

22 (1997) Nr. 1

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 1997 Nr. 289

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek  
Trinidad en Tobago inzake luchtdiensten tussen en via de Nederlandse  
Antillen en Trinidad en Tobago, met bijlage;  
Port of Spain, 24 september 1997*

B. TEKST

**Agreement between the Government of the Kingdom of the  
Netherlands and the Government of the Republic of Trinidad and  
Tobago relating to air services between and beyond the Nether-  
lands Antilles and Trinidad and Tobago**

The Government of the Kingdom of the Netherlands and the Govern-  
ment of the Republic of Trinidad and Tobago, hereinafter referred to as  
the Contracting Parties,

Desiring to develop cooperation in the field of international air trans-  
port;

Desiring to facilitate the expansion of international air transport op-  
portunities;

Desiring to conclude an agreement for the purpose of establishing  
regular air services between and beyond their respective territories;

Desiring to ensure the highest degree of safety and security in inter-  
national air transport;

Being Parties to the Convention on International Civil Aviation opened  
for signature at Chicago on December 7, 1944;

have agreed as follows:

## Article 1

*Definitions*

For the purpose of the present Agreement unless the context otherwise requires:

- a) "Aeronautical Authorities" means, in the case of the Republic of Trinidad and Tobago, the Minister responsible for Civil Aviation and/or any person or body authorized to perform any functions at present exercised by the said Minister and, in the case of the Kingdom of the Netherlands Antilles or any person or body authorized to perform any functions at present exercised by the said Minister;
- b) "airline" means any air transport enterprise offering or operating an international air service;
- c) "air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo, separately or in combination for compensation;
- d) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944 and includes:
  - (1) any amendment thereto which has entered into force under Article 94 a) thereof and has been ratified by both Contracting Parties;
  - (11) any Annex or any amendment thereto adopted under Article 90 of that Convention, insofar as such amendment or Annex is at any given time effective for both Contracting Parties;
- e) "designated airline" means any airline which has been designated and authorized in accordance with Article 3 of the present Agreement;
- f) "international air service" means an air service which passes through the air space over the territory of more than one state;
- g) "Party" means the Government of the Republic of Trinidad and Tobago and the Government of the Netherlands Antilles and "Parties" should be interpreted accordingly;
- h) "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, cargo or mail, carried for compensation;
  - i) "tariff" means the price to be paid for the carriage of passengers, baggage and cargo on scheduled air services and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail;
  - j) "territory" in relation to a State means the land areas, archipelagic waters and/or territorial seas adjacent thereto and the airspace under the sovereignty and jurisdiction of the State.

## Article 2

*Grant of rights*

1. Each Party grants to the other 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 Annex on Route Schedules. Such services and routes are hereinafter called “the agreed services” and “the specified routes” respectively.

2. Subject to the provisions of the present Agreement, the airline(s) designated by each Party shall enjoy, while operating international services, the following rights:

- a) to fly without landing across the territory of the other Party;
- b) to make stops in the said territory for non-traffic purposes;
- c) to make stops in the said territory at the points specified for the route in the schedule for the purpose of putting down and taking up international traffic in passengers, cargo and mail.

3. Nothing in paragraph 1 of this Article shall be deemed to confer on the airline of one Party the privilege of taking up in the territory of the other Party passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of the other Party.

## Article 3

*Designation of airline(s) and operating authorization*

1. Each Party shall have the right to designate by diplomatic note one or more airlines to operate the agreed services on the routes specified in the Annex for such Party, to withdraw such designation and/or to substitute another airline or airlines for that or those previously designated.

2. On receipt of such notice of designation or of substitution pursuant to paragraph 1 of this Article, the other Party shall, consistent with its laws and regulations, and subject to the provisions of paragraph 3 of this Article, grant without undue delay to the airline(s) so designated the appropriate authorization to operate the agreed services for which such airline(s) has or have been designated.

3. Each Party shall be satisfied that substantial ownership and effective control of the designated airline(s) of the other Party is vested in that Party and/or its nationals.

4. Each Party shall have the right to refuse to grant the operating authorization referred to in paragraph 2 of this Article or to impose such conditions as it may deem necessary on the exercise by the designated airline(s) of the rights specified in Article 2 of the present Agreement, in any case where the provisions of paragraph 3 of this Article have not been met.

5. The Aeronautical Authorities of one Party may require an airline designated by the other Party to satisfy them that it is competent to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

6. When an airline has been so designated and authorized it may begin at any time to operate the agreed services in whole or in part, provided that the airline complies with the applicable provisions of this Agreement.

#### Article 4

##### *Revocation, suspension and imposition of conditions*

1. Each Party shall have the right to revoke an operating authorization or to suspend the exercise by the designated airline(s) of the other Party of the rights specified in Article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise of such rights:

- a) in any case where it is not satisfied that the provisions of paragraph 3 of Article 3 have been met;
- b) in the case of failure by that airline or those airlines to comply with the laws or regulations in force in the territory of the Party granting these rights; or
- c) in case the said airline(s) otherwise fails or fail to operate the agreed services in accordance with the conditions prescribed under the present Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions provided for under paragraph 1 of this Article is essential to prevent further infringements of laws and regulations, such right shall be exercised only after consultation with the other Party.

#### Article 5

##### *Application of laws*

1. The laws and regulations of one Party relating to the admission to or departure from its territory or airspace of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline(s) designated by the other Party as they are applied to its own and shall be complied with by such aircraft upon entrance into or departure from and while within the said territory.

2. The laws and regulations of one Party relating to the admission to or departure from its territory of passengers, crew, mail or cargo on aircraft, including laws and regulations relating to entry clearance, immi-

gration, passports, customs, and quarantine shall be complied with, by or on behalf of such passengers, crew, mail or cargo by the designated airline of the other Party upon entrance into or departure from and while within the said territory.

#### Article 6

##### *Certificates and licences*

1. Certificates of airworthiness, certificates of competence and licences issued or rendered valid by one Party and still in force shall be recognized as valid by the other Party for the purpose of operating the routes and services provided for in the present Agreement, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.

2. Each Party reserves the right to refuse to recognize for the purpose of flights above its territory certificates of competence and licences granted to its nationals by the other Party.

#### Article 7

##### *Aviation security*

1. The Parties, recognising their responsibilities under the Convention to develop international civil aviation in a safe and orderly manner, reaffirm their grave concern about acts or threats against the security of aircraft which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation.

To this end, each Party:

a) reaffirms its commitment to act consistently with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

b) shall require that operators of aircraft of its registry act consistently with the applicable aviation security provisions established by the International Civil Aviation Organization; and

c) shall provide maximum aid within the limits of its resources to the other Party with a view to preventing unlawful seizure of aircraft, sabotage to aircraft, airports, and air navigation facilities, and threats to aviation security, give sympathetic consideration to any request from the other Party for special security measures for its aircraft or passengers to meet a particular threat and, when incidents or threats of hijacking or

sabotage against aircraft, airports or air navigation facilities occur, assist the other Party by facilitating communications intended to terminate such incidents rapidly and safely.

2. The Aeronautical Authorities of each Party may request consultations concerning the safety and security standards and requirements maintained and administered by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation of the designated airline(s). If, following such consultations, the Aeronautical Authorities of either Party find that the other Party does not effectively maintain and administer safety and security standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention, they will notify the other Party of such findings and the steps considered necessary to bring the safety and security standards and requirements of the other Party at least to the minimum standards which may be established pursuant to the Convention, and the other Party shall take appropriate corrective action.

3. Each Party reserves the right to withhold, revoke, or limit, pursuant to Articles 2 (Grant of rights), 3 (Designation of airline(s) and operating authorization) and 4 (Revocation, suspension and imposition of conditions), the operating authorization or technical permission of an airline or airlines designated by the other Party, in the event that the other Party does not take such appropriate action within a reasonable time.

#### Article 8

##### *User charges*

Each Party may impose or permit to be imposed, just and reasonable charges for the use of public airports and other facilities under its control provided that such charges shall not be higher than the charges imposed upon its national aircraft engaged in similar international air services.

#### Article 9

##### *Exemption from customs duties and other charges*

1. Aircraft operated on international services by the designated airline(s) of either Party, as well as their regular equipment, supplies of fuel 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 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 services performed:

- a) aircraft stores (including food, beverages and tobacco) taken on board in the territory of a Party and for use on board outbound aircraft engaged in an international service of the other Party;
- b) spare parts introduced into the territory of either Party for the maintenance or repair of aircraft used on international services by the designated airline(s) of the other Party;
- c) fuel and lubricants destined to supply outbound aircraft operated on international service by the designated airline(s) of the other Party when these supplies are to be used on the part of the journey performed over the territory of the Party in which they are taken on board.

Materials referred to in sub-paragraphs a, b and c above may be required to be kept under customs supervision or control.

#### Article 10

##### *Storage of airborne equipment and supplies*

The regular airborne equipment as well as the materials and supplies retained on board the aircraft of either Party may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, 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 11

##### *Capacity provisions*

1. The designated airline(s) shall enjoy fair and equal opportunity to operate the agreed services on the specified routes between and beyond the territories of the Parties.

2. The designated airline(s) of each Party shall take into consideration the interests of the designated airline(s) of the other Party so as not to affect unduly the services which the latter provide(s) on all or part of the same routes.

3. The agreed services provided by the designated airline(s) of each Party shall bear close relationship to the requirements of the public for transportation and shall have as their primary objective the provision at a reasonable load factor of capacity adequate to meet the current and reasonable anticipated requirements for the carriage of passengers, cargo and mail between the territories of the Parties.

4. The right of each of the designated airlines to carry international traffic originating from or destined for the territory of the other Party and the territories of third countries shall be exercised in conformity with the orderly development of international air transport and in particular:

- a) with traffic demands of the areas through which the agreed service passes, local and regional services being taken into account; and

- b) with the requirements of through airline operation.

#### Article 12

##### *Scheduling of services*

The scheduling of services to be operated by the designated airline(s) of one Party to and from the territory of the other Party shall be submitted for the approval of the latter Party at least thirty (30) days before the proposed effective date of the schedule. Such approval shall not be unreasonably withheld.

#### Article 13

##### *Establishment of tariffs*

1. The tariffs to be charged by the designated airline(s) of either Party on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit and characteristics of service.

2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed by the designated airlines concerned of both Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association.

3. The tariffs so agreed shall be submitted for the approval of the Aeronautical Authorities of the 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 other reason a tariff cannot be fixed in accordance with the provisions of paragraph 2 of this Article, or if, during the first fifteen (15) days of the thirty (30) day period referred to in paragraph 3 of this Article, one Party gives the other 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 Parties shall try to determine the tariff by agreement between themselves.

5. If the Aeronautical Authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 of this Article and on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of Article 18 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 Party have not approved it.

7. Where a tariff is introduced by a third and fourth freedom carrier on a route on which a designated airline enjoys fifth freedom rights, that airline shall be entitled to match such tariff.

8. The tariffs 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 14

##### *Airline representation*

1. The designated airline(s) of one Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Party, to bring in and maintain in the territory of the other Party those of its managerial, technical and other specialist staff who are required for the provision of air services.

2. Except in special circumstances determined by the appropriate authorities, both Parties shall dispense with the charges associated with work permits for personnel performing certain temporary services and duties. Such permits shall be issued promptly so as not to delay the entry into the territory of the Parties of the personnel concerned.

#### Article 15

##### *Financial provisions*

1. Each Party undertakes to grant to the designated airline(s) of the other Party the right of free transfer, at the official rate of exchange, of the excess of receipts over expenditure earned in its territory in connection with the carriage of passengers, baggage, cargo and mail by the said designated airline(s).

2. Each Party shall, on the basis of reciprocity, exempt the revenues, gross receipts, income earned or profits derived in its territory by the designated airline(s) of the other Party from the operation of transportation services as an air carrier from income tax and other taxes, provided that these airlines are resident for income tax purposes in the territory of the latter Party.

#### Article 16

##### *Exchange of statistics*

The Aeronautical Authorities of each Party shall supply to the other, on request, such statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services. Such statements shall include information required to determine the amount of traffic carried on the agreed services and the initial origins and final destinations of such traffic.

## Article 17

*Consultations and amendments*

1. In a spirit of close cooperation, the appropriate authorities of the 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.

2. Either Party may at any time request consultation with the other Party for the purpose of amending the present Agreement, such consultation to begin within a period of sixty (60) days from the date of the request unless the Parties agree to an extension of this period.

3. 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 Parties relating to the interpretation or application of the present Agreement, the Parties shall in the first place endeavour to settle it by negotiation.

2. If the Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body. If they do not so agree, the dispute shall at the request of either Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Party and the third to be appointed by the two so nominated. Each of the Parties shall nominate an arbitrator within a period of sixty (60) days of the date of receipt by either Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal, and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may at the request of either Party appoint an arbitrator or arbitrators as the case requires. In all cases, the third arbitrator shall be a national of a third State and shall act as President of the tribunal. The tribunal will report within three (3) months of its appointment.

3. The Parties shall comply with any decision given under paragraph 2 of this Article.

4. The expenses of the tribunal shall be shared equally by the Parties.

## Article 19

*Registration*

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

## Article 20

*Multilateral agreement*

If a multilateral agreement accepted by both Contracting Parties concerning any matter covered by this Agreement enters into force, the Contracting Parties undertake to enter into discussions with a view to amending this Agreement so as to conform with the provisions of the multilateral agreement.

## Article 21

*Termination*

1. Either Contracting Party may at any time notify the other Contracting Party, through diplomatic channels, of its decision to terminate the present Agreement. Such notification shall simultaneously be communicated to the International Civil Aviation Organization.

2. In such cases, the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party unless it is withdrawn by mutual agreement before this period expires.

3. In default of acknowledgement of receipt by the other Contracting Party, the notification shall be deemed to have been received fourteen (14) days after the date on which the International Civil Aviation Organization received the notice.

## Article 22

*Entry into force*

This Agreement and any amendments thereto shall come into force once the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with and on exchange of diplomatic notes between the Contracting Parties.

On its entry into force this Agreement shall, as far as air services between the Republic of Trinidad and Tobago and the Netherlands Antilles are concerned, replace the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic

of Trinidad and Tobago for the establishment and operation of air services, signed at The Hague on July 3, 1967.

Article 23

*Application*

As regards the Kingdom of the Netherlands, this Agreement shall apply to the territory of the Netherlands Antilles only.

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

DONE at Port of Spain in duplicate this September 24, 1997 in the English language.

*For the Government of the Kingdom of the Netherlands*  
(sd.) L. A. I. CHANCE

*For the Government of the Republic of Trinidad and Tobago*  
(sd.) SADIQ BAKSH

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**Annex**

Route schedule

Section I

Routes to be operated by the designated airline or airlines of the Republic of Trinidad and Tobago.

Points in	Intermediate	Points in the	Points
<i>Trinidad and Tobago</i>	<i>Points</i>	<i>Netherlands Antilles</i>	<i>Beyond</i>
		<i>Route I</i>	
Trinidad	Barbados	Curaçao	Jamaica

Points in	Intermediate	Points in the	Points
Tobago	Caracas (without traffic rights)	St. Maarten	Miami a)
		<i>Route II</i>	
Trinidad Tobago		St. Maarten Bonaire Curaçao	New York b)
		<i>Route III</i>	
Trinidad Tobago		St. Maarten	San Juan A point in Europe (ex- cluding any point in the Netherlands)

a) Services between Curaçao and Miami or vice versa will be limited to a maximum of two (2) frequencies per week.

b) Services to and from New York will include any airport in the New York area (namely J.F. Kennedy, La Guardia and Newark Airports).

## Section II

Routes to be operated by the designated airline or airlines of the Netherlands Antilles.

Points in the	Intermediate	Points in the	Points
<i>Netherlands Antilles</i>	<i>Points</i>	<i>Trinidad and Tobago</i>	<i>Beyond</i>
		<i>Route I</i>	
Curaçao St. Maarten		Trinidad Tobago	Paramaribo Cayenne

Points in the	Intermediate	Points in the	Points
Bonaire			Georgetown Points in South America Two points in Europe (exclud- ing any point in the United Kingdom)
<i>Route II</i>			
Curaçao St. Maarten Bonaire	St. Lucia a) Barbados	Trinidad Tobago	

a) Only stopover traffic rights between St. Lucia and Trinidad and Tobago.

Note: Points on the specified routes may at the option of the designated airline(s) be omitted on any or all flights.

#### 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

De bepalingen van het Verdrag zullen ingevolge artikel 22, eerste lid, in werking treden zodra de Verdragsluitende Partijen elkaar schriftelijk hebben medegedeeld dat de daarvoor constitutioneel vereiste procedures in hun respectieve landen zijn voltooid.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag ingevolge artikel 23 alleen voor de Nederlandse Antillen gelden.

#### J. GEGEVENS

Van het op 7 december 1944 te Chicago tot stand gekomen Verdrag inzake de internationale burgerluchtvaart, naar welk Verdrag wordt verwezen onder meer in de preambule tot het onderhavige Verdrag, zijn de Engelse tekst en de vertaling bekendgemaakt in *Stb.* H 165; zie ook, laatstelijk, *Trb.* 1996, 32.

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 wordt verwezen in artikel 7, eerste lid, letter a, van het onderhavige Verdrag, is de tekst geplaatst in *Trb.* 1964, 115 en de vertaling in *Trb.* 1964, 186; zie ook, laatstelijk, *Trb.* 1995, 203.

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 wordt verwezen in artikel 7, eerste lid, letter a, van het onderhavige Verdrag, zijn de Engelse en de Franse tekst, alsmede de vertaling, geplaatst in *Trb.* 1971, 50; zie ook, laatstelijk, *Trb.* 1995, 204.

Van het op 23 september 1971 te Montreal tot stand gekomen Verdrag tot bestrijding van wederrechtelijke gedragingen gericht tegen de burgerluchtvaart, naar welk Verdrag wordt verwezen in artikel 7, eerste lid, letter a, van het onderhavige Verdrag, zijn de Engelse en de Franse tekst, alsmede de vertaling, geplaatst in *Trb.* 1971, 218; zie ook, laatstelijk, *Trb.* 1995, 205.

Van de op 3 juli 1967 te 's-Gravenhage tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden en Trinidad en Tobago inzake de instelling en exploitatie van luchtdiensten, welke Overeenkomst door het onderhavige Verdrag ingevolge zijn artikel 22, tweede lid, zal worden vervangen in de betrekkingen tussen het Koninkrijk der Nederlanden (voor wat betreft de Nederlandse Antillen) en Trinidad en Tobago, is de tekst alsmede de vertaling geplaatst in *Trb.* 1967, 116; zie ook, laatstelijk, *Trb.* 1985, 152.

Uitgegeven de zesde november 1997.

*De Minister van Buitenlandse Zaken,*

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