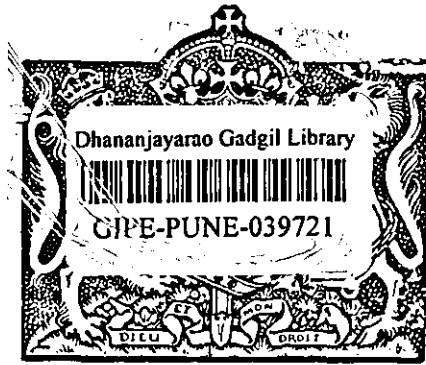


Agreement
between the Govt. of the U.K. and the Govt. of
Portugal for air services traversing
British and Portuguese territories.



Portugal No. 2 (1946)

Agreement

between the Government of the United Kingdom
and the Government of Portugal for

Air Services traversing British and Portuguese Territories

[With Annex and Exchange of Notes]

Lisbon, 6th December, 1945

[The Agreement has not been ratified by the Government of the United Kingdom]

*Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty*

LONDON
HIS MAJESTY'S STATIONERY OFFICE
TWO PENCE NET

Cmd. 6740

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM AND THE GOVERNMENT OF PORTUGAL FOR AIR
SERVICES TRAVERSING BRITISH AND PORTUGUESE
TERRITORIES.

Lisbon, 6th December, 1945.

THE Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Portugal,

Desiring to conclude an Agreement for the purpose of establishing certain air services as soon as possible to, in or over British and Portuguese territories,

Have accordingly appointed plenipotentiaries for this purpose, who, being duly authorised to this effect, have agreed as follows:—

ARTICLE 1.

Each contracting party grants to the other contracting party the rights specified in the Annex to this Agreement for the purpose of the establishment of the air services therein described (hereinafter referred to as the "agreed services"). The agreed services may be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.

ARTICLE 2.

(1) Each of the agreed services may be put into operation as soon as the contracting party to whom the rights have been granted has designated an airline or airlines for the specified route or routes and the contracting party granting the rights shall, subject to the provisions of Paragraph 2 of this Article and of Article 6, be bound to grant without delay the appropriate operating permission to the airline(s) concerned.

(2) The airline or airlines designated may be required to satisfy the competent aeronautical authorities of the contracting party granting the rights that it (they) is (are) qualified to fulfil the conditions prescribed under the laws and regulations normally applied by these authorities to the operations of commercial airlines.

ARTICLE 3.

(1) The charges which either of the contracting parties may impose, or permit to be imposed, on the designated airline(s) of the other contracting party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(2) Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of one contracting party by, or on behalf of, the other contracting party or its designated airline(s) and intended solely for use by the aircraft of the other contracting party shall be accorded, with respect to customs duties, inspection fees or other charges imposed by the former

contracting party, treatment not less favourable than that granted to national airlines engaged in international transport or the airline of the most favoured nation.

(3) Aircraft operated on the agreed services and supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of the designated airline(s) of one contracting party shall be exempt in the territory of the other contracting party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory.

ARTICLE 4.

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one contracting party and still in force shall be recognised as valid by the other contracting party for the purpose of operating the agreed services. Each contracting party reserves the right, however, to refuse to recognise, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another State.

ARTICLE 5.

(1) The laws and regulations of one contracting party relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline(s) of the other contracting party.

(2) The laws and regulations of one contracting party relating to the entry into or departure from its territory of passengers, crew, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew or cargo of the aircraft of the designated airline(s) of the other contracting party while in the territory of the first contracting party.

ARTICLE 6.

Each contracting party reserves the right to withhold or revoke the rights specified in the Annex to this Agreement in any case in which it is not satisfied that substantial ownership and effective control of the designated airline(s) of the other contracting party are vested in nationals of either contracting party, or in case of failure by the designated airline(s) to comply with its laws and regulations as referred to in Article 5, or otherwise to fulfil the conditions under which the rights are granted in accordance with this Agreement.

ARTICLE 7.

This Agreement shall be registered with the Provisional International Civil Aviation Organisation set up by the Interim Agreement on International Civil Aviation signed at Chicago on the 7th December, 1944.⁽¹⁾

ARTICLE 8.

If either of the contracting parties considers it desirable to modify any provision or provisions of the Annex to this Agreement, such modification may be made by direct agreement between the competent aeronautical authorities of the contracting parties.

⁽¹⁾ "Miscellaneous No. 6 (1945)," Cmd. 6614.

ARTICLE 9.

Any dispute between the contracting parties relating to the interpretation or application of this Agreement or of the Annex thereto shall be referred for decision to the Interim Council in accordance with the provisions of Article III, Section 6 (8) of the Interim Agreement on International Civil Aviation signed at Chicago on the 7th December, 1944, unless the contracting parties agree to settle the dispute by reference to an Arbitral Tribunal appointed by agreement between the contracting parties, or to some other person or body. The contracting parties undertake to comply with the decision given.

ARTICLE 10.

If a general multilateral air Convention which is accepted by both contracting parties comes into force the present Agreement shall be amended so as to conform with the provisions of the said Convention.

ARTICLE 11.

Either contracting party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the Provisional International Civil Aviation Organisation. If such notice is given, this Agreement shall terminate twelve 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 acknowledgment of receipt by the other contracting party notice shall be deemed to have been received fourteen days after the receipt of the notice by the Provisional International Civil Aviation Organisation.

ARTICLE 12.

The instruments of ratification shall be exchanged in London as soon as possible. Pending ratification this Agreement shall be provisionally put into force, and shall enter into force definitively on the exchange of ratifications.

In witness thereof the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Agreement and have affixed thereto their seals.

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

(L.S.) IVOR THOMAS.

For the Government of Portugal:

(L.S.) A. DE O. SALAZAR.

Done this Sixth day of December, Nineteen hundred and forty-five in duplicate at Lisbon in the Portuguese and English languages, both texts being equally authentic.

ANNEX.

THE airlines designated by the Government of the United Kingdom for the purpose of the operation of air services on the routes specified in Schedule I to this Annex shall be British Overseas Airways Corporation and such other airlines as may be notified by the Government of the United Kingdom.

2. The airline(s) designated by the Government of Portugal for the purpose of the operation of air services on the route(s) specified in Schedule II to this Annex shall be an airline (airlines) to be notified by the Government of Portugal.

3. For the purposes of operating air services on the routes specified in Schedule I, the designated British airlines referred to in Paragraph 1 above shall be accorded in Portuguese territory rights of transit, of non-traffic stops and of commercial entry and departure for international traffic as hereinafter provided, and the use on the said routes of aerodromes and ancillary facilities designated for international traffic, provided that aircraft accorded rights of transit over the continental territory of Portugal shall be required to land at Lisbon.

4. For the purpose of operating air services on the route(s) specified in Schedule II the designated Portuguese airline(s) referred to in Paragraph 2 above shall be accorded in British territory rights of transit, of non-traffic stops and of commercial entry and departure for international traffic as hereinafter provided, and the use on the said route(s) of aerodromes and ancillary facilities designated for international traffic.

5.—(a) The designated airlines of the United Kingdom shall be entitled to set down and pick up at the places in Portuguese territory specified in Schedule I traffic embarked in or destined for places in British territory.

(b) The designated airline(s) of Portugal shall be entitled to set down and pick up at the places in British territory specified in Schedule II traffic embarked in or destined for places in Portuguese territory.

(c) The capacity to be provided from time to time by the designated airlines of Portugal and of the United Kingdom for the conveyance of the traffic referred to in sub-paragraphs (a) and (b) shall be maintained in equilibrium with the traffic offering between the places in Portuguese and British territory.

(d) The total capacity shall be divided equally between the airlines referred to in Paragraphs 1 and 2 above, where they are operating the same route.

(e) The capacity to be provided at the outset shall be agreed between the competent aeronautical authorities of the contracting parties before the services are inaugurated.

(f) Thereafter the capacity to be provided shall be discussed from time to time between the competent aeronautical authorities of the contracting parties and adjusted by agreement between them.

(g) The load factor to be adopted for determining the frequency to be operated shall be agreed at the outset between the airlines referred to in Paragraphs 1 and 2 above, subject to the approval of the competent aeronautical authorities of the contracting parties.

(h) The load factor initially determined may be reviewed from time to time by the airlines referred to above. Any recommendation for the variation of the load factor shall be submitted to the competent aeronautical authorities of the contracting parties for approval.

(i) On the basis of the figures in force for the time being of the capacity to be operated, the load factor and the payload of the aircraft employed, the frequency of the services to be operated by the airlines referred to

in Paragraphs 1 and 2 above shall be agreed between them, subject to the approval of the competent aeronautical authorities of the contracting parties before the services start or are changed.

(j) In order to meet unexpected traffic demands of a temporary character the airlines referred to in Paragraphs 1 and 2 above may, notwithstanding the provisions of sub-paragraphs (c) and (d) of this paragraph, agree between them to such temporary increases of capacity as are necessary to meet the traffic demand. Any such increases shall be reported forthwith to the competent aeronautical authorities who may confirm or modify them.

6. In so far as one of the contracting parties may not wish, permanently or temporarily, to operate, in full or in part, the capacity to which it is entitled under the preceding paragraph, that contracting party may arrange with the other contracting party, under terms and conditions to be agreed between them for the designated airline(s) of such other contracting party to operate additional capacity so as to maintain the full capacity agreed upon between them in accordance with the preceding paragraph. It shall, however, be a condition of any such arrangement, that if the first contracting party should at any time decide to commence to operate, or to increase the capacity of its services, within the total capacity to which it is entitled under the preceding paragraph, the airline(s) of the other contracting party shall withdraw correspondingly some or all of the additional capacity which it (they) had been operating.

7. If the airline of a contracting party desires to set down and pick up in the territory of the other contracting party traffic embarked in or destined for the territories of third parties and the other contracting party is prepared to consider a claim to carry such traffic, the contracting parties shall, in cases where it is not inconsistent with the provisions of other Agreements which either contracting party may have concluded, enter into consultation with the other States concerned in order to determine what adjustments of capacity, if any, should be made at the appropriate stages on the route. The grant of any privileges under this paragraph and any consequential adjustment of capacity should be governed by—

- (a) the capacity determined in accordance with Paragraph 5 of this Annex;
- (b) the air transport needs of the territories concerned judged in relation to public convenience and necessity;
- (c) the adequacy of other air transport services in and between the territories concerned, and
- (d) the economy of through airline operation.

The application of this paragraph to the airlines of the United Kingdom and of Portugal respectively shall be as set out in Schedules I and II.

8.—(a) Tariffs to be charged by the airlines referred to in this Annex shall be agreed in the first instance between them in consultation with other airlines operating on the respective routes or any sections thereof. Any tariffs so agreed shall be subject to the approval of the contracting parties. In the event of disagreement between the airlines, the contracting parties themselves shall endeavour to reach agreement. If the contracting parties should fail to agree, the matter in dispute shall be referred to arbitration, as provided for in Article 9 of this Agreement.

(b) The tariffs to be agreed in accordance with (a) above shall be fixed at reasonable levels, due regard being paid to all relevant factors, including economical operation, reasonable profit, differences of characteristics of service (including standards of speed and accommodation) and the tariffs charged by any other operators on the route. Tariffs charged for traffic taken up or put down at points on a route (other than traffic destined for or

embarked in the country whose Government has designated the airline) may be higher than the corresponding tariffs for similar traffic carried by local or regional services on the corresponding sector of the route.

SCHEDULE I.

British Routes.

Poole-Lisbon-Bathurst-Natal-Belem-Trinidad-Bermuda-Baltimore-Bermuda-Azores and/or Lisbon and/or Foynes-Poole.

London-Lisbon-Rabat-Port Etienne-Bathurst-Freetown-Takoradi-Accra-Lagos.

Durban-Lourenço Marques-Beira-Mozambique-Lindi-Dar-es-Salaam-Mombasa-Kisumu-and beyond.

London-Lisbon-Bathurst-Natal-Rio de Janeiro-Montevideo-Buenos Aires-Santiago de Chile-Lima.

London-Lisbon and/or Azores-Bermuda and/or Gander-Montreal.

London-Lisbon and/or Azores-Bermuda and/or Gander-New York or Chicago or Boston.

London-Lisbon and/or Azores-Bermuda-Miami.

London-Malta or Rome-Cairo-Khartoum-Nairobi-Salisbury-Johannesburg.

The above-mentioned routes may be varied by agreement between the competent aeronautical authorities of the contracting parties.

The designated airlines of the United Kingdom shall be entitled to set down and pick up at places in Portuguese territory traffic embarked in or destined for places outside Portuguese territory on the routes specified in this Schedule, provided that the capacity shall not exceed that agreed under Paragraphs 5 and 7 of this Annex for the routes in question.

SCHEDULE II.

Portuguese Routes.

Lisbon-Cape Juby and/or Villa Cisneiros-Dakar-Bathurst-Bolama-Freetown (or Monrovia)-Takoradi (or Accra)-Lagos-Libreville-Loanda-Villa Luso-Lusaka (or Livingstone)-Lourenço Marques; or

Lisbon-Dakar-Bamako-Niamey-Zinder-Fort Lamy-Banqui-Leopoldville-Loanda to Lourenço Marques as above; or

Lisbon-Colomb Béchar-Aoulef-Gao-Lagos-Libreville-Loanda to Lourenço Marques as above; or

Lisbon-Colomb Béchar-Aoulef-Gao-Niamey-Zinder-Fort Lamy-Banqui-Leopoldville-Loanda-Villa Luso-Lusaka (or Livingstone)-Lourenço Marques; or

Lisbon-Azores-Bermuda-New York.

The above-mentioned routes may be varied by agreement between the competent aeronautical authorities of the contracting parties.

The designated airline(s) of Portugal shall be entitled to set down or pick up at places in British territory traffic embarked in or destined for places outside British territory on the route(s) specified in this Schedule, provided that the capacity shall not exceed that agreed under Paragraphs 5 and 7 of this Annex for the route(s) in question.
