

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1978 Nr. 55

A. TITEL

Protocol met betrekking tot de Luchtvaartovereenkomst tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika van 1957;

Washington, 31 maart 1978

B. TEKST

Protocol relating to Netherlands-United States Air Transport Agreement of 1957

The Government of the Kingdom of the Netherlands and the Government of the United States of America,

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum governmental regulation, and

Intending to make it possible for airlines to offer the traveling and shipping public low-fare competitive services and increased opportunities for charter air services in the North Atlantic,

Have agreed to this Protocol relating to the Air Transport Agreement between the Government of the Kingdom of the Netherlands and the Government of the United States of America signed at Washington on April 3, 1957, as amended, and applicable to North Atlantic international air transportation.

Article 1

Definitions

(a) "Agreement" means the Air Transport Agreement between the

Government of the Kingdom of the Netherlands and the Government of the United States of America signed at Washington on April 3, 1957, and amendments thereto.

(b) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944.

Article 2

Designation and Authorization

(a) Each Contracting Party shall have the right to designate airlines for the purpose of exercising the rights granted in the Agreement as amended by the present Protocol. Each Party shall be free to determine the type or types of services which its designated airlines may operate.

(b) Airlines of a Contracting Party whose designation allows the exercise of scheduled air service rights shall be permitted to exercise these rights on the routes specified in the Schedule attached to the Agreement, as amended by Article 3 of this Protocol.

(c) Airlines of a Contracting Party whose designation allows the exercise of the rights specified in Article 4 of this Protocol shall be permitted to exercise those rights in accordance with the rules specified in that Party's designation for the carriage of international charter traffic from its territory on a one-way or round-trip basis, or any waivers of such rules granted for appropriate reasons. These rules shall be the charterworthiness rules now or hereafter published by the aeronautical authorities of each Contracting Party. When such rules of one Contracting Party apply more restrictive terms, conditions, or limitations to one, or more, of its designated airlines, the designated airlines of the other Contracting Party shall be subject to the least restrictive of such terms, conditions or limitations. Moreover, if the aeronautical authorities of either Contracting Party promulgate charterworthiness rules which apply different conditions to different countries, each Party shall apply the most liberal rule to the designated airlines of the other Contracting Party.

(d) Designated airlines shall be granted appropriate operating permission without undue delay in accordance with Articles 3 and 4 of the Agreement.

Article 3

Routes for Scheduled Air Services

(a) Paragraph 1 of the Schedule attached to the Agreement is amended by deleting "Paramaribo" from the route described in subparagraph (b) thereof.

(b) Paragraph 2 of the Schedule attached to the Agreement is amended by deleting routes a., b., and c. and substituting therefor the following routes and footnotes:

"a. The Netherlands to New York¹⁾, Chicago, Houston, Los Angeles, and one additional point²⁾ in the United States to be selected by the Netherlands and notified to the United States.

"b. The Netherlands via Montreal to Houston.³⁾

"Footnote 1: The Netherlands carrier(s) is authorized to navigate aircraft, in all-cargo services only, on Route 2 a. between Montreal, Canada and New York, New York without traffic rights between Montreal and New York.

"Footnote 2: The Netherlands carrier(s) is authorized to navigate aircraft on Route 2 a. between Montreal and Mexico City, on the one hand, and this United States point, without traffic or stopover rights between these foreign points and the United States point.

"Footnote 3: The Netherlands carrier(s) is authorized to navigate aircraft on Route 2 b. between Houston and Mexico City, without traffic rights between Houston and Mexico City, and without stopover rights at Houston.

"Routes 2 d., e. and f. are renumbered 2 c., d. and e.; and note 3 is renumbered as 4."

(c) Paragraph 3 of the Schedule attached to the Agreement is amended to read, in its entirety, as follows:

"3. Each designated airline may, on any or all flights and at its option, operate flights in either or both directions, serve points on the routes in any order, and omit stops at any point or points without loss of any right to uplift or discharge traffic otherwise permissible under the Agreement, as amended by this Protocol, provided the service begins or terminates in the territory of the Contracting Party designating the airline."

(d) The Schedule attached to the Agreement is amended by adding thereto a new paragraph to read:

"4. Where traffic rights are available on an international segment or segments of routes described in paragraphs 1 or 2 above, a designated airline of one Contracting Party may operate flights on these segments without any limitation as to change in type or number of aircraft operated."

Article 4

Grant of Rights for Charter Air Services

(a) Each Contracting Party grants to the other Contracting Party the right for the designated airlines of that other Party to uplift and

discharge international charter traffic in passengers (and their accompanying baggage) and cargo¹⁾ at any point or points in the territory of the first Contracting Party for carriage between such points and any point or points in the territory of the other Contracting Party, either directly or with stopovers at points outside the territory of either Party or with carriage of stopover or transiting traffic to points beyond the territory of the first Party.

(b) Charter traffic:

- (i) originating outside the territory of both Contracting Parties; or
- (ii) carried by an airline of one Contracting Party, originating in the territory of the other Contracting Party, and having a traffic stop outside the territory of the other Contracting Party without a stopover in the territory of the first Contracting Party of at least two consecutive nights;

shall not be covered by this Protocol. However, each Contracting Party shall continue to extend favorable consideration to applications by designated airlines of the other Contracting Party to carry such traffic on the basis of comity and reciprocity.

Article 5

Fair Competition

(a) Each Contracting Party shall allow a fair opportunity for the designated airlines of both Contracting Parties to compete in the international air transportation services covered by the Agreement and this Protocol.

(b) Each Contracting Party shall take into consideration the interests of the other Contracting Party in its designated airlines so as not to affect unduly the opportunity for the airlines of each Party to offer the services covered by the Agreement and this Protocol.

(c) Neither Contracting Party shall limit the volume, frequency, or aircraft type operated by the designated airlines of the other Contracting Party, except under uniform conditions consistent with Article 15 of the Convention.

(d) Neither Contracting Party shall impose an uplift ratio with respect to the capacity, frequency or traffic to be carried by the designated airlines of the other Contracting Party.

¹⁾ Pending further review, which shall take place during the consultations foreseen by Article 13 of this Protocol and notwithstanding paragraph (c) of Article 2 of this Protocol, cargo charters are permitted only where the entire capacity of the aircraft is purchased by a single charterer, as defined by the Contracting Party in whose territory the cargo is uplifted. Other types of cargo charters shall be allowed where and to the extent agreed by the Contracting Parties.

Article 6

Fares, Rates and Prices

(a) Both Contracting Parties desire to facilitate the expansion of international air transportation opportunities over the routes specified in the Schedule attached to the Agreement, as amended by Article 3 of this Protocol, as well as in charter transportation. This objective can best be achieved by making it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest fares, rates and prices that are not predatory or discriminatory and do not tend to create a monopoly. In order to give weight to this objective, each Contracting Party shall encourage individual airlines to develop and implement competitive fares, rates and prices. Accordingly, the Contracting Parties agree that such fares, rates, and prices should be set by each designated airline based primarily on commercial considerations in the marketplace and that governmental intervention should be limited to prevention of predatory or discriminatory practices, protection of consumers from the abuse of monopoly power, and protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

(b) Each Contracting Party may require the filing with its aeronautical authorities of fares and rates and of wholesale prices to be charged by designated airlines of the other Contracting Party. Neither Contracting Party shall require the filing by a designated airline of the other Contracting Party of prices or rates charged by charterers to the public for charter traffic originating in the territory of that other Contracting Party. If a Contracting Party is dissatisfied with a fare, rate or price filed, it shall notify the other Contracting Party as soon as possible, and in any event within 30 days of receiving notification of the fare, rate or price. Either Contracting Party may then request consultations which shall be held as soon as possible, and in no event later than 30 days of the receipt of the request. If agreement is reached during such consultations, each Contracting Party shall use its best efforts to put such agreed fares, rates or prices into effect.

(c) Notwithstanding paragraphs (E), (F), or (G) of Article 11 of the Agreement, neither Contracting Party shall prevent the institution or continuation of any fare or rate or any wholesale or retail price which is proposed or offered by a designated airline of the other Contracting Party, except where the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in the territory of the first Contracting Party, unless otherwise agreed by the Contracting Parties. However, each Contracting Party shall permit any designated airline of the other Contracting Party to institute or continue a fare or rate or a wholesale or retail price which

matches, or provides for a substantially similar fare, rate or price and for substantially similar terms and conditions as, any fare or rate or any wholesale or retail price which is approved or permitted for its own airline or airlines.

Article 7

Flight or Program Approvals

(a) Each Contracting Party shall minimize the administrative burdens of filing requirements and procedures on charterers and on designated airlines of the other Contracting Party.

(b) A designated airline of one Contracting Party proposing to carry charter traffic originating in the territory of the other Contracting Party shall comply with the applicable rules of that other Contracting Party.

(c) Neither Contracting Party shall require a designated airline of the other Contracting Party, in respect of the carriage of charter traffic originating in the territory of that other Contracting Party, to submit more than a declaration of conformity with the rules specified in that other Party's designation, or of a waiver of these rules granted by the aeronautical authorities of that other Contracting Party.

(d) Notwithstanding paragraph (c) above, each Contracting Party may require that a designated airline of the other Contracting Party provide such advance information with regard to flights as is essential for customs, airport, and air traffic control purposes.

(e) Designated airlines shall comply with established procedures in regard to airport slotting and shall provide prior notification of flights or series of flight to the relevant authorities if so required.

(f) Neither Contracting Party shall require prior approval of flights or notifications of information relating thereto by designated airlines of the other Contracting Party, except as provided in subparagraphs (b), (c), (d) and (e) above.

Article 8

Enforcement

(a) The Contracting Party in whose territory the traffic originates shall, for practical purposes, have exclusive jurisdiction for the enforcement of its rules and regulations.

(b) The Contracting Parties shall cooperate with each other on enforcement matters. Where evidence is obtained of a possible violation of the rules of the other Contracting Party with regard to traffic originating in that Party's territory, a Contracting Party shall transmit such evidence to the other Contracting Party for investigation and

appropriate enforcement action, instead of interrupting flights or interfering with traffic which originated in the territory of the other Contracting Party.

(c) Each Contracting Party may take such steps as it considers necessary to regulate the conduct of its own airlines, charterers, travel organizers, agents, forwarders or shippers offering or organizing services covered by the Agreement and this Protocol. However, such regulations shall not preclude or limit the power of the other Contracting Party to regulate, within its territory and pursuant to its domestic laws, the conduct of such organizations or individuals of the first Contracting Party.

Article 9

Aviation Security

The Contracting Parties reaffirm their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services and undermine public confidence in the safety of civil aviation. The Contracting Parties agree to provide maximum aid to each other with a view to preventing hijackings and sabotage to aircraft, airports and air navigation facilities and threats to aviation security. The Contracting Parties reaffirm their commitments under and shall have regard to 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. The Contracting Parties shall also have regard to applicable aviation security provisions established by the International Civil Aviation Organization. The Contracting Parties agree to observe the security provisions required by each Party for entry into the territory of that Party. The Parties agree to take adequate measures to screen passengers and their carry-on items. When incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications intended to terminate such incidents rapidly and safely. Each Contracting Party shall give sympathetic consideration to any request from the other for special security measures for its aircraft or passengers to meet a particular threat.

Article 10

Commercial Operations

(a) Each designated airline shall have the right to perform its own ground handling in the territory of the other Contracting Party or to

use the services of an authorized agent of its choice. Such agents shall be freely authorized, subject to the availability of airport facilities.

(b) User charges shall be established at reasonable and non-discriminatory levels, consistent with the costs of providing the relevant services or facilities, and be equitably apportioned among categories of users.

Article 11

Capacity

Article 10 of the Agreement is amended by deleting the second paragraph thereof and the Notes exchanged on November 25, 1969, concerning Article 10 of the Agreement are no longer in effect.

Article 12

Multilateral Agreement

If a multilateral agreement concerning charter air transportation accepted by both Contracting Parties enters into force, the Agreement and this Protocol shall be amended so as to conform with the provisions of the multilateral agreement.

Article 13

Revision of Agreement

Consultations shall be scheduled at an early date for the purpose of concluding within six months a new air transport agreement governing all types of air services which would incorporate the provisions of this Protocol and up-to-date provisions on such matters as airworthiness and security standards, user charges, commercial operations and arbitration.

Article 14

Entry into force

The provisions of this Protocol shall be applied from the date of its signature until a new air transport agreement as provided for in Article 13 of this Protocol enters into force.

DONE at Washington, in duplicate, this thirty-first day of March, 1978.

*For the Government of the
Kingdom of the Netherlands:*

(sd.) TAMMENOMS
BAKKER

*For the Government of the
United States of America:*

(sd.) JULIUS L. KATZ

D. PARLEMENT

Het Protocol behoeft ingevolge artikel 62, eerste lid, letter c, van de Grondwet niet de goedkeuring der Staten-Generaal.

G. INWERKINGTREDING

De bepalingen van het Protocol worden ingevolge artikel 14 toegepast vanaf 31 maart 1978.

Wat het Koninkrijk der Nederlanden betreft, geldt het Protocol alleen voor Nederland.

J. GEGEVENS

Van de op 3 april 1957 te Washington totstandgekomen Luchtvaartovereenkomst tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika, tot wijziging waarvan het onderhavige Protocol strekt in de verhouding tussen het Koninkrijk der Nederlanden (Nederland) en de Verenigde Staten van Amerika, zijn tekst en vertaling geplaatst in *Trb.* 1957, 53. Zie ook, laatstelijk, *Trb.* 1969, 243.

Van het op 7 december 1944 te Chicago totstandgekomen Verdrag inzake de internationale burgerluchtvaart, naar welk Verdrag onder meer in artikel 1 van het onderhavige Protocol wordt verwezen, is de tekst geplaatst in *Stb.* H 165 en de bijgewerkte vertaling in het Nederlands in *Trb.* 1973, 109.

Van het op 14 september 1963 te Tokio totstandgekomen Verdrag inzake strafbare feiten en bepaalde andere handelingen begaan aan boord van luchtvaartuigen, naar welk Verdrag in artikel 9 van het onderhavige Protocol wordt verwezen, is de tekst geplaatst in *Trb.* 1964, 115 en de vertaling in het Nederlands in *Trb.* 1964, 186. Zie ook, laatstelijk, *Trb.* 1974, 168.

Van het op 16 december 1970 te 's-Gravenhage totstandgekomen Verdrag tot bestrijding van het wederrechtelijk in zijn macht brengen van luchtvaartuigen, naar welk Verdrag in artikel 9 van het onderhavige Protocol wordt verwezen, zijn tekst en vertaling in het Nederlands geplaatst in *Trb.* 1971, 50. Zie ook, laatstelijk, *Trb.* 1974, 170.

Van het op 23 september 1971 te Montreal totstandgekomen Verdrag tot bestrijding van wederrechtelijke gedragingen, gericht tegen de veiligheid van de burgerluchtvaart, naar welk Verdrag in artikel 9 van het onderhavige Protocol wordt verwezen, zijn tekst en vertaling in het Nederlands geplaatst in *Trb.* 1971, 218. Zie ook, laatstelijk, *Trb.* 1974, 169.

Uitgegeven de vijfde mei 1978.

De Minister van Buitenlandse Zaken,
C. A. VAN DER KLAUW.