

No. 7857

**UNITED NATIONS,
INTERNATIONAL LABOUR ORGANISATION,
FOOD AND AGRICULTURE ORGANIZATION
OF THE UNITED NATIONS,
UNITED NATIONS EDUCATIONAL, SCIENTIFIC
AND CULTURAL ORGANIZATION,
INTERNATIONAL CIVIL AVIATION
ORGANIZATION,
WORLD HEALTH ORGANIZATION,
INTERNATIONAL TELECOMMUNICATION
UNION,
WORLD METEOROLOGICAL ORGANIZATION,
INTERNATIONAL ATOMIC ENERGY AGENCY,
UNIVERSAL POSTAL UNION and
INTER-GOVERNMENTAL MARITIME CONSULTATIVE
ORGANIZATION
and
MALAWI**

**Agreement on operational assistance (with annex). Signed at
Zomba, on 20 July 1965**

Official text: English.

Registered ex officio on 20 July 1965.

No. 7857. AGREEMENT¹ ON OPERATIONAL ASSISTANCE BETWEEN THE UNITED NATIONS, THE INTERNATIONAL LABOUR ORGANISATION, THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, THE INTERNATIONAL CIVIL AVIATION ORGANIZATION, THE WORLD HEALTH ORGANIZATION, THE INTERNATIONAL TELECOMMUNICATION UNION, THE WORLD METEOROLOGICAL ORGANIZATION, THE INTERNATIONAL ATOMIC ENERGY AGENCY, THE UNIVERSAL POSTAL UNION AND THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION AND THE GOVERNMENT OF MALAWI. SIGNED AT ZOMBA, ON 20 JULY 1965

The United Nations, the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, the World Health Organization, the International Telecommunication Union, the World Meteorological Organization, the International Atomic Energy Agency, the Universal Postal Union and the Inter-Governmental Maritime Consultative Organization (hereinafter called "the Organizations"), members of the Technical Assistance Board and the Government of Malawi (hereinafter called "the Government");

Desiring to give effect to the resolutions and decisions of the Organizations relating to technical assistance in public administration, in particular resolutions 1256 (XIII)² and 1946 (XVIII)³ of the United Nations General Assembly, which are intended to promote the economic and social development of peoples;

Considering it appropriate to join in furthering the development of the administrative and other public services of Malawi, and thus to supplement the

¹ Came into force on 20 July 1965, upon signature, in accordance with article VI (1).

² United Nations, *Official Records of the General Assembly, Thirteenth Session, Supplement No. 18 (A/4090)*, p. 16.

³ United Nations, *Official Records of the General Assembly, Eighteenth Session, Supplement No. 15 (A/5515)*, p. 33.

technical assistance available to the Government under the Revised Technical Assistance Agreement of 24th October, 1964,¹ between the Organizations and the Government,

Have entered into this Agreement in a spirit of friendly co-operation.

Article I

SCOPE OF THE AGREEMENT

1. This Agreement embodies the conditions under which the Organizations shall provide the Government with the services of officers to perform functions of an operational, executive and administrative character, as civil servants or other comparable employees of the Government (hereinafter referred to as "the Officers"). It also embodies the basic conditions which shall govern the relationship between the Government and the Officers. The Government and the Officers shall either enter into contracts between themselves, or adopt such other arrangements as may be appropriate concerning their mutual relationships in conformity with the practice of the Government in regard to its own civil servants or other comparable employees. However, any such contracts or arrangements shall be subject to the provisions of this Agreement, and shall be communicated to the Organizations concerned.

2. The relationship between each Organization and the officers provided by it shall be defined in contracts which the Organization concerned shall enter into with such Officers. A copy of the form of contract which the Organizations intend using for this purpose is transmitted herewith to the Government for its information, as Annex I² to this Agreement. The Organizations undertake to furnish the Government with a copy of each such contract within one month after it has been concluded.

Article II

FUNCTIONS OF THE OFFICERS

1. The Officers to be provided under this Agreement shall be available to perform operational, executive, administrative and managerial functions, including training, for the Government or, if so agreed by the Government and the Organization concerned, in other public agencies or public corporations or public bodies or bodies which are not of a public character.

2. In the performance of the duties assigned to them by the Government, the Officers shall be solely responsible to, and be under the exclusive direction of, the Government or the public or other agency or body to which they are assigned; they shall not report to nor take instructions from the Organizations

¹ United Nations, *Treaty Series*, Vol. 514, p. 220.

² United Nations, *Treaty Series*, vol. 527, No. 7622.

or any other person or body external to the Government, or the public or other agency or body to which they are assigned, except with the approval of the Government. In each case the Government shall designate the authority to whom the Officer shall be immediately responsible.

3. The Parties hereto recognize that a special international status attaches to the Officers made available to the Government under this Agreement, and that the assistance provided hereunder is in furtherance of the purposes of the Organizations. Accordingly the Officers shall not be required to perform functions incompatible with such special international status, or with the purposes of the Organizations, and any contract entered into by the Government and the Officer shall embody a specific provision to this effect.

4. The Government agrees that nationals of the country shall be provided as national counterparts to the Officers, and shall be trained by the latter to assume as early as possible the responsibilities temporarily assigned to the Officers pursuant to this Agreement. Appropriate facilities for the training of such counterparts shall be furnished by the Government.

Article III

OBLIGATIONS OF THE ORGANIZATIONS

1. The Organizations undertake to provide, in response to requests from the Government, qualified officers to perform the functions described in Article II above.

2. The Organizations undertake to provide Officers in accordance with any applicable resolutions and decisions of their competent organs, and subject to the availability of the necessary funds and of suitable Officers.

3. The Organizations undertake, within the financial resources available to them, to provide administrative facilities necessary to the successful implementation of this Agreement, including the payment of stipends and allowances to supplement, as appropriate, the salaries and related allowances paid to the Officers by the Government under Article IV, paragraph 1 of this Agreement, and upon request, the effecting of such payments in currencies unavailable to the Government, and the making of arrangements for travel and transportation outside of Malawi, when the Officers, their families or their belongings are moved under the terms of their contracts with the Organization concerned.

4. The Organizations undertake to provide the Officers with such subsidiary benefits as the Organizations may deem appropriate, including compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the Government. Such subsidiary benefits shall be specified in the contracts to be entered into between the Organization concerned and the Officers.

5. The Organizations undertake to extend their good offices towards making any necessary modifications to the conditions of service of the Officers including the cessation of such services, if and when this becomes necessary.

Article IV

OBLIGATIONS OF THE GOVERNMENT

1. The Government shall contribute to the cost of implementing this Agreement by paying the Officers the salary, allowances and other related emoluments which would be payable to a national civil servant or other comparable employee holding the same rank to which the Officers are assimilated, provided that if the total emoluments forming the Government's contribution in respect of an Officer should amount to less than twelve and one-half per cent of the total cost of providing that Officer, or to less than such other percentage of such total cost as the competent organs of the Organizations shall determine from time to time, the Government shall make an additional payment to the Technical Assistance Board, or to the Organization concerned, as appropriate, in an amount which will bring the Government's total contribution for each Officer to twelve and one-half per cent or other appropriate percentage figure of the total cost of providing the Officers, such payment to be made annually in advance.

2. The Government shall provide the Officers with such services and facilities, including local transportation and medical and hospital facilities, as are normally made available to a national civil servant or other comparable employee holding the rank to which the Officers are assimilated.

3. The Government shall use its best endeavours to locate suitable housing and make it available to each Officer. It shall provide each Officer with housing if it does so with respect to its national civil servants or other comparable employees and under the same conditions as are applicable to them.

4. The Government shall grant the Officers annual and sick leave under conditions not less favourable than those which the Organization providing the Officers applies to its own officials. The Government shall also make any arrangement necessary to permit the Officers to take such home leave as they are entitled to under the terms of their contracts with the Organization concerned.

5. The Government recognizes the Officers shall :
- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - (b) be exempt from taxation on the stipends, emoluments and allowances paid to them by the Organizations;
 - (c) be immune from national service obligations;
 - (d) be immune, together with their spouses and relatives dependent upon them, from immigration restrictions and alien registration;
 - (e) be accorded the same privileges in respect of currency or exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions to the Government;
 - (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as diplomatic envoys;
 - (g) have the right to import free of duty their furniture and effects at the time of first taking up their posts in the country.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Officers or against the Organizations and their agents and employees, and shall hold the Officers, the Organizations and their agents and employees harmless in any case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government, the Executive Chairman of the Technical Assistance Board where appropriate, and the Organization concerned that such claims or liabilities arise from gross negligence or wilful misconduct of Officers or the agents or employees of the Organization concerned.

7. In forwarding requests for the provision of the services of Officers under this Agreement, the Government shall provide the Organization concerned with such information as the Organization may request concerning the requirements of any post to be filled and the terms and conditions of the employment of any Officer by the Government in that post.

8. The Government shall ensure that, in respect of each post filled, the date upon which the Officer's assignment commences in the Government's service shall coincide with the date of appointment entered in his contract with the Organization.

9. The Government shall do everything within its means to ensure the effective use of the Officers provided, and will, as far as practicable, make

available to the Organizations information on the results achieved by this assistance.

10. The Government shall defray such portion of the expenses of the Officers to be paid outside the country as may be mutually agreed upon.

11. Should the services of an Officer be terminated at the initiative of the Government under circumstances which give rise to an obligation on the part of an Organization to pay him an indemnity by virtue of its contract with the Officer, the Government shall contribute to the cost thereof the amount of separation indemnity which would be payable to a national civil servant or other comparable employee of like rank in the event of the termination of his services in the same circumstances.

Article V

SETTLEMENT OF DISPUTES

1. Any dispute between the Government and any Officer arising out of or relating to the conditions of his service may be referred to the Organization providing the Officer by either the Government or the Officer involved, and the Organization concerned shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence, the matter shall be submitted to arbitration at the request of either party to the dispute pursuant to paragraph 3 of this Article.

2. Any dispute between the Organizations and the Government arising out of or relating to this Agreement which cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either party to the dispute pursuant to paragraph 3 of this article.

3. Any dispute to be submitted to arbitration shall be referred to three arbitrators for a decision by a majority of them. Each party to the dispute shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the chairman. If within thirty days of the request for arbitration either party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the Secretary-General of the Permanent Court of Arbitration to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the parties to the dispute as the final adjudication thereof.

Article VI

GENERAL PROVISIONS

1. This Agreement shall enter into force upon signature.
2. The provisions of this Agreement shall not apply to Officers provided by any Organization, other than the United Nations, under the regular programme of technical assistance of such Organization, where such regular programme of technical assistance is subject to a special agreement between the Organization concerned and the Government, relating thereto.
3. This Agreement may be modified by agreement between the Organizations and the Government but without prejudice to the rights of Officers holding appointments pursuant to this Agreement. Any relevant matter for which no provision is made in this Agreement shall be settled by the Organization concerned and by the Government, in keeping with the relevant resolutions and decisions of the competent organs of the Organizations. Each party to this Agreement shall give full and sympathetic consideration to any proposal for such settlement advanced by the other party.
4. This Agreement may be terminated by any or all of the Organizations so far as they are respectively concerned, or by the Government upon written notice to the other party and shall terminate sixty days after receipt of such notice. The termination of this Agreement shall be without prejudice to the rights of Officers holding appointments hereunder.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the Organizations and of the Government, respectively, have on behalf of the parties signed the Present Agreement at Zomba this 20th day of July in the year nineteen hundred sixty-five in the English language in two copies.

For the Government of Malawi :

H. KAMUZU BANDA
Prime Minister

For the United Nations, the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific, and Cultural Organization, the International Civil Aviation Organization, the World Health Organization, the International Telecommunication Union, the World Meteorological Organization, the Inter-

national Atomic Energy Agency, the Universal Postal Union and the Inter-Governmental Maritime Consultative Organization :

Kouros SATRAP

Representative of United Nations Technical Assistance Board in Malawi