

No. 188

NETHERLANDS
and
UNION OF SOUTH AFRICA

Agreement relating to air services between their respective territories (with Annex). Signed at Pretoria, on 22 July 1947

Dutch, Afrikaans and English official texts communicated by the Permanent Representative of the Netherlands to the United Nations. The registration took place on 9 February 1948.

PAYS-BAS
et
UNION SUD-AFRICAINE

Accord relatif aux services de transports aériens reliant leurs territoires respectifs (accompagné d'une annexe). Signé à Prétoria, le 22 juillet 1947

Textes officiels hollandais, afrikaans et anglais communiqués par le représentant permanent des Pays-Bas auprès de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 9 février 1948.

No. 188. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNION OF SOUTH AFRICA RELATING TO AIR SERVICES BETWEEN THEIR RESPECTIVE TERRITORIES. SIGNED AT PRETORIA, ON 22 JULY 1947

The Government of the Netherlands and the Government of the Union of South Africa,

Desiring to conclude an Agreement for the purpose of establishing certain air services as soon as possible to, in and over Netherlands and South African territory,

Have appointed their representatives who, duly authorised, have agreed upon the following:

Article 1

Each contracting party grants to the other contracting party the rights specified in the Annex to this Agreement for the purpose of establishment of the air services therein referred to (hereinafter referred to as the "agreed services"). The agreed services may be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.

Article 2

(1) Each of the agreed services may be put into operation as soon as the contracting party to whom the rights have been granted has designated an airline or airlines for the specified route or routes and the contracting party granting the rights shall, subject to the provisions of paragraph (2) of this Article and of Article 6, be bound to grant without delay the appropriate operating permission to the airline(s) concerned.

(2) The airline(s) designated may be required to satisfy the competent aeronautical authorities of the contracting party granting the rights that it (they) is (are) qualified to fulfil the conditions prescribed under the laws and regulations normally applied by these authorities to the operations of commercial airlines.

¹ Came into force on 22 July 1947, as from the date of signature, in accordance with Article 12.

Article 3

(1) The charges which either of the contracting parties may impose, or permit to be imposed, on the designated airline(s) of the other contracting party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(2) 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 airlines designated by the other contracting party and intended solely for use by the aircraft of such designated airlines shall be accorded, with respect to customs duties, inspection fees or other charges imposed by the former contracting party, treatment not less favourable than that granted to national airlines engaged in international transport, or any such airline of the most favoured nation.

(3) Aircraft operated on the agreed services and supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board aircraft of the designated airline(s) 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 on the agreed services. 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 4

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one contracting party and still in force shall be recognised as valid by the other contracting party for the purpose of operating the agreed services. Each contracting party reserves the right, however, to refuse to recognise, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another state.

Article 5

(1) The laws and regulations of one contracting party relating to entry into or departure from its territory of aircraft engaged in international air navi-

gation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline(s) of the other contracting party.

(2) The laws and regulations of one contracting party relating to the entry into or departure from its territory of passengers, crews, or cargo of aircraft (such as regulations relating to entry, clearance, immigration, passports, customs and quarantine) shall be applicable to the passengers, crew or cargo of the aircraft of the designated airline(s) of the other contracting party while in the territory of the first contracting party.

Article 6

Each contracting party reserves the right to withhold or revoke the rights specified in the Annex to this Agreement in any case in which it is not satisfied that substantial ownership and effective control of the designated airline(s) of the other contracting party are vested in nationals of either contracting party, or in case of failure by the designated airline(s) to comply with its laws and regulations as referred to in Article 5, or otherwise to fulfil the conditions under which the rights are granted in accordance with this Agreement.

Article 7

This Agreement shall be registered with the International Civil Aviation Organisation set up by the Convention on International Civil Aviation signed at Chicago on the 7th December, 1944.

Article 8

If either of the contracting parties considers it desirable to modify any provision or provisions of the Annex to this Agreement, such modification may be made by direct agreement between the competent aeronautical authorities of the contracting parties.

Article 9

Any dispute between the contracting parties relating to the interpretation or application of this Agreement or of the Annex thereto shall be referred for decision to an Arbitral Tribunal appointed by agreement between the contracting parties, or to some other person or body so appointed. The contracting parties undertake to comply with the decision given.

Article 10

Either contracting party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organisation. If such notice is given, this Agreement shall terminate 12 months after the date of receipt of the notice by the other contracting party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment 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 Organisation.

Article 11

For the purpose of the present agreement and its annex:

(a) the term "territory" as applied to each contracting party shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, mandate, or trusteeship of such contracting party;

(b) the term "aeronautical authorities" shall mean in the case of the Union of South Africa the Minister in Charge of Civil Aviation, and in the case of the Netherlands the Director General of the Aeronautical Service of the Netherlands, and in the case of the Indies the Director of Public Works and Communications at Batavia, and in each case any person or body authorised to perform the functions presently exercised by the aeronautical authorities as defined herein;

(c) the term "international air services" shall have the meaning specified in Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.

Article 12

This Agreement shall enter into force on the date of signature.

DONE at Pretoria this 22nd day of July 1947 in triplicate in the Dutch, English and Afrikaans languages, each of which shall be of equal authenticity.

For the Government of the Netherlands:

VISSER

For the Government of the Union of South Africa:

J. C. SMUTS

ANNEX

1. The Government of the Netherlands grants to the Government of the Union of South Africa the right to conduct air transport services by one or more air carriers of South African nationality designated by the latter country, on one or more routes which transit or serve commercially the territory of the Netherlands. Such route or routes shall be determined at a later stage by agreement between the competent aeronautical authorities of the contracting parties.

2. The Government of the Union of South Africa grants to the Government of the Netherlands the right to conduct air transport services by one or more air carriers of Netherlands nationality designated by the latter country on the routes specified in the Schedule attached, which transit or serve commercially the territory of the Union of South Africa.

3. For the purpose of operating air services on the routes determined in accordance with paragraph 1, the designated airlines of the Union of South Africa shall be accorded in Netherlands territory rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail as hereinafter provided, and the use on the said routes of aerodromes and ancillary facilities designated for international traffic.

4. For the purpose of operating air services on the routes specified in the Schedule, the designated Netherlands airlines shall be accorded in South African territory rights of transit, of stops for non-traffic purposes and of commercial entry and departure for international traffic in passengers, cargo and mail as hereinafter provided, and the use on the said routes of aerodromes and ancillary facilities designated for international traffic.

5. (a) The designated airlines of the Union of South Africa shall be entitled to set down and pick up at the places in Netherlands territory provided for by agreement in accordance with paragraph 1, traffic embarked in or destined for places in South African territory, and in addition traffic embarked in or destined for third countries at a point or points on the routes agreed upon in accordance with paragraphs 1 and 2, or mentioned in the Schedule as specified in paragraph 6 under the conditions provided therein.

(b) The designated airlines of the Netherlands shall be entitled to set down and pick up at the places in South African territory specified or provided for in the Schedule hereto, traffic embarked in or destined for places in Netherlands territory,

and in addition traffic embarked in or destined for third countries at a point or points on the routes agreed upon in accordance with paragraphs 1 and 2, or mentioned in the Schedule as specified in paragraph 6 under the conditions provided therein.

(c) The air transport facilities provided by the designated airlines of the Netherlands and the Union of South Africa shall bear a close relationship to the requirements of the public for such transport.

(d) (I) 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 and its Annex.

(II) In the event of the aeronautical authorities of either contracting party failing or ceasing to publish information in relation to services on lines similar to that included in airline traffic surveys (station-to-station and origination and destination) and failing or ceasing to supply such data of this character as may be required by the International Civil Aviation Organisation, the aeronautical authorities of the contracting party which so fails or ceases to publish or supply such information, shall supply, on request of the aeronautical authorities of the other contracting party, such information of that nature as may be requested.

6. It is the understanding of both contracting parties that services provided by their designated airlines shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country which has designated the airline and the country of the ultimate destination of the traffic. The right of the airlines of each of the two parties to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes agreed upon in accordance with paragraph 1 or mentioned in the Schedule to this Annex, shall be applied in accordance with the general principles of orderly development to which both Governments subscribe and shall be subject to the general principle that capacity should be related:

(a) to traffic requirements between the country of origin and the countries of destination;

(b) to the requirements of through airline operation; and

(c) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

7. (a) Tariffs to be charged by the airlines referred to in this Annex shall be agreed in the first instance between them in consultation with other airlines operating on the respective routes or any sections thereof. Any tariffs so agreed shall be subject to the approval of the respective contracting parties. In the event of disagreement between the airlines, the contracting parties themselves shall endeavour to reach agreement.

(b) The tariffs to be agreed in accordance with (a) above shall be fixed at reasonable levels, due regard being had to all relevant factors, including economical operation, reasonable profit, difference of characteristics of service (including standards of speed and accommodation) and the tariffs charged by any other operators on the route.

SCHEDULE

Airlines of the Netherlands authorised under the present Agreement shall operate on the following routes in both directions:

(1) The Netherlands via Tunis or Algiers or Tripoli and Kano, Leopoldville or Brazzaville to Johannesburg either directly or via intermediate points.

(2) The Netherlands Indies—Cocos Isles and/or Colombo, Mauritius, Madagascar, to Johannesburg, either directly or via intermediate points other than intermediate points in the Union of South Africa territory.

Any or all intermediate points may be omitted on any or all flights at the option of the carrier concerned.