

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1994 Nr. 282

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Macao inzake
luchtdiensten tussen en via hun onderscheiden grondgebieden,
met bijlage;
's-Gravenhage, 16 november 1994*

B. TEKST

**Agreement between the Kingdom of the Netherlands and Macau
for Air Services between and beyond their respective Areas**

The Government of the Kingdom of the Netherlands,
and

the Government of Macau, duly authorized by the competent sovereign institution of the Portuguese Republic and with the consent of the Government of the People's Republic of China,

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 Macau and the Netherlands, have agreed as follows:

Article 1

Definitions

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

- a) the term "aeronautical authorities" means:
for the Kingdom of the Netherlands the Minister of Transport, Public Works and Watermanagement;
for Macau, the Civil Aviation Authority;
or in either case any person or body authorized to perform any func-

tions at present exercised by the said authorities;

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

c) the term “area” in relation to Macau includes the Macau Peninsula and the Taipa and Coloane Islands and in relation to the Kingdom of the Netherlands has the meaning assigned to “Territory” in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;

d) 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 said Convention;

e) the terms “agreed service” and “specified route” mean international air service pursuant to Article 3 of this Agreement and the route specified in the appropriate Section of the Annex to this Agreement respectively;

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

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

h) 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

Provisions of the Chicago Convention Applicable to International Air Services

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including the Annexes and any amendments to the Convention or to its Annexes, insofar as these provisions are applicable to international air services.

Article 3

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 services by the designated airline of the other Contracting Party:

- a) the right to fly across its area without landing;
- b) the right to make stops in its area for non-traffic purposes; and
- c) while operating an agreed service on a specified route, the right to make stops in its area 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 confer to the designated airline of one Contracting Party the right to provide air services between points in the area of the other Contracting Party.

Article 4

Designation and Authorization

1. Each Contracting Party shall have the right to designate by written notification to the other Contracting Party 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 thus designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of this Article.

3. Upon receipt of the operating authorization referred to in 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.

Article 5

Revocation and Suspension of Authorisation

1. Each Contracting Party 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 regula-

tions normally and reasonably applied by these authorities in conformity with the Convention referred to in Article 2;

b) in the event of failure by such airline to comply with the laws and regulations of that Contracting Party;

c) (i) in the case of Macau, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of the Kingdom of the Netherlands or its nationals or in both;

(ii) in the case of the Kingdom of the Netherlands, in any case where it is not satisfied that that airline is incorporated and has its principle place of business in Macau.

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 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 areas 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 by means of the procedures of the International Air Transport Association for the fixation 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 thus agreed shall be submitted for approval to 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 of 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 of this Article, 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 17 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 area of the other Contracting Party offices for the promotion of air transportation and sale of air transportation (including the issuance of air tickets and air waybills) as well as other facilities required for the provision of air transportation;

b) in the area of the other Contracting Party to engage directly and, at the 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 into and maintain in the area of the other Contracting Party its managerial, commercial, operational and technical staff, 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 area of the other Contracting Party provided that they are authorized to perform such services (including handling for other airlines) in the area of that Contracting Party.

4. The above activities shall be carried out in compliance 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 Parties to participate in the international air services 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 airline of the other Contracting Party.

Article 9

Timetable

1. The airline designated by each Contracting Party shall present to the aeronautical authorities of the other Contracting Party, forty five (45) days in advance the timetable for 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 may be submitted for approval by the designated airline 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 any 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 duties and charges, on arrival in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft until such time as they are re-exported.

2. With regard to regular equipment, spare parts, supplies of fuels and lubricants and aircraft stores brought into the area 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 aircraft while operating internat-

ional services, no duties and charges, including customs duties and inspection fees imposed in the area 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 area of the Contracting Party in which they are taken on board. The items referred to above may be required to be kept under customs supervision and control.

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

3. Regular airborne equipment, spare parts, supplies of fuels and lubricants and aircraft stores kept on board the aircraft of either Contracting Party may be unloaded on the area of the other Contracting Party only with the approval of the customs authorities of that Party, who may require that these items 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 area 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 area 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 area 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.

Article 12

Transfer of Funds

1. The designated airlines of the Contracting Parties shall be free to sell air transport services in the areas 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 areas of sale to their home area the excess, in the area 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 supplementary 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 area 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 entry into, and until and including its departure from the said area.

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 entry into, and until and including their departure from the area of the said Contracting Party.

3. Passengers, baggage and cargo in direct transit across the area 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 area of either Contracting Party to the airline operations of the other Contracting Party for the use of airports and other aviation facilities in the area of the first Contracting Party shall not be higher than those applied to the operations of any other airline engaged in similar operations under comparable conditions.

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 which have not expired 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 referred to in Article 2 of this Agreement.

Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its own area certificates of competency and licences granted to, in the case of the Kingdom of the Netherlands its own nationals or, in the case of Macau its residents, by the other Contracting Party.

Article 15

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 area 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 consistently 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 of the date of receipt of such a request. Failure to reach a satisfactory agreement could constitute grounds for the application of Article 17 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 those Conventions are applicable to the Contracting Parties.

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

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 of the date of 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 necessary procedures.

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 17

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 thus chosen, provided that the third arbitrator shall not be a national of the Kingdom of the Netherlands or a resident of Macau. 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 written 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 made under paragraph 2 of this Article.

Article 18

Termination

Either Contracting Party may at any time give notice in writing 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 on which the notice was received by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period. If the receipt is not acknowledged 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 19

Registration with ICAO

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

Article 20

Applicability

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

Article 21

Entry into Force

This Agreement shall enter into force as soon as the Contracting Parties have informed each other in writing that any necessary procedures have been completed.

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

DONE in duplicate at The Hague on 16 November 1994, in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) A. JORRITSMA-LEBBINK

For the Government of Macau

(sd.) V. R. VIEIRA

Annex

A. *Route Schedule*

Each designated airline shall have the right to operate the following routes:

All points in the area of its Contracting Party – all intermediate points – all points in the area of the other Contracting Party – all beyond points v.v.

B. *Conditions*

1. Intermediate and beyond points may be served in any order and/or may be omitted at the choice of the designated airline.

2. Each designated airline shall have the right to exercise full commingling*) and own stop-over traffic**) rights on all points in the route schedule.

3. Each designated airline shall have the right to exercise full fifth freedom traffic rights on the following points:

Intermediate points:

The designated airline of Macau: two points at its own choice (rover points).

The designated airline of the Netherlands: two points at its own choice (rover points), except Japan.

Beyond points:

For the designated airline of Macau: two points at its own choice (rover points) in Europe.

*) “commingling”: any combination of points without the exercise of fifth freedom traffic rights.

**) “own stop-over traffic”: traffic booked on a designated airline, making a deliberate interruption agreed to in advance by the same designated airline at a point between the place of departure and the place of destination.

For the designated airline of the Netherlands: two points at its own choice (rover points) in Asia/Oceania, except Japan.

However, the total number of intermediate and beyond points that can be served with fifth freedom rights by each designated airline at any time, cannot exceed two (2).

Further points for fifth freedom traffic rights may be operated after previous written agreement between the aeronautical authorities of both Contracting Parties.

4. Each designated airline shall have the right to operate on the specified routes a maximum of seven weekly return services with any type of aircraft in any configuration in accordance with the following time-frame:

a) Each designated airline shall have the right to start operations with at least two weekly services.

b) As from the start of actual operations of a designated airline, the entitlements of both designated airlines shall be increased with one extra weekly service per year above the minimum of two frequencies.

5. No points in the mainland of China, Hong Kong and Taiwan may be served as an intermediate or beyond point for the provision of air transportation.

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 21 in werking treden zodra de Verslagsluitende Partijen elkaar schriftelijk ervan in kennis hebben gesteld dat de noodzakelijke procedures zijn voltooid.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag ingevolge artikel 20 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 wordt verwezen onder meer in artikel 1, onder c, van het onderhavige Verdrag, zijn de Engelse tekst en de vertaling in het Nederlands bekendgemaakt in *Stb.* H 165. Zie ook, laatstelijk, *Trib.* 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 wordt verwezen in artikel 15, vierde lid, van het onderhavige Verdrag, is de tekst geplaatst in *Trb.* 1964, 115 en de vertaling in het Nederlands 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 wordt verwezen in artikel 15, vierde lid, van het onderhavige Verdrag, zijn de Engelse en de Franse tekst, alsmede de vertaling in het Nederlands, 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 wordt verwezen in artikel 15, vierde lid, van het onderhavige Verdrag, zijn de Engelse en de Franse tekst, alsmede de vertaling in het Nederlands, geplaatst in *Trb.* 1971, 218; zie ook, laatstelijk, *Trb.* 1981, 115.

Uitgegeven de *dertigste* december 1994.

De Minister van Buitenlandse Zaken a.i.,

W. KOK