



Treaty Series No. 117 (1968)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Malawi

for Air Services between and beyond
their respective Territories

Blantyre, 27 September 1968

[The Agreement entered into force on signature]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
January 1969*

LONDON

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Malawi;

Being parties to the Convention on International Civil Aviation⁽¹⁾ opened for signature at Chicago on the Seventh Day of December 1944;

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

Have agreed as follows:

ARTICLE 1

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

- (a) the term “the Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the Seventh Day of December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have become effective for or been ratified by both Contracting Parties;
- (b) the term “aeronautical authorities” means, in the case of the United Kingdom, the Board of Trade and any person or body authorised to perform any functions at present exercisable by the said Board or similar functions, and, in the case of Malawi, the Minister responsible for civil aviation matters and any person or body authorised to perform the same or similar functions at present exercised by the said Minister;
- (c) the term “designated airline” means an airline which has been designated by a Contracting Party and authorised in accordance with Article 3 of the present Agreement;
- (d) the term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, protection or trusteeship of that State; and for the avoidance of misunderstanding in the case of Malawi it includes that part of Lake Malawi which is part of Malawi;

⁽¹⁾ “Treaty Series No. 8 (1953)”, Cmd. 8742.

- (e) the terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention; and
- (f) the terms "aircraft equipment", "stores" and "spare parts" have the meanings respectively assigned to them in Chapter 1 of Annex 9 of the Convention.

ARTICLE 2

(1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the route specified in the appropriate Part of the Schedule annexed to the present Agreement. Such services and routes are hereafter called "the agreed services" and "the specified routes" respectively. The airline designated by each Contracting Party shall enjoy, while operating an agreed service on a 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; and
- (c) to make stops in the said territory, at the points specified for that route in the Schedule for the purpose of putting down and taking up international traffic in passengers, cargo and mail.

(2) Nothing in paragraph (1) of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking up, 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.

(3) The provisions of the International Air Services Transit Agreement done at Chicago on the Seventh Day of December 1944, shall apply as between the Contracting Parties as if the Government of the Republic of Malawi had accepted that Agreement, but Article V thereof shall be interpreted consistently with Article 1 (d) of the present Agreement.

ARTICLE 3

(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.

(2) On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

(3) One Contracting Party may require an airline 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 the first-mentioned Contracting Party in conformity with the provisions of the Convention.

(4) Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2 of the present Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

(5) When an airline has been so designated and authorised it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of Article 9 of the present Agreement is in force in respect of that service.

ARTICLE 4

(1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 of the present Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights—

- (a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or
- (b) in the case of failure by that airline to comply with the laws or regulations in force in the territory of the Contracting Party granting these rights; or
- (c) in case the airline otherwise fails to operate in accordance with the conditions prescribed under the present 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 or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 5

(1) Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their aircraft equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

(2) There shall also be exempt from the same duties, fees and charges, with the exception of charges corresponding to the services performed—

- (a) aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board outbound aircraft engaged in an international service of the other Contracting Party;

- (b) spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party;
- (c) fuel and lubricants destined to supply outbound aircraft operated on international services by the designated airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

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

ARTICLE 6

The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. In 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 7

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

(2) In operating the agreed services, the airlines of each Contracting Party shall take into account the interests of the 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 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, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers, cargo and mail taken up or put down 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 transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

ARTICLE 8

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

- (a) that it is justified by reason of economy of operation;
- (b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is not larger in capacity than that used on the nearer section;
- (c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- (d) that there is an adequate volume of through traffic;
- (e) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where the change of aircraft is made;
- (f) that the provisions of Article 7 of the present Agreement shall govern all arrangements made with regard to change of aircraft;
- (g) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

ARTICLE 9

(1) For the purpose of the following paragraphs, the term "tariff" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.

(2) The tariffs to be charged by the airlines of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, and the tariffs of other airlines.

(3) The tariffs referred to in paragraph (2) of this Article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

(4) The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least ninety (90) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.

(5) This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph (4) of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph (4), the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

(6) If a tariff cannot be agreed in accordance with paragraph (3) of this Article, or if, during the period applicable in accordance with paragraph (5) of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph (3), the aeronautical authorities of the two Contracting Parties shall, after consultation with the aeronautical authorities of any other State whose advice they consider useful, endeavour to determine the tariff by mutual agreement.

(7) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph (4) of this Article, or on the determination of any tariff under paragraph (6) of this Article, the dispute shall be settled in accordance with the provisions of Article 13 of the present Agreement.

(8) A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which it otherwise would have expired.

ARTICLE 10

The aeronautical authorities of a 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 capacity provided on the agreed services by the designated airlines of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

ARTICLE 11

Each Contracting Party grants to the designated airlines of the other Contracting Party the right of free transfer at the official rate of exchange of the excess of receipts over expenditure earned by those airlines in its territory in connection with the carriage of passengers, mail and cargo.

ARTICLE 12

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

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

ARTICLE 13

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

(2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body suitable to decide the relevant questions of law and fact; if they do not so agree, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal, and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the specified period, the President of the Council of the International Civil Aviation Organisation may at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal. Each Contracting Party shall pay the costs of the arbitrator whom it has nominated or who has been appointed by the President of the Council of the International Civil Aviation Organisation in default of such nomination. The two Contracting Parties shall equally share the costs of the third arbitrator (however appointed) as well as the other costs of the arbitration.

(3) The Contracting Parties shall comply with any decision given under paragraph (2) of this Article, and also with any order of provisional measures of protection made by the arbitral tribunal whether at its own initiative or at the request of either Contracting Party.

ARTICLE 14

If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement including the Schedule annexed thereto, such modification, if agreed between the Contracting Parties and if necessary after consultation in accordance with Article 12 of the present Agreement, shall come into effect when confirmed by an Exchange of Letters.

ARTICLE 15

The present Agreement and its schedule shall be amended by an Exchange of Letters between the Contracting Parties so as to conform with any multilateral Convention or Agreement which may become binding on them.

ARTICLE 16

(1) Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by Agreement before the expiry of this period. In the absence of acknowledgment 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 Organisation.

(2) The Government of Malawi shall register the present Agreement with the International Civil Aviation Organisation.

ARTICLE 17

The present Agreement shall enter into force on the date of signature.

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

DONE in duplicate at Blantyre this 27th day of September 1968.

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

For the Government of the Republic
of Malawi:

T. S. TULL.

J. D. MSONTHI.

SCHEDULE

PART I

Route to be operated by the designated airline or airlines of the United Kingdom :

London—Points in Europe—Points in Africa—Blantyre—Points beyond.

The agreed services provided by the designated airline or airlines of the United Kingdom shall begin at a point in the territory of the United Kingdom, but other points on the route may, at the option of the designated airline, be omitted on any or all flights.

PART II

Route to be operated by the designated airline or airlines of Malawi :

Blantyre—Intermediate points to be agreed—London.

The agreed services provided by the designated airline or airlines of Malawi shall begin at a point in the territory of Malawi, but other points on the route may, at the option of the designated airline, be omitted on any or all flights.

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