

No. 857

UNITED STATES OF AMERICA
and
UNION OF SOUTH AFRICA

Agreement relating to air services between their respective territories (with annex). Signed at Cape Town, on 23 May 1947

Exchange of notes constituting an agreement interpreting the application of article IX of the above-mentioned Agreement. Cape Town, 23 May 1947

Official texts : English and Afrikaans.

Registered by the United States of America on 3 July 1950.

ETATS-UNIS D'AMÉRIQUE
et
UNION SUD-AFRICAINE

Accord relatif aux services aériens entre leurs territoires respectifs (avec annexe). Signé au Cap, le 23 mai 1947

Échange de notes constituant un accord relatif à l'interprétation de l'article IX de l'Accord mentionné ci-dessus. Le Cap, 23 mai 1947

Textes officiels anglais et afrikaans.

Enregistrés par les Etats-Unis d'Amérique le 3 juillet 1950.

No. 857. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOUTH AFRICA RELATING TO AIR SERVICES BETWEEN THEIR RESPECTIVE TERRITORIES. SIGNED AT CAPE TOWN, ON 23 MAY 1947

The Government of the United States of America and the Government of the Union of South Africa, considering—

that the possibilities of commercial aviation as a means of transport have greatly increased, and

that it is desirable to organize the international air services in a safe and orderly manner and to further as much as possible the development of international co-operation in this field,

have appointed their representatives, who duly authorized, have agreed upon the following :

Article I

The contracting parties grant to each other the rights specified in the annex hereto for the establishment of the international air services set forth in that annex, (hereinafter referred to as the "agreed services").

Article II

(A) 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, on condition that—

- (1) the contracting party to whom the rights have been granted shall have designated an air carrier or carriers for the specified route or routes;
- (2) the contracting party which grants the rights shall have given the appropriate operating permission to the air carrier or carriers concerned pursuant to paragraph (B) of this article which (subject to the provisions of Article VI) it shall do with the least possible delay.

¹ Came into force on 23 May 1947, as from the date of signature, in accordance with article XI.

(B) The designated air carrier or carriers may be required to satisfy the aeronautical authorities of the contracting party granting the rights that it or they is or are qualified to fulfil the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operations of commercial air carriers.

Article III

(A) The charges which either contracting party may impose or permit to be imposed on the designated air carrier or carriers 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 employed in similar international air services.

(B) 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, any designated air carrier of the other contracting party and intended solely for use by the aircraft of such carrier shall be accorded, with respect to customs duties, inspection fees and other charges imposed by the former contracting party, treatment not less favourable than that granted to national air carriers engaged in international air services or such carriers of the most favoured nation.

(C) Aircraft of the designated airline of one contracting party operating on the agreed services on a flight to, from or across the territory of the other contracting party shall be admitted temporarily free from customs duties subject otherwise to the customs regulations of such other contracting party. Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of any designated air carrier 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 within that territory.

Article IV

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

Article V

(A) The laws and regulations of one contracting party relating to the admission to 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 be applied to the aircraft of the other contracting party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party.

(B) The laws and regulations of each contracting party as to the admission to, sojourn in and departure from its territory of passengers, crew and cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine, shall be observed.

Article VI

Each contracting party reserves the right to withhold or revoke a certificate or permit to an air carrier designated by the other contracting party in the event that it is not satisfied that substantial ownership and effective control of such carrier are vested in nationals of the other contracting party, or in case of failure by that carrier to comply with the laws and regulations referred to in Article V hereof, or otherwise to fulfil the conditions under which the rights are granted in accordance with this agreement and its annex.

Article VII

(A) In a spirit of close collaboration, the aeronautical authorities of the two contracting parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in this the present agreement and its annex.

(B) In the event of the aeronautical authorities of either contracting party failing or ceasing to publish information in relation to the agreed services on lines similar to that included in the Airline Traffic Surveys (Station to Station and Origination and Destination) now published by the Civil Aeronautics Board and failing or ceasing to supply such data of this character as may be required by the International Civil Aviation Organization, the aeronautical authorities of such contracting party shall supply, on the request of the aeronautical authorities of the other contracting party, such information of that nature as may be requested.

Article VIII

For the purpose of the present agreement and its annex—

(A) the term “territory” as applied to each contracting party shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, mandate, or trusteeship of such contracting party;

(B) the term “aeronautical authorities” shall mean in the case of the Union of South Africa the Minister in Charge of Civil Aviation, and in the case of the United States the Civil Aeronautics Board, and in both cases any person or body authorized to perform the functions presently exercised by the aeronautical authorities as defined herein;

(C) the term “international air services” shall have the meaning specified in Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.¹

Article IX

Except as otherwise provided in this agreement or its annex, any dispute between the contracting parties relative to the interpretation or application of this agreement or its annex, which cannot be settled through consultation, shall be submitted for an advisory report to a tribunal of three arbitrators, one to be named by each contracting party, and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either contracting party. Each of the contracting parties shall designate an arbitrator within two months of the date of delivery by either party to the other party of a diplomatic note requesting arbitration of a dispute; and the third arbitrator shall be agreed upon within one month after such period of two months. If the third arbitrator is not agreed upon, within the time limitation indicated, the vacancy thereby created shall be filled by the appointment of a person, designated by the president of the council of ICAO, from a panel of arbitral personnel maintained in accordance with the practice of ICAO. The executive authorities of the contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. A moiety of the expenses of the arbitral tribunal shall be borne by each party.

¹ United Nations, *Treaty Series*, Volume 15, page 295; Volume 26, page 420; Volume 32, page 402; Volume 33, page 352; Volume 44, page 346; and Volume 51, page 336.