



Treaty Series No. 39 (1990)

# Agreement

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

concerning Air Services

London, 30 January 1990

[The Agreement entered into force on 30 January 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 BOTSWANA  
CONCERNING AIR SERVICES**

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

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944<sup>1</sup>;

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

Have agreed as follows:

**ARTICLE 1**

**Definitions**

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

- (a) the term "the Chicago Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 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 any given time effective for both Contracting Parties;
- (b) the term "aeronautical authorities" means in the case of the United Kingdom, the Secretary of State for Transport, and in the case of the Republic of Botswana, 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 or similar functions;
- (c) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (d) the term "territory" in relation to a State has the meaning assigned to it in Article 2 of the Chicago Convention;
- (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 Chicago Convention;
- (f) the term "this Agreement" includes the Annex hereto and any amendments to it or to this Agreement;
- (g) the term "user charge" means a charge made to airlines for the provision for aircraft, their crews and passengers of airport or air navigation property or facilities, including related services and facilities;
- (h) the terms "aircraft equipment", "stores" and "spare parts" have the meanings respectively assigned to them in Annex 9 to the Chicago Convention.

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<sup>1</sup> Treaty Series No. 8 (1953), Cmd. 8742.

## ARTICLE 2

### **Applicability of the Chicago Convention**

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.

## 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.

(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 airline designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the 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 airline 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.

(4) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, the designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

## ARTICLE 4

### **Designation of and Authorisation of Airlines**

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designations.

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

(3) The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Chicago 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 the designated airline of the rights specified in Article 3(2) of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

(5) When an airline has been so designated and authorised it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

## ARTICLE 5

### Revocation or Suspension of Operating Authorisations

(1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3(2) of this Agreement by the airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of those 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 or the Contracting Party granting those rights; or
- (c) if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

## ARTICLE 6

### 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 airline of each Contracting Party shall take into account the interests of the designated airline 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 7

### Tariffs

(1) The term "tariff" means the price to be charged for the carriage of passengers and their baggage or cargo (excluding mail) and the commission to be paid for the sale of tickets for the carriage of passengers and their baggage, or for the corresponding transactions for the carriage of cargo. It includes also the conditions that govern the applicability of the price for such carriage and the payment of commission.

(2) The tariffs to be charged by the designated airline of a Contracting Party 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 cost of operation, the standards of service, commission rates, reasonable profit, the interests of users and market considerations.

(3) The tariffs referred to in paragraph (2) of this Article may be agreed by the designated airlines of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route. Such agreement may be reached through the appropriate tariff co-ordinating machinery of IATA.

(4) The proposed tariffs which each designated airline wishes to charge, including jointly agreed tariffs presented by a single airline on behalf of the airlines of both Contracting Parties, shall be submitted for the approval of the aeronautical authorities of both Contracting Parties in such form as those aeronautical authorities may separately require, at least forty-five (45) days before the proposed date of introduction of the tariffs. In special cases, this period may be reduced, subject to the agreement of the said authorities.

(5) This approval may be given expressly. However, if neither of the aeronautical authorities of the Contracting Parties has expressed disapproval within twenty-one (21) days from the date of submission, 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 twenty-one (21) days. When approving a tariff an aeronautical authority may require the airline concerned to propose, or may itself attach, an expiry date.

(6) 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 submitted in accordance with the provisions of paragraph (4) of this Article, the aeronautical authorities may consult with a view to determining the tariff by mutual agreement. For that purpose the aeronautical authorities of either Contracting Party may request consultations within thirty (30) days of the service of the notice of disapproval and if so requested, such consultations shall be completed within a further thirty (30) days, unless the aeronautical authorities agree to extend that period.

(7) If the aeronautical authorities cannot determine any tariff under the provisions of paragraph (6) of this Article the dispute may at the request of either be settled in accordance with the provisions of Article 15 of this 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 would otherwise have expired except with the agreement of the aeronautical authorities of both Contracting Parties.

(9) The aeronautical authorities of each Contracting Party shall exercise their best efforts to ensure that the designated airlines conform to the tariffs approved by the aeronautical authorities of the Contracting Parties.

(10) Each tariff to be charged by the 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. The designated airlines shall be allowed to match such tariffs approved for the third and fourth freedom rights on the same sectors.

## ARTICLE 8

### Customs Duties

(1) Aircraft operated on international air services by the designated airline of either Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco) which are on board such aircraft shall be

relieved on the basis of reciprocity from all customs duties, national excise taxes and similar national fees and charges not based on the cost of services provided on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft.

(2) There shall also be relieved from the duties, taxes, 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 introduced into or supplied in the territory of a Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft engaged in an international air service of the designated airline of the other Contracting Party;
- (b) spare parts including engines introduced into the territory of a Contracting Party for the maintenance or repair of aircraft used in an international air service of the designated airline of the other Contracting Party; and
- (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft engaged in an international air service of the designated airline of the other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board.

(3) Equipment and supplies referred to in paragraphs (1) and (2) 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 airline of one Contracting Party has 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 paragraphs (1) and (2) of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

## ARTICLE 9

### Aviation Security

(1) The assurance of safety for civil aircraft, their passengers and crew being a fundamental pre-condition for the operation of international air services, the Contracting Parties reaffirm their obligations to each other to provide for the security of civil aviation against acts of unlawful interference and shall act in conformity with the provisions of the Chicago Convention, the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963<sup>1</sup>, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970<sup>2</sup> and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971<sup>3</sup>.

(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 airport 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 Organization and designated as Annexes to the Chicago Convention<sup>4</sup>; 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.

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<sup>1</sup> Treaty Series No. 126 (1969), Cmnd. 4230.

<sup>2</sup> Treaty Series No. 39 (1972), Cmnd. 4956.

<sup>3</sup> Treaty Series No. 10 (1974), Cmnd. 5524.

<sup>4</sup> Treaty Series No. 8 (1953), Cmd. 8742.

(4) Each Contracting Party agrees that its airlines may be required to observe the aviation security provisions referred to in paragraph (3) 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 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 and aircraft stores prior to and during boarding or loading. 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.

(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.

(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 fifteen (15) 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 fifteen (15) days.

#### ARTICLE 10

##### Provision of Statistics

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 airline of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by that airline on the agreed services and the origins and destinations of such traffic.

#### ARTICLE 11

##### Transfer of Earnings

Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions but in accordance with the procedures of the prevailing foreign exchange regulations, uniformly and reasonably applied to comparable operations at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance.

#### ARTICLE 12

##### Airline Representation

Each Contracting Party shall grant to the designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory including ancillary matters which facilitate such sale of air transportation directly, or, at the airline's discretion, through its agents. The airline 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 13

##### User Charges

(1) Neither Contracting Party shall impose or permit to be imposed on the designated airline of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.

(2) User charges imposed by the competent authorities of a Contracting Party may be paid in the currency of that Contracting Party.

## ARTICLE 14

### Consultation

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations, which may be between aeronautical authorities, shall begin within a period of sixty (60) days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

## 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 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, at a place to be determined by the president of the tribunal.
- (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**

**Amendment**

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an Exchange of Notes.

**ARTICLE 17**

**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 Organization. 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 Organization.

**ARTICLE 18**

**Entry into Force**

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

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

Done in duplicate at London this 30th day of January 1990.

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

**WILLIAM WALDEGRAVE**

For the Government of the Republic of  
Botswana:

**MERAFHE**

## ANNEX

### Route Schedule

#### SECTION 1

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

Points in the United Kingdom—intermediate points—points in the Republic of Botswana

Notes:

- (1) The routes may be operated in either direction.
- (2) The designated airline of the United Kingdom may on any or all flights omit calling at any of the above-mentioned points provided that the agreed services on 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 points in the Republic of Botswana or vice versa, except as may from time to time be agreed by the aeronautical authorities of the Contracting Parties.

#### SECTION 2

Routes to be operated by the designated airline of the Republic of Botswana:

Points in the Republic of Botswana—intermediate points—points in the United Kingdom

Notes:

- (1) The routes may be operated in either direction.
- (2) The designated airline of the Republic of Botswana 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 Botswana.
- (3) No traffic may be picked up at an intermediate point and set down at points in the United Kingdom or 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 stop-over traffic.



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