

N° 4833

CHAMBRE DES DEPUTES

Session ordinaire 2000-2001

PROJET DE LOI

portant approbation

- de l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la Région Administrative spéciale de Hong Kong de la République Populaire de Chine relatif aux services aériens, signé à Hong Kong, le 3 juin 1998;
- de l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement du Royaume du Népal relatif aux services aériens signé à Luxembourg, le 18 juin 1999;
- de l'Accord sous forme d'échange de lettres des 13 et 21 juillet 1998 entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement des Etats-Unis d'Amérique amendant l'Accord relatif aux services aériens, signé à Luxembourg, le 19 août 1986, tel qu'il a été amendé par Accord sous forme d'échange de lettres du 6 juin 1995

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*(Dépôt: le 21.8.2001)***SOMMAIRE:**

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ARRETE GRAND-DUCAL DE DEPOT

Nous HENRI, Grand-Duc de Luxembourg, Duc de Nassau,

Sur le rapport de Notre Ministre des Affaires Etrangères et du Commerce Extérieur et après délibération du Gouvernement en Conseil;

Arretons:

Article unique.— Notre Ministre des Affaires Etrangères et du Commerce Extérieur est autorisée à déposer en Notre nom à la Chambre des Députés le projet de loi portant approbation

- de l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la Région Administrative spéciale de Hong Kong de la République Populaire de Chine relatif aux services aériens, signé à Hong Kong, le 3 juin 1998;
- de l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement du Royaume du Népal relatif aux services aériens signé à Luxembourg, le 18 juin 1999;
- de l'Accord sous forme d'échange de lettres des 13 et 21 juillet 1998 entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement des Etats-Unis d'Amérique amendement l'Accord relatif aux services aériens, signé à Luxembourg, le 19 août 1986, tel qu'il a été amendé par Accord sous forme d'échange de lettres du 6 juin 1995.

Cabasson, le 1er août 2001

*Le Ministre des Affaires Etrangères
et du Commerce Extérieur,*

Lydie POLFER

HENRI

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TEXTE DU PROJET DE LOI

Art. 1er.— Est approuvé l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement de la Région Administrative spéciale de Hong Kong de la République Populaire de Chine relatif aux services aériens, signé à Hong Kong, le 3 juin 1998.

Art. 2.— Est approuvé l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement du Royaume de Népal relatif aux services aériens signé à Luxembourg, le 18 juin 1999.

Art. 3.— Est approuvé l'Accord sous forme d'échange de lettres des 13 et 21 juillet 1998 entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement des Etats-Unis d'Amérique amendement l'Accord relatif aux services aériens, signé à Luxembourg, le 19 août 1986, tel qu'il a été amendé par Accord sous forme d'échange de lettres du 6 juin 1995.

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EXPOSE DES MOTIFS

Le présent projet de loi portant approbation de deux accords aériens bilatéraux, ainsi que de l'Accord sous forme d'échange de lettres portant amendement de l'Accord relatif aux services aériens entre le Luxembourg et les Etats-Unis, fait suite à plusieurs projets similaires, qui entre-temps ont été adoptés.

Les deux accords qui font l'objet du présent projet de loi ont été signés avec la Région Administrative spéciale de Hong Kong de la République Populaire de Chine et le Royaume du Népal.

Ces accords sont la confirmation de la politique poursuivie par le Gouvernement en matière de transports aériens ayant pour objectif d'assurer les perspectives d'avenir tant de nos compagnies aériennes nationales en leur procurant un maximum de droits de trafic, que de notre aéroport comme plate-forme internationale pour le trafic de passagers et de fret. Ceci étant, l'exposé des motifs développé à l'appui des projets de loi déposés précédemment, garde toute sa valeur.

C'est pourquoi cet exposé des motifs est reproduit ci-après, avec quelques modifications de texte, tout en étant complété à la fin par quelques considérations tenant plus spécifiquement aux trois accords dont question.

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CONSIDERATIONS GENERALES

Dans le passé, l'existence d'un accord aérien bilatéral a constitué, dans un certain nombre de cas, un préalable indispensable à l'ouverture de relations aériennes régulières, soit par un transporteur aérien luxembourgeois, soit par un transporteur aérien de l'autre partenaire bilatéral. D'autres accords négociés, soit à la demande luxembourgeoise, soit à la demande de l'autre partie, n'ont pas conduit immédiatement à une mise en oeuvre pratique des droits de trafic négociés, mais ils constituent néanmoins la base juridique indispensable pour l'ouverture de services aériens réguliers, si des besoins futurs s'en faisaient sentir. Ils permettent en effet aux autorités aéronautiques respectives de réagir sans autre délai si un ou des transporteurs aériens de part et d'autre soumettaient une demande d'exploitation de services aériens.

A part l'aspect bilatéral décrit ci-dessus, il faut également voir la conclusion d'accords aériens bilatéraux dans un sens plus large, c'est-à-dire comme un instrument dans la politique du gouvernement pour renforcer notre porte-feuille d'accords aériens bilatéraux en vue d'éventuelles négociations multilatérales futures.

Dans la politique communautaire européenne de libéralisation du transport aérien, un rôle de plus en plus important reviendra à l'avenir aux relations aériennes entre l'Union européenne, considérée comme un marché aérien unique, d'une part, et les pays tiers, d'autre part. Ce dossier est depuis quelque temps à l'étude auprès des services de la Commission et du Conseil européens, l'objectif étant la recherche d'une solution par laquelle la négociation menée par la communauté obtiendrait un meilleur résultat que la somme des négociations bilatérales éventuelles. Le moins qu'on puisse dire à ce stade est que l'approche choisie ne fait pas encore l'unanimité des Etats membres de l'Union européenne. Globalement les avis sont effectivement partagés sur les éventuels avantages et désavantages découlant tant de l'idée même d'une négociation communautaire future que de l'approche pratique à adopter quant à la procédure de négociation proprement dite.

Le gouvernement est d'avis, et cette opinion est partagée par d'autres partenaires européens, que dans l'éventualité de négociations multilatérales futures menées en bloc sous la conduite de la Commission, il devra être tenu compte des acquis bilatéraux, quitte à y apporter certains réaménagements pour éliminer, le cas échéant, des dispositions qui ne seraient plus compatibles avec le droit communautaire.

Les accords qui font l'objet du présent projet de loi ont été conclus en suivant, en règle générale, les recommandations respectives de l'Organisation de l'Aviation Civile Internationale (OACI) et de la Conférence Européenne de l'Aviation Civile (CEAC), tout en s'inspirant d'un modèle d'accord-type en la matière, utilisé par les pays membres de l'OACI. Après ratification les accords seront enregistrés auprès de l'OACI.

Quant au fond, les accords sont tous identiques dans une large mesure, tandis que du point de vue rédactionnel certains articles ont une présentation quelque peu différente d'un accord à l'autre pour répondre aux vœux particuliers exprimés par les parties contractantes respectives.

Les principaux éléments contenus dans les accords sont les suivants:

- les définitions terminologiques arrêtées par la Convention de Chicago;
- l'indication des droits octroyés pour l'exploitation des services c.-à-d. survol, escale technique, escale commerciale, (libertés de l'air);
- la désignation des compagnies aériennes respectives; les accords prévoient la désignation multiple de transporteurs aériens, une pratique qui répond déjà à la politique aéronautique communautaire de ne pas limiter la possibilité de désignation au seul transporteur national;
- la stipulation qu'une autorisation peut être retirée si l'entreprise ne se conforme pas aux termes de l'accord, ni aux lois et règlements de la partie contractante ayant délivrée l'autorisation;
- l'exonération, sous certaines conditions, de tous droits de douane, frais d'inspection et autres droits et taxes similaires des avions utilisés, y compris les équipements normaux, le carburant, les pièces de rechange, les provisions de bord etc.;
- les principes déterminant la capacité de mise en oeuvre et son adaptation à la demande de trafic;
- la procédure d'établissement des tarifs;
- l'application des lois et règlements internes;
- l'engagement des Parties Contractantes de faire respecter les Conventions internationales existantes en matière de sûreté de l'aviation civile;
- le transfert des excédents de recettes réalisés sur le territoire de l'autre Partie Contractante;
- le principe de la consultation périodique entre les autorités aéronautiques;
- la procédure de règlement des différends;
- l'engagement d'adapter l'accord à toute convention multilatérale ultérieure, liant les parties en matière aéronautique;
- l'égalité des chances des entreprises désignées, la sauvegarde de leurs intérêts mutuels ainsi que la primauté de l'intérêt du public.

Les accords prévoient en outre des dispositions relatives aux possibilités d'amendement ou de dénonciation à la demande d'une partie contractante, la production de statistiques sur le trafic aérien, la non-discrimination dans l'application des taxes aéroportuaires et la procédure d'entrée en vigueur.

Tous les accords comprennent une annexe qui définit le tableau des routes classiques, entre le Luxembourg et les autres Parties Contractantes, avec possibilité d'escales intermédiaires et/ou d'escales au-delà dans des pays tiers. Les points à desservir seront fixés ultérieurement d'un commun accord par les autorités aéronautiques concernées en fonction des besoins formulés par le ou les compagnies aériennes intéressées.

Comme d'habitude les négociations avaient été menées en anglais et en conséquence les accords sont tous rédigés en langue anglaise pour éviter ultérieurement des malentendus d'interprétation entre les autorités aéronautiques et les compagnies aériennes concernées.

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CONSIDERATIONS PARTICULIERES

Outre les considérations générales ci-dessus il y a lieu de mentionner encore les considérations particulières suivantes.

Région Administrative spéciale de Hong Kong

Hong Kong n'a jamais constitué un Etat souverain. Aux termes des accords conclus entre la Grande-Bretagne et la Chine, ces anciens territoires sous souveraineté britannique, constituent, depuis leur rétrocession à la Chine le 1er juillet 1997, une Région Administrative spéciale de la Chine populaire. Hong Kong est cependant autorisé à négocier pour son propre compte des accords aériens bilatéraux. L'aéroport de Hong Kong, un des plus importants dans la région, permet à notre transporteur national de fret aérien de consolider les acquis et lui offre des perspectives de développement dans ses relations avec l'Extrême-Orient.

Népal

L'accord conclu avec cet Etat asiatique ne présente pas de dispositions particulières et suit les recommandations de l'Organisation de l'Aviation Civile Internationale (OACI) en s'inspirant d'un modèle d'accord-type en la matière.

Etats-Unis

L'accord aérien existant entre le Grand-Duché de Luxembourg et les Etats-Unis d'Amérique fut signé le 19 août 1986 et ratifié par notre Chambre des Députés le 27 juillet 1988. Il fut une première fois amendé par accord sous forme d'échange de lettres du 6 juin 1995 entre les deux gouvernements respectifs, qui fut approuvé par une loi du 23 avril 1997.

Par échange de lettres des 13 et 21 juillet 1998 un second amendement a été apporté à l'accord aérien de base. L'accord de base de 1986 avait déjà un caractère assez libéral, il y manquait cependant une annexe importante, le tableau des routes, partie essentielle pour la pratique. Après un revirement concernant la politique aéronautique des Etats-Unis, le Gouvernement américain offrit en 1994 des accords aériens bilatéraux très libéraux à neuf Etats européens dont le Luxembourg, ce qui a conduit au 1er amendement sous forme d'échange de lettres du 6 juin 1995 entre les deux gouvernements respectifs.

L'annexe I de l'accord de 1995 excluait seulement la septième liberté de l'air qui concerne les droits de trafic pour un transporteur qui opère entre un pays tiers et l'autre Partie contractante, sans que le vol en question fasse escale à un point dans le territoire de la Partie contractante qui a désigné le transporteur.

Avec le présent Accord sous forme d'échange de lettres, justement cette septième liberté de l'air est également accordée, ce qui favorise bien entendu les compagnies luxembourgeoises et contribue au développement dans notre pays du secteur du transport aérien.

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AGREEMENT

between the Government of the Grand Duchy of Luxembourg and the Government of the Hong Kong Special Administrative Region of the People's Republic of China concerning air services

The Government of the Grand Duchy of Luxembourg and the Government of the Hong Kong Special Administrative Region of the People's Republic of China („the Hong Kong Special Administrative Region“) (hereinafter referred to as the „Contracting Parties“),

Desiring to conclude an Agreement for the purpose of providing the framework for air services between the Grand Duchy of Luxembourg and the Hong Kong Special Administrative Region,

HAVE AGREED as follows:

Article 1

Definitions

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

- (a) the term „aeronautical authorities“ means in the case of the Grand Duchy of Luxembourg, the Minister responsible for Civil Aviation, and in the case of the Hong Kong Special Administrative Region, the Director of Civil Aviation, or, in both cases, any person or body authorised to perform any functions at present exercisable by the above-mentioned authorities or similar functions;
- (b) the term „designated airline“ means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;

- (c) the term „area“ in relation to the Hong Kong Special Administrative Region includes Hong Kong Island, Kowloon and the New Territories and in relation to the Grand Duchy of Luxembourg has the meaning assigned to „territory“ in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;
- (d) the terms „air services“, „international air services“, „airline“ and „stop for non-traffic purposes“ have the meanings respectively assigned to them in Article 96 of the said Convention;
- (e) the term „this Agreement“ includes the Annex hereto and any amendments to it or to this Agreement.

Article 2

Provisions of the Chicago Convention Applicable to International Air Services

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including the Annexes and any amendments to the Convention or to its Annexes which apply to both Contracting Parties, insofar as these provisions are applicable to international air services.

Article 3

Grant of Rights

- (1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services:
 - (a) the right to fly across its area without landing;
 - (b) the right to make stops in its area for non-traffic purposes.
- (2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Annex to this Agreement. Such services and routes are hereinafter called „the agreed services“ and „the specified routes“ respectively. While operating an agreed service on a specified route the designated airlines of each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the area of the other Contracting Party at points determined for that route in accordance with the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo, including mail, separately or in combination.
- (3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, at one point in the area of the other Contracting Party, passengers and cargo, including mail, carried for hire or reward and destined for another point in the area of the other Contracting Party.
- (4) If because of armed conflict, political disturbances or developments, or special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

Article 4

Designation of and Authorisation of Airlines

- (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designations.
- (2) On receipt of such a designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

- (3) (a) The Government of the Hong Kong Special Administrative Region shall have the right to refuse to grant the operating authorisations 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 3(2) of this Agreement, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of the Grand Duchy of Luxembourg or its nationals.
- (b) The Government of the Grand Duchy of Luxembourg shall have the right to refuse to grant the operating authorisations 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 3(2) of this Agreement, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in the Hong Kong Special Administrative Region.
- (4) 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 and regulations normally and reasonably applied to the operation of international air services by such authorities.
- (5) When an airline has been so designated and authorised it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

Article 5

Revocation or Suspension of Operating Authorisation

- (1) Each Contracting Party shall have the right to revoke or suspend an operating authorisation for the exercise of the rights specified in Article 3 (2) 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 those rights:
- (a) (i) in the case of the Government of the Hong Kong Special Administrative Region, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of the Grand Duchy of Luxembourg or its nationals;
- (ii) in the case of the Government of the Grand Duchy of Luxembourg, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in the Hong Kong Special Administrative Region; or
- (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting those rights; or
- (c) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
- (2) Unless immediate revocation or suspension of the operating authorisation mentioned in paragraph (1) of this Article or imposition of the conditions therein is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

Article 6

Principles Governing Operation of Agreed Services

- (1) There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.
- (2) In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements 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 meet the current and reasonably anticipated requirements for the carriage of passengers and cargo, including mail, originating in or destined for the area of the contracting Party which has designated the airline. Provision for the carriage of passengers and cargo, including mail, both taken on board and discharged at points on the specified routes other than points in the area of the Contracting Party which designated the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the area of the Contracting Party which has designated the airline;
 - (b) traffic requirements of the region through which the agreed service passes, taking account of other air services established by airlines of the States comprising that region; and
 - (c) the requirements of through airline operation.
- (4) The capacity to be provided on the specified routes shall be such as is from time to time jointly determined by the Contracting Parties.

Article 7

Tariffs

- (1) The term „tariff“ means one or more of the following:
- (a) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
 - (b) the rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
 - (c) the conditions governing the availability or applicability of any such fare or rate including any benefit attaching to it; and
 - (d) the rate of commission paid by an airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services.
- (2) The tariffs to be, charged by the designated airlines of the Contracting Parties for carriage between the Hong Kong Special Administrative Region and the Grand Duchy of Luxembourg shall be those approved by the aeronautical authorities of both Contracting Parties and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interests of users, reasonable profit and the tariffs of other airlines operating over the whole or part of the same route.
- (3) The tariffs referred to in paragraph (2) of this Article may be agreed by the designated airlines of the Contracting Parties seeking approval of the tariffs, which may consult other airlines operating over the whole or part of the same route, before proposing such tariffs. However, a designated airline shall not be precluded from proposing, nor the aeronautical authorities of the Contracting Parties from approving, any tariff, if that airline shall have failed to obtain the agreement of the other designated airlines to such tariff, or because no other designated airline is operating on the same route. References in this and the preceding paragraph to „the same route“ are to the route operated, not the specified route.
- (4) Any proposed tariff for carriage between the Hong Kong Special Administrative Region and the Grand Duchy of Luxembourg shall be filed with the aeronautical authorities of the Contracting Parties by the designated airline or airlines seeking its approval in such form as the aeronautical authorities may separately require to disclose the particulars referred to in paragraph (1) of this Article. It shall be filed not less than 60 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with the aeronautical authorities of a Contracting Party on the date on which it is received by those aeronautical authorities.

(5) Any proposed tariff may be approved by the aeronautical authorities of a Contracting Party at any time and, provided it has been filed in accordance with paragraph (4) of this Article, shall be deemed to have been approved by the aeronautical authorities of that Contracting Party unless, within 30 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) after the date of filing, the aeronautical authorities of one Contracting Party have served on the aeronautical authorities of the other Contracting Party written notice of disapproval of the proposed tariff.

(6) If a notice of disapproval is given in accordance with the provisions of paragraph (5) of this Article, the aeronautical authorities of the Contracting Parties may jointly determine the tariff. For this purpose, one Contracting Party may, within 30 days of the service of the notice of disapproval, request consultations between the aeronautical authorities of the Contracting Parties which shall be held within 30 days from the date the other Contracting Party receives such request in writing.

(7) If a tariff has been disapproved by the aeronautical authorities of a Contracting Party in accordance with paragraph (5) of this Article, and if the aeronautical authorities of the Contracting Parties have been unable jointly to determine the tariff in accordance with paragraph (6) of this Article, the dispute may be settled in accordance with the provisions of Article 15 of this Agreement.

(8) Subject to paragraph (9) of this Article, a tariff established in accordance with the provisions of this Article shall remain valid until a replacement tariff has been established.

(9) Except with the agreement of the aeronautical authorities of both Contracting Parties, and for such period as they may agree, the validity of a tariff shall not be prolonged by virtue of paragraph (8) of this Article:

- (a) where a tariff has a terminal date, for more than 12 months after that date;
- (b) where a tariff has no terminal date, for more than 12 months after the date on which a replacement tariff is filed with the aeronautical authorities of the Contracting Parties by a designated airline of a Contracting Party.

(10) (a) The tariffs to be charged by the designated airlines of the Hong Kong Special Administrative Region for carriage between the Grand Duchy of Luxembourg and another State shall be subject to approval by the aeronautical authorities of the Grand Duchy of Luxembourg and, where appropriate, of the other State. The tariffs to be charged by the designated airlines of the Grand Duchy of Luxembourg for carriage between the Hong Kong Special Administrative Region and a State other than the Grand Duchy of Luxembourg shall be subject to approval by the aeronautical authorities of the Hong Kong Special Administrative Region and, where appropriate, of the other State.

(b) Any proposed tariff for such carriage shall be filed by the designated airline of one Contracting Party seeking approval of such tariff with the aeronautical authorities of the other Contracting Party. It shall be filed in such form as those aeronautical authorities may require to disclose the particulars referred to in paragraph (1) of this Article and not less than 90 days (or such shorter period as they may decide) prior to the proposed effective date. The proposed tariff shall be treated as having been filed on the date on which it is received by those aeronautical authorities.

(c) Such tariff may be approved at any time by the aeronautical authorities of the Contracting Party with whom it has been filed and shall be deemed to have been approved by them unless, within 30 days after the date of filing, they have served on the designated airline seeking approval of such tariff written notice of disapproval.

(d) the aeronautical authorities of a Contracting Party may withdraw approval of any such tariff approved or deemed to be approved by them on giving 90 days' notice to the designated airline charging such tariff. That airline shall cease to charge such tariff at the end of that period.

(11) Notwithstanding the provisions of paragraphs (5) and (10) (c) of this Article, the aeronautical authorities of a Contracting Party shall not disapprove any proposed tariff filed with them by a designated airline which corresponds (e.g. in price level, conditions and date of expiry but not necessarily the

routing being used) to the tariff charged by an airline of that Contracting Party for comparable services between the same points or is more restrictive or higher than that tariff.

Article 8

Customs Duties

(1) Aircraft operated in international air services by the designated airlines of one Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco) which are on board such aircraft shall be exempted by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, provided such regular equipment and such other items remain on board the aircraft.

(2) Regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft stores (including but not limited to such items as food, beverages and tobacco), printed ticket stock, air waybills, any printed material which bears insignia of a designated airline of one Contracting Party and usual publicity material distributed without charge by that designated airline, introduced into the area of the other Contracting Party by or on behalf of that designated airline or taken on board the aircraft operated by that designated airline, shall be exempted by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, even when such regular equipment and such other items are to be used on any part of a journey performed over the area of the other Contracting Party.

(3) The regular equipment and the other items referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the customs authorities of the other Contracting Party.

(4) The regular equipment and the other items referred to in paragraph (1) of this Article may be unloaded in the area of the other Contracting Party with the approval of the customs authorities of that other Contracting Party. In these circumstances, such regular equipment and such items shall enjoy, on the basis of reciprocity, the exemptions provided for by paragraph (1) of this Article until they are re-exported or otherwise disposed of in accordance with customs regulations. The customs authorities of that other Contracting Party may however require that such regular equipment and such items be placed under their supervision up to such time.

(5) The exemptions provided for by this Article shall also be available in situations where a designated airline of one Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the area of the other Contracting Party of the regular equipment and the other items referred to in paragraphs (1) and (2) of this Article, provided that that other airline or airlines similarly enjoy such exemptions from that other Contracting Party.

(6) Baggage and cargo in direct transit across the area of a Contracting Party shall be exempt from customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival.

Article 9

Aviation Security

(1) Each Contracting Party reaffirms that its obligation to the other Contracting Party to protect the security of civil aviation against unlawful interference forms an integral part of this Agreement. Each Contracting Party shall in particular act in conformity with the aviation security provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for, the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

(2) Each Contracting Party shall be provided at its request with all necessary assistance by the other Contracting Party to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

(3) The Contracting Parties shall, in their mutual relations, act in conformity with the applicable aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944. Each Contracting Party shall require that operators of aircraft of its registry or operators of aircraft having their principal place of business or permanent residence in its area, and the operators of airports in its area, act in conformity with such aviation security provisions.

(4) Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) of this Article required by the other Contracting Party for entry into, departure from, or while within the area of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its area to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

(5) When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, each Contracting Party shall assist the other Contracting Party by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 10

Provision of Statistics

The aeronautical authorities of each Contracting Party shall, on request, provide such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of that Contracting Party to the aeronautical authorities of the other Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

Article 11

Conversion and Remittance of Revenue

(1) The designated airlines of the Hong Kong Special Administrative Region shall have the right to convert and remit to the Hong Kong Special Administrative Region from the Grand Duchy of Luxembourg on demand local revenues in excess of sums locally disbursed. The designated airlines of the Grand Duchy of Luxembourg shall have the right to convert and remit to the Grand Duchy of Luxembourg from the Hong Kong Special Administrative Region on demand local revenues in excess of sums locally disbursed.

(2) The conversion and remittance of such revenues shall be permitted without restriction at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

Article 12

Airline Representation and Sales

(1) The designated airlines of each Contracting Party shall have the right, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, to bring into

and maintain in the area of that other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air transportation.

(2) The designated airlines of each Contracting Party shall have the right to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase, such transportation in local currency or in any freely convertible other currency.

Article 13

User Charges

(1) The term „user charge“ means a charge made to airlines by the competent authorities or permitted by them to be made for the provision of airport property or facilities or of air navigation facilities, including related services and facilities, for aircraft, their crews, passengers and cargo.

(2) A Contracting Party shall not impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.

(3) Each Contracting Party shall encourage consultation on user charges between its competent charging authorities and airlines using the services and facilities provided by those charging authorities, where practicable through those airlines' representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning user charges.

Article 14

Consultation

One Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement. Such consultations, which may be between the aeronautical authorities of the Contracting Parties, shall begin within 60 days from the date the other Contracting Party receives such request in writing, unless otherwise agreed by the Contracting Parties.

Article 15

Settlement of Disputes

(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 try to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of a Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

- (a) within 30 days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a State which can be regarded as neutral in relation to the dispute, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within 60 days of the appointment of the second;
- (b) if within the time limits specified above any appointment has not been made, a Contracting Party may request the President of the Council of the International Civil Aviation Organization to make the necessary appointment within 30 days. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the most senior Vice-President who is not disqualified on that ground shall make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of a Contracting Party, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 30 days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within 45 days after the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of a Contracting Party, or at its discretion, within 30 days after replies are due.

(5) The tribunal shall attempt to give a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.

(6) A Contracting Party may submit a request for clarification of the decision within 15 days after it is received and such clarification shall be issued within 15 days of such request.

(7) The decision of the tribunal shall be binding on the Contracting Parties.

(8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President or Vice-President of the Council of the International Civil Aviation Organization in implementing the procedures in paragraph (2) (b) of this Article.

Article 16

Amendment

Any amendments to this Agreement agreed by the Contracting Parties shall enter into force when confirmed in writing by the Contracting Parties.

Article 17

Termination

One Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of such notice by that other Contracting Party, unless such notice is withdrawn by agreement before the end of this period.

Article 18

Registration with the International Civil Aviation Organization

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 19

Entry into Force

This Agreement shall be applied provisionally from the date of signature and shall enter into force as soon as the Contracting Parties have given notice in writing to each other that any necessary procedures have been completed.

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

DONE, in duplicate, at Hong Kong this 3rd day of June 1998 in the English language.

*For the Government of the
Grand Duchy of Luxembourg,*

Mady DELVAUX-STEHRRES

*For the Government of the Hong Kong
Special Administrative Region of the
People's Republic of China,*

Stephen IP

*

ANNEX

ROUTE SCHEDULE

Section 1

Routes to be operated by the designated airline or airlines of the Hong Kong Special Administrative Region:

Hong Kong Special Administrative Region – intermediate points – Luxembourg – points beyond.

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of the Hong Kong Special Administrative Region may on any or all flights omit calling at any points on the routes specified above, and may serve intermediate points in any order, and points beyond in any order, provided that the agreed services on these routes begin at the Hong Kong Special Administrative Region.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at Luxembourg or vice versa, except as may from time to time be jointly determined by the Contracting Parties.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.

Section 2

Routes to be operated by the designated airline or airlines of the Grand Duchy of Luxembourg:

Luxembourg – intermediate points – Hong Kong Special Administrative Region – points beyond.

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of the Grand Duchy of Luxembourg may on any or all flights omit calling at any points on the routes specified above, and may serve intermediate points in any order, and points beyond in any order, provided that the agreed services on these routes begin at Luxembourg.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at the Hong Kong Special Administrative Region or vice versa, except as may from time to time be jointly determined by the Contracting Parties.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.

*

AGREEMENT
between the Government of the Grand Duchy of Luxembourg
and his Majesty's Government of Nepal on air services

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The Government of the Grand Duchy of Luxembourg and His Majesty's Government of Nepal (hereinafter referred to as the „Contracting Parties“);

Being Parties to the Convention on International Civil Aviation and the International Air Services Transit Agreement opened for signature at Chicago, on the 7th day of December, 1944;

Desiring to conclude an agreement for the purpose of establishing air services between and beyond their respective territories; and

Desiring to ensure the highest degree of safety and security in international air transport;

HAVE AGREED as follows:

Article 1

Definitions

For the purpose of this Agreement, unless the context otherwise requires, the term:

- (a) „aeronautical authorities“ means in the case of the Grand Duchy of Luxembourg, the Minister responsible for the subject of Civil Aviation and, in the case of Nepal, the Director General of the Department of Civil Aviation;
or, in both cases, any other authority or person empowered to perform the functions now exercised by the said authorities;
- (b) „agreed services“ means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;

- (c) „Agreement“ means this Agreement, its Annex, and any amendments thereto;
- (d) „Convention“ means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of the Convention and any amendment thereto or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted or ratified by both Contracting Parties;
- (e) „designated airline“ means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;
- (f) „tariffs“ means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other ancillary services, but excluding remuneration and conditions for the carriage of mail;
- (g) „air services“, „international air service“, „airline“ and „stop for non-traffic purposes“ have the meaning respectively assigned to them in Article 96 of the Convention;
- (h) „territory“ has the meaning assigned to it in Article 2 of the Convention.

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the purpose of operating international air services by the airline designated by the 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;
 - (c) each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and routes are hereafter called „the agreed services“ and „the specified routes“ respectively. While operating agreed services on a specified route the airlines designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule of this Agreement for the purpose of taking on board and discharging passengers and cargo including mail, in combination or separately.
2. Nothing contained in paragraph 1 of this article shall be deemed to have conferred on a designated airline of one Contracting Party the privilege of taking up passengers, cargo and mail carried for remuneration or hire in the territory of the other Contracting Party and destined for another point in the territory of that other Contracting Party.
3. If because of armed conflict, political disturbances or developments or special and unusual circumstances a designated airline of one Contracting Party is unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangement of routes.

Article 3

Designation and Authorization

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines to operate the agreed services on the specified routes and to withdraw or alter such destinations.
2. On receipt of such designation pursuant to paragraph 1. above and subject to the provisions of Article 4 of this Agreement, the aeronautical authorities of the other Contracting Party shall grant without delay to the airline or airlines so designated the appropriate authorizations to operate the agreed services.

3. Upon receipt of such authorizations pursuant to paragraph 2. above the designated airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the applicable provisions of this Agreement.

Article 4

Revocation and Limitation of Authorization

1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorization referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, to revoke or suspend such authorizations or impose conditions:

- (a) in the event of failure by such airline to qualify before the aeronautical authorities of that Contracting Party under the laws and regulations normally and reasonably applied by these authorities in conformity with the Convention;
- (b) in the event of failure by such airline to comply with the laws and regulations of that Contracting Party;
- (c) in the event that they are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in its nationals; and
- (d) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above, the rights enumerated in paragraph 1 of this article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party in conformity with Article 14 of this Agreement.

Article 5

Application of Laws and Regulations

1. The laws and regulations of either Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the designated airline or airlines of the other Contracting Party upon entrance into, departure from and while within the said territory.

2. The laws and regulations of one Contracting Party relating to entry, clearance, transit, immigration, passports, customs, quarantine and currency shall be complied with by the designated airline or airlines of the other Contracting Party, by or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of the other Contracting Party.

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline of the other Contracting Party engaged in similar international air services in the application of its customs, immigration, quarantine and similar regulations.

4. Passengers, baggage and cargo in direct transit through the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall 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 6

Recognition of Certificates and Licenses (Safety)

1. Certificates of airworthiness, certificates of competency and licenses, issued or validated by one Contracting Party and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services on the routes specified in the Annex provided that such certificates or licenses were issued or validated 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 licenses granted to its own nationals by the other Contracting Party.

2. Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to the aeronautical facilities, aircrew, aircraft, and operation of the designated airlines.

Article 7

Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to security of civil aviation.

3. The Contracting Parties shall act in conformity with the aviation security provisions and technical requirements established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions and requirements are applicable to the Contracting Parties: For this purpose they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions and requirements referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party.

Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Should one Contracting Party have problems with regard to the aviation security provisions of this Article, the aeronautical authorities of either Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party.

Article 8

Customs Duties and Other Charges

1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national laws from import restrictions,

customs duties, excise duties, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco and other products destined for sale to passengers in limited quantities during the flight) and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party operating the agreed services.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article only if such items are:

- (a) introduced into the territory of one Contracting Party by or on behalf of the designated airline or airlines of the other Contracting Party;
- (b) retained on board aircraft of the designated airline or airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- (c) taken on board aircraft of the designated airline or airlines of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are not alienated in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline or airlines 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 territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

Article 9

Capacity

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

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

3. The agreed services provided by the designated airline of the Contracting Parties shall bear close relationship to the requirements 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 meet the current and reasonably anticipated requirements for the carriage of passengers and cargo including mail, coming from or destined for the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes other than points in the territory of the Contracting Party which designated 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 territory through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the territory; and
- (c) the requirements of through airline operation.

4. The capacity to be provided on the specified routes shall be such as is from time to time jointly determined by the aeronautical authorities of both Contracting Parties.

*Article 10****Tariffs***

1. The tariffs to be charged by the designated airlines for carriage between the territory of the two Contracting Parties shall be established at reasonable levels, due regard being paid to all relevant factors, including the interests of users, cost of operation, reasonable profit and market considerations.
2. The tariffs referred to in paragraph 1. of this Article may be agreed by the designated airlines of both Contracting Parties.
3. Each tariff agreed by the airlines or, if they do not wish to or cannot agree, each tariff which designated airline wishes to charge shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least 60 days (or such shorter period as the aeronautical authorities of both Contracting Parties may agree) before the proposed date of its introduction. Each tariff shall be filed in the form which each of the aeronautical authorities may require in order to disclose the particulars referred elsewhere in this Agreement.
4. Each proposed tariff may be approved by the aeronautical authorities of either Contracting Party at any time. In the absence of such approval it will be treated as having been approved by the aeronautical authorities of a Contracting Party 45 days after the date of filing unless within 30 days after the date of filing the aeronautical authorities of that Contracting Party have served on the aeronautical authorities of the other Contracting Party written notice of disapproval of the proposed tariff. If, however, either of the aeronautical authorities gives such written notice of disapproval the aeronautical authorities may at a request of either try to determine the tariff by agreement.
5. If the aeronautical authorities cannot determine a tariff under the provision of paragraph 4. of this Article, the dispute may, at the request of either, be settled in accordance with the provisions of Article 15 of this Agreement.
6. Each tariff established in accordance with the provisions of this Article shall remain in force until it has been replaced by a new tariff determined in accordance with the provisions of this Article. However, a tariff shall not have its validity extended by virtue of this paragraph for more than twelve (12) months after the date on which it would otherwise have expired unless otherwise agreed by aeronautical authorities of both Contracting Parties.
7. Each tariff to be charged by a designated airline of one Contracting Party for carriage between the territory of the other Contracting Party and the territory of a third party shall be filed for approval with the aeronautical authorities of the other Contracting Party not less than 60 days before the proposed date of its introduction and shall not be introduced until it has been approved by those aeronautical authorities.

*Article 11****Airline Representation***

1. The designated airline or airlines of one Contracting Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of the other Contracting Party their representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.
2. These staff requirements may, at the option of the designated airline or airlines of one Contracting Party, be satisfied on its own or by using the services of any other organization, company or airline operating in the territory of the other Contracting Party, and authorized to perform such services in the territory of that Contracting Party.
3. The representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party, and, consistent with such laws and regulations, each Contracting Party shall, on the

basis of reciprocity and with the minimum of delay, grant the necessary work permits, visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article.

Article 12

Commercial Opportunities and Transfer of Funds

1. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. To the extent permitted by national laws, each designated airline shall have the right to sell transportation in the currency of that territory or in freely convertible currencies of other countries, and to the same extent any person shall be free to purchase such transportation in currencies accepted for sale by that airline.
2. Each Contracting Party grants to any designated airline of the other Contracting Party the right of free transfer, in accordance with the laws of the other Contracting Party, at the official rate of exchange of the excess of receipts over expenditure earned by that airline in its territory in connection with the carriage of passengers, mail and cargo.

Article 13

Statistics

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request, such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services.

Article 14

Consultation

In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and of its Annex, and shall also consult as and when necessary to provide for modification thereof.

Either Contracting Party may request consultations, which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of the date of the request, unless both Contracting Parties agree to an extension of this period.

Article 15

Settlement of Disputes

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 negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt of the notice by either Contracting Party through diplomatic channels requesting for arbitration and 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 be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires.

In all cases 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.

*Article 16****Modification of Agreement***

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days from the date of such request made by either Contracting Party unless otherwise agreed for an extension therefore. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

Modifications of the Annex shall be made by direct agreement between the aeronautical authorities of the Contracting Parties. Such modification shall be effective from the date of the approval of the aeronautical authorities.

*Article 17****Multilateral Convention***

This Agreement and its Annexes shall be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties insofar as these provisions are applicable to international air services.

*Article 18****Termination***

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate twelve (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 the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by the International Civil Aviation Organization.

*Article 19****Registration***

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

*Article 20****Entry into Force***

This Agreement shall be approved after the completion of necessary legal requirements of each Contracting Party. It shall enter into force on the date of an exchange of diplomatic notes confirming that all such legal requirements of each Contracting Party have been completed.

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

DONE in Duplicate at Luxembourg on this 18th day of June 1999 in the English language.

*For the Government of
the Grand Duchy of Luxembourg*

*For His Majesty's Government
of Nepal*

(suivent les signatures)

ANNEX

Route Schedule

Section I

Routes to be operated by the designated airline or airlines of Luxembourg:

Luxembourg – Intermediate points – Points in Nepal – Points beyond

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the aeronautical authorities of both Contracting Parties.
2. The designated airline or airlines of Luxembourg may on any or all flights omit calling at any points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin at Luxembourg.
3. Traffic may only be taken on board at an intermediate point or at any point beyond Nepal and discharged at points in Nepal or vice versa, in accordance with such arrangements as may from time to time be jointly agreed by the two aeronautical authorities.

Route Schedule

Section II

Routes to be operated by the designated airline or airlines of Nepal:

Points in Nepal – Intermediate points – Luxembourg – Points beyond

Notes:

1. The points to be served on the routes specified above are to be jointly determined by the aeronautical authorities of both Contracting Parties.
2. The designated airline or airlines of Nepal may on any or all flights omit calling at any points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin in Nepal.
3. Traffic may only be taken on board at an intermediate point or at any point beyond Luxembourg and discharged at points in Luxembourg or vice versa, in accordance with such arrangements as may from time to time be jointly agreed by the two aeronautical authorities.

**DEPECHE DU SECRETARY OF STATE FF. A L'AMBASSADEUR
DU GRAND-DUCHE DE LUXEMBOURG A WASHINGTON**

(13.7.1998)

Excellency:

I have the honor to refer to the Air Transport Agreement between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg, signed at Luxembourg August 19, 1986, as amended by an exchange of notes at Washington dated June 6, 1995 („The Agreement“).

I have the further honor to propose to Your Excellency that the Agreement be further amended to provide seventh freedom rights for scheduled and charter all-cargo services by replacing Annexes I and II of the Agreement with the Annexes set out as an enclosure to this note.

If the foregoing is acceptable to the Government of the Grand Duchy of Luxembourg, I would appreciate an affirmative note in reply from Your Excellency, which, together with this Note and its enclosure, shall constitute an agreement between the two governments. In addition, I have the honor to propose that the terms of this Amendment shall be provisionally applied from the date of Your Excellency's note in reply and shall enter into force upon a subsequent exchange of diplomatic notes indicating that all internal procedures have been completed.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State,
(signature)

Enclosure: As stated.

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ENCLOSURE

Annex I

Scheduled Air Transportation

Section 1 – Routes

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation between points on the following routes:

- A. Routes for the airline or airlines designated by the Government of the United States of America:
 - 1. From points behind the United States via the United States and intermediate points to a point or points in Luxembourg and beyond.
 - 2. For all-cargo service or services, between Luxembourg and any point or points.
- B. Routes for the airline or airlines designated by the Government of the Grand Duchy of Luxembourg:
 - 1. From points behind Luxembourg via Luxembourg and intermediate points to a point or points in the United States and beyond.
 - 2. For all-cargo service or services, between the United States and any point or points.

Section 2 – Operational Flexibility

Each designated airline may, on any or all flights and at its option:

- 1. Operate flights in either or both directions;
- 2. Combine different flight numbers within one aircraft operation;

3. Serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
 4. Omit stops at any point or points;
 5. Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
 6. Serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;
- without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services, the service serves a point in the territory of the Party designating the airline.

Section 3 – Change of Gauge

On any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airlines is a continuation of the transportation from beyond such point.

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Annex II

Charter Air Transportation

Section 1

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):

- a. Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and
- b. Between any point or points in the territory of the other Party and any point or points in a third country or countries, *provided* that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right to: (1) make stopovers at any points whether within or outside of the territory of either Party; (2) carry transit traffic through the other Party's territory; and (3) combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; *provided* that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.

Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

Section 2

Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a

Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

Section 3

Except with respect to the consumer protection rules referred to in the preceding paragraph above, neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under Section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.

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**DEPECHE DE L'AMBASSADEUR DU GRAND-DUCHE DE LUXEMBOURG
A WASHINGTON
AU SECRETAIRE D'ETAT, Mme MADELEINE ALBRIGHT
(21.7.1998)**

Dear Madame Secretary:

I have the honor to refer to the air transport agreement between the Government of the Grand Duchy of Luxembourg and the Government of the United States of America, signed in Luxembourg on August 19, 1996, as amended by an exchange of notes in Washington dated June 6, 1995 („The Agreement“).

I have the further honor to acknowledge receipt of your letter dated July 13, 1998 by which it is suggested that the Agreement be further amended to provide seventh freedom rights for scheduled and charter all-cargo services by replacing Annexes I and II of the Agreement with the Annexes set out as an enclosure to said-letter.

On behalf of the Government of the Grand Duchy of Luxembourg, I hereby confirm that the suggested amendment is acceptable to the Government of Luxembourg. I am in agreement with the suggestion that your note of July 13, 1998 as well as the present note and its enclosure shall constitute an Agreement between the two Governments. I am further in agreement with the suggestion that the terms of this amendment shall be provisionally applied from the date of this present note and shall enter into force upon a subsequent exchange of diplomatic notes indicating that internal procedures have been completed.

Accept, Dear Madame Secretary , the renewed assurances of my highest consideration.

Alphonse BERNS
Ambassador of Luxembourg

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AVIS DU CONSEIL D'ETAT

(19.6.2001)

Par dépêche du 13 novembre 2000, le Premier Ministre, Ministre d'Etat, a saisi le Conseil d'Etat pour avis du projet de loi portant approbation des trois Accords aériens sous rubrique.

Le projet de loi, élaboré par le ministre des Affaires étrangères et du Commerce extérieur, était accompagné d'un exposé des motifs, des considérations générales et particulières ainsi que des textes des accords aériens à approuver.

Le Conseil d'Etat ignore si l'avis des chambres professionnelles a été demandé. Toujours est-il qu'à la date de l'émission du présent avis, aucun avis d'une chambre professionnelle n'a été porté à la connaissance du Conseil d'Etat.

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Le Conseil d'Etat est en mesure de soutenir la politique du Gouvernement visant à élargir le portefeuille d'accords aériens bilatéraux avec un maximum de pays. Dans le contexte actuel de la libéralisation des airs, mais aussi compte tenu de la tendance à la communautarisation des relations aériennes extérieures, ces accords bilatéraux constituent un acquis certain dont il faudra tenir compte lors d'un futur transfert de compétences en la matière vers les organes communautaires.

Les accords soulignent également le caractère international de l'aéroport de Luxembourg, au développement duquel ils peuvent contribuer, notamment dans le secteur du fret aérien.

Les auteurs du projet de loi ont opté pour le regroupement, dans un article unique d'un seul projet de loi, des trois accords aériens visés, essentiellement dans un but „de faciliter la procédure de ratification“. Le Conseil d'Etat admet que par le passé il avait approuvé cette manière de procéder et que d'un point de vue formel la procédure est valable. Il en est cependant à se demander si des considérations d'ordre diplomatique ne plaident pas plutôt pour une scission du projet de loi en trois projets distincts, dont chacun viserait la ratification d'un accord avec un pays déterminé. Aussi le Conseil d'Etat invite-t-il le Gouvernement à présenter désormais un projet de loi distinct pour chaque accord aérien à ratifier.

A défaut de pouvoir ce faire pour les accords aériens visés par le présent projet, le Conseil d'Etat insiste cependant à ce que le texte de l'article unique soit scindé en trois articles distincts visant chaque fois un accord spécifique à ratifier.

Le libellé du texte de ratification ne donne pas lieu à observation, sauf qu'il échet de constater que l'article 16 de l'Accord entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement du Royaume du Népal permet au ministre ayant l'Aviation civile dans ses attributions de pouvoir procéder, de commun accord avec l'autorité népalaise compétente, à la modification de l'annexe de la convention. Le Conseil d'Etat peut consentir à cette clause d'approbation anticipée qui est constitutionnellement valable étant donné que les limites de l'assentiment sont tracées avec la précision requise. En ce qui concerne toutefois la compétence d'amender l'Accord qui est dévolue au ministre ayant l'Aviation civile dans ses attributions, il s'entend que ledit ministre ne pourra y procéder qu'au nom du Grand-Duc, considérant qu'aux termes de l'article 37 de la Constitution la prérogative de faire les traités est réservée au Grand-Duc. Il y a encore lieu de relever que les amendements convenus devront faire l'objet d'un arrêté grand-ducal de publication afin de leur conférer force obligatoire.

Ainsi délibéré en séance plénière, le 19 juin 2001.

Le Secrétaire général,
Marc BESCH

Le Président,
Marcel SAUBER

