

No. 13134

**MALAWI
and
SWAZILAND**

Agreement for air services between their respective territories (with schedule). Signed at Blantyre on 26 July 1973

Authentic text: English.

Registered by Malawi on 28 February 1974.

**MALAWI
et
SOUAZILAND**

Accord relatif aux services aériens entre leurs territoires respectifs (avec tableau des routes). Signé à Blantyre le 26 juillet 1973

Texte authentique : anglais.

Enregistré par le Malawi le 28 février 1974.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWAZILAND AND THE GOVERNMENT OF THE REPUBLIC OF MALAWI FOR AIR SERVICES BETWEEN THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of Swaziland and the Government of the Republic of Malawi,

Desiring to promote the development of scheduled air services between their respective territories,

Intending to apply to such air services the principles and provisions of the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 1944,²

Have agreed as follows:

Article 1. For the purpose of the present Agreement, unless the context otherwise requires:

(a) The term “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 in accordance with article 2 (3) of the present Agreement;

(b) The term “aeronautical authorities” means, in the case of Swaziland, the Minister for Works, Power and Communications or any other person authorised to perform the functions exercised by the said Minister, and in the case of Malawi, the Minister responsible for civil aviation matters or any person or body authorised by the said Minister;

(c) The term “designated airline” means an airline which has been designated by a Contracting Party and authorised in accordance with article 3 of the present Agreement;

(d) The term “territory” in relation to a State means the land areas, internal waters, and territorial waters adjacent thereto under the sovereignty, protection or trusteeship of that State; and for the avoidance of misunderstanding, in the case of Malawi it includes that portion of Lake Malawi which is part of Malawi;

(e) The terms “air services”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in article 96 of the Convention;

(f) The terms “aircraft equipment”, “stores” and “spare parts” have the meanings respectively assigned to them in chapter 1 of annex 9 of the Convention; and

(g) The term “tariff” means the fares or cargo rates to be charged and any conditions upon which those fares or cargo rates depend.

¹ Came into force on 26 July 1973 by signature, 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; vol. 740, p. 21; and vol. 893, No. I-12777.

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 international air services on the routes specified in the appropriate section of the schedule annexed to the present Agreement (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 schedule to the present Agreement for the purpose of setting down or taking up international traffic in passengers, cargo and mail.

(2) Nothing in paragraph (1) of this article shall be deemed to confer on the airlines 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) So long as either Contracting Party is not a Party to the Convention—

- (a) The provisions of the Convention shall apply as between the Contracting Parties, as far as is permitted under the terms of the Convention, as if both Swaziland and Malawi were parties thereto; and
- (b) Any amendment of the annexes or Convention under articles 90 and 94 thereof shall be considered adopted as between the Contracting Parties in the absence of written notification from either Contracting Party that it does not adopt the amendment.

(4) The provisions of the International Air Services Transit Agreement, done at Chicago on the seventh day of December, 1944,¹ shall apply as between the Contracting Parties as if both Swaziland and Malawi had 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 shall have the right to designate in writing to the other Contracting Party one or more airlines 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), (4) and (5) of this article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

(3) Each Contracting Party undertakes to comply with the standards and recommended practices and procedures relating to aircraft, personnel, airways and auxiliary services as adopted and amended from time to time by the International Civil Aviation Organization in accordance with article 37 of the Convention.

(4) Each Contracting Party may require an airline designated by the other Contracting Party to satisfy it that the airline is qualified to fulfil the conditions

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

prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by the first mentioned Contracting Party in conformity with the provisions of the Convention.

(5) Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in article 2 of the present Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline is vested in the Contracting Party designating the airline or in its nationals.

(6) When an airline has been designated and authorised in accordance with the provisions of this article, it may begin at any time to operate the agreed services, provided that a tariff established in accordance with the provisions of article 9 of the present Agreement is in force in respect of that service.

Article 4. (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 an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of those rights—

- (a) In any case where it is not satisfied that substantial ownership and effective control of that airline is 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 specified 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 5. (1) Aircraft operated on agreed services by the designated airlines of either Contracting Party, as well as their aircraft 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 similar charges on arriving in the territory of the other Contracting Party, provided such equipment and supplies 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, fees and charges, with the exception of charges corresponding to the service performed:

- (a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board outbound aircraft engaged in an agreed service 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 the agreed services by the designated airlines of the other Contracting Party;
- (c) Fuel and lubricants destined to supply outbound aircraft operated on agreed services by the designated airlines 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 kept under Customs supervision or control.

Article 6. The regular airborne equipment, as well as the materials and supplies retained 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 that territory. In such cases, 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 7. (1) There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services, the airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline.

(4) Provision for the carriage of passengers, cargo and mail both taken up or put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) Traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) Traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (c) The requirements of through airline operation.

Article 8. In operating any agreed service on any specified route, a designated airline of one Contracting Party may substitute one type of aircraft for another at a point in the territory of the other Contracting Party only on the following conditions:

- (a) That it is justified by reason of economy of operation;

- (b) That the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is not larger in capacity than that used in the nearer section;
- (c) That the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- (d) That there is an adequate volume of through traffic;
- (e) The airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where the change of aircraft is made;
- (f) That the provisions of article 7 of the present Agreement shall govern all arrangements made with regard to change of aircraft; and
- (g) That in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

Article 9. (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, together with the rates of agency commission applicable shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, after consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached by the use of the procedures of the International Air Transport Association for the determination of tariffs.

(3) The tariffs so agreed shall be submitted for the approval of 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 reason a tariff cannot be fixed in accordance with the provision 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), the dispute shall be settled in accordance with the provisions of article 14 of the present Agreement.

(6) Subject to the provisions of paragraph (5) of this article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

(7) The tariff 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 10. (1) The laws and regulations of the one Party governing entry into a departure from its territory of aircraft engaged in international air navigation or flights of such aircraft within its territory shall apply to the designated airline of the other Party.

(2) The laws and regulations relating to immigration, passports or other approved travel documents or quarantine of the one Party governing entry into, sojourn in or departure from its territory of passengers, crew, cargo or mail shall apply to passengers, crew, cargo or mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.

(3) Each Party agrees not to give preference to its own designated airline over the designated airline of the other Party in the application of its regulations concerning visas, immigration, quarantine, or other regulations affecting air transportation.

Article 11. The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statement of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first mentioned Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

Article 12. Each Contracting Party shall grant to the designated airlines of the other Contracting Party the rights of free transfer at the official rate of exchange of the excess of receipts over expenditure earned by those airlines in its territory in connection with the carriage of passengers, mail and cargo.

Article 13. (1) 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 schedule annexed thereto and shall also consult when necessary to provide for modification thereof.

(2) Either Contracting Party may request consultation which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of the date of the request, unless both Contracting Parties agree to an extension of this period.

Article 14. (1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first instance endeavour to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body competent to decide the relevant questions of law and fact.

(3) If settlement is not reached by the above methods, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal

composed of three arbitrators. Each Contracting Party shall nominate an arbitrator and the two arbitrators shall appoint a national of a third state as President. Each Contracting Party shall nominate an arbitrator within a period of sixty (60) days from the date of receipt of a notice through diplomatic channels by either Contracting Party from the other requesting arbitration of the dispute, and the third arbitrator shall be appointed within a further period of sixty days. If a Contracting Party fails to nominate an arbitrator within the specified period, or if the third arbitrator is not appointed within the specified period, either Contracting Party may request the President of the Council of the ICAO to make the necessary appointments. The arbitral tribunal shall determine its own procedure and shall decide on the apportionment of costs.

(4) The Contracting Parties shall comply with all provisional orders and final decisions given under paragraphs (2) and (3) of this article.

Article 15. If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, including the schedule annexed thereto, such modification, if agreed between Contracting Parties, and if necessary after consultation in accordance with article 13 of the present Agreement, shall come into effect when confirmed by an exchange of notes.

Article 16. The present Agreement and its schedule shall be amended by an exchange of notes so as to conform with any multilateral convention which may become binding on both Contracting Parties.

Article 17. (1) 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 Organization. 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 Organization.

(2) The Government of Malawi shall register the present Agreement with the International Civil Aviation Organization.

Article 18. The present Agreement shall enter into force on the date of signature.

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

DONE in two originals at Blantyre on 26th July, 1973.

W. B. DELEZA

For the Government of the Republic of Malawi

A. M. NXUMALO

For the Government of the Kingdom of Swaziland

SCHEDULE

1. The route which may be operated in both directions by the airline or airlines designated by the Government of the Republic of Malawi:

Blantyre – intermediate points as may be agreed – Matsapha – Maseru

2. The route which may be operated in both directions by the airline or airlines designated by the Government of the Kingdom of Swaziland:

Matsapha – intermediate points as may be agreed – Blantyre

3. The designated airline or airlines of each Contracting Party may, on any or all flights under the agreed services, omit stops at any intermediate point or other point not within the territory of either Contracting Party.
