



Treaty Series No. 78 (1992)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of South Africa
for Air Services between and beyond their
Respective Territories

London, 11 August 1992

[The Agreement entered into force on 11 August 1992]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
December 1992*

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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 SOUTH AFRICA
FOR AIR SERVICES BETWEEN AND BEYOND THEIR
RESPECTIVE TERRITORIES**

The Government of the United Kingdom and Northern Ireland and the Republic of South Africa, hereinafter referred to together 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;¹

Desiring to contribute to the progress of international civil aviation;

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, unless the context otherwise requires:

- (a) the term "aeronautical authorities" means:
for the Government of the United Kingdom of Great Britain and Northern Ireland, the Secretary of State for Transport and for the purpose of Article 8, the Civil Aviation Authority;
for the Republic of South Africa, the Minister responsible for Civil Aviation;
or in both cases, any person or body authorised to perform any functions at present exercisable by the above-mentioned authorities;
- (b) the terms "agreed service" and "specified route" mean an international air service pursuant to Article 3 of this Agreement and the route specified in the appropriate Section of the Annex to this Agreement respectively;
- (c) the term "Agreement" means this Agreement, its Annex drawn up in application thereof, and any amendments to the Agreement or to the Annex;
- (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 terms "Convention" and "Chicago Convention" mean the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December 1944,¹ and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes to the Convention under Articles 90 and 94 thereof, in so far as those Annexes and amendments have become effective for, or been ratified by both Contracting Parties;
- (f) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (g) the term "tariff"—see paragraph 1 of Article 8; and
- (h) the term "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention.

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

ARTICLE 2

Applicability of the Chicago Convention and Multilateral Agreements

- (1) The provisions of this Agreement shall be subject to the provisions of the Chicago Convention in so far as those provisions are applicable to international air services.
- (2) If a multilateral agreement concerning any matter covered by this Agreement, and which is accepted by both Parties, enters into force, the relevant provisions of that agreement shall supersede the relevant provisions of the present Agreement to the extent agreed upon by both Contracting Parties.

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;
 - (b) the right to make stops in its territory for non-traffic purposes; and
 - (c) while operating an agreed service on a specified route, the right to make stops in its territory for the purpose of taking up and discharging international passengers, cargo, and mail, separately or in combination.
- (2) Nothing in paragraph (1) of this Article shall be deemed to grant to 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.
- (3) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routeing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangement of routes.

ARTICLE 4

Designation and Authorisation

- (1) Each Contracting Party shall have the right by written notification through the diplomatic channel to the other Contracting Party to designate an airline or airlines to operate the agreed air services on the specified routes and to withdraw or alter such designations.
- (2) On receipt of such notification, the other Contracting Party shall, without delay, grant to an airline or airlines so designated the appropriate operating authorisations subject to the provisions of this Article.
- (3) Upon receipt of the operating authorisation referred to in paragraph (2) of this Article, a designated airline may at any time begin to operate the agreed services, in part or in whole, provided that it complies with the provisions of this Agreement.
- (4) For the purpose of granting the appropriate operating authorisation under paragraph (2) of this Article, the aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy it 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 those authorities in conformity with the provisions of the Convention.
- (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 grant this authorisation under conditions that may be deemed necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement, if the said Contracting Party is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating it or in its nationals.

ARTICLE 5

Revocation or Suspension of Operating Authorisation

- (1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights granted under this Agreement to a designated airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of such rights:
 - (a) in the event of failure by such airline to comply with the laws and regulations normally and reasonably applied by the Contracting Party granting those rights;
 - (b) in the event that it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; and
 - (c) in case 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 and regulations referred to above, the rights enumerated in paragraph (1) of this Article shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6

Airline Representation and Sales

- (1) The designated airline or airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.
- (2) The designated airlines of each Contracting Party shall have the right to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase, such transportation in local currency or in any freely convertible other currency.

ARTICLE 7

Principles Governing the Operation of Agreed Services

- (1) The designated airlines of the two Contracting Parties shall be afforded fair and equitable treatment in order that they may enjoy equal opportunity in the operation of the agreed services. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive/predatory practices adversely affecting the competitive position of the airlines of the other Contracting Party.
- (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/or 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 route 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

Tariffs

- (1) (a) The term "tariff" means:
 - (i) the price to be charged by airlines, directly or through their agents, for the carriage of passengers, baggage or cargo (excluding mail);
 - (ii) the additional goods, services or other benefits to be furnished or made available by airlines, directly or through their agents, in conjunction with such carriage or as a matter which is incidental thereto or consequential thereon; and
 - (iii) the prices to be charged by airlines, directly or through their agents, for such additional goods, services or benefits;and includes the conditions that are to govern the applicability of any such price and the furnishing or availability of any such goods, services or benefits:
 - (iv) the rate of commission paid by an airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services.
 - (b) Where fares or rates differ according to the season, day of the week or time of the day on which a flight is operated, the direction of travel or according to some other factor, each different fare or rate shall be regarded as a separate tariff whether or not it has been filed separately with the related conditions with the relevant authorities.
- (2) The tariffs to be charged by the designated airlines for carriage between the territories of the 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 market considerations. The designated airlines may consult together or, if they so wish, with other airlines about tariff proposals, but shall not be required to do so before filing a proposed tariff.
- (3) The aeronautical authorities of both countries shall apply the following provisions for the approval of tariffs to be charged by airlines of either Contracting Party for carriage between a point in one country and a point in the other country:
- (a) any proposed tariff to be charged for carriage between the two countries shall be filed by or on behalf of the designated airline concerned with both aeronautical authorities at least thirty (30) days (or such shorter period as both aeronautical authorities may agree) before it is proposed that the tariff will take effect;
 - (b) a tariff so filed may be approved at any time by the aeronautical authorities. However, subject to the next two following sub-paragraphs, any such tariff shall be treated as having been approved twenty-one (21) days after the day on which the filing was received unless the aeronautical authorities of both countries have informed each other in writing within twenty (20) days of the filing being received by them that they do not approve the proposed tariff;
 - (c) nothing in paragraph (b) above shall prevent the aeronautical authorities of either country from unilaterally disallowing any tariff filed by one of its own designated airlines. However, such unilateral action shall be taken only if it appears to those authorities either that a proposed tariff is excessive or that its application would constitute anti-competitive behaviour likely to cause serious damage to another airline or other airlines;
 - (d) if the aeronautical authorities of either country consider either that a proposed tariff filed with them by a designated airline of the other country is excessive or that its application would constitute anti-competitive behaviour likely to cause serious damage to another airline or other airlines they may, within twenty (20) days of

receiving the filing, request consultations with the aeronautical authorities of the other country. Such consultations shall be completed within twenty-one (21) days of being requested and the tariff shall take effect at the end of that period unless the authorities of both countries agree otherwise;

- (e) in the event that a tariff which has come into effect in accordance with the provisions above is considered by the aeronautical authorities of one country to be causing serious damage to another airline or other airlines on a particular route or routes, those aeronautical authorities may request consultations with the aeronautical authorities of the other country.

(4) The tariffs to be charged by a designated airline of one country for carriage between the territory of the other country and a third state shall be filed for the approval of the aeronautical authorities of the other country. Each tariff filed shall be given approval if it is identical in level, conditions and date of expiry to a tariff currently approved by those aeronautical authorities and applied by a designated airline of that other country for carriage between its territory and that of a third state, provided that those aeronautical authorities may withdraw their approval if the tariff being matched is discontinued for any reason, or may vary the terms of the approval to correspond to any approved variation in the tariff being matched.

ARTICLE 9

Provisions of Information

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 or 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 10

Customs Duties

(1) Aircraft operated in international services by the designated airline or airlines of either Contracting Party shall be relieved from all customs duties, national excise taxes and similar national fees, as shall the following items introduced by a designated airline of one Contracting Party:

(a) into the territory of the other Contracting Party:

- (i) repair, maintenance and servicing equipment and component parts;
- (ii) passenger handling equipment and component parts;
- (iii) cargo-loading equipment and component parts;
- (iv) security equipment and component parts for incorporation into security equipment;
- (v) instructional material and training aids; and

(b) into the territory of the other Contracting Party or supplied to designated airlines of one Contracting Party in the territory of the other Contracting Party:

- (i) aircraft stores (including but not limited to items such as food, beverages and tobacco) whether introduced into or taken aboard in the territory of the other Contracting Party;
- (ii) fuel, lubricants and consumable technical supplies;
- (iii) spare parts including engines;
- (iv) advertising and promotional material;

provided that in each case they are for use on board an aircraft or within the limits of an international airport in connection with the establishment or maintenance of an international air service by the designated airline concerned.

(2) The relief from customs duties, national excise taxes and similar national fees shall not extend to charges based on the cost of services provided to the designated airlines of a Contracting Party in the territory of the other Contracting Party.

(3) Equipment and supplies referred to in paragraph (1) of this Article may be required to be kept under the supervision or control of the appropriate authorities.

(4) The reliefs provided for by this Article shall also be available in situations where the designated airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph (1) of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

ARTICLE 11

Transfer of Funds

Each designated airline shall have the right to convert and remit to its country on demand revenues earned locally in excess of sums locally disbursed. Where such earnings are in local currency, conversion and remittance shall be freely permitted at the rate of exchange fixed by the competent authorities of the Contracting Party concerned. The exchange rate shall be that which is applicable to current transactions and which is in effect at the time such revenues are presented for conversion and remittance.

ARTICLE 12

Aviation Security

(1) The Contracting Parties reaffirm that their obligations to each other to provide for the security of civil aviation against acts of unlawful interference (and in particular their obligations under the Chicago Convention, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963,¹ 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 1971)³ form an integral part of this Agreement.

(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 Standards and, so far as they are applied by them, the Recommended Practices established by the International Civil Aviation Organisation and designated as Annexes to the Chicago Convention; and shall require that operators of aircraft of their registry, operators 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. In this paragraph the reference to aviation security Standards includes any difference notified by the Contracting Party concerned. Each Contracting Party shall give advance information to the other of its intention to notify any difference.

(4) Each Contracting Party shall ensure that effective measures are taken within its territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo (including hold baggage) and aircraft stores prior to and during boarding or loading and that those measures are adjusted to meet increases in the threat. Each Contracting Party agrees that its airlines may be required to observe the aviation security provisions referred to in paragraph (3) of this Article required by the other Contracting Party, for entrance into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall also act favourably upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

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

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

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

(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 as rapidly as possible commensurate with minimum risk to life such incident or threat.

(6) When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request immediate consultations with the other Contracting Party. Failure by the Contracting Parties to reach a satisfactory resolution of the matter within sixty (60) days from the date of receipt of such request shall constitute grounds for withholding, revoking, limiting or imposing conditions on the operating authorisations or technical permissions of an airline or airlines of the other Contracting Party. When justified by an emergency, a Contracting Party may take interim action prior to the expiry of sixty (60) days.

ARTICLE 13

Change of Gauge

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

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

ARTICLE 14

Consultation and Amendment

(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 consult when necessary to provide for modification thereof.

(2) Either Contracting Party may request consultations, which shall begin within sixty (60) days of the date of the receipt of the request unless both Contracting Parties agree to an extension or reduction of this period. Such consultations may be conducted either orally or in writing.

(3) Any amendment to or modification of this Agreement agreed by the Contracting Parties, shall be effected by an Exchange of Notes and where applicable, shall be dependent upon the completion of nationally required legal procedures.

ARTICLE 15

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;
 - (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 for in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction, establish its own procedure and determine the venue of the arbitration. 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 16

Termination

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by the International Civil Aviation Organisation.

ARTICLE 17

Registration of Agreement and Amendments

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

ARTICLE 18

Entry into Force

This Agreement shall enter into force on the date of signature and shall replace the Air Services Agreement between the Contracting Parties signed in Pretoria on 26 October 1945,¹ except with respect to air services between Hong Kong and the Republic of South Africa to which the 1945 Agreement shall continue to apply until such time as it is replaced by agreement between the Contracting Parties.

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

Done in duplicate at London this eleventh day of August 1992 in the English language.

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

*For the Government of the Republic of
South Africa:*

CAITHNESS

P. J. WELGEMOED

¹ Cmd. 7858.

ANNEX

Route Schedule

Section 1

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

Points in the United Kingdom—intermediate points—points in the Republic of South Africa—points beyond.

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 the territory of the United Kingdom.
3. No traffic may be picked up at an intermediate point to be set down at points in the Republic of South Africa or at points in the Republic of South Africa 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 South Africa.

Points in the Republic of South Africa—intermediate points—points in the United Kingdom—points beyond.

Notes:

1. The routes may be operated in either direction.
2. The designated airline or airlines of the Republic of South Africa 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 South Africa.
3. No traffic may be picked up at an intermediate point to be set down at points in the United Kingdom or at points in the United Kingdom 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.

