No. 10620

UNITED STATES OF AMERICA
and
MALAYSIA

Air Transport Agreement (with route schedule). Signed at Kuala Lumpur on 2 February 1970

Authentic texts: English and Malay.
Registered by the United States of America on 3 August 1970.

ÉTATS-UNIS D'AMÉRIQUE
et
MALAISIE

Accord relatif aux transports aériens (avec tableau de routes). Signé à Kuala Lumpur le 2 février 1970

Textes authentiques: anglais et malais.
Enregistré par les États-Unis d'Amérique le 3 août 1970.

AIR TRANSPORT AGREEMENT [1] BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF MALAYSIA

The Government of the United States of America and the Government of Malaysia,

Recognizing the increasing importance of international air travel between the two countries and desiring to conclude an Agreement which will assure its continued development in the common welfare, and

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

Have agreed as follows:

Article 1

For the purposes of the present Agreement:

A. "Agreement" shall mean this Agreement, the Schedule attached thereto, and any amendments thereto.

B. "Aeronautical Authorities" shall mean, in the case of the United States of America, the Civil Aeronautics Board, and in the case of Malaysia, the Minister of Transport, or, in both cases, any person or agency authorized to perform the functions exercised at present by those authorities.

C. "Designated Airline" shall mean an airline that one Contracting Party has notified the other Contracting Party to be an airline which will operate a specific route or routes listed in the Schedule of this Agreement. Such notification shall be communicated in writing through diplomatic channels.

[1] Came into force on 2 February 1970 by signature, in accordance with article 18.

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

D. "Territory", in relation to a State, shall mean the land areas under the sovereignty, suzerainty, protection, jurisdiction or trusteeship of that State, and territorial waters adjacent thereto.

E. "Air Service" shall mean any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo, separately or in combination.

F. "International Air Service" shall mean an air service which passes through the airspace over the territory of more than one State.

G. "Stop for non-traffic purposes" shall mean a landing for any purpose other than taking on or discharging passengers, cargo, or mail.

Article 2

A. Each Contracting Party grants to the other Contracting Party rights for the conduct of air services by the designated airline or airlines, as follows:

(1) to fly without landing across the territory of the other Contracting Party;

(2) to make stops in the said territory for non-traffic purposes; and

(3) to take on and discharge international traffic in passengers, cargo, and mail, separately or in combination, at the points in its territory named on each of the routes specified in the appropriate paragraph of the Route Schedule of this Agreement.

B. Nothing in paragraph A of this Article shall be deemed to confer on the designated airline or airlines of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo, or mail carried with or without remuneration or hire and destined for another point in the territory of the other Contracting Party. However, a designated airline of one Contracting Party which provides air services over a route containing more than one point in the territory of the other Contracting Party may provide a stopover at any of such points to traffic moving on a ticket or waybill providing for transportation on the same airline on a through journey to or from a point outside the territory of such other Contracting Party.

Article 3

Air service on a route specified in the Schedule to this Agreement may be inaugurated by an airline or airlines of one Contracting Party at any time after that Contracting Party has designated such airline or airlines for that route and the other Contracting Party has granted the appropriate operating permission. Such other Contracting Party shall, subject to Article 4, grant this permission, provided that the designated airline or airlines may be required to qualify before the competent Aeronautical Authorities of that Contracting Party, under the laws and regulations normally applied by those authorities, before being permitted to engage in the operations contemplated in this Agreement.

Article 4

A. Each Contracting Party reserves the right to withhold or revoke the operating permission referred to in Article 3 of this Agreement with respect to a designated airline of the other Contracting Party, or to impose conditions on such permission, in the event that:

(1) such airline fails to qualify under the laws and regulations normally applied by the Aeronautical Authorities of that Contracting Party;

(2) such airline fails to comply with the laws and regulations referred to in Article 5 of this Agreement; or

(3) that Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party.

B. Unless immediate action is essential to prevent infringement of the laws and regulations referred to in Article 5 of this Agreement, the right to revoke such permission shall be exercised only after consultations with the other Contracting Party.

Article 5

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

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

Article 6

Certificates of airworthiness, certificates of competency, and licenses 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 routes and air services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation. 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.

Article 7

Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed for the use of such airports and facilities by its national aircraft engaged in similar international air services.

Article 8

A. Each Contracting Party shall exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts, including engines, regular equipment, ground equipment, stores, and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party engaged in international air service. The exemptions provided under this paragraph shall apply to the following items whether or not used or consumed wholly within the territory of the Contracting Party granting the exemption:

(1) items introduced into the territory of one Contracting Party;

(2) items retained on aircraft of the designated airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party; or

(3) items taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other and intended for use in international air service.

B. The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified

in paragraph A, provided such other airline or airlines similarly enjoy such exemptions from such other Contracting Party.

Article 9

There shall be a fair and equal opportunity for the designated airlines of each Contracting Party to operate on any route covered by this Agreement.

Article 10

In the operation by the designated airline or airlines of either Contracting Party of the air services described in this Agreement, the interest of the designated airline or airlines of the other Contracting Party shall be taken into consideration so as not to affect unduly the air services which the latter provide on all or part of the same route.

Article 11

A. The air services made available to the public by the designated airlines operating under this Agreement shall be closely related to the requirements of the public for such services.

B. Air services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such designated airline is a national and the countries of ultimate destination of the traffic. The right to embark or disembark on such air services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be applied in accordance with the general principles of orderly development to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related to:

(1) traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

(2) the requirements of through airline operations; and

(3) the traffic requirements of the area through which the designated airline passes, after taking account of local and regional services.

C. Without prejudice to the right of each Contracting Party to impose such uniform conditions on the use of airports and airport facilities as are consistent with Article 15 of the Convention on International Civil Aviation, neither Contracting Party shall unilaterally restrict the airline or airlines of the other Contracting Party with respect to capacity, frequency, scheduling or type of aircraft employed in connection with services over any of the routes specified in the Schedule. In the event that one of the Contracting Parties believes that the operations conducted by the designated airline or airlines of the other Contracting Party have been inconsistent with the standards and principles set forth in this Article, it may request consultations pursuant to Article 14 of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with said standards and principles. For that purpose, statistics will be maintained in a manner to be determined by both Contracting Parties.

Article 12

A. All rates to be charged by a designated airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, such as costs of operation, reasonable profit, and the rates charged by any other airline, as well as the characteristics of each air service. Such rates shall be subject to the approval of the Aeronautical Authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal competence.

B. Any rate proposed to be charged by the designated airline or airlines of either Contracting Party for carriage to or from the territory of the other Contracting Party shall, if so required, be filed by such airline with the Aeronautical Authorities of the other Contracting Party at least thirty (30) days before the proposed date of introduction unless the Contracting Party with whom the filing is to be made permits filing on shorter notice. The Aeronautical Authorities of each Contracting Party shall use their best efforts to ensure that the rates charged and collected conform to the rates filed with either Contracting Party, and that no airline rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents.

C. It is recognized by both Contracting Parties that during any period for which either Contracting Party has approved the traffic conference procedures of the International Air Transport Association, or other association of international air carriers, any rate agreements concluded through these procedures and involving the designated airline or airlines of that Contracting Party will be subject to the approval of the Aeronautical Authorities of that Contracting Party.

D. If the Aeronautical Authorities of a Contracting Party, on receipt of the notification referred to in paragraph B above, are dissatisfied with the rate proposed, the other Contracting Party shall be so informed at least fifteen (15) days prior to the date that such rate would otherwise become effective, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.

E. If the Aeronautical Authorities of a Contracting Party, upon review of an existing rate charged for carriage to or from the territory of that Party by the designated airline or airlines of the other Contracting Party, are dissatisfied with that rate, the other Contracting Party shall be so informed and the

Contracting Parties shall endeavour to reach agreement on the appropriate rate.

F. In the event that an agreement is reached pursuant to the provisions of paragraph D or E, each Contracting Party will exercise its best efforts to put such rate into effect.

G. If:

(1) under the circumstances set forth in paragraph D no agreement can be reached prior to the date that such rate would otherwise become effective, or

(2) under the circumstances set forth in paragraph E no agreement can be reached prior to the expiration of sixty (60) days from the date of notification, then the Aeronautical Authorities of the Contracting Party raising the objection to the rate may take such steps as may be considered necessary to prevent the inauguration or the continuation of the air service in question at the rate complained of; provided, however, that the Aeronautical Authorities of the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable air service between the same points.

H. When in any case under paragraphs D and E of this Article, two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by either of them, the terms of Article 15 of this Agreement shall apply. In rendering its decision or award, the arbitral tribunal shall be guided by the principles laid down in this Article.

Article 13

The following provisions shall govern the sale of transportation and the conversion and remittance of revenues:

A. 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,

in its discretion, through its agents. Such airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

B. Any rate specified in terms of the national currency of one of the Contracting Parties shall be established in an amount which reflects the prevailing rate of exchange (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Party.

C. Each designated airline shall have the right to convert and remit to its country local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly and without restrictions at the prevailing rate of exchange for the sale of transportation at the time such revenues are presented for conversion and remittance and shall, if permitted by national law, be exempted from taxation to the fullest extent so permitted. If a Contracting Party does not have a convertible currency and requires the submission of applications for conversion and remittance, the designated airline or airlines of the other Contracting Party shall be permitted to file such applications as often as weekly free of burdensome or discriminatory documentary requirements.

Article 14

Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations shall begin within a period of sixty (60) days from the date the other contracting party receives the request.

Article 15

A. Any dispute with respect to matters covered by this Agreement not satisfactorily adjusted through consultations shall, upon request of either

Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein.

B. Arbitration shall be by a tribunal of three arbitrators constituted as follows:

(1) One arbitrator shall be named by each Contracting Party within sixty (60) days of the date of delivery by either Contracting Party to the other of a request for arbitration. Within thirty (30) days after such period of sixty (60) days, the two arbitrators so designated shall by agreement designate a third arbitrator who shall not be a national of either Contracting Party.

(2) If either Contracting Party fails to name an arbitrator or if the third arbitrator is not agreed upon in accordance with paragraph (1), either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators.

C. Each Contracting Party shall use its best efforts consistent with its national law to put into effect any decision or award of the arbitral tribunal.

D. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties.

Article 16

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

Article 17

Either of the Contracting Parties may at any time notify the other of its intention to terminate this Agreement. Such a notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one year after the date on which the notice of termination is received

by the other Contracting Party, unless withdrawn before the end of this period by agreement between the Contracting Parties.

Article 18

This agreement will come into force on the day it is signed.

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

DONE in duplicate at Kuala Lumpur in the English and Malaysian language, both texts being equally authentic, this 2nd day of February, 1970.

In the case of any inconsistency, the text in the English language shall prevail.

For the Government
of the United States of America:
[*Illegible — Illisible*] [1]

For the Government
of Malaysia:
[*Illegible — Illisible*] [2]

ROUTE SCHEDULE

1. An airline or airlines designated by the Government of the United States of America shall be entitled to operate air services and to make scheduled landings in Malaysia on the routes specified below:

From the United States* via intermediate points in Japan,** Hong Kong, Thailand, South Vietnam, and Cambodia to Kuala Lumpur and beyond to Singapore, Indonesia,** Australia,** New Zealand and via points in the South Pacific to the United States in both directions.

* On services on this route, Hawaii, American Samoa, and Guam may be served either as points of origin or destination or as intermediate points.

** No more than two points may be served in each of these countries.

NOTE:

The airline or airlines designated by the United States may not carry passengers between Kuala Lumpur and Singapore whose ticket origin and destination are points in Malaysia and Singapore.

[1] Jack W. Lydman.
[2] V. Manickavasagam.

2. The Government of Malaysia reserves the right to request consultations with the United States Government at a later time for the purpose of setting forth a route schedule for the Malaysian designated airline or airlines.

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