

No. 3604

**NETHERLANDS
and
PERU**

**Bilateral Air Transport Agreement (with annex). Signed
at Lima, on 22 September 1952**

Official texts: Dutch and Spanish.

Registered by the International Civil Aviation Organization on 1 December 1956.

**PAYS-BAS
et
PÉROU**

**Accord bilatéral relatif aux transports aériens (avec annexe).
Signé à Lima, le 22 septembre 1952**

Textes officiels néerlandais et espagnol.

Enregistré par l'Organisation de l'aviation civile internationale le 1^{er} décembre 1956.

[TRANSLATION — TRADUCTION]

No. 3604. BILATERAL AIR TRANSPORT AGREEMENT¹
BETWEEN THE GOVERNMENT OF THE KINGDOM OF
THE NETHERLANDS AND THE GOVERNMENT OF THE
REPUBLIC OF PERU. SIGNED AT LIMA, ON 22 SEP-
TEMBER 1952

The Government of the Kingdom of the Netherlands and the Government of the Republic of Peru, desiring to encourage civil and commercial air transport between their respective territories, and in accordance with the recommendation made in its resolution VIII of 7 December 1944 by the International Civil Aviation Conference held at Chicago from 1 November to 7 December 1944, that there should be as great a measure of uniformity as possible in any agreements made between States for the operation of air services, have decided to conclude the following Bilateral Air Transport Agreement which covers the regular air services described below and which shall be governed by the following provisions:

Article I

DEFINITIONS

For the purpose of this Agreement the terms hereinafter described shall have the meaning assigned to them in this article, except where the text of the Agreement expressly provides otherwise :

(a) The term "aeronautical authorities" shall mean, in the case of the Netherlands, the *Directeur-Generaal van de Rijksluchtvaartdienst* and any person or body duly authorized to perform his functions ; and, in the case of Peru, the *Ministerio de Aeronáutica* or any body duly authorized to perform the functions exercised by it.

(b) The term "designated airline" shall mean that airline which the aeronautical authorities of one of the Contracting Parties have notified, in writing, to the aeronautical authorities of the other Contracting Party as being designated, in conformity with article III of this Agreement, to operate the routes mentioned in such notice.

(c) The term "territory" shall have the meaning assigned to it by article 2 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944.²

¹ Came into force provisionally on 22 September 1952 and definitively on 1 June 1956, in accordance with article XII.

² See footnote 1, p. 13 of this volume.

(*d*) The definitions contained in paragraphs (*a*), (*b*) and (*d*) of article 96 of the Convention on International Civil Aviation signed at Chicago on 7 December 1944 shall apply to this Agreement.

(*e*) The term "traffic requirements" shall mean the demand for the carriage of passengers, cargo and/or mail between any of the points on the route or routes granted to each Contracting State.

(*f*) The term "capacity" shall mean the space in an aircraft intended for use in meeting the demand for the carriage of passengers, cargo and/or mail.

(*g*) The term "air route" shall mean the fixed itinerary followed by an aircraft which provides a regular service for the public transport of passengers, cargo and/or mail.

Article II

The two Contracting Parties grant each other the rights specified in the annex¹ to this Agreement, to the extent described in the said annex, for the purpose of establishing international commercial air routes and services between their respective territories.

Article III

(*a*) The air services described in the annex may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights are granted, but not before :

1. The Contracting Party to whom the rights are granted has designated an airline of its nationality for the route or routes specified in the annex, and

2. The Contracting Party granting the rights has given the appropriate operating permission to the designated airline, which it shall do without delay, subject to paragraph (*b*) of this article and to article VII.

(*b*) The airline designated by one of the Contracting Parties shall be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfil the conditions prescribed under the laws, rules and regulations normally applied by those authorities to the operation of commercial air transport services.

(*c*) In the case of areas under military occupation or affected by military requirements the inauguration of the services shall be subject to the approval of the competent military authorities of the country concerned.

¹ See p. 76 of this volume.

Article IV

In order to prevent discriminatory practices and to ensure equality of treatment, both Contracting Parties agree that :

(a) Each Contracting Party may impose or permit to be imposed fair and reasonable charges for the use of airports and other facilities. Both Contracting Parties agree, however, that these charges 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.

(b) Fuel, lubricating oils and spare parts introduced into or taken on board in the territory of one Contracting Party and intended solely for use by aircraft of the airline designated by the other Contracting Party shall be accorded, with respect to customs duties, inspection fees or similar national duties or charges imposed by the Contracting Party into whose territory they are introduced, the same treatment as that applied to fuel, lubricating oils and spare parts intended for use by national airlines and airlines of the most favoured nation.

(c) Aircraft and fuel, lubricating oils, spare parts, regular equipment and aircraft stores carried on board the civil aircraft of the airline of one Contracting Party authorized to operate the routes and services described in the annex shall, on arrival in or departure from the territory of the other Contracting Party, be exempt from customs duties, inspection fees or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

(d) Goods exempted under the terms of the foregoing paragraph may not be disembarked save with the approval of the customs authorities of the other Contracting Party, and if they are to be re-exported they shall, pending their re-exportation, be kept under the supervision of those authorities.

Article V

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one of the Contracting Parties shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services described in the annex, subject to payment of any registration fees which may be required for the recognition of such validity. Each Contracting Party, however, reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another State.

Article VI

(a) The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air

navigation or to the operation and navigation of such aircraft while within its territory, shall apply to aircraft operated by the designated airline of the other Contracting Party without distinction as to nationality and shall be observed and complied with by such aircraft upon entry into or departure from the territory of the first Contracting Party or while within that territory.

(b) The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crews or cargo of aircraft, such as regulations concerning entry, clearance, immigration, passports, customs, quarantine and other formalities, shall be observed and complied by or on behalf of the passengers, crews and cargos of aircraft operated by the designated airline of the other Contracting Party on entry into and departure from and while within the territory of the first Contracting Party.

Article VII

Each Contracting Party reserves the right to withhold or revoke the exercise of the rights specified in the annex to this Agreement by an airline designated by the other Contracting Party in any case where the substantial ownership and effective control of that airline are not vested in nationals of the other Contracting Party. The same reservation shall apply in any case where the airline designated by the other Contracting Party fails to comply with the laws and regulations of the first Contracting Party referred to in the preceding article or to fulfil the obligations assumed under this Agreement or its annex.

Article VIII

This Agreement and the contracts and concessions connected therewith shall be registered with the International Civil Aviation Organization.

Article IX

The aeronautical authorities of the two Contracting Parties shall consult each other whenever either of them so requests in order to determine whether it is desirable to modify one or more of the provisions of the annex to this Agreement ; they shall also consult each other in order to determine whether the principles laid down in this Agreement and its annex are being applied by the airlines designated by the Governments of the two Contracting Parties. Such consultations shall begin within ninety days from the date of the request.

If the consultations result in an agreement to modify the provisions of the annex, such modifications shall be made by direct agreement between the aeronautical authorities of the two Contracting Parties and shall be confirmed by an exchange of diplomatic notes.

Article X

The Contracting Parties shall endeavour to settle any dispute between them relating to the interpretation or application of this Agreement by negotiations between themselves. If the Contracting Parties fail to settle the dispute by means of such negotiations :

(a) They may refer the dispute for arbitration to any person, body or tribunal designated by agreement between the two Contracting Parties, such agreement to include the designation of the arbitrator or arbitral tribunal, the matter for arbitration and the appropriate arbitral procedure ; or,

(b) If the Parties cannot agree on any of the foregoing points or if, having agreed to refer the matter to an arbitral tribunal, they cannot reach agreement as to its composition, either of them may refer the dispute for arbitration to any competent tribunal which may hereafter be established within the International Civil Aviation Organization or, if there is no such tribunal, to the Council of that Organization.

The Contracting Parties shall comply with the decision given in accordance with this article.

If either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision given in accordance with this article, the other Contracting Party may limit, suspend or revoke any right granted by virtue of this Agreement to the Contracting Party or the designated airline in default.

Article XI

Whenever either Contracting Party wishes to terminate this Agreement, it may give notice of termination to the other Contracting Party, such notice to be simultaneously communicated to the International Civil Aviation Organization.

If it is decided to proceed in this manner, this Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party unless it is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the Contracting Party to which the notice has been sent, the notice shall be deemed to have been received fourteen days after it has come to the knowledge of the International Civil Aviation Organization.

Article XII

This Agreement shall enter into force provisionally as soon as it has been signed and definitively when it has been approved and ratified in accordance with the domestic legislation of each of the Contracting Parties.

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

DONE at Lima, on 22 September 1952, in duplicate, in the Spanish and Dutch languages, both texts being equally authentic.

(Signed) Ricardo RIVERA SCHREIBER
Minister of Foreign Affairs

(Signed) Lodewijk A. GASTMANN
Ambassador Extraordinary and Minister Plenipotentiary
of the Netherlands

A N N E X

(1) The Government of the Republic of Peru grants to the Government of the Kingdom of the Netherlands the right to operate an air transport service in and over its territory by an airline of Netherlands nationality to be designated by the Government of the Kingdom of the Netherlands on the routes specified in schedule I.¹

(2) The Government of the Kingdom of the Netherlands grants to the Government of the Republic of Peru the right to operate an air transport service in and over its territory by an airline of Peruvian nationality to be designated by the Government of the Republic of Peru on the routes specified in schedule II.²

(3) The airline designated by one Contracting Party in accordance with the provisions laid down in the Agreement shall enjoy, in the territory of the other Contracting Party, rights of transit and of stops for non-traffic purposes and the right to pick up and set down international traffic in passengers, mail and cargo on each of the routes indicated in the respective schedules, excluding, however, the right to engage in cabotage or internal commercial traffic.

(4) In the operation of the designated airlines, on the common sections of the routes described in this annex, the interests of the airline of the other Contracting Party shall be taken into consideration so as not to affect unduly the services it provides and so as to protect the interests of both airlines.

(5) The air transport services provided by the airlines of both countries shall bear a close relationship to the needs and requirements of the public for such services.

(6) The airlines designated in conformity with this Agreement and its annex shall endeavour to retain as the primary objective of their services the provision of capacity sufficient to satisfy traffic demands between the territory of the country to which the airline belongs and the territory of the country of destination of the traffic.

¹ See p. 78 of this volume.

² See p. 80 of this volume.

(7) The right of an airline designated by either of the two countries to pick up or set down at points in the territory of the other country international traffic in passengers, cargo and mail destined for or coming from third countries, at one or more points on the routes specified in the attached schedules, shall be exercised in accordance with the general principles of air traffic to which both Governments subscribe and applied in an orderly manner, and shall be subject to the general principle that the airlines should endeavour to relate their capacity to :

1. Traffic requirements between the country of origin and the countries of destination ;
2. The requirements of through airline operation ;
3. The traffic requirements of the area through which the airline passes, after taking account of local and regional services.

(8) The rates to be charged on each of the agreed services shall be fixed at reasonable levels, due regard being paid to all relevant factors such as economy of operation, reasonable profit, the characteristics of each service and the rates charged by other airlines on any part of the route.

These rates shall be fixed in accordance with the following provisions :

The rates shall, where possible, be fixed for each route by agreement between the designated airlines.

Such agreement shall be based on the rates system of the International Air Transport Association (IATA).

Notice of the rates so agreed on shall be given to the aeronautical authorities of the two Contracting Parties.

In the event of disagreement between the designated airlines concerning the rates or of objection thereto by the aeronautical authorities of one of the Contracting Parties, the aeronautical authorities of the Kingdom of the Netherlands and of the Republic of Peru shall endeavour to fix the rates by agreement between themselves.

If the Contracting Parties fail to reach an agreement the matter shall be referred to arbitration as provided for in article X of this Agreement.

SCHEDULE I

Routes to be operated by the airline designated by the Government of the Kingdom of the Netherlands

From the Netherlands to :

(1) Curaçao and/or Aruba via points in Venezuela, Colombia and Ecuador to Lima and other points in Peru to be fixed by subsequent agreement, and points beyond outside Peru, in both directions.

(2) Surinam via points in Venezuela, Colombia and Ecuador to Lima and other points in Peru to be fixed by subsequent agreement, and points beyond in both directions.

Any of the points indicated on the routes specified in this schedule may be omitted on any or all flights at the option of the designated airline.

SCHEDULE II

Routes to be operated by the airline designated by the Government of the Republic of Peru

(1) From Lima via points in Ecuador, Colombia, Panama, Cuba and/or Venezuela, and thence :

(a) Via the Azores and/or Lisbon to London and Amsterdam ;

(b) Via New York, Montreal, Gander and/or London to Amsterdam and other points in the Netherlands to be fixed by subsequent agreement, and beyond, in both directions.

Any of the points indicated on the routes specified in this schedule may be omitted on any or all flights at the option of the designated airline.
