

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1995 Nr. 127

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Mongolië inzake
luchtdiensten;
's-Gravenhage, 9 maart 1995*

B. TEKST

**Agreement between the Government of the Kingdom of the
Netherlands and the Government of Mongolia for air services**

The Government of the Kingdom of the Netherlands

and

the Government of Mongolia, hereinafter referred to as the Contracting Parties,

Desiring to conclude an Agreement for the purpose of establishing and operating air services between and beyond their respective territories,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;

Have agreed as follows:

Article 1

Definitions

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

a) "aeronautical authorities" means in the case of Mongolia, the Minister of Infrastructure Development and in the case of the Kingdom of the Netherlands the Minister of Transport, Public Works and Watermanagement; or, in either case, any person or body authorized to perform any functions on Civil Aviation at present exercised by the said authorities;

- b) "Agreement" means this Agreement, its Annex and any amendments thereto;
- c) "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 that Convention and any amendment made to the Convention or its Annexes under Article 90 and 94 thereof so far as these Annexes and amendments have been effective for both Contracting Parties;
- d) "territory" has the meaning assigned to it in Article 2 of the Convention;
- e) "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) "designated airline" means an airline designated and authorised in accordance with Article 3 of the present Agreement;
- g) "specified route" means the routes specified in the Annex to the present Agreement;
- h) "agreed services" means the air services operated on the specified routes;
 - i) the term "stores" means articles of a readily consumable nature for use or sale on board an aircraft during flight, including commissary supplies;
 - j) 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.

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the privileges specified in the present Agreement to enable its designated airlines to establish and operate the agreed services.
2. The airlines of each Contracting Party shall enjoy the following privileges in respect of their international air services;
 - a) to fly across the territory of the other Contracting Party without landing; and,
 - b) to make stops in the territory of the other Contracting Party for non-traffic purposes.
3. Subject to the provisions of the present Agreement, the designated airlines of each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the privilege to make stops in the terri-

tory of the other Contracting Party at the points specified for that route in the Annex for the purposes of discharging and of taking on international traffic in passengers, cargo and mail, separately or in combination.

4. Nothing in paragraph 3 of this Article shall be deemed to confer on the designated airlines of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article 3

Designation and Authorisation

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline or airlines for the operation of 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 and 4 of this Article, grant the appropriate operating authorisation without delay to the designated airline or airlines concerned.

3. One Contracting Party may require the designated airlines of the other Contracting Party to satisfy them that they are qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied by such authorities to the operation of international air services.

4. Each Contracting Party shall have the right to refuse to grant the operating authorisation referred to in paragraph 2 of this Article, or to impose such conditions as they may deem necessary on the exercise by the designated airlines of privileges 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 those airlines are vested in the Contracting Party designating the airlines and/or in its nationals.

5. The airlines designated and authorised in accordance with provisions of paragraphs 1 and 2 of this Article may begin at any time to operate the agreed services, provided that the airlines comply with the applicable provisions of the present Agreement.

Article 4

Revocation and Suspension of Authorization

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the privileges specified in paragraphs 2 and 3 of Article 2 of the present Agreement by the desig-

nated airlines of the other Contracting Party, or to impose such conditions as they may deem necessary on the exercise of these privileges:

- a) in any case where they are not satisfied that substantial ownership and effective control of those airlines are vested in the Contracting Party designating the airlines and/or in its nationals; or
- b) in case of failure by those airlines to comply with the laws or regulations of the Contracting Party granting those privileges; or
- c) in case the airlines otherwise fail to comply with provisions of the present Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions prescribed in paragraph 1 of this Article is essential to prevent further infringements of laws or regulations, such rights shall be exercised only after consultation with the Aeronautical Authorities of the other Contracting Party, in conformity with the provisions laid down in Article 14.

Article 5

Application of Laws, Regulations and Procedures

1. The laws, regulations and procedures of one Contracting Party governing entry into or departure from its territory of an aircraft engaged in international air services, or relating to the operation and navigation of such aircraft while within its territory, shall be complied with by the airline or airlines of the other Contracting Party.

2. The laws, regulations and procedures of one Contracting Party governing entry into, stay in or departure from its territory of passengers, crew, cargo and mail, such as formalities relating to entry, exit, emigration and immigration, passports, customs, currency, and quarantine shall be applied to the passengers, crew, cargo and mail carried by the designated airlines of the other Contracting Party.

3. Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such purpose shall only be subject to a very simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar charges.

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 6

Airline Representation

1. Each Contracting Party grants to the designated airlines of the other Contracting Party the right to establish representative offices in its territory. Those representative offices may include managerial, commercial, operational and technical staff.

The representative offices and their staff shall be established in accordance with the laws and regulations in force in the territory of that other Contracting Party.

2. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents.

Article 7

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 8

Recognition of Certificates and Licences (Safety)

Certificates of airworthiness, certificates of competency and licences, issued or validated 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 on the routes specified in the Annex provided that such certificates or licences were issued or validated pursuant to, and in conformity with, the standards established under the Convention. Each Contracting Party shall have the right, however, to refuse to recognise, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

Article 9

Fair Competition and Capacity

1. The designated airline or airlines of the Contracting Parties shall have a fair and equal opportunity to operate the agreed services covered by the present 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 10

Tariffs

1. Each Contracting Party shall allow tariffs for air transportation to be established by each designated airline based upon commercial consideration in the marketplace. Intervention by the Contracting Parties shall be limited to:

- a) prevention of predatory or discriminatory prices or practices;
- b) protection of consumers from tariffs that are unduly high or restrictive because of the abuse of a dominant position; and
- c) protection of airlines from tariffs that are artificially low because of direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to or filing with its Aeronautical Authorities of tariffs proposed to be charged to or from its territory by airlines of the other Contracting Party. Notification or filing by the airlines of both Contracting Parties may be required no more than sixty (60) days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required.

3. If either Contracting Party believes that any such tariff is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a tariff for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. If the agreement between the Aeronautical authorities cannot be reached, the dispute shall be settled in accordance with the provisions of Article 15 of the present Agreement.

Article 11

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 pro-

motional 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.

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 12

Transfer of Funds

1. 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.

2. 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

Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of the present Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

2. The Contracting Parties shall provide upon request all necessary assistance in accordance with their respective laws and regulations to each other to prevent acts against the safety of aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to the Contracting Parties, and they shall require that their airlines and the operators of airports in their territory act in conformity with such security provisions.

4. Each Contracting Party agrees that such airlines may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. Each Contracting Party shall take appropriate measures within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

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

6. The Contracting Parties shall act in accordance with the applicable aviation security provisions established by the International Civil Avia-

tion 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 15 of this Agreement.

Article 14

Consultation

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 of its Annex and shall also consult when necessary to provide for modification thereof.

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 15

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.

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 nominated by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, provided that the third arbitrator shall not be a national of either Contracting Party. The third arbitrator shall act as President of the arbitral tribunal. 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 Contracting Party 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, at request of either Contracting Party, appoint an arbitrator or arbitrators as the case requires.

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

4. The expenses of the national arbitrators shall be borne by the respective Contracting Parties. All other expenses of the arbitral tribunal, including the fees and expenses of the third arbitrators shall be shared equally.

Article 16

Modification of the Agreement

If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultation with the other Contracting Party in accordance with Article 14. Such consultations, which may be between Aeronautical Authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of the request unless both Contracting Parties agree to an extension of this period. Any modification so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes. Modifications of the Annex shall be made by direct agreement between the Aeronautical Authorities of the Contracting Parties. Such modifications would be effective from the date of the approval of the Aeronautical Authorities.

Article 17

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 18

Termination

Either Contracting Party may at any time give notice through diplomatic channels to the other Contracting Party of its decision to terminate the present Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization. In such case the present Agreement shall be terminated twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt, the notice shall be deemed to have been received fourteen (14) days after the date of receipt of its copy by the International Civil Aviation Organization.

Article 19

Applicability

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

Article 20

Registration

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

Article 21

Entry into Force

The present Agreement shall be provisionally applied from the thirtieth day following 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 the present Agreement.

DONE in duplicate at The Hague, on this 9th day of March 1995 in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) W. KOK

For the Government of Mongolia

(sd.) P. JASRAY

Annex to the Air Services Agreement between the Government of the Kingdom of the Netherlands and the Government of Mongolia

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 – Ulaanbataar and two other points in Mongolia – points beyond – and vice versa.
2. The designated airline of the Republic of Mongolia shall be entitled to operate air services on the routes specified hereunder:
points in Mongolia – intermediate points – Amsterdam–Rotterdam–Maastricht – 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.

De voorlopige toepassing van het Verdrag (zie rubriek G hieronder) is in overeenstemming met artikel 15, vierde lid, van de Rijkswet goedkeuring en bekendmaking verdragen medegedeeld aan de Eerste en de Tweede Kamer der Staten-Generaal bij brieven van 16 maart 1995.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 21 in werking treden op de eerste dag van de tweede maand volgend op de datum waarop de Verdragsluitende Partijen elkaar schriftelijk hebben medegedeeld dat de in hun onderscheiden landen voor de inwerkingtreding constitutioneel vereiste formaliteiten zijn vervuld.

Het Verdrag wordt ingevolge hetzelfde artikel vanaf 8 april 1995 voorlopig toegepast.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag ingevolge artikel 19 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 13, eerste lid, van het onderhavige Verdrag wordt verwezen, is de tekst geplaatst in *Trb.* 1964, 115 en de vertaling in *Trb.* 1964, 186; 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 13, eerste lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse en de Franse tekst, alsmede 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 13, eerste lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse en de Franse tekst, alsmede de vertaling, geplaatst in *Trb.* 1971, 218; zie ook, laatstelijk, *Trb.* 1981, 115.

Uitgegeven de *drieëntwintigste* mei 1995.

De Minister van Buitenlandse Zaken,

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