

No. 13135

**CYPRUS
and
MALAWI**

Agreement on commercial scheduled air transport (with annex). Signed at London on 30 December 1971

Authentic text: English.

Registered by the International Civil Aviation Organization on 1 March 1974.

**CHYPRE
et
MALAWI**

Accord relatif aux transports aériens commerciaux réguliers (avec annexe). Signé à Londres le 30 décembre 1971

Texte authentique : anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 1er mars 1974.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CYPRUS AND THE GOVERNMENT OF THE REPUBLIC OF MALAWI ON COMMERCIAL SCHEDULED AIR TRANSPORT

The Government of the Republic of Cyprus and the Government of the Republic of Malawi, hereinafter called in the present Agreement the Contracting Parties,

Both being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December, 1944,²

Desiring to make arrangements for commercial scheduled air transport between and beyond their respective territories, and

With a view to promoting tourism,

Have agreed as follows:

Article 1. For the purpose of the present Agreement and the annex thereto, the following terms have the following meanings, unless the context otherwise requires:

(a) "The Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, and includes any annex adopted under article 90 of the Convention and any amendment of the annexes or Convention under articles 90 and 94 thereof so far as those annexes and amendments have been adopted by both Contracting Parties;

(b) "Aeronautical Authorities" means, in the case of the Republic of Malawi, the Minister responsible for civil aviation matters and any person or body authorised to perform the same or similar functions at present exercised by the said Minister, and in the case of the Republic of Cyprus, the Civil Aviation Administration of the Ministry of Communications and Works and any person or body authorised to perform the same or similar functions at present exercised by the said Civil Aviation Administration;

(c) "Designated airline" means the airline that each of the Contracting Parties shall have designated in writing to the other Contracting Party, in accordance with article 3 of the present Agreement, as the airline which is to operate the international air services on the routes specified in article 2(1) of the present Agreement;

(d) "Territory", "air services", "international air service", "airline", and "stop for non-traffic purposes" have the meanings respectively assigned to them in articles 2 and 96 of the Convention. In the case of Malawi "territory" includes also internal waters and that portion of Lake Malawi which is part of Malawi;

(e) "Aircraft equipment", "stores" and "spare parts" have the meanings respectively assigned to them in chapter 1 of annex 9 of the Convention;

¹ Came into force on 9 July 1973, upon the exchange of diplomatic notes indicating its approval by each Contracting Party pursuant to its constitutional procedures, in accordance with article 18.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; and vol. 740, p. 21.

(f) "Tariff" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.

Article 2. (1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled air services on the routes specified in the annex to the present Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. The airline designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

- (a) To fly, without landing, across the territory of the other Contracting Party;
- (b) To make stops in the said territory for non-traffic purposes; and
- (c) To make stops in the said territory at the points specified for that route in the annex to the present Agreement for the purpose of putting down and taking up international traffic in passengers, cargo and mail.

(2) Nothing in paragraph (1) of this article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

(3) The provisions of the International Air Services Transit Agreement done at Chicago on the seventh day of December, 1944¹ shall apply as between the Contracting Parties as if the Republic of Cyprus and the Republic of Malawi had both accepted that Agreement, and article V thereof shall be interpreted consistently with article 1(d) of the present Agreement.

Article 3. (1) Each Contracting Party has 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.

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

(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 fulfill 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 Convention.

(4) Each Contracting Party shall have the right to refuse to grant the operating authorisation 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 2, 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.

¹ United Nations, *Treaty Series*, vol. 84, p. 389.

(5) When an airline has been so designated and authorised, it may begin at any time to operate the agreed services, provided that a tariff, established in accordance with the provisions of article 10 of the present Agreement, is in force in respect of that service.

Article 4. (1) There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate on any route specified in accordance with article 2 of the present Agreement.

(2) In the operation of international air services on the routes specified in accordance with article 2 of the present Agreement, the designated airline of each of the Contracting Parties shall take account of the interests of the designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates on the same routes or parts of them.

(3) The international air services on the routes specified in accordance with article 2 of the present Agreement shall have as their primary objective the provision of capacity adequate to the foreseeable traffic demands in passengers, cargo and mail to and from the territory of the Contracting Party designating the airline. The right of each of the designated airlines to carry traffic between points in the territory of the other Contracting Party and points in the territories of third countries on the specified routes in accordance with article 2 of the present Agreement shall be exercised in the interests of the orderly development of international air transport in such a way that capacity is related to:

- (a) The traffic demand to and from the territory of the Contracting Party designating the airline;
- (b) The traffic demand existing in the areas through which the air services pass, taking account of local and regional services; and
- (c) The requirements for economic operation of through services.

Article 5. (1) The designated airline of each Contracting Party shall communicate for approval to the Aeronautical Authorities of the other Contracting Party not later than thirty (30) days prior to the inauguration of services on the routes specified in accordance with article 2 of the present Agreement the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes.

(2) The Aeronautical Authorities of each of the Contracting Parties shall furnish to the Aeronautical Authorities of the other Contracting Party, at their request, all periodic statistical data of the designated airline as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline of each Contracting Party on the routes specified in accordance with article 2 of the present Agreement. Such data shall include all information required to determine the amount of traffic and the origin and destination of such traffic.

Article 6. (1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in article 2 of the present Agreement by the airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these 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 these rights; or
- (c) In case the airline otherwise fails to operate in accordance with the conditions prescribed under the present 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 7. (1) Aircraft operated on international services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants, and aircraft stores including food, beverages and tobacco on board such aircraft, shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment and supplies shall remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

(2) There shall also be exempt from the same duties and taxes, with the exception of charges corresponding to the service performed:

- (a) Aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board aircraft used on a specified route of the other Contracting Party;
- (b) Spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on a specified route by the designated airline of the other Contracting Party; and
- (c) Fuel and lubricants destined to supply aircraft operated on a specified route by the designated airline of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under customs supervision or control.

Article 8. The regular airborne equipment, as well as the materials and supplies on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such Contracting Party. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

Article 9. Passengers in transit through the territory of either Contracting Party shall be subject to a minimum of immigration, customs and health control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 10. (1) The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be

established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit and the tariffs of other airlines.

(2) The tariffs referred to in paragraph (1) of this article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, and in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

(3) The tariffs so agreed shall be submitted for approval to the Aeronautical Authorities of the Contracting Parties at least thirty (30) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the agreement of the said Authorities.

(4) If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph (2) of this article, or if during the first fifteen (15) days of the thirty (30) days' period referred to in paragraph (3) of this article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph (2) of this article, the Aeronautical Authorities of the Contracting Parties shall attempt to determine the tariff by agreement between themselves.

(5) If the Aeronautical Authorities cannot agree on any tariff submitted to them under paragraph (3) of this article or on the determination of any tariff under paragraph (4) of this article, the dispute shall be settled in accordance with the provisions of article 15 of the present Agreement.

(6) Subject to the provisions of paragraph (3) of this article, no tariff shall come into force if the Aeronautical Authorities of either Contracting Party have not approved it.

(7) The tariffs established in accordance with the provisions of this article shall remain in force until new tariffs have been established in accordance with the provisions of this article.

Article 11. 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 the present Agreement and the annex thereto.

Article 12. (1) If either of the Contracting Parties considers it desirable to modify any provisions of the present Agreement, it may request consultation with the other Contracting Party. Such consultation, which may be between Aeronautical Authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of the date of the request. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

(2) Modifications to the annex of this Agreement may be made by direct agreement between the Aeronautical Authorities of the Contracting Parties and shall come into force when they have been confirmed by an exchange of diplomatic notes.

Article 13. The present Agreement and the annex thereto shall be amended so as to conform with any multilateral convention which may become binding on

both Contracting Parties. Such amendments shall be effected by an exchange of diplomatic notes.

Article 14. Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate the present Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

Article 15. (1) If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to submit the dispute for decision to some person or body; if they do not agree, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as chairman of the arbitral body.

(3) The Contracting Parties undertake to comply with any decision given under paragraph (2) of this article.

(4) The expenses of the arbitration shall be equally shared between the Contracting Parties.

Article 16. The charges imposed by either Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline of the other Contracting Party shall not be higher than those paid by its national aircraft operating international services.

Article 17. The present Agreement, any amendment to it and any exchange of diplomatic notes under this Agreement shall be communicated to the International Civil Aviation Organisation for registration.

Article 18. The present Agreement shall be approved by each Contracting Party in accordance with its constitutional procedures, and shall enter into force upon exchange of diplomatic notes indicating such approval.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in two originals in the English language at London this 30th day of December 1971.

For the Government
of the Republic
of Cyprus:

C. A. ASHIOTIS

For the Government
of the Republic
of Malawi:

B. W. KATENGA

ANNEX

Article 1. The designated airline of the Government of the Republic of Malawi shall have the right to operate on the following routes:

Route A: Points in Malawi – Nicosia and vice versa.

Route B: Points in Malawi – Addis Ababa – Nicosia – London and vice versa, without traffic rights between Addis Ababa and Nicosia and between Nicosia and London.

Article 2. The designated airline of the Government of the Republic of Cyprus shall have the right to operate on the following routes:

Route A: Nicosia – a point in Malawi and vice versa.

Route B: Nicosia – Addis Ababa – a point in Malawi – point beyond to be agreed, without traffic rights between Addis Ababa and a point in Malawi and between the point in Malawi and the point beyond to be agreed.

Article 3. The designated airlines may omit any point on any or all flights on the specified routes above.