Treaty Series No. 41 (1989)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the United States of America

further amending the Agreement concerning Air Services, signed at Bermuda on 23 July 1977, as amended

Washington, 25 May 1989

[The Exchange of Notes entered into force on 25 May 1989]

Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 1989

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EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FURTHER AMENDING THE AGREEMENT CONCERNING AIR SERVICES, SIGNED AT BERMUDA ON 23 JULY 1977, AS AMENDED

No. 1

The Secretary of State of the United States of America to her Majesty's Ambassador at Washington

Department of State
Washington
25 May 1989

Excellency:

I have the honor to refer to negotiations which have taken place in London and Washington pursuant to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland concerning air services, signed at Bermuda on July 23, 1977[1], as amended (hereinafter referred to as the "Agreement").

As a result of those negotiations, which concluded on September 11, 1986, and in accordance with Article 18 of the Agreement, I have the further honor to propose that the Agreement be further amended as set out below:

1. Article 7 shall be amended to read as follows:

"Revised Article 7—Aviation Security

(1) The assurance of safety for civil aircraft, their passengers and crew being a fundamental precondition for the operation of international air services, 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 Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944[2], the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963[3], the Convention for the suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970[4] and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971[5]) 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 Organization and designated as Annexes to the Convention on International Civil Aviation; 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.

[1]Treaty Series No. 76 (1977), Cmnd. 7016.
[2]Treaty Series No. 8 (1953), Cmnd. 8742.
[3]Treaty Series No. 126 (1969), Cmnd. 4230.
[4]Treaty Series No. 39 (1972), Cmnd. 4956.
[5]Treaty Series No. 10 (1974), Cmnd. 5524.

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(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 increased threats to the security of civil aviation. Each Contracting Party shall also act favorably upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat. 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, pursuant to Article 4 of this Agreement, for entrance into, departure from, or while within, the territory of that other Contracting Party.

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

(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 15 days from the date of receipt of such request shall constitute grounds for withholding, revoking, limiting or imposing conditions on the operating authorizations 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 15 days."

2. The following shall replace the expired Annex 2:

" Replacement ANNEX 2—Capacity on the North Atlantic

(1) In order to ensure the sound application of the principles in Article 11 (Fair Competition) of this Agreement and in view of the special circumstances of North Atlantic air transport, the Contracting Parties have agreed to the following procedures with respect to combination air services on US Routes 1 and 2 and UK routes 1, 2, 3, 4 and 5, specified in Annex 1.

(2) The purpose of this Annex is to provide a consultative process to deal with cases of excess provision of capacity, while ensuring that designated airlines retain adequate scope for managerial initiative in establishing schedules and that the overall market share achieved by each designated airline will depend upon passenger choice rather than the operation of any formula or limitation mechanism. In keeping with these objectives, the Contracting Parties desire to avoid unduly frequent invocation of the consultative mechanism or limitation provision in order to avoid undue burden of detailed supervision of airline scheduling for the Contracting Parties.

(3) Not later than 130 days before each summer and winter traffic season, each designated airline shall file with both Contracting Parties its proposed schedules for services on each relevant gateway route segment for that season. Such schedules shall specify the frequency of service, type of aircraft and all points to be served. In the event that increases in frequencies are later required, such increases shall be filed with both Contracting Parties on a timely basis. Any such late-filed increase in frequencies by an airline on any gateway route segment shall be subject to the approval of the other Contracting Party only if the increase could have been the subject of consultations under paragraph (4) of this Annex if it had been filed by the deadline specified in this paragraph.

(4) If a Contracting Party (the "Receiving Party") believes that an increase in frequencies on a gateway route segment contained in any of the schedules so filed with it by a designated airline of the other Contracting Party (the " Requesting Party ") may be inconsistent with the principles set forth in Article 11 of this Agreement, it may, not later than 105 days before the next traffic season, request consultations, notifying the Requesting Party of the reasons for its belief and, in its discretion, indicating the increase, if any, in frequencies on the gateway route segment which it considers consistent with the Agreement. Such request shall not, however, be permitted in respect

of a schedule for a summer traffic season which specifies a total of 214 or fewer round trip frequencies on any gateway route segment or for a winter traffic season which specifies 151 or fewer such frequencies.

(5) Consultations shall be held as soon as possible and in any event not later than 90 days before the traffic season in question.

(6) If, 75 days before the traffic season begins, agreement has not been reached, each designated airline whose proposed schedule was the subject of consultations shall be entitled to operate during that season, on the gateway route segment in question, the total number of round trip frequencies which it was authorized to operate on that gateway route segment during the previous corresponding season, plus an additional 30 round trip frequencies during a summer traffic season or 22 during a winter traffic season. However, if the authorized frequencies for the previous corresponding season were also determined under this paragraph, such authorized frequencies shall be deemed not to include such 30 or 22 additional frequencies except to the extent they were actually operated in that season.

(7) A designated airline of one Contracting Party which inaugurates service on a gateway route segment already served by a designated airline or airlines of the other Contracting Party shall not be bound by the limitations set forth in paragraph (6) of this Annex for a period of two years or until it matches the frequencies of any incumbent airline of that Contracting Party whichever occurs first.

(8) In no event, except when sub-paragraph (b) of paragraph (9) of this Annex applies, shall the designated airline(s) of one Contracting Party be required, in aggregate, to operate on any gateway route segment fewer than either (a) the total number of authorized frequencies of the designated airline(s) of the other Contracting Party including Concorde frequencies or (b) 150 percent of the total number of authorized subsonic frequencies of the designated airline(s) of the other Contracting Party.

(9) (a) For the purpose of applying the provisions of this Annex to a designated airline which replaces a designated airline of the same Contracting Party, the replacement airline, in so far as it begins to operate the same agreed services on a regular basis within 12 months of the previous airline ceasing to operate them, shall, in respect of the previous corresponding season, be deemed to have been authorized to operate the frequencies authorized for the previous airline, and to have operated the frequencies actually operated by that airline.

(b) Where the replacement airline begins operations after the start of a traffic season, it shall be entitled to operate for the remaining part of that season on a pro-rata basis the frequencies authorized for the previous airline.

(c) A replacement airline shall file schedules with the other Contracting Party as soon as it has been designated, or in accordance with paragraph (3) of this Annex, whichever is the later.

(10) If a newly designated airline that is not a replacement airline is unable, because of the date of its designation, to file schedules with the other Contracting Party in accordance with the provisions of paragraph (3) of this Annex, it shall file its proposed schedules as soon as it has been designated. Schedules filed may be operated unless the Receiving Party objects within 15 days of the schedules being filed. If there is an objection, the level of operations may not be held to a level less than a total of 214 round-trip frequencies, if it is a summer-traffic season, and 151, if it is a winter traffic season. Where such airline begins operations after the start of a traffic season, it shall be entitled to operate such frequencies for the remaining part of that season on a pro-rata basis.

(11) Each Contracting Party shall allow filed schedules which have not been the subject of a request for consultations under paragraph (4) of this Annex to become effective on their proposed commencement dates. Each Contracting Party shall allow schedules which have been determined by agreement or as provided in paragraphs (6), (8), (9) or (10) of this Annex to become effective on their proposed commencement dates. Each Contracting Party may take such steps as it considers necessary to prevent the operation of schedules which include frequencies greater than those permitted or agreed under this Annex.

(12) Each designated airline shall be entitled to operate extra sections on any gateway route segment, provided they are operated as duplicate flights to meet unforeseen short

term demand for additional seats; are not sold, advertised or held out or shown in any reservations system (except in an airline's internal system for inventory control purposes) as separate flights; and are operated as close to the time of the flights which they duplicate as airport conditions allow.

(13) In the event that either Contracting Party believes that this Annex is not achieving the objectives set forth in paragraph (2) of this Annex, it may at any time request consultations, pursuant to Article 16 of this Agreement, to consider alterations to the procedures or numerical limitations.

(14) Subject to Article 19 (Termination) of this Agreement, this Annex shall remain in force for an initial period of 3 years from November 1, 1986. A Contracting Party may give notice in writing to the other Contracting Party of its intention to terminate this Annex. If such notice is given, this Annex shall terminate twelve months later, but in no event before October 31, 1989.

(15) For the purposes of this Annex, "summer and winter traffic season" mean; respectively, the periods from April 1 through October 31 and from November 1 through March 31."

3. Part V of Annex 5 shall be amended to read as follows:

"PART V—Termination

(12) Subject to Article 19 (Termination) of this Agreement, this Annex shall remain in force until terminated by either Contracting Party. A Contracting Party wishing to terminate this Annex may give notice in writing to the other Contracting Party of its intention to do so. If such notice is given, the Annex shall terminate twelve months later, but in no event before October 31, 1989. Each Contracting Party shall thereupon be entitled, for the purposes of Article 14 of this Agreement, to impose on cargo charter traffic covered by paragraph (3) of Article 14 such charterworthiness conditions and such conditions in regard to prices and rates as it considers necessary."

If the foregoing amendments are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honor to propose that the present Note, together with your reply in that sense, shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply. The replacement Annex 2 has been provisionally applied from November 1, 1986.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

CHARLES ANGEVINE

No. 2

Her Majesty's Ambassador at Washington to the Secretary of State of the United States of America

British Embassy
Washington
25 May 1989

Sir,

I have the honour to acknowledge your Note of 25 May 1989 which reads as follows:

[As in No. 1]

I have the honour to inform you that the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, who therefore agree that your Note, together with the present reply, shall constitute an Agreement between our two Governments in this matter which shall enter into force on the date of this present reply.

I avail myself of this opportunity to renew to you the assurance of my highest consideration.

For the Ambassador:

A. J. HUNT

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