of parking bays by owners of commercial buildings.
- 13 — Use of walkways.
- 14 — Parking of motor vehicles.
- 15 — Designated parking.
- 16 — Regulations.

THE COUNTY ROADS, WALKWAYS AND PARKING BAYS BILL, 2018

A Bill for

AN ACT of Parliament to provide for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and walkways; to provide proper planning of access-ways to commercial buildings along major roads; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

- Short title. 1. This Act may be cited as the County Roads, Walkways and Parking Bays Act, 2018.
- Interpretation. 2. In this Act—
- No. 6 of 1996 “commercial building” shall have the same meaning assigned to it under the Physical Planning Act;
- Cap. 403. “commercial vehicle” shall have the meaning assigned to it under the Traffic Act;
- “county executive committee member” means the county executive committee member responsible for matters relating to county roads in each county;
- “county road” means all roads falling within the mandate of the county governments under Part 2 of the Fourth Schedule to the Constitution and specified under any other written law;
- Cap. 403. “heavy commercial vehicle” has the meaning assigned to it under section 2 of the Traffic Act;
- “walkway” means any egress, footpath, pathway or route for use by non-motorized traffic and shall not include cycle lanes.

Object and purpose of the Act.

3. The object and purpose of this Act is to—

- (a) provide a framework for the planning and construction of access ways from major roads in each county in a manner that ensures the safety of road users;
- (b) provide a framework for planning of commercial structures along county roads in accordance with the Physical Planning Act; and
- (c) promote the development of a well planned environment in counties in order to achieve unhindered and adequate access to buildings from major roads by members of the public.

No. 6 of 1996.

Application.

4. This Act shall apply to all county roads.

Duties of the county executive committee member.

5. (1) The county executive committee member shall—

- (a) formulate a comprehensive plan for the construction and maintenance of county roads within the respective county;
- (b) facilitate the design, development and maintenance of drainage systems along county roads;
- (c) ensure access-ways to buildings constructed along county roads;
- (d) construct, maintain and facilitate the construction and maintenance of adequate parking bays in the respective county; and
- (e) facilitate regular inspection of all buildings, roads, streets, lanes, alleys, parking bays and walkways under the jurisdiction of the county government to ensure that they adhere to prescribed building codes and standards as set out in the Physical Planning Act, the Urban Areas and Cities Act and any other written law.

No. 6 of 1996

No. 13 of 2011

(2) The county executive committee member shall, in the performance of the functions under this Act, make provision for the access and use of buildings, roads, streets, lanes, alleys, parking bays and pavements by persons with disabilities in accordance with section 21 of the Persons with Disabilities Act.

No. 14 of 2003.

(3) The county executive member shall, for purposes of subsection (2), consult with the National Council for Persons with

Disabilities established under section 3 of the Persons with Disabilities Act.

Construction and maintenance of streets, lanes, alleys, etc.
No. 6 of 1996.

6. Each county government shall construct and maintain streets, lanes, alleys and other means of accessing properties in the county in accordance with the Physical Planning Act.

Construction and maintenance of parking bays by the county government.

7. (1) The county executive committee member shall, in consultation with the National Lands Commission, designate public land for the construction of parking bays within the county.

No. 6 of 2012.

(2) Where the county executive committee member considers it necessary to acquire private land for the construction of parking bays, the county executive committee member may initiate the process of compulsory acquisition of such land in accordance with section 107 of the Land Act.

Construction and maintenance of walkways by the county government.

8. Each county government shall construct and maintain walkways along all county roads in the respective county.

Designation of pedestrian crossing.

9. (1) The county executive member shall designate areas for use by pedestrians for the purpose of crossing a county road in a manner that does not interfere with the flow of traffic and that complies with national and county legislation.

(2) The county executive member shall, for the purpose of subsection (1) and where necessary designate a pedestrian crossing and maintain a footbridge or any other convenience for use by pedestrians to cross a county road.

Access ways to commercial buildings.

10. (1) Subject to subsection (2), an owner of a commercial building which is situated along a county road—

(a) may, with approval of the county governments, construct an access-way to the property in which the commercial building is situated in such a manner that the access-way does not obstruct a county road or extend directly from a county road; and

(b) shall allocate adequate space for access to the building in accordance with the Physical Planning Act and any other written law.

(2) The county government shall ensure that there is an alternative means of access to commercial buildings in the area where the building is situated.

(3) Every person who, immediately before the commencement of this Act, owns a commercial building situated along a county road shall comply with provisions of this section—

- (a) within a period of twelve months from the date of the commencement of this Act; or
- (b) within a period of twelve months from the date of completion of the construction of an alternative means of access to the building as provided under subsection (2).

(4) A person who contravenes subsection(1)(b) commits an offence and is liable, on conviction, in accordance with section 30 of the Physical Planning Act.

No. 6 of 1996

Construction and maintenance of walkways by owners of commercial buildings.

11. (1) The owner of a commercial building may construct and maintain a walkway next to the commercial building where the county government—

- (a) has designated an area next to the building for the construction of a walkway; and
- (b) has not constructed or has failed to maintain the walkway.

(2) A person shall not construct or maintain a walkway under subsection (1)—

- (a) unless such person has applied for and obtained approval of the county executive committee member; and
- (b) otherwise than in accordance with the prescribed standards.

Construction and maintenance of parking bays by owners of commercial buildings.

12. (1) The owner of a commercial building may, with the approval of the county executive committee member, construct and maintain a parking bay next to the commercial building on an area designated by the county executive committee member as a parking bay.

No. 6 of 1996

(2) The construction of a parking bay by the owner of a commercial building under subsection (1) shall be carried out in accordance with the Physical Planning Act and any other written law.

(3) The respective county government may enter into an agreement with the owner of a commercial building under subsection (1) for the lease of a designated parking bay for a period of not more than twelve years and on the condition that the construction of the parking bay—

- (a) does not endanger the lives or property of pedestrians or other road users;
- (b) does not cause any inconvenience to other road users;
- (c) does not block access to any other property;
- (d) reverts back to the county government in good condition on the expiry of the lease; and
- (e) on such other conditions as the county executive committee member may impose.

Use of walkways

13. (1) A walkway shall only be used by pedestrians and in such a manner as the county executive committee member may prescribe.

(2) A person shall not drive, park, erect a structure, or carry out any trade or commercial activity on a walkway.

Parking of motor vehicles.

14. (1) A person driving a motor vehicle shall not park the vehicle in an area other than that which is designated as a parking bay.

(2) A person shall not use a parking bay other than for the purpose of parking a motor vehicle and in accordance with such conditions as may be prescribed by the county executive committee member.

(3) Where the owner of a motor vehicle contravenes this section, the county executive committee member may seize the motor vehicle and such vehicle shall only be released to the owner upon payment of the required fine and charges.

Designated parking.

15. (1) The county executive committee member shall designate parking bays for—

No. 12 of 2006.

- (a) the exclusive parking of petroleum tanker vehicles in accordance with section 99 of the Energy Act; and
- (b) the parking of heavy commercial vehicles.

(2) A person driving a petroleum tanker vehicle or a heavy commercial vehicle shall not park the vehicle in an area other than that which is designated for parking of the vehicle.

(3) Notwithstanding subsection (2), a person may park a petroleum tanker vehicle or a heavy commercial vehicle outside the designated areas for the purpose of loading or offloading goods where—

- (a) the loading or offloading process is continuous;
- (b) the goods are of such weight that they cannot be reasonably conveyed otherwise than by means of a vehicle;
- (c) the vehicle is parked as near as possible to the loading or offloading site; and
- (d) the loading or offloading activity is carried out promptly.

(4) A person who contravenes this section commits an offence and is liable, on conviction, in accordance with section 52A of the Traffic Act.

Cap. 403.

Regulations.

16. (1) The county executive committee member may, in consultation with the Cabinet Secretary and all relevant stakeholders, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by subsection (1), the county executive committee member shall make Regulations—

- (a) prescribing the conditions for the use of parking bays and walkways in the county; and
- (b) prescribing the procedure for the application for any approval required in this Act.

MEMO

TO : DIRECTOR, COMMITTEE SERVICES
FROM : HEAD OF TABLE OFFICE DEPARTMENT
DATE : JULY 30, 2019
SUBJECT : BILLS READ A FIRST TIME

The following Bills were Read a First Time on Tuesday, July 30, 2019;

1. The County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018); *PC - TRANSPORT*
2. The County Outdoor Advertising Control Bill (Senate Bill No. 19 of 2018); *PC - ICT*
3. The County Law Compliance and Enforcement Bill (Senate Bill No. 25 of 2018); *PC - JUSTICE*
4. The County Wards (Equitable Development) Bill (Senate Bill No. 34 of 2018); and *BUDGET*
5. The Division of Revenue Bill (Senate Bill No. 13 of 2019). *BUDGET*

Please find them attached for your necessary action.



RANA K. TIAMPATI

Copy: Clerk of the National Assembly
Director, Legislative & Procedural Services
Chief Librarian/Deputy Director, DDIRS

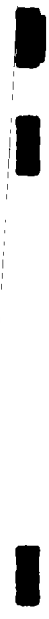
Encls).

RECEIVED
30 JUL 2019

(i) - GAZOMBA
- TUNGUOV
- CHAETHA


(ii) - Emission
- CHAMUNGO
Please note
FA
30/7/19

Please deal
FA
30/7/19



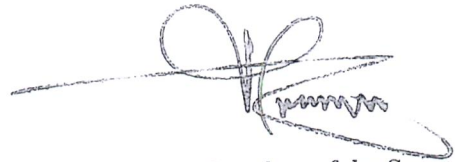
The County Roads, Walkways and Parking Bays Bill, 2018

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 19th June, 2019.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.



Speaker of the Senate



NEWS JUDICIARY

KORANE DEGREE PETITION

Garissa deputy governor joins his boss' papers case

Muhumed says he will be affected by outcome of the suit

ALPHONCE MUNG'AHU
@TheStarKenya



The High Court yesterday allowed Garissa Deputy Governor to be enjoined in a case challenging the academic papers of Governor Ali Korane as an interested party.

In his ruling, Justice James Makau said that the application by Abdi Daganu Muhumed seeking to enjoin in the case has merit.

After allowing the request, the judge directed him through his lawyer to file his papers and serve the other parties in the case within 21 days upon which they will have seven days to respond to the same.

Muhumed had earlier filed an application under certificate of urgency, claiming that being the deputy governor he will be affected by the outcome of the petition.

This is after the Independent Electoral and Boundaries Commission opposed his application, saying it is only Governor Korane's documents being challenged in court.

The commission, through lawyer Paul Nyamodi, while opposing his application, told the court that it is the governor's academic papers being challenged and not his deputy governor's academic qualifications.

In his supporting affidavit, he claimed that he has a legal interest in the suit due to the nature of his appointment and his position as the deputy governor and will be affected by any negative outcome of the suit.

Muhumed said he was declared the deputy governor by the IEBC when Korane was declared governor.

The Ethics and Anti-Corruption Commission said it commenced investigations against embattled Garissa Governor Korane over his academic qualifications.

This follows a petition filed by Aden Muktar Bare, whose son Idriss was shot as he pursued the matter. Idriss, 34, was shot in his car on August 19, 2018, in Kileleshwa, Nairobi, where he had gone for evening prayers. He remains bedridden with a bullet lodged in his head.

Bare filed a petition before court seeking to declare the governor's seat vacant. He argued that Korane presented fake academic papers.

In an affidavit, EACC investigator Kevin Langat said preliminary findings show Korane, while seeking clearance of the commission in 2012 and 2017, filed a form indicating that he possesses a master's degree from University of Nairobi.

"Analysis of the form reveals the information was altered to remove MBA degree and replace it with Bachelor of Arts in International Studies and Diplomacy from Washington International University."



Garissa Governor Ali Korane /STEPHEN ASTARIKO



DIDN'T ANSWER PHONE

Man who got M-Pesa cash by mistake charged with theft

Stanley Irungu tells court he will repay the money

CAROLYNE KUBWA/A man who received money through M-Pesa by mistake from a businesswoman has been charged with theft.

Stanley Irungu was accused that on June 22 at Umoja in Nairobi he stole Sh39,000 wrongly sent to his phone. The money belonged to Milcent Atieno.

Police said that Atieno, who operates an M-Pesa shop in Umoja, was given money by her customer to deposit in his number, but she wrongly sent the cash to Irungu who was also her customer.

Irungu is accused of withdrawing Sh39,000 from the Sh60,000 that was sent to him.

Atieno called Safaricom to reverse

the Sh21,000 that was remaining in Irungu's M-Pesa account.

She tried to reach the accused to refund the money since she knew him, but he ignored the calls.

The matter was reported to the police who traced him leading to his arrest.

Irungu admitted receiving the money and told the court that he was willing to pay it back.

"Your honour, I received the money and withdrew some of it. But I'm willing to pay the complainant her money," Irungu told the court.

Makadara senior principal magistrate Angelo Kithinji released him on Sh20,000 bail. The case will be mentioned on October 1

Stanley Irungu in a Makadara court /CAROLYNE KUBWA

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

In the Matter of consideration by the National Assembly
The County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18
of 2018)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018) seeks to provide a framework for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and walkways to:-

- a) Provide a framework for proper planning of access-ways to commercial buildings along county roads in accordance with the Physical Planning Act, No. 6 of 1996; and
- b) Promote the development of a well-planned environment in counties in order to achieve unhindered and adequate access to buildings from major roads by members of the public.

The County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018) has undergone First Reading in accordance with the provisions of Standing Order 127(1) and is now committed to the Departmental Committee on Transport, Public Works and Housing for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites members of the Public to submit any representations they may have on the said Bill.

The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, First Floor, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 26th September, 2019 at 5.00 pm.

MICHAEL R. SIALAL EBS
CLERK OF THE NATIONAL ASSEMBLY

