



Treaty Series No. 43 (1990)

Agreement

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

Banjul, 5 February 1990

[The Agreement entered into force on 5 February 1990]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
June 1990*

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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 THE GAMBIA
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 The Gambia (hereinafter referred to as the "Contracting Parties"),

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944¹;

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 I

Definitions

For the purpose of this Agreement and the Annex attached hereto, unless the context otherwise requires:

- (a) the term "this Agreement" includes the Annex hereto and any amendments to it or to this Agreement;
- (b) the term "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944 and includes any amendment thereto which has entered into force under Article 94(a) thereof and has been ratified by both Contracting Parties, and any Annex or any amendment thereto adopted under Article 90 of that Convention, insofar as such amendment or Annex is at any given time effective for both Contracting Parties;
- (c) the term "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;
- (d) 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;
- (e) the term "regular equipment" means articles, other than stores and spare parts of a removable nature, for use on board an aircraft during flight, including first aid and survival equipment;
- (f) the term "aeronautical authorities" means in the case of each Contracting Party, its Secretary of State or Minister in charge of Civil Aviation or any person or body authorised under its laws to perform a particular function to which this Agreement relates;
- (g) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (h) the term "aircraft stores" means articles of a readily consumable nature for use or sale on board an aircraft during flight, including commissary supplies;
- (i) the term "spare parts" means articles of a repair or replacement nature for incorporation in an aircraft, including engines and propellers; and
- (j) the term "tariff" means the fare or freight rate to be charged by an airline for the carriage of passengers, baggage and cargo (excluding mail) and the conditions under which the fare or rate applies, including the price and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail.

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

ARTICLE 2

Applicability of Chicago Convention

The provisions of this Agreement shall be subject to the provisions of the Convention insofar as those provisions are applicable to international air services.

ARTICLE 3

Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services;

- (a) the right to fly across its territory without landing; and
- (b) the right to make stops in its territory for non-traffic purposes.

(2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route the airlines designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

ARTICLE 4

Designation of Airlines

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

(2) On receipt of such designation, the aeronautical authorities of the other Contracting Party shall without delay, subject to the provisions of paragraphs (3) and (4) of this Article, grant to the airlines designated in accordance with paragraph (1) of this Article the appropriate operating authorisation.

(3) Each Contracting Party shall have the right, by written notification to the other Contracting Party, to withdraw or alter the designation of any airline.

(4) The aeronautical authorities of one Contracting Party may require any airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and the regulations normally and reasonably applied to the operation of international air services by such authorities.

(5) Each Contracting Party shall have the right to refuse to grant the operating authorisation referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

(6) When an airline has been so designated and authorised, it may operate the agreed services for which it is designated provided that the airline complies with the applicable provisions of this Agreement and that in particular a tariff established in accordance with the provisions of Article 11 of this Agreement is in force in respect of that service and is at all times adhered to by that designated airline.

ARTICLE 5

Revocation and Suspension of Rights

(1) Each Contracting Party shall have the right to suspend the exercise of the rights specified in Article 3(2) of the present Agreement by an airline designated by the other Contracting Party, or to revoke the operating authorisation, 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 designation the airlines or in its nationals; or
- (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) if the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.

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

ARTICLE 6

Applications of Laws and Regulations

(1) Subject to the provisions of the Convention the laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in internal air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the designated airlines of both Contracting Parties when operating the agreed services on the specified routes without distinction as to nationality 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 as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with, by or on behalf of such passengers, crew or cargo carried by a designated airline of either Contracting Party upon entrance into or departure from, or while within the territory of that Contracting Party.

(3) Certificates of airworthiness and certificates of competency and licences issued or rendered valid by one Contracting Party in relation to an aircraft used by a designated airline of that Contracting Party shall be recognised as valid by the other Contracting Party provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to the Convention.

ARTICLE 7

Exemptions from Customs Duties, Inspection Fees and Other Similar Charges

(1) Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided such equipment, supplies and aircraft stores 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 the territory.

- (2) There shall also be exemption from the same duties, fees and charges with the exception of charges corresponding to the services performed for:
- (a) aircraft stores taken on board in the territory of a Contracting Party, within reasonable limits and for use on board outbound aircraft engaged in an international service by the designated airlines of the other Contracting Party;
 - (b) spare parts and regular equipment imported into the territory of either Contracting Party for the maintenance services by the designated airlines of the other Contracting Party; and
 - (c) fuel and lubricants for the supply of 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.
- (3) Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under customs supervision or control.

ARTICLE 8

Treatment of Regular Airborne Equipment Retained on Board

The regular airborne equipment as well as the materials and supplies retained on board the aircraft operated by the designated airlines 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 cases, they may be placed under the supervision of the said customs authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

ARTICLE 9

Representation

The designated airlines of either Contracting Party shall be allowed to establish in the territory of the other Contracting Party offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation. The airlines shall also be allowed to bring in and maintain in the territory of the other Contracting Party, in accordance with the laws and regulations of that other Contracting Party relating to entry, residence and employment, managerial, sales, technical, operational and other specialist staff required for the provision of air transportation.

ARTICLE 10

Principles Governing Operation of Agreed Services

- (1) There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.
- (2) In 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 which has designated the airline. Provision for 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 transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

ARTICLE 11

Tariffs

- (1) The tariffs to be charged by the designated airlines for carriage between the territories of the two Contracting Parties shall be established at reasonable levels due regard being paid to all relevant factors, including the interests of users, cost of operation, reasonable profit and tariffs of other airlines operating over the whole or part of the route.
- (2) The tariffs referred to in paragraph (1) of this Article, including the rates of agency commission applicable shall, if possible, be agreed by the designated airlines of both Contracting Parties, in consultation if necessary with other airlines operating over the whole or part of the route.
- (3) A tariff agreed by the airlines or, if they cannot agree, a tariff which one designated airline wishes to charge shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least thirty (30) days (or such shorter period as the aeronautical authorities of both Contracting Parties may agree) before the proposed date of its introduction.
- (4) Unless the aeronautical authorities of one Contracting Party give the other aeronautical authorities written notice of dissatisfaction with any proposed tariff submitted in accordance with the provisions of paragraph (3) of this Article within twenty-one (21) days the tariff shall be deemed to have been approved. If, however, either of the aeronautical authorities gives such written notice of its dissatisfaction the aeronautical authorities will at the request of either try to determine the tariff by agreement.
- (5) If the aeronautical authorities cannot determine any tariff under the provisions of paragraph (4) of this Article the dispute may at the request of either be settled in accordance with the provisions of Article 16 of this Agreement.
- (6) Subject to the provisions of paragraph (5) of this Article, no tariff shall come into effect unless it has been approved or deemed to have been approved by both aeronautical authorities under the provisions of this Article.
- (7) A tariff established in accordance with the provisions of this Article shall remain in force until it has been replaced by a new tariff determined in accordance with the provisions of this Article. Unless otherwise agreed by both Contracting Parties, however, a tariff shall not have its validity extended by virtue of this paragraph for more than twelve (12) months after the date on which it would otherwise have expired.
- (8) A tariff to be charged by a designated airline of one Contracting Party for carriage between the territory of the other Contracting Party and that of a third State shall be filed for approval with the aeronautical authorities of the other Contracting Party not less than thirty (30) days before the proposed date of its introduction and shall not be introduced until it has been approved by those aeronautical authorities.

ARTICLE 12

Provision of Statistics

- (1) The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at the latter's request such periodic or other statements 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.
- (2) Such statements shall include the information required to determine the amount of traffic carried by the designated airlines on the agreed services and the origins and destinations of such traffic.

ARTICLE 13

Transfer of Earnings

- (1) Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right at any time promptly to transfer in convertible currency at the official rate of exchange any excess of receipts over expenditure earned by the airlines in its territory in connection with the carriage of passengers, baggage, mail and cargo.
- (2) If the payment system between the Contracting Parties is governed by a special agreement, that agreement shall to the extent that it is incompatible with this Article apply in place of the provisions of this Article.

ARTICLE 14

Aviation Security

- (1) The Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against unlawful interference forms an integral part of this Agreement. The Contracting Parties shall in particular act in conformity with the aviation security provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963¹, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971³.
- (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 applicable aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944⁴. They shall require that operators of aircraft of their registry or operators of aircraft having their principal place of business or permanent residence in their area, and the operators of airports in their area, 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) of this Article required by the other Contracting Party for entry into, departure from, or while within, the area of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its area to protect the aircraft and to inspect passengers, crew, carry-on items, baggage 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.

¹ Treaty Series No. 126 (1969), Cmnd. 4230.

² Treaty Series No. 39 (1972), Cmnd. 4956.

³ Treaty Series No. 10 (1974), Cmnd. 5524.

⁴ Treaty Series No. 8 (1953), Cmd. 8742

(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 15

Consultations

(1) In a spirit of close co-operation, the aeronautical authorities of both Contracting Parties may consult each other from time to time with a view to ensuring the effective implementation of this Agreement.

(2) Either Contracting Party may request consultations. Such consultations which may be between aeronautical authorities, and which may be through discussion, or by correspondence shall begin within a period of sixty (60) days from the date when the other Contracting Party receives the written request, unless both Contracting Parties agree to an extension of this period.

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 try to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

(a) within thirty (30) days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a third State, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within sixty (60) days of the appointment of the second; and

(b) if within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the International Court of Justice to make the necessary appointment within thirty (30) days. If the President is of the same nationality as one of the Contracting Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than thirty (30) days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within forty-five (45) days after the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within thirty (30) days after replies are due.

(5) The tribunal shall attempt to give a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, thirty (30) days after the date both replies are submitted. The decision shall be taken by a majority vote.

(6) The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.

- (7) The decision of the tribunal shall be binding on the Contracting Parties.
- (8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President or Vice-President of the International Court of Justice in implementing the procedures in paragraph (2)(b) of this Article.

ARTICLE 17

Effect of Multilateral Agreement

If a general multilateral air convention enters into force in relation to both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

ARTICLE 18

Amendments

- (1) If either of the Contracting Parties considers it desirable to amend any provision of this Agreement it may at any time request consultations with the other Contracting Party and such consultation shall begin within a period of sixty (60) days from the date of the receipt of the request by the other Contracting Party.
- (2) Any amendment to this Agreement shall come into effect when confirmed by an Exchange of Notes through the diplomatic channel.

ARTICLE 19

Registration of Agreement with ICAO

This Agreement and any amendments thereto shall be registered with the International Civil Aviation Organisation.

ARTICLE 20

Duration and Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such a case, 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. 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 Organisation.

ARTICLE 21

Entry into Force

This Agreement shall enter into force on the date of signature.

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

Done in duplicate at Banjul this fifth day of February 1990.

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

ALEC IBBOTT

For the Government of the Republic of
The Gambia:

M C CHAM

ANNEX

ROUTE SCHEDULE

SECTION 1

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

London—intermediate points—Banjul—points beyond in Africa

Notes:

- (1) The routes may be operated in either direction.
- (2) The designated airline or airlines of the United Kingdom may on any or all flights omit calling at any of the above-mentioned points provided that the agreed services on these routes begin at a point in United Kingdom territory.
- (3) No traffic may be picked up at an intermediate point and set down at Banjul or at Banjul to be set down at a point beyond, and vice versa, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties. This restriction also applies to all forms of stop-over traffic.

SECTION 2

Routes to be operated by the designated airline or airlines of the Republic of The Gambia:

Banjul—intermediate points—London—points beyond in Europe

Notes:

- (1) The routes may be operated in either direction.
- (2) The designated airline or airlines of the Republic of The Gambia may on any or all flights omit calling at any of the above-mentioned points provided that the agreed services on these routes begin at a point in the territory of the Republic of The Gambia.
- (3) No traffic may be picked up at an intermediate point and set down at London or at London to be set down at a point beyond and vice versa, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties. This restriction also applies to all forms of stop-over traffic.



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