

No. 18806

**FEDERAL REPUBLIC OF GERMANY
and
IRAQ**

**Air Transport Agreement (with exchange of notes). Signed
at Baghdad on 10 May 1977**

Authentic texts: German, Arabic and English.

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

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
IRAQ**

**Accord relatif aux transports aériens (avec échange de
notes). Signé à Bagdad le 10 mai 1977**

Textes authentiques : allemand, arabe et anglais.

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

AIR TRANSPORT AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF IRAQ

The Federal Republic of Germany and the Republic of Iraq,

Desiring to make arrangements for the regulation of air transport between their respective territories and beyond,

Have agreed as follows:

Article 1. For the purposes of the present Agreement, unless otherwise stated in the text:

a) The term “aeronautical authorities” shall mean, in the case of the Federal Republic of Germany, the Federal Minister of Transport; in the case of the Republic of Iraq, the Minister of Communications of Iraq; or in both cases, any other person or agency authorized to perform the functions exercised by the said authorities.

b) The term “designated airline” shall mean an airline that one Contracting Party has designated in writing to the other Contracting Party, in accordance with article 3 of the present Agreement, as being an airline which is to operate international air services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement.

c) The terms “territory”, “air service”, “international air service” and “stop for non-traffic purposes” shall have the meaning laid down in articles 2 and 96 of the Convention of December 7, 1944, on International Civil Aviation,² including their amendments which have entered into force for both Contracting Parties.

Article 2. (1) The routes over which the designated airlines of the two Contracting Parties will be authorized to operate international air services shall be specified in a route schedule to be agreed upon in an exchange of notes.

(2) Subject to the limitations as determined in the exchange of notes referred to in paragraph (1) of this article, each Contracting Party shall grant to the other Contracting Party for the purpose of operating international air services by the designated airline over the routes specified in accordance with paragraph (1) of this article:

- The right to fly across its territory without landing;
- The right to land in its territory for non-traffic purposes; and
- The right to land in its territory at the points named on the routes specified in accordance with paragraph (1) of this article, in order to take on or discharge passengers, mail and/or cargo on a commercial basis.

Article 3. (1) The international air services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement may be started at any time, provided:

a) The Contracting Party to whom the rights specified in paragraph (2) of article 2 are granted, has designated an airline in writing; and

¹ Came into force on 21 March 1980, i.e., 30 days following the exchange of the instruments of ratification, which took place at Bonn on 20 February 1980, in accordance with article 16 (2).

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.

b) The Contracting Party granting these rights has authorized the designated airline to inaugurate the air services.

(2) The Contracting Party granting these rights shall, subject to the provisions of paragraphs (3) and (4) of this article and subject to the provisions of article 9 of the present Agreement, give without delay the said authorization to operate the international air service.

(3) Each Contracting Party may require an airline designated by the other Contracting Party to satisfy it that it is qualified to meet the requirements prescribed under the laws and regulations of the first Contracting Party governing the operation of international air traffic.

(4) Each Contracting Party may withhold the exercise of the rights provided for in article 2 of the present Agreement from any airline designated by the other Contracting Party if such airline is not able to prove upon request that substantial ownership and effective control of such airline are vested in nationals or corporations of the other Contracting Party or in that State itself.

Article 4. (1) Each Contracting Party may revoke, or limit by the imposition of conditions, the authorization granted in accordance with paragraph (2) of article 3 of the present Agreement in the event of failure by the designated airline to comply with the laws and regulations of the Contracting Party granting the rights or to comply with the provisions of the present Agreement or to fulfil the obligations arising therefrom. This shall also apply if the proof referred to in paragraph (4) of article 3 is not furnished. Each Contracting Party shall exercise this right only after consultation as provided for in article 12 of the present Agreement, unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws or regulations.

(2) Each Contracting Party shall have the right by written communication to the other Contracting Party to replace, subject to the provisions of article 3, an airline it has designated by another airline. The newly designated airline shall have the same rights and be subject to the same obligations as the airline which it replaces.

Article 5. The charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities by the aircraft of a designated airline of the other Contracting Party shall not be higher than those paid by aircraft of a national airline engaged in similar international air services.

Article 6. (1) Fuel, lubricating oils, regular aircraft equipment, spare parts and aircraft stores introduced into or taken on the aircraft in the territory of one Contracting Party by, or on behalf of, the airline designated by the other Contracting Party and intended solely for use by aircraft of such other Contracting Party shall be accorded in respect to customs duties, other charges levied on the occasion of the importation, exportation or transit of goods, inspection fees and special consumption charges, treatment not less favourable than that granted to other airlines engaged in similar international air services.

(2) Aircraft of the designated airline of one Contracting Party, fuel, lubricating oil, regular aircraft equipment, spare parts and stores retained on board such aircraft shall be exempt in the territory of the other Contracting Party from customs, inspection fees or similar duties or charges, even though such supplies are used or consumed by/or on such aircraft on flights in that territory. If these materials were unloaded on the territory of the other Contracting Party, with the exception of

fuel and oils which may not be unloaded, then unloaded material shall be subject to the respective customs laws.

(3) Spare parts, regular equipment and aircraft stores for use in the operation of the agreed services may be stored at airports served by the designated airlines at the predetermined charges for storage under the supervision of the customs authorities.

Article 7. (1) There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate air services on any route specified in accordance with paragraph (1) of article 2 of the present Agreement.

(2) In the operation of international air services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement, any designated airline of either Contracting Party shall take account of the interests of a designated airline of the other Contracting Party so as not to affect unduly the air services which the latter airline operates over the same routes or parts thereof.

(3) The international air services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement should have as their primary objective the provision of capacity adequate to the foreseeable traffic demands to and from the territory of the Contracting Party designating the airline. The right of such airline to carry traffic between points of a route specified in accordance with paragraph (1) of article 2 of the present Agreement which are located in the territory of the other Contracting Party, and points in third countries shall be exercised, in the interests of an orderly development of international air transport, in such a way that capacity is related to:

- a) The traffic demand to and from the territory of the Contracting Party designating the airline;
- b) The traffic demand existing in the areas through which the air services pass, taking account of local and regional air services;
- c) The requirements of an economical operation of through traffic routes.

Article 8. (1) The designated airlines shall communicate to the aeronautical authorities of both Contracting Parties not later than thirty days prior to the inauguration of air services on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement the type of service, the types of aircraft to be used and the flight schedules. This shall likewise apply to later changes.

(2) The aeronautical authorities of either Contracting Party shall furnish to the aeronautical authorities of the other Contracting Party at their request such periodic or other statistical data of the designated airlines as may be reasonably required for the purpose of reviewing the capacity provided by any designated airline of the first Contracting Party on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement. Such data shall include all information required to determine the amount of traffic carried and the origins and destinations of such traffic.

Article 9. In fixing rates to be charged for passengers and freight on the routes specified in accordance with paragraph (1) of article 2 of the present Agreement, account shall be taken of all factors, such as cost of operation, reasonable profit, the characteristics of the various routes and the rates charged by any other airlines which operate over the same routes or parts thereof. In fixing such rates, the provisions of the following items should be observed.

1. The rates shall, if possible, be agreed for each route between the designated airlines concerned. For this purpose the designated airlines should be guided by such decisions as are applicable under the traffic conference procedures of the International Air Transport Association (IATA), or should, if possible, agree on such rates directly between themselves after consulting with airlines of third countries which operate over the same routes or parts thereof.

2. Any rates so agreed shall be submitted for approval to the aeronautical authorities of both Contracting Parties at least thirty days prior to the proposed date of their introduction. This period may be reduced in special cases if the aeronautical authorities so agree.

3. If no agreement has been reached between the designated airlines in accordance with item 1 above, or if one of the Contracting Parties does not consent to the rates submitted for its approval in accordance with item 2 above, the aeronautical authorities of the two Contracting Parties should by common accord fix those rates for routes or parts thereof on which there is disagreement or lack of consent.

4. If no accord as envisaged in item 3 of this article is reached between the aeronautical authorities of the two Contracting Parties, the provisions of article 13 of the present Agreement shall apply. Until such time as an arbitral award is rendered, the Contracting Party which has withheld its consent to a given rate, shall be entitled to require the other Contracting Party to maintain the rate previously in effect.

Article 10. In the event of a general multilateral air transport convention accepted by both Contracting Parties entering into force, the provisions of the multilateral convention shall prevail. Any discussions with a view to determining the extent to which the present Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention shall take place in accordance with article 12 of the present Agreement.

Article 11. Exchange of views shall take place as needed between the aeronautical authorities of the two Contracting Parties in order to achieve close cooperation and agreement in all matters pertaining to the application and interpretation of the present Agreement.

Article 12. (1) Consultation may be requested at any time by either Contracting Party for the purpose of discussing amendments to the present Agreement or to the route schedules and matters related to them. The same applies to discussions concerning the interpretation and application of the present Agreement if either Contracting Party considers that an exchange of views within the meaning of article 11 has been without success. Such consultation shall begin within sixty days from the date of receipt of any such request.

(2) With the exception of amendments to the route schedule any agreed amendments to the present Agreement shall enter into force in accordance with the procedure provided for in article 16 of the present Agreement.

(3) Any amendments to the route schedule shall enter into force as soon as they are confirmed by an Exchange of Notes between the Governments of the Contracting Parties in accordance with paragraph 1 of article 2 of the present Agreement.

Article 13. (1) To the extent that any disagreement arising out of the interpretation or application of the present Agreement cannot be settled in accordance

with article 12 of this Agreement, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

(2) Such arbitral tribunal shall be established in each individual case in such a way as to comprise one member to be appointed by each Contracting Party and these two members shall then agree upon the choice of a national of a third State as their chairman who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within sixty days and the chairman within ninety days after either Contracting Party has informed the other Contracting Party of its intention of referring the disagreement to arbitration.

(3) If the time-limits provided for in paragraph (2) of this article are not observed, either of the Contracting Parties may, in the absence of any other relevant agreement, invite the President of the Council of the International Civil Aviation Organization (ICAO) to make the necessary appointments. Where the President possesses the nationality of one of the two Contracting Parties or is otherwise prevented from carrying out this function, his deputy in office should make the necessary appointments.

(4) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding for both Contracting Parties. Each of the Contracting Parties shall bear the expenses of its own member as well as of its representation in the proceedings at the arbitral tribunal; the expenses of the chairman and any other expenses shall be borne in equal parts by both Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 14. Each Contracting Party may at any time give written notice of termination of the present Agreement, which shall then expire one year after the date of the receipt of such notice by the other Contracting Party.

Article 15. The present Agreement and any exchange of notes under paragraph (1) of article 2 of this Agreement and any amendments to them shall be communicated to the ICAO for registration.

Article 16. (1) The present Agreement shall be ratified. The instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) The present Agreement shall enter into force thirty days after the exchange of the instruments of ratification.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, having been duly authorized to that effect by their respective Governments, have signed the present Agreement.

DONE at Baghdad on this 22nd day of Jamadi el Ula 1397 Hijra, corresponding to the 10th day of May 1977 of the Christian Era in two originals, each in [the] German, Arabic and English languages. All the texts are binding; in case of dispute in interpreting the German or the Arabic text the English text will prevail.

For the Federal Republic
of Germany:

[Signed]

FRITZ C. MENNE
Ambassador to Iraq

For the Republic of Iraq:

[Signed]

ASKAR MAHMOUD RIDHA
Under Secretary
of the Ministry of Communications

EXCHANGE OF NOTES

I

THE AMBASSADOR OF THE FEDERAL REPUBLIC OF GERMANY

Excellency,

I have the honour to refer to article 2 of the Air Transport Agreement between the Federal Republic of Germany and the Republic of Iraq, signed today. In the negotiations which have been conducted in connection with the above-mentioned Agreement, it has been agreed that air services may be operated on the routes specified in the following route schedule:

ROUTE SCHEDULE

I. Routes to be operated by the airline designated by the Federal Republic of Germany:

¹ Points of origin	² Intermediate points	³ Points in the territory of the Republic of Iraq	⁴ Points beyond
Points in the Federal Republic of Germany	Vienna or Prague Rome or Budapest Athens or Belgrade Sofia Istanbul or Ankara Nicosia Beirut or Damascus	Baghdad or Basra	Teheran and beyond

The designated airline of the Federal Republic of Germany may enjoy all traffic rights between all points to and from Iraq on the above-mentioned route except the fifth freedom between Iraq, on [the] one hand, and Beirut, Damascus, Istanbul, Ankara and Teheran, on the other hand.

II. Routes to be operated by the airline designated by the Republic of Iraq:

¹ Points of origin	² Intermediate points	³ Points in the territory of the Federal Republic of Germany	⁴ Points beyond
Points in the Republic of Iraq	Damascus or Beirut Nicosia or Athens Istanbul or Sofia Rome or Milano Vienna or Prague Belgrade or Budapest Geneva or Zurich	Munich or Frankfurt	London and beyond

The designated airline of the Republic of Iraq may enjoy all traffic rights between all points to and from the Federal Republic of Germany except the fifth freedom between the Federal Republic of Germany and Vienna.

III. A designated airline may, if it so desires, omit one or more of the points on the specified routes, provided that the point of origin of such a route lies in the territory of the Contracting Party that has designated the airline.

I have the honour to inform you that the Government of the Federal Republic of Germany agrees to the above route schedule. I should be grateful if you would inform me whether the Government of the Republic of Iraq also agrees to this route

schedule. If this should be the case, the present note and your note in reply shall be regarded as constituting an arrangement between our Governments.

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

Baghdad, 10 May 1977

[Signed — Signé]¹

Under Secretary of Iraqi
Ministry of Communications

II

UNDER-SECRETARY OF IRAQI MINISTRY OF COMMUNICATIONS

Excellency,

I have the honour to confirm receipt of your letter dated 10th May 1977, which reads as follows:

[See note 1]

I have the honour to confirm to you the approval of my Government to the contents of your above-mentioned letter.

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

Baghdad, 10th May 1977

[Signed — Signé]²

His Excellency the Ambassador of the Federal Republic
of Germany
Baghdad

¹ Signed by Fritz C. Menne—Signé par Fritz C. Menne.

² Signed by Asker Mahmud Ridha—Signé par Asker Mahmud Ridha.