

No. 268

**NETHERLANDS
and
INDIA**

**Agreement relating to air services (with annex). Signed at
New Delhi, on 31 May 1947**

*English official text communicated by the Representative a.i. of the Netherlands
to the United Nations. The registration took place on 27 July 1948.*

**PAYS-BAS
et
INDE**

**Accord relatif aux services de transports aériens (avec
annexe). Signé à New-Delhi, le 31 mai 1947**

*Texte officiel anglais communiqué par le représentant a.i. des Pays-Bas auprès
de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 27 juillet
1948.*

No. 268. AGREEMENT¹ BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF THE NETHERLANDS RELATING TO AIR SERVICES. SIGNED AT NEW DELHI, ON 31 MAY 1947

The Government of India and the Government of the Netherlands, hereinafter described as the Contracting Parties, being contracting parties to the Convention on International Civil Aviation² and the International Air Services Transit Agreement, both signed at Chicago on the seventh day of December, 1944 the terms of which Convention and Agreement are binding on both parties.

Considering

That it is desirable to organize international air services in a safe and orderly manner and to further as much as possible the development of international co-operation in this field, and

That it is desirable to stimulate international air travel, at the lowest rates consistent with sound economic principles, as a means of promoting friendly understanding and good will among peoples and securing the many indirect benefits of this new form of transportation to the common welfare of both countries, and

That it is desirable to re-establish commercial air transport services between the Netherlands territories and India, have accordingly appointed plenipotentiaries who, being duly authorised to this effect, have agreed as follows:

Article I

(A) Each Contracting Party grants to the other Contracting Party the right to operate the air services specified in the Annex to this Agreement (hereinafter referred to as the "specified air services") and to carry traffic to, from and in transit over the territory of the other Party as provided in this Agreement.

(B) The air line designated as provided in Article II hereof shall the right to use

¹ Came into force on 31 May 1947, as from the date of signature, in accordance with article XII.

² United Nations, *Treaty Series*, Volume 15, page 295.

(1) for traffic purposes, airports provided for public use at the points specified in the Annex to this Agreement and ancillary services provided for public use on the air routes specified in the said Annex (hereinafter referred to as the "specified air routes") and

(2) for non-traffic purposes, all airports and ancillary services provided for public use on the specified air routes,
subject in either case to such conditions as may normally be applicable thereto.

Article II

(A) Each of the specified air services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, on condition that:

(1) The Contracting Party to whom the rights have been granted shall have designated an air line (hereinafter referred to as a "designated air line") for the specified route.

(2) The Contracting Party which grants the rights shall have given the appropriate operating permission to the air line pursuant to paragraph (C) of this Article which it shall do with the least possible delay.

(B) Substantial ownership and effective control of the designated air lines of each Contracting Party shall be vested in that Party or its nationals.

(C) The designated air line may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfil the conditions prescribed by or under the laws and regulations normally applied to those authorities to the operation of commercial air carriers.

(D) The operation of each of the specified air services shall be subject to the agreement of the Contracting Party concerned that the route organisation available for civil aviation on the specified air route is adequate for the safe operation of air services.

Article III

(A) The air lines designated by the Netherlands Government shall, subject to the provisions of Article IV, be entitled in Indian territory to carry, set down or pick up traffic as detailed below:

(1) Traffic embarked in or destined for the Netherlands or the Netherlands East Indies.

(2) Traffic between any two countries other than the Netherlands, the Netherlands East Indies and India carried in transit across Indian territory and not embarked or disembarked in India.

(3) Traffic embarked in the territory of a third country and destined for India, and traffic embarked in India and destined for a third country.

(B) The air lines designated by the Government of India shall, subject to the provisions of Article IV, be entitled in Netherlands territory to carry, set down or pick up traffic as detailed below:

(1) Traffic embarked in or destined for India.

(2) Traffic between any two countries other than India and the Netherlands or the Netherlands East Indies carried in transit across Netherlands territory and not embarked or disembarked in that territory.

(3) Traffic embarked in the territory of a third country and destined for the Netherlands or the Netherlands East Indies and traffic embarked in the Netherlands or the Netherlands East Indies and destined for a third country.

Article IV

In order to achieve and maintain equilibrium between the capacity of the specified air services and the requirements of the public for air transport on the specified air routes or sections thereof and in order to achieve and maintain proper relationship between the specified air services inter se and between those air services and other air services operating on the specified air routes or sections thereof, the Contracting Parties agree as follows:

(A) The air lines of each Contracting Party shall enjoy equal rights in the operation of air services for the carriage of traffic between the territories of the two parties.

(B) To the extent that the air lines of one of the Contracting Parties are temporarily unable to make use of the rights referred to in paragraph (A), the situation will be mutually examined by the two Parties for the purpose of aiding as soon as possible the air lines concerned increasingly to make their proper contribution to the services contemplated.

(C) In the operation by the air lines of either Contracting Party of the specified air services the interests of the air lines of the other Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same route.

(D) The air transport offered by the air lines of each Contracting Party on different sections of the specified air routes shall bear a close relationship to the needs of the public for air transport and to the traffic interests of the air lines concerned as defined in this Agreement.

(E) The services provided by a designated air line under this Agreement shall retain as their primary objective the provision (jointly with the air lines of the other States concerned) of capacity adequate to the traffic demands between the country of which such air line is a national and the country of ultimate destination of the traffic, and the right of the air lines of either Party to embark and to disembark at points in the territory of the other Party international traffic destined for or coming from third countries shall be applied in accordance with the general principles of orderly development to which both Parties subscribe and shall be subject to the general principle that capacity shall be related:

(1) to the requirements of traffic between the country of origin of the air service and destinations on the specified air routes,

(2) to the air transport needs of the area through which the air line passes, and

(3) to the adequacy of other air transport services established by air lines of the States concerned between their respective territories.

Article V

When, for the purpose of economy of onward carriage of through traffic, different aircraft are used on different sections of a specified air route, with

the point of change in the territory of one of the Contracting Parties, such change of aircraft shall not affect the provisions of this Agreement relating to the capacity of the air service and the carriage of traffic. In such cases the second aircraft shall be scheduled to provide a connecting service with the first aircraft, and shall normally await its arrival.

Article VI

(A) Rates shall be fixed at reasonable levels, due regard being paid to all relevant factors, including costs of comparable economical operators, reasonable profit, differences of characteristics of service and the rates charged by any other operators on the route.

(B) The rates to be charged by any of the air lines designated under this agreement in respect of traffic between the territories of the two Parties shall be agreed in the first instance between the designated air lines in consultation with other air lines operating on the route or any section thereof, and shall have regard to relevant rates adopted by the International Air Transport Association. Any rates so agreed shall be subject to the approval of the aeronautical authorities of the Contracting Parties. In the event of disagreement between the air lines, the Contracting Parties themselves shall endeavour to reach agreement and will take all necessary steps to give effect to such agreement. Should the Contracting Parties fail to agree, the dispute shall be dealt with in accordance with Article XI. Pending the settlement of any disagreement or until the International Civil Aviation Organization has rendered a report in pursuance of Article XI the rates already established shall prevail.

(C) Pending the acceptance by both Parties of any recommendations which the International Civil Aviation Organization may make with regard to the regulation of rates for traffic other than that defined in Paragraph (B) of this Article, the rates to be charged by an air line of one Contracting Party in respect of traffic between the territory of the other Contracting Party and a third country shall be fixed on the basis of the principles set out in paragraph (A) of this Article and after taking into consideration the interests of the air lines of the other Party and shall not vary unduly in a discriminatory manner from the rates established by the air lines of the other Party operating air services on that part of the specified air routes concerned. Provided, however, that a

designated air line under the Agreement shall not be required to charge rates higher than those established by any other air line operating on the specified air routes.

(D) If the International Civil Aviation Organization fails to establish a means of determining rates for traffic defined in paragraph (C) of this Article in a manner acceptable to both Parties, within a reasonable time, consultation shall be inaugurated in accordance with Article X of this agreement with a view to such modification of paragraph (C) of this Article as appears desirable.

Article VII

(A) The aeronautical authorities of both Contracting Parties shall exchange information as promptly as possible concerning the authorizations extended to their respective designated air lines to render service to, through and from the territory of the other Contracting Party. This will include copies of current certificates and authorizations for service on the specified air routes, together with amendments, exemption orders and authorised service patterns.

(B) Each Contracting Party shall cause its designated air lines to provide to the aeronautical authorities of the other Contracting Party, as long in advance as practicable, copies of time tables, tariff schedules and all other relevant information concerning the operation of the specified air services and of all modifications thereof.

(C) Each Contracting Party shall cause its designated air lines to provide to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried on their air services to, from or over the territory of the other Contracting Party showing the origin and destination of the traffic.

Article VIII

(A) Fuel, lubricating oils and spare parts introduced into or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, the

other Contracting Party or its designated air lines and intended solely for use by the latter's aircraft shall be accorded, with respect to customs duty, inspection fees or other charges imposed by the former Contracting Party, treatment not less favourable than that granted to its national air lines engaged in international public transport or to the air lines of the most favoured nation.

(B) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of the designated air lines of one Contracting Party shall be exempt in the territory of the other Contracting Party from customs duties, inspection fees or similar duties or charges, even though such supplies be used by such aircraft on flights in that territory. Goods so exempted may only be unloaded with the approval of the customs authorities of the other Contracting Party. These goods, which are to be re-exported, shall be kept until re-exportation under customs supervision.

Article IX

Each Contracting Party reserves the right to itself to withhold or revoke, or impose such appropriate conditions as it may deem necessary with respect to, an operating permission in case of failure by a designated air line of the other Party to comply with the laws and regulations of the former Party, or in case, in the judgment of the former Party, there is a failure to fulfil the conditions under which the rights are granted in accordance with this Agreement. Except in case of a failure to comply with laws and regulations, such action shall be taken only after consultation between the Parties. In the event of action by one Party under this Article, the rights of the other Party under Article XI shall not be prejudiced.

Article X

(A) In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties will consult regularly with a view to assuring the observance of the principles and the implementation of the provisions outlined in this Agreement.

(B) Either Contracting Party may at any time request consultation with the other with a view to initiating any amendments of this Agreement which may be desirable in the light of experience. Such consultation shall begin within a period of sixty days from the date of the request. Any modification of

this Agreement agreed to as a result of such consultation shall come into effect when it has been confirmed by an exchange of diplomatic notes.

(C) When the procedure for consultation provided for in Paragraph (B) of this Article has been initiated, either Contracting Party may at any time give notice to the other of its desire to terminate this Agreement as provided in Paragraph (E) of this Article. Such notice shall be simultaneously communicated to the International Civil Aviation Organization.

(D) Changes made by either Contracting Party in the specified air routes, except those which change the points served by the designated air lines in the territory of the other Contracting Party, shall not be considered as modifications of this Agreement. The aeronautical authorities of either Contracting Party may, therefore, proceed unilaterally to make such changes, provided, however, that notice of any change shall be given without delay to the aeronautical authorities of the other Contracting Party. If such latter aeronautical authorities find that, having regard to the principles set forth in Article IV of this Agreement, the interests of any of their air lines are prejudiced by the carriage by a designated air line of the first Contracting Party of traffic between the territory of the second Contracting Party and the new point in the territory of a third country, the latter Party may request consultation in accordance with the provisions of Paragraph (B) of this Article.

(E) This Agreement shall terminate one year after the date of receipt by the other Contracting Party of the notice to terminate, unless the notice is withdrawn by agreement before the expiration of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

Article XI

Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement, which cannot be settled through consultation, shall be referred for decision to the Council of the International Civil Aviation Organization, in accordance with the provisions of Chapter XVIII of the Convention on International Civil Aviation signed at Chicago on December 7, 1944, unless the Contracting Parties agree to settle the dispute by reference to an

Arbitral Tribunal appointed by agreement between the Contracting Parties, or to some other person or body. The Contracting Parties undertake to comply with the decision given.

Article XII

This Agreement shall come into force on the day it is signed. The Agreement and all relative contracts shall be registered with the International Civil Aviation Organization set up by the Convention on International Civil Aviation signed at Chicago on December 7, 1944.

Article XIII

(A) In the event of the conclusion of a multilateral convention or agreement concerning air transport to which both Contracting Parties adhere, this Agreement shall be modified to conform with the Provisions of such convention or agreement.

(B) For the purpose of this Agreement the terms "territory", "air service", "international air service" & "air line" shall have the meaning specified in the Convention on International Civil Aviation signed at Chicago on December 7, 1944.

(C) The term "aeronautical authorities" shall mean, in the case of India, the Director-General of Civil Aviation in India, and in the case of the Netherlands, the Director-General of Civil Aviation in the Netherlands or the Director of Civil Aviation in the Netherlands East Indies as may be appropriate, and in both cases any person or body authorised to perform the functions presently exercised by the above mentioned authorities.

(D) The Annex to this Agreement shall be deemed to be part of the Agreement and all references to the "Agreement" shall include references to the Annex, except where otherwise expressly provided.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE this thirty-first day of May 1947 in duplicate at New Delhi in the English language.

For the Government of India:
Jawaharlal NEHRU
Member for External Affairs

A. R. NISHTAR
Member for Communications

These signatures are appended in agreement with His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States.

For the Government of the Netherlands:

A. M. L. WINKELMAN
Chargé d'Affaires *ad interim* of the Netherlands Embassy

ANNEX

1. An air line designated by the Netherlands Government shall be entitled to operate air services on each of the routes specified and to make scheduled landings in India at the points specified in this paragraph.

Route 1: The Netherlands through Europe, the Near East, and Iran to Karachi, Delhi and Calcutta, thence to a point in Burma, a point in Siam, a point in Malaya to the Netherlands East Indies; via intermediate points and beyond in both directions.

Route 2: The Netherlands East Indie through Malaya, Siam and Burma to Calcutta; via intermediate points in both directions.

2. An air line designated by the Government of India shall be entitled to operate air services on each of the routes specified in this paragraph:

Route 1: India through the Near East and Europe to Amsterdam or Rotterdam; via intermediate points and beyond in both directions.

Route 2: India through Burma, Siam, and Malaya to Batavia, Sourabaya, Koepang; via intermediate points and beyond in both directions.

3. (A) Points on any of the specified routes may, at the option of the designated air line, be omitted on any or all flights.

(B) If, at any time, scheduled flights on any of the specified air services of one Contracting Party are operated so as to terminate in the territory of the other Contracting Party and not as part of a through air service extending beyond such territory, the latter party shall have the right to nominate the terminal point of such scheduled flights on the specified air route in its territory. The latter Party shall give not less than six months notice to the other Party if it decides to nominate a new terminal point for such scheduled flights.
