

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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**JAARGANG 2009 Nr. 216**

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A. TITEL

*Overeenkomst tussen het Koninkrijk der Nederlanden en de Republiek Zuid-Afrika inzake luchtdiensten tussen en via hun onderscheiden grondgebieden;  
(met Bijlage)  
Kaapstad, 26 mei 1992*

B. TEKST

De Engelse tekst van de Overeenkomst, met Bijlage, is geplaatst in *Trb.* 1992, 100. Zie voor een correctie *Trb.* 1993, 46.

Zie voor de Engelse tekst van de wijziging van de Bijlage van 30 mei 1996 rubriek J van *Trb.* 1996, 161.

Op 7 oktober 2009 is te Pretoria een notawisseling tot stand gekomen houdende een verdrag, met Bijlage, tot wijziging van de Overeenkomst. De Engelse tekst van de notawisseling luidt als volgt:

**Nr. I**

AMBASSADE VAN HET KONINKRIJK DER NEDERLANDEN

Pretoria, 25 August 2009

PRE-EA/238-09

Note verbale

The Embassy of the Kingdom of the Netherlands presents its compliments to the Department of International Relations and Co-operation of the Republic of South Africa and has the honour to refer to the consultations held in Pretoria on 9 and 10 July 2008 between delegations of

the Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa concerning the Bilateral Air Services Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa, done at Cape Town on 26 May 1992, hereinafter referred to as “the Agreement”.

The Embassy of the Kingdom of the Netherlands has the honour to propose the following amendments to the Agreement:

A new Article on Aviation Security, numbered Article 16 bis, to be added, with the following text:

*Aviation safety*

1. A Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of such request.

2. If, following such consultations, a Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in the areas referred to above which are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards. Such Contracting Party shall take appropriate corrective action and failure to take appropriate action within fifteen (15) days of being notified thereof, or such longer period as may be agreed upon, shall be grounds for the application of Article 5.

3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated airline of one Contracting Party on services to or from the territory of the other Contracting Party, may, while within the territory of the other Contracting Party, be subject to an examination by the authorised representative of that Contracting Party. The purpose of such examination shall include the verification of the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (hereinafter referred to as “ramp inspection”), provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections gives rise to serious concerns that:

a) an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention;  
or

b) there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the ramp inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the designated airline of one Contracting Party in accordance with paragraph 3 above is denied by the representatives of that designated airline, the other Contracting Party may infer that serious concerns of the type referred to in paragraph 4 above arise and draw conclusions referred to in that paragraph.

6. Each Contracting Party reserves the right to immediately suspend or vary the operating authorization of a designated airline of the other Contracting Party in the event the first Contracting Party concludes, whether as a result of a ramp inspection or consultation, that immediate action is essential to the safety of airline operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 and 6 above, shall be discontinued upon compliance by the other Contracting Party with the safety provisions of this Article.

To replace Article 16 paragraph 3 on Aviation Security with the following text:

*Aviation security*

3. The Contracting Parties shall act in conformity with any agreement effective between them regarding the suppression of acts of unlawful interference, inter alia in respect of aircraft in flight, aircraft in service and/or security at airports.

To replace Article 8 on Tariffs with the following text:

*Tariffs*

1. Each Contracting Party shall allow tariffs for air services to be decided by each designated airline or airlines based on commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

- a) prevention of tariffs or practices whose application constitute anti-competitive behaviour which has or is likely to have the effect of preventing, restricting or distorting competition or excluding a competitor from a route;
- b) protection of consumers from tariffs that are unreasonably high or restrictive due to the abuse of market power; and
- c) protection of airlines from tariffs that are artificially low due to direct or indirect governmental subsidy or support.

2. Neither Contracting Party shall require notification or filing of any tariff to be charged by the designated airline or airlines of the other Contracting Party. Tariffs may remain in effect unless subsequently disappeared under paragraph 3 below.

3. Neither Contracting Party shall take unilateral action to prevent the coming into effect or continuation of a tariff charged or proposed to be charged by an airline of the other Contracting Party. If one Contracting Party believes that any such tariff is inconsistent with the considerations set out in paragraph 1 above, it may request consultations and notify the other Contracting Party of the reasons for its dissatisfaction. These consultations shall be held no later than 15 days after receipt of the request. Without a mutual agreement the tariff shall take effect or continue in effect.

To delete Article 12 on Double Taxation.

The Embassy of the Kingdom of the Netherlands further has the honour to propose that this Note together with the concept Note in reply confirming on behalf of the Republic of South Africa the foregoing understanding, shall be regarded as constituting an agreement between the two Governments to amend the Agreement. This agreement to amend the Agreement shall be provisionally applied from the date of the reply of the Government of Republic of South Africa, and shall enter into force on the date on which both Governments have informed each other in writing that the formalities constitutionally required therefore in their respective countries have been complied with.

The Embassy of the Kingdom of the Netherlands avails itself of this opportunity to renew to the Department of International Relations and Co-operation of the Republic of South Africa the assurances of its highest consideration.

*Department of Foreign Affairs of the Republic of South Africa  
Pretoria*

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**Annex****Route schedule**

THE DESIGNATED AIRLINE(S) OF THE REPUBLIC OF SOUTH AFRICA AUTHORIZED UNDER THE PRESENT AGREEMENT SHALL OPERATE ON THE FOLLOWING ROUTES IN BOTH DIRECTIONS:

<b>POINTS OF DEPARTURE</b>	<b>INTERMEDIATE POINTS</b>	<b>POINTS OF DESIGNATION</b>	<b>POINTS BEYOND</b>
Points in the Republic of South Africa	Any points	Points in the Kingdom of the Netherlands	Any points

THE DESIGNATED AIRLINE(S) OF THE KINGDOM OF THE NETHERLANDS AUTHORIZED UNDER THE PRESENT AGREEMENT SHALL OPERATE ON THE FOLLOWING ROUTES IN BOTH DIRECTIONS:

<b>POINTS OF DEPARTURE</b>	<b>INTERMEDIATE POINTS</b>	<b>POINTS OF DESIGNATION</b>	<b>POINTS BEYOND</b>
Points in the Kingdom of the Netherlands	Any points	Points in the Republic of South Africa	Any points

**Notes:**

- Any or all intermediate and beyond points may be omitted and/or served in any order on any or all flights at the option of the airlines concerned.
  - Intermediate and beyond points shall be served without fifth freedom traffic rights, unless otherwise agreed to by the aeronautical authorities of the Contracting Parties.
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## Nr. II

Pretoria, The 07 October 2009

23/2009

The Department of Foreign Affairs of the Republic of South Africa presents its compliments to the Embassy of the Kingdom of the Netherlands and has the honour to refer to Note Verbale PRE-EA/238-09 which reads as follows:

(Zoals in Nr. I)

In reply, the Department of International Relations and Co-operation has the honour to inform the Embassy that the Government of the Republic of South Africa is in agreement with the foregoing proposal and that this Note together with the Embassy's Note constitute an agreement between the two Governments which shall be provisionally applied from the date of this reply, and which shall enter into force on the date on which both Governments have informed each other in writing that the formalities constitutionally required therefore in their respective countries have been complied with.

The Department of International Relations and Cooperation has the further honour to request that the reply be forwarded to the Aeronautical Authority of<sup>1)</sup> Netherlands in compliance with the Memorandum of Understanding of 10 July 2008, between the two countries.

The Department of International Relations and Cooperation of the Republic of South Africa avails itself of this opportunity to renew to the Embassy the assurances of its highest consideration.

*Embassy of the Kingdom of the Netherlands*  
*Pretoria*

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C. VERTALING

Zie *Trb.* 1993, 46.

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<sup>1)</sup> Redactie Tractatenblad: hier is kennelijk het woordje „the” weggevalen.

D. PARLEMENT

Zie *Trb.* 1993, 46 en rubriek J van *Trb.* 1996, 161.

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Het in nota's vervatte verdrag tot wijziging van de Overeenkomst behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

F. VOORLOPIGE TOEPASSING

De bepalingen van het in nota's vervatte verdrag, met Bijlage, worden ingevolge de één na laatste alinea van Nota Nr. I en de twee na laatste alinea van Nota Nr. II vanaf 7 oktober 2009 voorlopig toegepast door het Koninkrijk der Nederlanden.

Wat het Koninkrijk der Nederlanden betreft, geldt de voorlopige toepassing alleen voor Nederland.

G. INWERKINGTREDING

Zie *Trb.* 1992, 100, *Trb.* 1993, 46 en rubriek J van *Trb.* 1996, 161.

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De bepalingen van het in nota's vervatte wijzigingsverdrag van 7 oktober 2009 zullen ingevolge het gestelde in de op één na laatste alinea van Nota Nr. I en de op twee na laatste alinea van Nota Nr. II in werking treden op de datum van de laatste schriftelijke kennisgeving waarin de verdragsluitende partijen elkaar op de hoogte hebben gesteld dat de voor de inwerkingtreding vereiste wettelijke en constitutionele procedures zijn voltooid.

J. VERWIJZINGEN

Zie voor verwijzingen en overige verdragsgegevens *Trb.* 1992, 100, *Trb.* 1993, 46 en *Trb.* 1996, 161.

**Verwijzingen**

- Titel : Verdrag inzake de internationale burgerluchtvaart;  
Chicago, 7 december 1944  
Laatste *Trb.* : *Trb.* 2009, 48

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het in nota's vervatte verdrag van 7 oktober 2009 zal zijn bekendgemaakt in Nederland op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *dertigste* november 2009.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN