



Treaty Series No. 93 (1995)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and His Majesty's Government of Nepal

concerning Air Services

Kathmandu, 3 March 1994

[The Agreement entered into force on 3 March 1994]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 1994*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND HIS MAJESTY'S GOVERNMENT OF NEPAL
CONCERNING AIR SERVICES**

The Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty's Government of Nepal;

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;¹

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, insofar 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 Nepal, the Director General of Civil Aviation, or, in both cases, any person or body authorized 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 "user charge" means a charge made to airlines by the competent authorities or permitted by them to be made for the provision of airport property or facilities or of air navigation facilities, including related services and facilities for aircraft, their crews, passengers and cargo;
- (g) the term "this Agreement" includes the Annex hereto and any amendments to it or to this Agreement.

ARTICLE 2

Applicability of the Chicago Convention

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

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

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 scheduled international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and route are hereinafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route the airline(s) 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 the 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(s) 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, 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 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 or more airlines 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 or airlines designated the appropriate operating authorisations.

(3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by 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 a 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 an 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 of 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(s) of each Contracting Party shall take into account the interests of the designated airline(s) of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.
- (3) The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision at a reasonable load factor of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers 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:
 - (i) the price to be charged for the carriage of passengers, baggage or cargo (excluding mail);
 - (ii) the additional goods, services or other benefits to be furnished or made available in conjunction with such carriage or as a matter which is incidental thereto or consequential thereon; and

- (iii) the prices to be charged 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.
- (2) 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 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.
- (4) Each tariff agreed by the airlines or, if they do not wish to or cannot agree, each tariff which a designated airline wishes to charge shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least 60 days (or such shorter period as the aeronautical authorities of both Contracting Parties may agree) before the proposed date of its introduction. Each tariff will be filed in the form which each of the aeronautical authorities may require in order to disclose the particulars referred to in paragraph (1) of this Article.
- (5) Each proposed tariff may be approved by the aeronautical authorities of either Contracting Party at any time. In the absence of such approval it will be treated as having been approved by the aeronautical authorities of a Contracting Party 45 days after the date of filing unless within 30 days after the date of filing the aeronautical authorities of that Contracting Party have served on the aeronautical authorities of the other Contracting Party written notice of disapproval of the proposed tariff. If, however, either of the aeronautical authorities give such written notice of disapproval the aeronautical authorities may at a request of either try to determine the tariff by agreement.
- (6) If the aeronautical authorities cannot determine a tariff under the provisions of paragraph (5) of this Article, the dispute may, at the request of either, be settled in accordance with the provisions of Article 14 of this Agreement.
- (7) Each 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. 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 unless otherwise agreed by both Contracting Parties.
- (8) Each tariff to be charged by a designated airline of one Contracting Party for carriage between the territory of the other Contracting Party and the territory of a third state shall be filed for approval with the aeronautical authorities of the other Contracting Party not less than 60 days before the proposed date of its introduction and shall not be introduced until it has been approved by those aeronautical authorities.

ARTICLE 8

Customs Duties

- (1) Aircraft operated in international air services by the designated airline or airlines of either Contracting Party shall be relieved, on the basis of reciprocity, from all customs duties, national excise taxes and similar national fees, as shall:
- (a) the following items introduced by a designated airline of one Contracting Party 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 including component parts for incorporation into security equipment;
 - (v) instructional material and training aids;
 - (vi) computer equipment and component parts;
 - (vii) airline and operators' documents; and
- (b) the following items introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party or supplied to a designated airline of one Contracting Party in the territory of the other Contracting Party:
- (i) aircraft stores (including but not limited to such items as food, beverages and tobacco) whether introduced into or taken on board in the territory of the other Contracting Party;
 - (ii) fuel, lubricants and consumable technical supplies;
 - (iii) spare parts including engines;

provided in each case that the items referred to in subparagraphs (a) and (b) above are for use on board an aircraft or within the physical boundary 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 airline(s) 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 airline or airlines of the 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 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 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 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 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.

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

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

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

(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) required by the 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.

(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.

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

ARTICLE 11

Transfer of Earnings

Each designated airline shall have the rights to convert and remit to its country on demand local revenues from sales made in accordance with Article 12 of this Agreement in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

ARTICLE 12

Airline Representation

(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 airline(s) of each Contracting Party shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party, either directly or through agents appointed by the designated airline(s). The designated airline(s) of each Contracting Party shall have the right to sell, and any person shall be free to purchase, such transportation. Such sales may be made in freely convertible currency and also local currency in the case of sales to Nepalese Nationals in Nepal.

ARTICLE 13

User Charges

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

(2) Each Contracting Party shall encourage consultation between its competent charging authorities and airlines using the services and facilities where practicable through those airlines' representative organisations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made. Each Contracting Party shall further encourage the competent charging authorities and the airlines to exchange appropriate information concerning user charges.

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 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 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 60 days of the appointment of the second;

(b) if within the 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 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 30 days after the tribunal is fully constituted.

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

(5) The tribunal shall attempt to give a written decision within 30 days after completion of the hearing or, if no hearing is held, 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 15 days after it is received and such clarification shall be issued within 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 procedures in paragraph (2)(b) of this Article.

ARTICLE 16

Amendment

Any amendments to 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 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 14 days after the receipt of the notice by the International Civil Aviation Organisation.

ARTICLE 18

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 Kathmandu this third day of March, 1994.

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

For His Majesty's Government of Nepal:

TIMOTHY J B GEORGE

P BHATTARAI

ANNEX
Route Schedule
Section I

Routes to be operated by the designated airline or airlines of the United Kingdom:
Points in the United Kingdom—intermediate points—points in Nepal—points beyond.

Notes:

1. The designated airline or airlines of the United Kingdom may on any or all flights omit calling at any points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin at points in the United Kingdom.

2. Traffic may only be taken on board at an intermediate point or at any point beyond Nepal and discharged at points in Nepal or vice versa, in accordance with such arrangements as may from time to time be jointly agreed by the two aeronautical authorities.

Route Schedule
Section II

Routes to be operated by the designated airline or airlines of Nepal:
Points in Nepal—Intermediate points—points in the United Kingdom—points beyond.

Notes:

1. The designated airline or airlines of Nepal may on any or all flights omit calling at any points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin at points in Nepal.

2. Traffic may only be taken on board at an intermediate point or at any point beyond the United Kingdom and discharged at points in the United Kingdom or vice versa, in accordance with such arrangements as may from time to time be jointly agreed by the two aeronautical authorities.



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