No. 11949

NETHERLANDS
and
MEXICO

Air Transport Agreement (with route schedule). Signed at Mexico City on 6 December 1971

Authentic texts: Dutch, Spanish and English.

Registered by the International Civil Aviation Organization on 13 September 1972.

PAYS-BAS
et
MEXIQUE

Accord relatif aux transports aériens (avec tableau de routes). Signé à Mexico le 6 décembre 1971

Textes authentiques : néerlandais, espagnol et anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 13 septembre 1972.

AIR TRANSPORT AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED MEXICAN STATES

The Government of the Kingdom of the Netherlands and the Government of the United Mexican States;

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;[2]

Considering that the possibilities of commercial aviation as a means of transport and of promoting friendly understanding and goodwill among peoples are increasing from day to day;

Desiring to strengthen even more the cultural and economic bonds which link their peoples and the understanding and goodwill which exist between them;

Considering that it is desirable to organize, on equitable bases of equality and reciprocity, regular air services between the two countries, in order to obtain greater cooperation in the field of international air transportation;

Desiring to conclude an Agreement which will facilitate the attainment of the aforementioned objectives;

Have accordingly appointed duly authorized plenipotentiaries for this purpose, who have agreed as follows :

Article 1

For the purposes of this Agreement :

A. The word " Agreement " shall mean the Agreement and the route schedule annexed thereto.

B. The term " aeronautical authorities " shall mean in the case of the Kingdom of the Netherlands, for the Netherlands, the Director General of Civil Aviation of the Netherlands, and for the Netherlands Antilles, the Director of Civil Aviation of the Netherlands Antilles or any person or body authorized to perform the functions exercised at present by them, and in the case of the United Mexican States, the Secretariat of Communications and Transports or any person or body authorized to perform the functions exercised at present by the Secretariat of Communications and Transports.

[1] Came into force provisionally on 6 December 1971, the date of signature, in accordance with article 18.

[2] United Nations, *Treaty Series*, vol. 15, p. 295; for the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209, and vol. 740, p. 21.

C. The term " airline " shall mean any air transport enterprise offering or operating an international air service.

D. The term " designated airline " shall mean an airline which one of the Contracting Parties have notified the other Contracting Party to be the airline which will operate a route or routes specified in the route schedule annexed to the Agreement.

E. The terms " territory ", " air service ", " international air service " and " stop for non-traffic purposes " will have for the purpose of the present Agreement the meaning given by the International Civil Aviation Convention of Chicago, of December 7, 1944, in articles 2 and 96.

F. The term " capacity of an aircraft " shall mean the pay load of an aircraft expressed in relation with the number of seats of passengers and the weight for cargo and mail.

G. The term " capacity offered " shall mean the total of capacities of the aircraft utilized for the operation of each one of the agreed air services multiplied by the frequencies with which these aircraft operate over a given period.

H. The term " air route " shall mean the scheduled route followed by an aircraft that is in regular service for public transport of passengers, cargo or mail.

I. The term " specified route " shall mean the route described in the route schedule attached to this Agreement.

J. The term " passenger load factor " shall mean the relation between the number of passengers carried by an airline, on a specified route over a given period divided by the number of seats offered by the same airline on the same route and during the same period.

K. The term " frequency " shall mean the number of roundtrips over a given period that an airline operates on a specified route.

L. The term " change of gauge " shall mean the change of an aircraft for another, with different capacity on a specified route.

M. The term " scheduled flights " shall mean the flights made by the airlines designated on specified routes.

N. The term " through plane service " shall mean the service offered by an airline without changing aircraft, from a point in the territory of one Contracting Party to a point in the territory of the other Contracting Party and beyond the aforesaid points.

Article 2

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement with the purpose of establishing air services on the specified routes in the route schedule annexed.

2. Except otherwise agreed in this Agreement, the airline designated by each Contracting Party shall enjoy, in the operation of international services, the following rights :

a) To fly without landing across the territory of the other Contracting Party;

b) To make stops for non-traffic purposes in said territory;

c) To embark and disembark passengers, cargo and mail in international traffic in said territory, at the points specified in the annexed route schedule.

3. The fact that such rights may not be exercised immediately shall not preclude the subsequent inauguration of air services by the airlines of the Party to whom such rights are granted over the routes specified in the said route schedule.

4. Both Contracting Parties agree that for the purpose of this agreement cargo transportation is complementary to the passengers transportation; therefore the operation of exclusive cargo services will be subject to negotiations between both Parties.

Article 3

1. Upon entry into effect of the present Agreement the aeronautical authorities of both Contracting Parties shall communicate to each other as soon as possible the relevant information on authorizations granted to operate the routes specified in the route schedule.

2. Air services on a specified route may be inaugurated immediately or at a later date at the option of the Party to whom the rights are granted after that Party has designated an airline for that route and the other Party has given the appropriate operating permission.

Such other Party shall be bound to give this permission requiring from the designated airline to qualify before the competent aeronautical authorities of that Party, under the laws and regulations normally applied by these authorities.

Article 4

Each Contracting Party reserves the right to withhold or revoke the operating permission granted to the airline designated by the other Contracting

Party, in the event that it is not satisfied that the majority of the ownership and the effective control of said airline are vested in nationals of the other Party in accordance with its respective laws, or in case of failure by such airline to comply with the laws and regulations referred to in this Agreement, or in case of failure of the airline or the Government designating it to fulfil the conditions under which the rights are granted in accordance with this Agreement.

Article 5

1. The laws and regulations of one 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 be applied to the aircraft of the airline designated by the other Party and shall be fulfilled by such aircraft upon entering into or departing from, and while within the territory of the first Party.

2. The laws and regulations of one Party relating to the admission to or departure from its territory of passengers, crew, cargo and mail, such as regulations relating to entry, clearance, immigration, passports, customs and quarantine shall be complied with by passengers, crew, cargo and mail transported on the aircraft of the designated airline of the other Contracting Party upon entrance into or departure from, and while within the territory of the first Party.

Article 6

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party, and still in force, shall be recognized as valid by the other Party for the purpose of operating the routes and services described in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards established pursuant to the Convention on International Civil Aviation. Each Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another State.

Article 7

1. Each of the Parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control. Each of the Parties agrees, however, that these charges shall not be

higher than those paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

2. Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuels and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.

3. Supplies of fuels, lubricants, spare parts, regular equipment and aircraft stores introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party or taken on board the aircraft operated by such designated airline and intended solely for use in the operation of international services shall be exempt from all national duties and charges, including customs duties and inspection fees imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are taken on board. The materials referred to above may be required to be kept under customs supervision or control.

4. The regular airborne equipment, spare parts, aircraft stores and supplies of fuels and lubricants retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of that Party, who may require that those materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 8

Both Contracting Parties agree that there shall be a fair and equal opportunity for the designated airlines of each Party to operate the agreed air services between their territories.

Article 9

In the operation by the designated airlines of the air services mentioned in this Agreement, the interests of the airlines of the other Contracting Party will be taken into consideration, so as not to affect unduly the services which the latter provides on all or parts of the same routes.

Article 10

1. It is agreed between the two Contracting Parties that the services provided by the airline(s) designated under this Agreement and its route schedule shall retain as principal objective the provision of capacity adequate to the traffic demands between the country of which the airline is a carrier and the countries of destination.

2. The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

3. Both Parties recognize that the development of local and regional services is a legitimate right of each of their countries. They agree therefore to consult periodically on the manner in which the standards mentioned in this article are being complied with by the respective designated airlines, in order to ensure that their respective interests in the local and regional services as well as the continental services are not being harmed.

4. Every change of gauge justifiable for reasons of economy of operation, shall be permitted in any stop on the specified routes. Nevertheless, no change of gauge may be made in the territory of the other Party when it modifies the characteristics of the operation of a through airline service or if it is incompatible with the principles enunciated in the present Agreement.

5. Before effecting an increase in capacity offered on a specified route or of the frequencies on said route, notification will be given by the aeronautical authorities of the Party concerned to the other Contracting Party at least fifteen (15) days in advance.

If the other Party considers that the increase is not justified in the light of the traffic volume on the route or that it is harmful to the interests of its designated airline, the latter may request a consultation with the other Party within a period of fifteen (15) days. Such consultation shall be initiated within the next thirty (30) days after the request and the designated airlines shall supply all necessary traffic information required to determine the necessity or justification of the proposed increase. In the event that no agreement is reached within ninety (90) days following the request for consultation, the issue shall be submitted to arbitration in accordance with article 14 of this Agreement. Meanwhile the proposed increase shall not take effect.

Article 11

1. The tariffs to be charged by the airlines of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels due regard being paid to all relevant factors including

cost of operation, reasonable profit, characteristics of service, and the tariffs of other airlines.

2. Subject to the provision of paragraph 4 of this article, no tariff shall come into force if the aeronautical authorities of either Contracting Party have not approved it.

3. The tariffs referred to in paragraph 1 of this article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, in consultation with other airlines operating over the whole or part of the route, and such agreement shall, where possible, be reached through the procedures of IATA, and be subject to approval of the aeronautical authorities of both Contracting Parties.

4. The tariffs so agreed, as well as the conditions upon which those tariffs depend and the conditions for any auxiliary functions which are associated with the application of those tariffs, shall be submitted for the approval of the aeronautical authorities of the Contracting Parties at least forty-five (45) days before the proposed date of their introduction; in special cases, this time limit may be reduced, subject to the agreement of the said authorities.

5. If the designated airlines cannot agree on any of these tariffs, or if for some other reason a tariff cannot be fixed in accordance with the provisions of paragraph 3 of this article, or if during the first 15 days of the 45 day period referred to in paragraph 4 of this article one Contracting Party gives the other Contracting Party notice of its dissatisfaction with any tariff agreed in accordance with the provisions of paragraph 3 of this article, the aeronautical authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

6. It is understood that the procedure provided for in the paragraph 5, shall be applicable only in cases of extreme conflict between the airlines designated by the Contracting Parties, or between the designated airline and the aeronautical authorities concerned. Normal cases in which approval of rates is withheld due to failure to comply with certain requirements on the part of the airline, seeking the approval, or due to certain modifications in the rules which apply domestically, can always be solved directly between the designated airline and the aeronautical authorities concerned.

7. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 4 of this article and on the determination of any tariff under paragraph 5, the dispute shall be settled in accordance with the provisions of article 14.

8. The tariffs established in accordance with the provisions of this article shall remain in force until new tariffs have been established in accordance with the provisions of this article.

Article 12

1. Both Contracting Parties agree that, subject to the provisions of this article, a designated airline of either Contracting Party may enter into a pool arrangement for the operation of any of the routes specified in the route schedule to this Agreement.

2. " Pool " means any arrangement made by a designated airline with any other airline or airlines of the same or different nationalities for the purpose of operating jointly any of the agreed services and to share among themselves the revenue and expenses thereof.

3. For the purpose of such pool a designated airline may establish schedules, time-tables, combined or through joint fares and rates, subject to the provisions of article 11; enter into lease, charter and interchange of equipment.

4. Any arrangement entered upon by a designated airline of one Contracting Party must be notified in writing to the other Contracting Party.

5. Arrangements referred to in this article are limited to pools on any of the specified routes :

a) Between the designated airlines of the Contracting Parties;

b) Between a designated airline and other airline or airlines of the same Contracting Party;

c) Between a designated airline of one Contracting Party and an airline or airlines of a third country which is or are authorized by the other Contracting Party to exercise traffic rights at the point in the territory of the other Contracting Party through which the pool service is to be operated.

6. Nothing in this article shall prevent the establishment and operation of the other joint operating organizations, international operating entities of pool arrangements referred to in articles 77 and 79 of the Chicago Convention.

Article 13

1. Consultation between the competent authorities of both Parties may be requested at any time by either Party for the purpose of discussing the interpretation, application or amendment of this Agreement. Such consultation shall begin within a period of sixty (60) days from the date of the receipt of the request by the Ministry of Foreign Affairs of the Kingdom of the Netherlands or the Secretariat of Foreign Relations of the United Mexican States, as the case may be. Should agreement be reached on amendment of the Agreement, such amendment will be formalized by an exchange of diplomatic notes.

2. The amendments agreed upon will be provisionally applied as from the

date of the exchange of diplomatic notes and will become effective as of the date agreed upon by the Parties by subsequent exchange of diplomatic notes, upon approval obtained in accordance with the respective constitutional procedures.

Article 14

1. Except as otherwise provided in this Agreement, any dispute between the Contracting Parties relative to the interpretation or application of this Agreement, which cannot be settled through consultation, upon request of either Contracting Party, shall be submitted to a Tribunal of three arbitrators; each Contracting Party shall name one arbitrator and the third shall be named by agreement of the two arbitrators thus chosen, with the understanding that the third arbitrator cannot be a national of either Contracting Party.

2. Each of the Contracting Parties shall designate an arbitrator within sixty (60) days of the date of delivery by either of the Contracting Parties to the other Contracting Party of a diplomatic note requesting the settlement of a dispute by arbitration; the third arbitrator shall be designated within thirty (30) days from the date of expiration of the sixty (60) days referred to above.

3. If within the term agreed upon no agreement is reached as to the third arbitrator, the post shall be filled by a person appointed by the President of the Council of the International Civil Aviation Organization, in conformity with its practice.

4. Both Contracting Parties undertake to comply with any decision given in conformity with the provisions of this Article. The Arbitral Tribunal shall determine the allocation of the expenses that may result from this procedure.

Article 15

This Agreement and all amendments thereof, shall be registered with the International Civil Aviation Organization.

Article 16

If a general multilateral air transport convention enters into force, for both Contracting Parties, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article 17

Either of the Parties may at any time notify the other Contracting Party of its intention to terminate the present Agreement. This notification shall be sent

simultaneously to the International Civil Aviation Organization. In the event of denunciation by either Party, this Agreement shall terminate six (6) months after the date of receipt by the other Party of the notification of termination, unless, by agreement between the Contracting Parties, said notification is withdrawn before the date of expiration. If the other Contracting Party fails to acknowledge receipt the notification shall be deemed as having been received fourteen (14) days after its receipt by the International Civil Aviation Organization.

Article 18

The present Agreement will become provisionally applicable as of the date of its signature and it will become effective on the date of an exchange of diplomatic notes, stating that the approval constitutionally required by each of the Contracting Parties has been obtained.

Article 19

Unless one of the Parties gives notice to the other of its intention to terminate this Agreement, by action pursuant to article 17, it will remain in force until three (3) years after the date of its signature and may be renewed for successive further periods of three (3) years, through an exchange of diplomatic notes.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, sign the present Agreement.

DONE at Mexico, D.F., on this sixth day of the month of December, nineteen hundred seventy one, in duplicate, in the Netherlands, Spanish and English languages, all three texts being equally authentic.

For the Government
of the Kingdom of the Netherlands:
[*Signed*]
BEREND J. SLINGENBERG
Ambassador Extraordinary
and Plenipotentiary

For the Government
of the United Mexican States:
[*Signed*]
EMILIO O. RABASA
Secretary of Foreign Relations

ROUTE SCHEDULE

SECTION I

An airline designated by the Government of the United Mexican States shall be entitled to operate air services in both directions, on the route specified:

Points in Mexico–Toronto and/or Montreal–Amsterdam.

SECTION II

An airline designated by the Government of the Kingdom of the Netherlands shall be entitled to operate air services in both directions, on each route specified :

a) Points in the Netherlands–Montreal and/or Toronto–Chicago and/or Houston –Mexico City.

b) Points in the Netherlands Antilles–Barranquilla–Panama–San José–Guatemala–Kingston–Montego Bay–Cozumel–Can Cum–Mexico City.

SECTION III

1. The airline designated by the Government of the United Mexican States shall be entitled to operate four frequencies per week in both directions with Boeing 747 or any similar type of aircraft.

2. The airline designated by the Government of the Kingdom of the Netherlands in route *a* of Section II shall be an airline domiciled in the Netherlands and shall be entitled to operate four frequencies per week in both directions with Boeing 747 or any similar type of aircraft.

3. The airline designated by the Government of the Kingdom of the Netherlands in route *b* of section II shall be an airline domiciled in the Netherlands Antilles and shall be entitled to operate three frequencies per week in both directions with Douglas DC-9 or any similar type of aircraft.

4. The designated airlines may omit any or all of the intermediate points specified in section I and II above, with the exception of Cozumel in route *b* of section II, on any or all flights.

5. The airline designated by the Government of the United Mexican States shall enjoy full traffic rights on the route specified in section I.

6. The airline designated by the Government of the Kingdom of the Netherlands in route *a* of section II shall not enjoy commercial traffic rights between Montreal, Toronto, Chicago and Houston on the one hand and Mexico City on the other.

7. The airline designated by the Government of the Kingdom of the Netherlands in route *b* of section II shall enjoy commercial traffic rights only between the Netherlands Antilles and Mexico City and between the Netherlands Antilles, Barranquilla and Guatemala on the one hand and Cozumel and Can Cum on the other.