

No. 5657

**PORTUGAL
and
MOROCCO**

**Air Transport Agreement (with annex). Signed at Rabat,
on 3 April 1958**

Official text: French.

Registered by the International Civil Aviation Organization on 27 March 1961.

**PORTUGAL
et
MAROC**

**Accord (avec annexe) relatif au transport aérien. Signé
à Rabat, le 3 avril 1958**

Texte officiel français.

Enregistré par l'Organisation de l'aviation civile internationale le 27 mars 1961.

[TRANSLATION — TRADUCTION]

No. 5657. AIR TRANSPORT AGREEMENT¹ BETWEEN
PORTUGAL AND THE KINGDOM OF MOROCCO.
SIGNED AT RABAT, ON 3 APRIL 1958

The Government of Portugal
and

the Government of the Kingdom of Morocco,

Desiring to promote the development of air transport between Portugal and Morocco and to further international co-operation in this field to the fullest possible extent;

Desiring to apply to such transport the principles and provisions of the Convention on International Civil Aviation signed at Chicago on 7 December 1944,² hereinafter referred to as the Convention;

Have for this purpose appointed as their plenipotentiaries :

The Government of Portugal :

Mr. Fernando Mario de Oliveira, Embassy Counsellor;

The Government of the Kingdom of Morocco :

Mr. Mohamed Jaidi, Chief of the Executive Office of the Minister for Foreign Affairs,

Who, having exchanged their full powers, found in good and due form,

Have agreed as follows :

TITLE I

GENERAL PROVISIONS

Article 1

The Contracting Parties grant each other the rights specified in this Agreement for the purpose of establishing international civil air links which serve or traverse their respective territories.

Article 2

For the purposes of this Agreement, except as otherwise provided in the text :

¹ Applied provisionally as from 3 April 1958, the date of signature, in accordance with article 21.

² See footnote 2, p. 56 of this volume.

- (a) The expression “ aeronautical authorities ” means :
- in the case of Portugal,
the “ Directorate-General of Civil Aviation ” or any person or body authorized to perform the functions at present exercised by the Directorate-General of Civil Aviation;
- in the case of Morocco,
the Ministry of Public Works (Air Division) or any person or body authorized to perform the functions at present exercised by the Ministry of Public Works (Air Division);
- (b) The expression “ designated airline ” means an airline which the aeronautical authorities of one Contracting Party have notified in writing to the aeronautical authorities of the other Contracting Party as being the airline designated by that Party, subject to the provisions of article 13 of this Agreement, to operate on the routes mentioned in the said notification;
- (c) The term “ territory ” has the meaning assigned to it in article 2 of the Convention;
- (d) The definitions given in article 96, paragraphs (a), (b) and (d), of the Convention apply to this Agreement.

Article 3

In order to prevent any discriminatory practices and to ensure complete equality of treatment :

- (a) Each Contracting Party may impose or permit to be imposed fair and reasonable charges for the use of airports and other facilities. Each Contracting Party also agrees that these charges 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.
- (b) Aircraft employed by the designated airlines of one Contracting Party and fuel, lubricating oils, spare parts, aircraft equipment, stores and general supplies intended solely for use by the aircraft and imported and re-exported therewith shall under the conditions laid down in the customs regulations of the other Contracting Party be exempt in its territory from customs duties and other charges levied in connexion with the importation, exportation and transit of goods.
- (c) Fuel, lubricating oils, spare parts, regular equipment and aircraft stores intended for use by the aircraft referred to in paragraph (a) above shall under the conditions laid down in the customs regulations of the other Contracting Party be exempt, on entry into or departure from its territory, from customs duties and other charges levied in connexion with the

importation, exportation or transit of goods, from inspection fees and from other similar charges with the exception, however, of charges levied as consideration for extraordinary services.

- (d) Fuel and lubricating oils taken on board aircraft employed by the designated airlines of one Contracting Party in the territory of the other Contracting Party and re-exported shall remain exempt, under the conditions laid down in the customs regulations of the latter Contracting Party, from customs duties and other duties and charges levied in connexion with the importation, exportation or transit of goods, and from consumption taxes.
- (e) The exemptions provided for in paragraphs (b) and (d) above for consumable goods (fuel, lubricating oils and aircraft stores) shall likewise apply to goods consumed above the territories of the two Contracting Parties.

Article 4

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still valid shall be recognized as valid by the other Contracting Party for the purpose of operating the air services governed by this Agreement.

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 issued to its own nationals by the other Contracting Party or by another State.

Article 5

(a) The laws and regulations of each Contracting Party relating to the entry into and departure from its territory of aircraft engaged in international navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the airline or airlines of the other Contracting Party.

(b) Passengers, crews and consignors of cargo shall be required to comply, either in person or through a third person acting in their name and on their behalf, with the laws and regulations governing, in the territory of each Contracting Party, the entry, stay and departure of passengers, crews or cargo, such as those relating to entry, clearance formalities, immigration, passports, customs and quarantine.

Article 6

Each Contracting Party reserves the right to withhold an operating permit from an airline designated by the other Contracting Party or to revoke such

a permit on sufficient grounds whenever it considers that it has no proof that substantial ownership and effective control of such airline are vested in the other Contracting Party or in nationals thereof, or in case of failure by such airline to comply with the laws and regulations referred to in article 5, or to fulfil its obligations under this Agreement.

Article 7

Either Contracting Party may at any time request a consultation between the competent aeronautical authorities of the two Contracting Parties with a view to the interpretation, application or modification of this Agreement.

Such consultation shall begin not later than sixty days after the date of receipt of the request by the other Contracting Party.

Any agreed modification of this Agreement shall become effective when it has been confirmed by an exchange of notes through the diplomatic channel.

Article 8

Either Contracting Party may at any time give the other Contracting Party notice of its desire to denounce this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization. The denunciation shall take effect six months after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the expiry of that period. If the Contracting Party receiving such notice fails to acknowledge receipt thereof, notice shall be deemed to have been received fifteen (15) days after receipt thereof at the headquarters of the International Civil Aviation Organization.

Article 9

(a) Any dispute relating to the interpretation or application of this Agreement which cannot be settled between the aeronautical authorities or between the Governments of the Contracting Parties in accordance with the provisions of article 7 shall, at the request of either Contracting Party, be referred to an arbitral tribunal.

(b) Such arbitral tribunal shall consist of three members. Each of the two Contracting Parties shall appoint one arbitrator. The Contracting Parties shall agree upon the appointment of a national of a third State as Chairman.

If the arbitrators have not been appointed within two months, and if the Chairman has not been chosen within three months, after the date on which one of the Contracting Parties gave notice of its intention to refer the dispute

to the arbitral tribunal, each of the Contracting Parties shall, unless otherwise agreed, request the President of the Council of ICAO to make the necessary appointments. Should the President of the Council of ICAO be a national of one of the Contracting Parties or be unable to act for other reasons, such appointments shall be made by his alternate on the Council.

(c) If the arbitral tribunal cannot arrive at an amicable settlement of the dispute, it shall take a decision by majority vote. Unless the Contracting Parties agree otherwise, it shall establish its own rules of procedure and determine its place of meeting.

(d) The Contracting Parties undertake to comply with any provisional measures ordered in the course of the proceedings and with the arbitral award, which shall in all cases be considered final.

(e) If and so long as either Contracting Party fails to comply with the arbitral awards, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

(f) Each Contracting Party shall pay the remuneration for the services of its own arbitrator, half the remuneration of the Chairman appointed, and half the other expenses of the tribunal.

Article 10

Should the two Contracting Parties ratify or accede to a multilateral air convention, this Agreement and its annex¹ shall be modified so as to conform with the provisions of the said convention as soon as it comes into force as between the two Contracting Parties.

Article 11

This Agreement, its annex and all additional provisions relating thereto shall be communicated to the International Civil Aviation Organization for registration by that Organization.

TITLE II

AGREED SERVICES

Article 12

The Portuguese Government grants to the Government of the Kingdom of Morocco and, in return, the Government of the Kingdom of Morocco grants to the Portuguese Government the right to have the air services specified

¹ See p. 223 of this volume.

in the route schedules contained in the annex to this Agreement operated by one or more airlines designated by their respective Government. The said services shall hereinafter be called "Agreed services".

Article 13

(a) The agreed services may be inaugurated immediately or at a later date at the option of the Contracting Party to which the rights are granted, provided that :

1. the Contracting Party to which the rights are granted has designated an airline or airlines to operate on the specified route or routes;
2. the Contracting Party granting the rights has given the airline or airlines concerned, under the conditions laid down in paragraph (b) below, the requisite operating permit, which shall be granted as soon as possible subject to the provisions of article 6 of this Agreement.

(b) The designated airlines may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that they are qualified to fulfil the conditions prescribed by the laws and regulations normally applied by those authorities to the operation of commercial airlines as regards the activities provided for in article 5, paragraph (a).

Article 14

For the purpose of operating the air services specified in the route schedules contained in the annex to this Agreement, the designated Portuguese and Moroccan airlines shall enjoy in the territory of the other Contracting Party :

- (a) the right of transit and the right of non-traffic stops;
- (b) the right to use airports and ancillary facilities open to international traffic;
- (c) the right to pick up and set down international traffic in passengers, mail and cargo, in accordance with the provisions of this Agreement.

Article 15

The airlines designated by each of the two Contracting Parties shall be assured fair and equitable treatment so as to enjoy equal opportunities for the operation of the agreed services.

In operation on common routes, they shall take into account their mutual interests so as not to affect unduly each other's services.

Article 16

(a) The operation of services between Moroccan territory and Portuguese territory on the routes specified in schedule I of the annex to this Agreement constitutes a basic and primary right of the two countries.

(b) For the purpose of operating these services :

1. The capacity shall be divided equally among the Moroccan and Portuguese airlines subject to the provisions of sub-paragraph 3 below;
2. The total capacity provided on each route shall be adapted to the reasonably foreseeable requirements.

In order to meet unforeseen or temporary traffic requirements on the same routes, the designated airlines shall decide among themselves upon appropriate measures to deal with such temporary increase in traffic. They shall report the same immediately to the aeronautical authorities of their respective countries, which may consult together if they see fit;

3. If either Contracting Party does not wish to use, on one or more routes, part or all of the transport capacity allocated to it, it shall come to an agreement with the other Party with a view to transferring to the latter, for a specified period, all or part of the transport capacity available to it to the extent specified.

The Contracting Party which transfers all or part of its rights may recover them at any time.

Article 17

(a) The agreed services on each of the routes specified in schedule II¹ of the annex to this Agreement shall have as their essential objective the provision, at a reasonable load factor, of capacity adequate to meet the normal and foreseeable requirements of international traffic between the country to which the airline operating the said services belongs and the country of final destination.

Within the limit of the capacity provided under the preceding paragraph, the airline or airlines designated by either Contracting Party may satisfy transport requirements between its own territory or the territories of third States and the territory of the other Contracting Party on the routes specified in schedule I² of the annex to this Agreement in so far as such requirements are not satisfied by the services of the other Contracting Party between the same territories.

(b) Whenever the transport requirements of the countries served by the route so justify, capacity additional to that referred to in the first paragraph

¹ See p. 223 of this volume.

² See p. 223 of this volume.

of this article may be provided by agreement, for a period to be specified in each case.

Article 18

(a) The tariffs to be applied by the agreed services on the Portuguese and Moroccan routes specified in this Agreement shall be fixed as far as possible by agreement between the designated airlines.

These airlines shall proceed :

- (1) either by applying any resolutions adopted under the tariff-fixing procedure of the International Air Transport Association (IATA);
- (2) or by direct agreement after consultation, where necessary, with any airlines of any third country operating on all or part of the same routes.

(b) The tariffs so fixed shall be submitted to the aeronautical authorities of each Contracting Party for approval not later than thirty (30) days before the date laid down for their entry into force; in special cases this time-limit may be reduced, subject to the agreement of the said authorities.

(c) Should the designated airlines fail to agree on the fixing of a tariff in accordance with the provisions of paragraph (a) above, or should one of the Contracting Parties make known its dissatisfaction with the tariff submitted to it in accordance with the provisions of paragraph (b) above, the aeronautical authorities of the two Contracting Parties shall endeavour to reach a satisfactory solution.

In the last resort, the matter shall be referred to the arbitration provided for in article 9 of this Agreement.

TITLE III

NON-SCHEDULED COMMERCIAL AIR SERVICES

Article 19

1. Each Contracting Party shall grant to the aircraft of the other Contracting Party authorization to operate non-scheduled commercial air services from or to its territory, without the imposition of the "regulations, conditions or limitations" provided for in the second paragraph of article 5 of the Convention, where such aircraft are engaged in :

- (a) flights for the purpose of meeting humanitarian or emergency needs;

- (b) taxi-class passenger flights of occasional character on request, provided that the aircraft does not have a seating capacity of more than six passengers and provided that the destination is chosen by the hirer or hirers and no part of the capacity of the aircraft is resold to the public;
- (c) flights on which the entire space is hired by a single person (individual, firm, corporation or institution) for the carriage of his or its staff or merchandise, provided that no part of such space is resold.

2. The same treatment shall be accorded to aircraft engaged in any of the following activities :

- (a) the transport of freight exclusively;
- (b) the transport of passengers between regions which have no connexion by scheduled air services;
- (c) single flights, no operator or group of operators being entitled under this sub-paragraph to more than one flight per month between the same two traffic centres for all aircraft available to him.

However, either Contracting Party may require the abandonment of the activities specified in paragraph 2 of this article if it deems that these are harmful to the interests of its scheduled air services.

Furthermore, in respect of the activity referred to in sub-paragraph (b) of this paragraph, each Contracting Party may determine freely the extent of the regions (including the airport or airports comprised) and may modify such determination at any time.

Article 20

The Contracting States further agree that in cases other than those covered by article 19 prior permission may be required for non-scheduled flights; the time by which the request must be submitted shall not be more than two full business days in the case of a single flight or of a series of not more than four flights; longer periods may be specified for more extensive series of flights.

FINAL PROVISION

Article 21

This Agreement shall enter into force provisionally on the date of its signature and definitively as soon as the formalities provided for in the law of each Contracting Party have been complied with.

IN WITNESS WHEREOF the plenipotentiaries, duly authorized by their respective Governments, have signed this Agreement.

DONE AT RABAT, on 3 April 1958,

In two originals in the French language.

For the Government
of Portugal :

(Signed) Fernando Mario DE OLIVEIRA

For the Kingdom of Morocco :

(Signed) Mohamed JAIDI

A N N E X

SCHEDULE I — LOCAL SERVICES

1. Moroccan routes

(a) Points in Morocco — Lisbon.

(b) Points in Morocco — Portuguese Guinea.

2. Portuguese routes

Points in Portugal — Tangier, Casablanca.

SCHEDULE II — TRUNK SERVICES

1. Moroccan routes

Points in Morocco — Lisbon to London, Oslo, Stockholm.

2. Portuguese routes

Points in Portugal — Casablanca or Agadir — Portuguese Guinea — São Thomé — Leopoldville — Angola — Elisabethville — Livingstone or Salisbury — Johannesburg — Mozambique.

NOTE. One or more points situated on the routes specified in the above schedules may be omitted provided that such omission is announced in advance in the time-tables of the designated airlines.

One or more non-traffic stops may be made at points other than those shown in the above routes.