

No. 18807

**NETHERLANDS
and
GUATEMALA**

Agreement for air services between and beyond their respective territories (with annexed route schedule). Signed at The Hague on 15 December 1977

Authentic texts: Dutch, English and Spanish.

Registered by the International Civil Aviation Organization on 12 May 1980.

**PAYS-BAS
et
GUATEMALA**

Accord relatif aux services aériens entre leurs territoires respectifs et au-delà (avec tableau de routes annexé). Signé à La Haye le 15 décembre 1977

Textes authentiques : néerlandais, anglais et espagnol.

Enregistré par l'Organisation de l'aviation civile internationale le 12 mai 1980.

AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF GUATEMALA FOR AIR SERVICES BE- TWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the Kingdom of the Netherlands and the Government of the Republic of Guatemala, hereinafter referred to as the Contracting Parties,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944,²

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories in the spirit of ample cooperation and equitable reciprocity,

Have agreed as follows:

Article I. For the purpose of this Agreement, unless the context otherwise requires:

a. The term “Aeronautical Authorities” means, in the case of the Republic of Guatemala, the Ministry of Communications and Public Works, and any person or body authorized to perform any functions at present exercised by the said Ministry or similar functions; and, in the case of the Kingdom of the Netherlands, the Ministry of Transport and Public Works, and any person or body authorized to perform any functions at present exercised by the said Ministry or similar functions.

b. The term “the Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944.

c. The term “designated airline” means an airline which has been designated and authorized in accordance with article III of the present Agreement.

d. The term “tariff” means the prices to be paid for carriage of passengers, baggage and freight and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.

e. The terms “territory”, “airline”, “air service”, “international air service” and “stop for non-traffic purposes” have the meanings respectively assigned to them in articles 2 and 96 of the Convention.

f. The term “air route” means the pre-established itinerary followed by an aircraft assigned to a regular air service.

g. The term “capacity offered” means the total of the capacities of the aircraft used in the operation of each one of the agreed services, multiplied by the frequency operated by such aircraft in a given period.

h. The term “frequency” means the number of return flights in a given period which an airline operates on a specified route.

¹ Came into force on 6 June 1979, the date on which the Contracting Parties informed each other in writing that the constitutional formalities had been completed, in accordance with article XVI (1).

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; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217, and vol. 1008, p. 213.

i. The term “fifth freedom of the air” means the privilege to embark and to disembark passengers, freight and mail with destination to or origin from third States.

Article II. 1. For the purpose of establishing international regular air services each Contracting Party grants to the other Contracting Party the following rights for the designated airline of that other Contracting Party:

- a. To fly without landing across the territory of the other Contracting Party;
- b. To make stops in the said territory for non-traffic purposes; and
- c. To make stops in the said territory for the purpose of taking up and putting down international traffic in passengers, cargo and mail, separately or in combination, while operating a service on a route agreed upon and specified in the annex drawn up in application of this Agreement; such services and routes are hereafter referred to as “agreed services” and “specified routes” respectively.

2. Nothing in paragraph 1 of this article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

Article III. 1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this article, without delay grant to the airline designated the appropriate operating authorizations.

3. The Aeronautical Authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws, regulations and procedures normally and reasonably applied to the operation of international air services by such Authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to grant the operating authorizations referred to in paragraph 2 of this article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in article II, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

5. Subject to the provisions of paragraph 3 of this article, when an airline has been so designated and authorized, it may begin at any time to operate the agreed services for which it has been designated, provided that a tariff established in accordance with the provisions of article X of this Agreement is in force in respect of those services.

6. The designated airline shall submit for approval to the Aeronautical Authorities of the other Contracting Party at least 30 days prior to the commencement of the operation of an agreed service the frequency, schedule and type of aircraft. The same applies to subsequent modifications.

Article IV. 1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in article II of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- a. In any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or
- b. In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- c. In case the airline otherwise fails to operate in accordance with the provisions of this Agreement and its annex.

2. The right to revoke, suspend or impose conditions shall be exercised after consultation with the other Contracting Party unless immediate revocation, suspension or imposition of conditions is essential to prevent further infringements of laws and regulations or further failure to operate in accordance with the provisions of this Agreement and its annex.

Article V. 1. There shall be fair and equitable opportunity for the designated airline of each of the Contracting Parties to operate the agreed services on the specified routes.

2. In operating the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same routes.

3. The air services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirement of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail between the territory of the Party which has designated the airline and the countries of ultimate destination of the traffic.

4. Provision for the carriage of passengers, cargo and mail both taken up and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- a. Traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- b. Traffic requirements of the area through which the airline passes after taking account of other transport services established by airlines of the States comprising the area; and
- c. The requirements of through airline operation.

Article VI. 1. The laws, regulations and procedures 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 in its territory, shall be applied to the aircraft of the airline designated by the other Contracting Party and shall be complied with by those aircraft upon entrance into, departure from and while within the territory of the first Contracting Party.

2. The laws and regulations of a Contracting Party respecting entry, clearance, immigration, passports, customs and quarantine shall be complied with by or on behalf of crews, passengers, cargo and mail upon entrance into, departure from and while within the territory of such a Contracting Party.

3. Passengers, baggage and cargo in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence and air piracy, be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article VII. 1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the air services on the specified routes provided that such certificates or licences were issued or rendered valid pursuant to and in conformity with the standards established under the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licences granted to any of its nationals by the other Contracting Party.

2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the Aeronautical Authorities of one Contracting Party to any person or aircraft, should permit a difference from the standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the Aeronautical Authorities of the other Contracting Party may request consultations with the Aeronautical Authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement in these matters regarding flight safety will constitute grounds for the application of article IV of this Agreement.

Article VIII. 1. The charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities on the aircraft of a designated airline of the other Contracting Party shall not be higher than those imposed on aircraft of other airlines engaged in similar international air services.

2. Neither of the Contracting Parties shall give a preference to any other airline over a designated airline of the other Contracting Party in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways and air traffic services and associated facilities under its control.

Article IX. 1. Aircraft operated on international air services by the designated airlines of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuel 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 similar charges 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.

2. Supplies of fuel, 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 exempted from all 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.

3. The regular airborne equipment, spare parts, aircraft stores and supplies of fuel 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 X. 1. The tariffs to be charged by the designated airlines of one Contracting Party for transport 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. The tariffs referred to in paragraph 1 of this article shall, if possible, be agreed between the designated airlines concerned of both Contracting Parties, in consultation with other airlines operating over all or part of the route, and such agreement shall, where possible, be reached through the procedures of the International Air Transport Association for establishing tariffs.

3. The tariffs so agreed shall be submitted for the approval of the Aeronautical Authorities of the Contracting Parties at least sixty (60) 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.

4. 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 2 of this article, or if during the first thirty (30) days of the sixty (60) days period referred to in paragraph 3 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 2 of this article, the Aeronautical Authorities of the Contracting Parties shall try to determine the tariff by agreement between themselves.

5. If the Aeronautical Authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 of this article and on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of article XIII of this Agreement.

6. No tariff shall come into force if the Aeronautical Authorities of either Contracting Party have not approved it in accordance with their national regulations.

7. 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.

8. Both Contracting Parties shall establish efficient mechanisms within their own jurisdiction to investigate tariff violations and take the necessary corrective measures including the imposition of uniform and consistent sanctions.

Article XI. Each Contracting Party grants to the airline of the other Contracting Party the right of free transfer in convertible currency of the excess of receipts over expenditure, obtained by each in the normal course of its business.

Such transfers shall be granted regularly and currently and shall be based on prevailing foreign exchange market rates applicable to current payments.

No charges, other than normal bank charges, shall be applicable to such transfers.

Article XII. In a spirit of close co-operation, the Aeronautical Authorities of the Contracting Parties shall consult each other whenever necessary for the purpose of ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and the annex thereto.

Article XIII. 1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by direct negotiation.

2. If the Contracting Parties fail to reach a settlement by direct negotiation, they may agree to refer the dispute for decision to some other person or body; if they do not so agree, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third, who shall act as President of the tribunal, to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal; the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision given under paragraph 2 of this article.

4. The expenses of the arbitral tribunal shall be shared equally by the Contracting Parties.

Article XIV. 1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement or the annex thereto, it may request consultation with the other Contracting Party; such consultation, which may be between the Aeronautical Authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of the request.

2. Any modifications of this Agreement decided upon during the consultation referred to in paragraph 1 above shall be agreed upon by an exchange of diplomatic notes between the Contracting Parties and shall take effect on the date on which both Contracting Parties have informed each other in writing that the formalities constitutionally required in their respective countries have been complied with.

3. Any modifications of the annex to this Agreement decided upon during the consultation referred to in paragraph 1 above shall be agreed upon in writing between the Aeronautical Authorities and shall take immediate effect.

Article XV. This Agreement and any amendment thereof shall be registered with the International Civil Aviation Organization.

Article XVI. 1. This Agreement shall come into force on the day on which the Contracting Parties have informed each other in writing that the formalities constitutionally required in their respective countries have been complied with.

2. As regards the Kingdom of the Netherlands this Agreement shall be applicable only to the Kingdom in Europe.

Article XVII. Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization, and shall become effective twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless such notice is withdrawn by mutual 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 (14) days after the receipt of the notice by the International Civil Aviation Organization.

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

DONE at The Hague on December 15, 1977, in duplicate in the Dutch, English and Spanish languages, all three texts being equally authentic.

For the Kingdom
of the Netherlands:
M. VAN DER STOEL

For the Republic
of Guatemala:
A. F. MALDONADO

ANNEX

1. Routes to be operated by the airline designated by the Government of the Republic of Guatemala:

ROUTE I

Intermediate points

Guatemala	San Salvador Managua San Jose, Costa Rica Bogotá Cartagena Caracas San Juan, Puerto Rico Santo Domingo Pointe à Pitre Madrid Paris Zurich	Amsterdam
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ROUTE II

Intermediate points

Guatemala	Miami Dallas Fort Worth Montreal	Amsterdam
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2. Routes to be operated by the airline designated by the Government of the Kingdom of the Netherlands:

	ROUTE I	
	<i>Intermediate points</i>	
Amsterdam	Frankfurt	Guatemala
	Zurich	
	Lisbon	
	Caracas	
	Points in the Caribbean	
	Barranquilla	
	Panama	
	San Jose, Costa Rica	
	ROUTE II	
	<i>Intermediate points</i>	
Amsterdam	Montreal	Guatemala
	Houston	
	Mexico	

3. Points on the specified routes may, at the option of the designated airline, be omitted on any or all flights.

4. Nothing will prevent the designated airline to serve other points than those listed in paragraphs 1 and 2 provided that no traffic rights be exercised between those points and the points in the territory of the other Contracting Party.