

No. 16700

**BURMA
and
INDONESIA**

**Agreement for air services between and beyond their
respective territories (with annex). Signed at Rangoon
on 28 July 1977**

Authentic text: English.

*Registered by the International Civil Aviation Organization on 25 May
1978.*

**BIRMANIE
et
INDONÉSIE**

**Accord relatif aux services aériens entre leurs territoires
respectifs et au-delà (avec annexe). Signé à Rangoon
le 28 juillet 1977**

Texte authentique : anglais.

*Enregistré par l'Organisation de l'aviation civile internationale le 25 mai
1978.*

AGREEMENT¹ BETWEEN THE COUNCIL OF MINISTERS OF THE SOCIALIST REPUBLIC OF THE UNION OF BURMA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Council of Ministers of the Socialist Republic of the Union of Burma and the Government of the Republic of Indonesia,

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

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1. For the purpose of the present Agreement, unless the context otherwise requires:

(a) The term “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 that Convention and any amendment of the annexes or Convention under articles 90 and 94 thereof;

(b) The term “aeronautical authorities” means, in the case of the Socialist Republic of the Union of Burma, the Department of Civil Aviation of the Ministry of Transport and Communications or any person or agency authorised to perform the functions exercised at present by the Department of Civil Aviation and, in the case of the Republic of Indonesia, the Minister of Communications and any person or body authorised to perform functions at present exercised by the said Minister or similar function;

(c) The term “designated airline” means an airline which one Contracting Party shall have designated, by written notification to the other Contracting Party, in accordance with article 3 of the present Agreement, for the operation of air services on the routes specified in such notification;

(d) The term “territory” in relation to a State shall have the meaning assigned to it in article 2 of the Convention;

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

Article 2. (1) Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled air services on the routes specified in the annex hereto which shall form part of this Agreement (hereinafter called “the agreed services” and “the specified routes”).

¹ Came into force on 28 July 1977 by signature, in accordance with article 14.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217, and vol. 1008, p. 213.

(2) Subject to the provision of the present Agreement, the airline designated by each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the following privileges:

- (a) to fly without landing across the territory of the other Contracting Party;
- (b) to make stops in the said territory for non-traffic purposes; and
- (c) to make stops in the said territory at the points specified for that route in the annex hereto, for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

(3) Nothing in paragraph (2) of this article shall be deemed to confer on the airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo or mail carried with or without remuneration or hire and destined for another point in the territory of that other Contracting Party.

(4) Notwithstanding the provision of paragraphs (1) and (2) of this article, the operation of agreed services in areas of hostilities or military occupation, or in areas affected thereby, shall, in accordance with article 9 of the Convention, be subject to the approval of the competent military authorities.

Article 3. (1) Each Contracting Party shall designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services on the specified routes.

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

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

(4) Each Contracting Party shall have the right to refuse to accept the designation of an airline and to withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of the Contracting Party designating the airlines.

(5) At any time after the provision of paragraphs (1) and (2) of this article have been complied with, the airline so designated and authorised may begin to operate the agreed services, provided that a service shall not be operated unless a tariff is in force in respect of it established in accordance with the provisions of article 6 of the present Agreement.

(6) Each Contracting Party shall have the right to suspend the exercise by an airline of the privileges specified in paragraph (2) of article 2 of the present Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where the airline fails to comply with the laws and regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions

prescribed in the present Agreement; provided that, unless immediate suspension or imposition of conditions is essential to prevent further infringements of laws or regulations, this right shall be exercised only after consultation with the other Contracting Party according to the provisions of paragraph (2) of article 9 of the present Agreement.

Article 4. (1) Aircraft operated by a designated airline of either Contracting Party and entering, departing again from, or flying across the territory of the other Contracting Party, as well as fuel, lubricants, spare parts, regular equipment and the aircraft stores on board such aircraft, shall be exempt from customs duties and other charges levied on the occasion of importation, exportation or transit of goods. This shall also apply to goods on board the aircraft consumed during the flight across the territory of the latter Contracting Party.

(2) Fuel, lubricants, aircraft stores, spare parts and regular equipment, temporarily imported into the territory of either Contracting Party, there to be immediately or after storage installed in or otherwise taken on board the aircraft of a designated airline of the other Contracting Party, or to be otherwise exported again from the territory of the former Contracting Party, shall be exempt from the customs duties and other charges mentioned in paragraph (1) of this article.

(3) Fuel and lubricants taken on board the aircraft of a designated airline of [the] other Contracting Party in the territory of the other Contracting Party and used in international air services shall be accorded by the first Contracting Party, in respect of customs duties, inspection fees and other similar national or local duties and charges, treatment not less favourable than that granted to its national airline engaged in the operation of international air services.

(4) Each Contracting Party may keep the goods mentioned in paragraphs (1) to (3) of this article under customs supervision or control.

(5) In so far as no duties or other charges are imposed on goods mentioned in paragraphs (1) to (3) of this article, such goods shall not be subject to any economic prohibitions or restrictions on importation, exportation and transit that may otherwise be applicable unless such prohibition or restriction applies to all airlines including the national airlines in respect to certain items mentioned in paragraphs (1) to (3) of this article.

(6) The treatment specified in this article shall be in addition to and without prejudice to that which each Contracting Party is under obligation to accord under article 24 of the Convention.

Article 5. (1) There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between and beyond their respective territories.

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

(3) The agreed services provided by the designated airlines 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 carry

the current and reasonably anticipated requirement for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers, cargo and mail both taken on and put down at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (i) traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (ii) traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (iii) the requirements of through airline operation.

Article 6. (1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part or whole of the specified route. These tariffs shall be fixed in accordance with the following provisions of this article.

(2) The tariffs referred to in paragraph (1) of this article, together with the rates of agency commission used in conjunction with them shall, if possible, be agreed in respect of each of the specified routes between the designated airlines concerned, in consultation with other airlines operating over the whole or part of that route, and such agreement may, where possible be reached through the rate-fixing machinery of the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

(3) If the designated airlines cannot agree on any of these tariffs, or if for some reason a tariff cannot be agreed in accordance with the provisions of paragraph (2) of this article, the aeronautical authorities of the Contracting Parties shall try to determine the tariffs by agreement between themselves.

(4) If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph (2) of this article or on the determination of any tariff under paragraph (3), the dispute shall be settled in accordance with the provisions of article 10 of the present Agreement.

(5) (a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph (3) of article 10 of the present Agreement.

(b) When tariffs have been established in accordance with the provisions of this article, these tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this article.

Article 7. Each Contracting Party shall grant to the designated airline of the other Contracting Party the right of transfer of excess of receipts over expenditure earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, baggage, cargo and mail in accordance with the foreign exchange regulations in force (if any) at the official bank rate of exchange.

Article 8. 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 by the designated airline of the first Contracting Party.

Article 9. (1) There shall be regular and frequent consultations between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of the present Agreement.

(2) Requests for consultation between the aeronautical authorities may be made at any time by either Contracting Party and consultation shall begin within a period of sixty days from the receipt by one of the Contracting Parties of a request from the other Contracting Party stating the subject or subjects on which consultation is desired.

Article 10. (1) If any dispute arises between Contracting Parties relating to the interpretation or application of the present Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.

(2) If the Contracting Parties fail to reach a settlement by negotiations, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through the diplomatic channel requesting arbitration of the dispute, and the third arbitrator shall be appointed within a further period of sixty (60) days, provided that such third arbitrator shall not be a national of either Contracting Party. Each of the Contracting Parties shall designate an arbitrator within sixty (60) days of the date of delivery by either Contracting Party to the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within thirty days after such period of sixty days. If either Contracting Party fails to designate its arbitrator or if the third arbitrator is not agreed upon, the vacancies thereby created shall be filled by persons designated by the President of the Council of the International Civil Aviation Organization on application by either Contracting Party.

(3) The Contracting Parties undertake to comply with any decision given under paragraph (2) of this article.

(4) If and so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision given under paragraph (2) of this article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of the present Agreement to the Contracting Party in default or to the designated airline of that Contracting Party or to the designated airline in default.

Article 11. (1) If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, such modification, if agreed between the Contracting Parties, shall come into effect when confirmed by an Exchange of Notes.

(2) In the event of the conclusion of any general multilateral Convention concerning air transport by which both Contracting Parties become bound, the

present Agreement shall be amended so as to conform with the provisions of such Convention.

Article 12. Either Contracting Party may at any time give notice to the other if it desires to terminate the present Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. If such notice is given, the present 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 acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 13. The present Agreement and any Exchange of Notes in accordance with article 11 shall be registered with the International Civil Aviation Organization.

Article 14. The present Agreement shall enter into force on the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by the Council of Ministers of the Socialist Republic of the Union of Burma and the Government of the Republic of Indonesia, have signed the present Agreement.

DONE this 28th day of July nineteen hundred and seventy-seven in duplicate in the English language.

TUN LIN
For the Council of Ministers
of the Socialist Republic
of the Union of Burma

EMIL SALIM
For the Government
of the Republic
of Indonesia

ANNEX

BURMESE ROUTE

Route to be operated in both directions by the designated airline of the Socialist Republic of the Union of Burma:

<i>Point of origin</i>	<i>Intermediate points</i>	<i>Point in Indonesia</i>	<i>Points beyond</i>
Rangoon	Bangkok and/or Chiangmai, Phnom Penh, Kuala Lumpur, Singapore	Jakarta	Points in Australia and New Zealand to be agreed upon

NOTE 1. The designated airline of the Socialist Republic of the Union of Burma may, on any or all flights omit calling at any of the above points, provided that the agreed services on this route begin at a point in the territory of the Socialist Republic of the Union of Burma.

NOTE 2. The designated airline of the Socialist Republic of the Union of Burma shall have the right to terminate its services in the territory of the Republic of Indonesia.

INDONESIAN ROUTE

Route to be operated in both directions by the designated airline of the Republic of Indonesia:

<i>Point of origin</i>	<i>Intermediate points</i>	<i>Point in Burma</i>	<i>Points beyond</i>
Jakarta	Singapore, Kuala Lumpur, Phnom Penh, Bangkok	Rangoon	Bombay, Karachi, Athens, Rome, Frankfurt, Paris, Amsterdam; points in the Middle East, Africa and Europe to be agreed upon

NOTE 1. The designated airline of the Republic of Indonesia may, on any or all flights omit calling at any of the above points, provided that the agreed services on this route begin at a point in the territory of Indonesia.

NOTE 2. The designated airline of the Republic of Indonesia shall have the right to terminate its services in the territory of the Socialist Republic of the Union of Burma.