

22 (1995) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1995 Nr. 111

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek
Georgië inzake luchtdiensten tussen en via hun onderscheiden
grondgebieden, met bijlage;
Wassenaar, 3 april 1995*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the
Republic of Georgia for air services between and beyond their
respective territories**

The Kingdom of the Netherlands

and

the Republic of Georgia

being parties to the Convention on International Civil Aviation opened
for signature at Chicago on 7 December 1944;

desiring to contribute to the progress of international civil aviation;

desiring to conclude an Agreement for the purpose of establishing air
services between and beyond their respective territories;

have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement and its Annex, unless the context
otherwise requires:

a) the term "the Convention" means the Convention on International
Civil Aviation, opened for signature at Chicago on 7 December 1944,
and includes any Annex adopted under Article 90 of that Convention and

any amendment of the Annexes or the Convention under Articles 90 and 94 thereof, insofar as those Annexes and amendments have become effective for, or been ratified by both Contracting Parties;

b) the term “aeronautical authorities” means:

for the Kingdom of the Netherlands: the Minister of Transport, Public Works and Watermanagement;

for the Republic of Georgia: the Head of the Air Transport Department of the Republic of Georgia;

or in either case any person or body authorized to perform any functions at present exercised by the said authorities;

c) the term “designated airline” means an airline which has been designated and authorized in accordance with Article 4 of this Agreement;

d) the term “territory” in relation to a State has the meaning assigned to it in Article 2 of the Convention;

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

f) the terms “agreed service” and “specified route” mean international air service pursuant to Article 2 of this Agreement and the route specified in the Annex to this Agreement respectively;

g) the term “stores” means articles of a readily consumable nature for use or sale on board an aircraft during flight, including commissary supplies;

h) the term “Agreement” means this Agreement, its Annex drawn up in application thereof, and any amendments to the Agreement or to the Annex;

i) the term “tariff” means any amount charged or to be charged by airlines, directly or through their agents, to any person or entity for the carriage of passengers (and their baggage) and cargo (excluding mail) in air transportation, including:

- I. the conditions governing the availability and applicability of a tariff, and
- II. the charges and conditions for any services ancillary to such carriage which are offered by airlines.

j) the term “change of aircraft” means the operation of one of the agreed services by a designated airline in such a way that one or more sectors of the route are flown by aircraft different in capacity from those used on another sector.

k) the term “Computer Reservation System” (CRS) means a computerized system containing information about airline schedules, seat availability, fares and related services and through which reservations can be made and/or tickets can be issued and which makes some or all of these facilities available to travel agents.

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party except as otherwise specified in the Annex the following rights for the conduct of international air transportation by the designated airline of the other Contracting Party:

- a) the right to fly across its territory without landing;
- b) the right to make stops in its territory for non-traffic purposes; and
- c) while operating an agreed service on a specified route, the right to make stops in its territory for the purpose of taking up and discharging international traffic in passengers, cargo and mail, separately or in combination.

2. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Contracting Party's airline to participate in air transportation between points in the territory of the other Contracting Party.

Article 3

Change of Aircraft

1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the territory of the other Contracting Party or at any point along the specified routes, provided that:

- a) aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be;
- b) in the case of change of aircraft in the territory of the other Contracting Party and when more than one aircraft is operated beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the third and fourth freedom sector.

2. For the purpose of change of aircraft operations, a designated airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial arrangements with another airline.

3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations.

Article 4

Designation and Authorization

1. Each Contracting Party shall have the right by written notification through diplomatic channels to the other Contracting Party to designate

an airline to operate air services on the routes specified in the Annex and to substitute another airline for an airline previously designated.

2. On receipt of such notification, each Contracting Party shall, without delay, grant to the airline so designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of this Article.

3. Upon receipt of the operating authorization of paragraph 2 of this Article the designated airline may at any time begin to operate the agreed services, in part or in whole, provided that it complies with the provisions of this Agreement and that tariffs for such services have been established in accordance with the provisions of Article 6 of this Agreement.

4. Each Contracting Party shall have the right to refuse to grant the operating authorization referred to in paragraph 2 of this Article, or to grant this authorization under conditions that may be deemed necessary for the exercise by the designated airline of the rights specified in Article 2 of this Agreement, if it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating it or in its nationals or in both.

Article 5

Revocation and Suspension of Authorization

1. The Contracting Parties shall have the right to withhold the authorizations referred to in Article 4 with respect to an airline designated by the other Contracting Party, to revoke or suspend such authorizations or impose conditions:

- a) in the event of failure by such airline to qualify before the aeronautical authorities of that Contracting Party under the laws and regulations normally and reasonably applied by these authorities in conformity with the Convention;
- b) in the event of failure by such airline to comply with the laws and regulations of that Contracting Party;
- c) in the event that they are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals or in both;
- d) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent further infringement of the laws and regulations referred to above, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date of receipt of the request.

Article 6

Tariffs

1. The tariffs to be charged by the designated airlines of the Contracting Parties for carriage between their territories shall be those approved by the aeronautical authorities of both Contracting Parties and 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 for any part of the specified route.

2. Tariffs referred to in paragraph 1 of this Article shall, whenever possible, be agreed by the designated airlines through the use of the procedures of the International Air Transport Association for the setting of tariffs. When this is not possible the tariffs shall be agreed between the designated airlines. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

3. All tariffs so agreed shall be submitted for approval of the aeronautical authorities of both Contracting Parties at least sixty (60) days before the proposed date of their introduction, except where the said authorities agree to reduce this period in special cases.

4. Approval of tariffs may be given expressly, or, if neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 3 of this Article, the tariffs shall be considered as approved.

In the event of the period for submission being reduced, as provided for in paragraph 3, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be reduced accordingly.

5. If a tariff cannot be agreed in accordance with paragraph 2 of this Article, or if, during the period applicable in accordance with paragraph 4 of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of any tariff agreed in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by mutual agreement.

6. If the aeronautical authorities cannot agree on a tariff submitted to them under paragraph 3 of this Article, or on the determination of a tariff under paragraph 5 of this Article, the dispute shall be settled in accordance with the provisions of Article 18 of this Agreement.

7. Tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established.

8. The designated airlines of both Contracting Parties may not charge tariffs different from those which have been approved in conformity with the provisions of this Article.

Article 7

Commercial Activities

1. The designated airlines of both Contracting Parties shall be allowed:

- a) to establish in the territory of the other Contracting Party offices for the promotion of air transportation and sale of air tickets as well as other facilities required for the provision of air transportation;
- b) in the territory of the other Contracting Party to engage directly and, at that airline's discretion, through its agents in the sale of air transportation.

2. The designated airline of one Contracting Party shall be allowed to bring in and maintain in the territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of air transportation.

3. These staff requirements may, at the option of the designated airline, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Contracting Party, and authorized to perform such services in the territory of that Contracting Party.

4. The above activities shall be carried out in accordance with the laws and regulations of the other Contracting Party.

Article 8

Fair Competition

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to participate in the international air transportation covered by this Agreement.

2. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Contracting Party.

Article 9

Timetable

1. The airline designated by one Contracting Party shall notify the aeronautical authorities of the other Contracting Party, forty-five (45) days in advance, of the timetable of its intended services, specifying the frequency, type of aircraft, configuration and number of seats to be made available to the public.

2. Requests for permission to operate additional flights can be submitted by the designated airline for approval directly to the aeronautical authorities of the other Contracting Party.

Article 10

Taxes, Customs and Charges

1. Aircraft operating on international air services by the designated airline of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuels and lubricants, aircraft stores (including food, beverages and tobacco) on board as well as advertising and promotional material kept on board such aircraft shall be exempt from all customs duties, inspection fees and similar national or local duties and charges, on arrival in the territory of the Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

2. With regard to regular equipment, spare parts, supplies of fuels and lubricants and aircraft stores introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use on board that aircraft while operating international services, no duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party, shall be applied, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are taken on board.

The articles referred to above may be required to be kept under customs supervision and control.

The provisions of this paragraph cannot be interpreted in such a way that a Contracting Party can be made subject to the obligation to refund customs duties which already have been levied on the items referred to above.

3. Regular airborne equipment, spare parts, supplies of fuels and lubricants and aircraft stores 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 Contracting Party, who may require that these materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 11

Double Taxation

1. Income and profits from the operation of aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. Gains from the alienation of aircraft operated in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

3. Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. The provisions of paragraph 1 of this Article shall also apply to income and profits from the participation in a pool, a joint business or an international operating agency.

5. If an agreement between the Contracting Parties on avoidance of double taxation on income or capital envisages procedures different from those referred to in paragraphs 1–4 of this Article, the provisions of the agreement on avoidance of double taxation on income or capital shall be applicable.

Article 12

Transfer of Funds

1. The designated airlines of the Contracting Parties shall be free to sell air transport services in the territories of both the Contracting Parties, either directly or through an agent, in any currency.

2. The designated airlines of the Contracting Parties shall be free to transfer from the territory of sale to their home territory the excess, in the territory of sale, of receipts over expenditure. Included in such net transfer shall be revenues from sales, made directly or through agents, of air transport services, and ancillary or supplemental services, and normal commercial interest earned on such revenues while on deposit awaiting transfer.

3. The designated airlines of the Contracting Parties shall receive approval for such transfer within at most thirty (30) days of application, into a freely convertible currency, at the official rate of exchange for conversion of local currency, as at the date of sale.

The designated airlines of the Contracting Parties shall be free to effect the actual transfer on receipt of approval.

Article 13

Application of Laws, Regulations and Procedures

1. The laws, regulations and procedures of either Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air services, or to the operation and navigation of such aircraft, shall be complied with by the designated airline of the

other Contracting Party upon its entrance into, and until and including its departure from, the said territory.

2. The laws, regulations and procedures of either Contracting Party relating to immigration, passports, or other approved travel documents, entry, clearance, customs and quarantine shall be complied with by or on behalf of crews, passengers, cargo and mail carried by aircraft of the designated airline of the other Contracting Party upon their entrance into, and until and including their departure from the territory of the said Contracting Party.

3. Passengers, baggage and cargo in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence and air piracy, be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

4. Fees and charges applied in the territory of either Contracting Party to the airline operations of the other Contracting Party for the use of airports and other aviation facilities in the territory of the first Contracting Party, shall not be higher than those applied to the operations of any other airline engaged in similar operations.

5. Neither of the Contracting Parties shall give preference to any other airline over the designated airline of the other Contracting Party in the application of its customs, immigration, quarantine, and similar regulations; or in the use of airports, airways and air traffic services and associated facilities under its control.

Article 14

Recognition of Certificates and Licences

Certificates of airworthiness, certificates of competency and licences issued, or validated, by one Contracting Party and unexpired shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services on the specified routes, provided always that such certificates or licences were issued, or validated, in conformity with the standards established under the Convention.

Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

Article 15

Aviation Security

1. The Contracting Parties agree to provide aid to each other as necessary with a view to preventing unlawful seizure of aircraft and other

unlawful acts against the safety of aircraft, airports and air navigation facilities and any other threat to aviation security.

2. Each Contracting Party agrees to observe non-discriminatory and generally applicable security provisions required by the other Contracting Party for entry into the territory of the other Contracting Party and to take adequate measures to inspect passengers and their carry-on items. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for special security measures for its aircraft or passengers to meet a particular threat.

3. The Contracting Parties shall act in accordance with applicable aviation security provisions established by the International Civil Aviation Organization. Should a Contracting Party depart from such provisions, the other Contracting Party may request consultations with that Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date of receipt of such a request. Failure to reach a satisfactory agreement could constitute grounds for the application of Article 18 of this Agreement.

4. The Contracting Parties shall act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, insofar as the Contracting Parties are both party to these Conventions.

5. When an incident, or threat of an incident, of unlawful seizure of aircraft or other unlawful acts against the safety of aircraft, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications intended to terminate rapidly and safely such incident or threat thereof.

Article 16

Computer Reservation System

1. The Contracting Parties agree that:

- a) the interest of consumers of air transport products will be protected from any misuse of such information including misleading presentation thereof;
- b) a designated airline of a Contracting Party and the airline's agents will have unrestricted and non-discriminatory access to and use of CRS's in the territory of the other Contracting Party;
- c) in this respect the CRS Code of Conduct adopted by the EEC shall prevail in the territory of the Kingdom of the Netherlands, whereas in the territory of the Republic of Georgia the prevalent Georgian regulation shall be applicable.

2. Each Contracting Party guarantees to the CRS chosen as its primary system by the designated airline of the other Contracting Party free and unimpaired access in its territory. Neither Contracting Party shall, in its territory, impose or permit to be imposed on the CRS of the designated airline of the other Contracting Party more stringent requirements than those imposed on the CRS of its own designated airline, such as with respect to:

- a) the operation and sale of the CRS services including CRS display and editing rules, and
- b) the access to and use of communications facilities, selection and use of technical hardware and software or the installation of hardware.

Article 17

Consultation and Amendment

1. In a spirit of close cooperation 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 this Agreement.

2. Either Contracting Party may request consultations with a view to modify the present Agreement or its Annex. These consultations shall begin within sixty (60) days from the date of the receipt of the request by the other Contracting Party, unless otherwise agreed.

Such consultations may be conducted through discussion or by correspondence.

3. Any modification to the present Agreement agreed upon by the Contracting Parties, shall come into force on the date on which the Contracting Parties have informed each other in writing of the completion of their respective constitutional requirements.

4. Any modification of the Annex to the present Agreement shall be agreed upon in writing between the aeronautical authorities and shall take effect on a date to be determined by the said authorities.

Article 18

Settlement of Disputes

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 between themselves.

2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision 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 a period of sixty (60) days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed upon within the period indicated, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators.

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

Article 19

Termination

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement.

Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this Agreement shall terminate twelve (12) months after the date when the notice has been received 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.

Article 20

Registration with ICAO

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 21

Applicability of Multilateral Agreements

1. The provisions of the Convention shall be applied to this Agreement.

2. If a multilateral agreement concerning any matter covered by this Agreement, accepted by both Contracting Parties, enters into force, the relevant provisions of that agreement shall supersede the relevant provisions of the present Agreement.

Article 22

Applicability

As regards the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe only.

Article 23

Entry into Force

The present Agreement shall be provisionally applied from the thirtieth day from the date of its signature and shall come into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the formalities constitutionally required therefore in their respective countries have been complied with.

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

DONE in duplicate at Wassenaar on 3 April 1995, in the English language.

For the Kingdom of the Netherlands

(s.) H. A. F. M. O. VAN MIERLO

For the Republic of Georgia

(s.) A. CHIKVAIDZE

Annex**to the Agreement between the Republic of Georgia and the Kingdom of the Netherlands for Air Services between and beyond their respective territories**

1. The designated airline of the Kingdom of the Netherlands shall be entitled to operate air services on the routes specified hereunder:
points in the Netherlands – intermediate points – points in Georgia – points beyond – and vice versa.
2. The designated airline of the Republic of Georgia shall be entitled to operate air services on the routes specified hereunder:
points in Georgia – intermediate points – points in the Nether-

lands – points beyond – and vice versa.

3. Any or all of the intermediate points and/or points beyond on the specified routes may, at the discretion of each designated airline, be omitted on any or all of the flights, provided that those flights originate, respectively terminate in the territory of the Contracting Party which has designated the airline.

4. The designated airlines of the Contracting Parties shall be allowed to operate flights on the routes mentioned above, without restrictions as to the frequency and type of aircraft, in any configuration.

5. Any intermediate points and/or points beyond may be served by the designated airline of one Contracting Party without exercising fifth freedom traffic rights between those points and the territory of the other Contracting Party. Such fifth freedom traffic rights may, however, be exercised by the designated airline of one Contracting Party after having obtained prior approval of the aeronautical authorities of the other Contracting Party.

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

Het Verdrag wordt ingevolge artikel 23 vanaf 3 mei 1995 voorlopig toegepast en treedt in werking op de eerste dag van de tweede maand die volgt op de dag waarop de Verdragsluitende Partijen elkaar er schriftelijk van in kennis hebben gesteld, dat aan de daarvoor in hun onderscheiden landen constitutioneel vereiste formaliteiten is voldaan.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag ingevolge artikel 22 alleen voor Nederland gelden.

J. GEGEVENS

Van het op 7 december 1944 te Chicago tot stand gekomen Verdrag inzake de internationale burgerluchtvaart, naar welk Verdrag onder meer in de preambule tot het onderhavige Verdrag wordt verwezen, zijn de Engelse tekst en de vertaling bekendgemaakt in *Stb.* H 165. Zie ook, laatstelijk, *Trb.* 1985, 45.

Van het op 14 september 1963 te Tokio tot stand gekomen Verdrag inzake strafbare feiten en bepaalde andere handelingen begaan aan boord van luchtvaartuigen, naar welk Verdrag in artikel 15, vierde lid, van het onderhavige Verdrag wordt verwezen, is de tekst geplaatst in *Trb.* 1964, 115 en de vertaling in *Trb.* 1964, 168; zie ook laatstelijk, *Trb.* 1981, 113.

Van het op 16 december 1970 te 's-Gravenhage tot stand gekomen Verdrag tot bestrijding van het wederrechtelijk in zijn macht brengen van luchtvaartuigen, naar welk Verdrag in artikel 15, vierde lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse en de Franse tekst en de vertaling geplaatst in *Trb.* 1971, 50; zie ook, laatstelijk, *Trb.* 1981, 114.

Van het op 23 september 1971 te Montreal tot stand gekomen Verdrag tot bestrijding van wederrechtelijke gedragingen, gericht tegen de veiligheid van de burgerluchtvaart, naar welk Verdrag in artikel 15, vierde lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse en de Franse tekst en de vertaling geplaatst in *Trb.* 1971, 218; zie ook, laatstelijk, *Trb.* 1981, 115.

Uitgegeven de eerste mei 1995.

De Minister van Buitenlandse Zaken,

H. A. F. M. O. VAN MIERLO