

No. 19619



**AUSTRALIA
and
BURMA**

**Air Transport Agreement (with annex). Signed at Rangoon
on 23 September 1976**

Authentic text: English.

Registered by Australia on 11 March 1981.



**AUSTRALIE
et
BIRMANIE**

**Accord relatif aux transports aériens (avec annexe). Signé à
Rangoon le 23 septembre 1976**

Texte authentique : anglais.

Enregistré par l'Australie le 11 mars 1981.

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE COUNCIL OF MINISTERS OF THE SOCIALIST REPUBLIC OF THE UNION OF BURMA

The Government of Australia and the Council of Ministers of the Socialist Republic of the Union of Burma (hereinafter referred to as the Contracting Parties),

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944,² 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 I. 1. For the purpose of the present Agreement, unless the context otherwise requires:

(a) The term “the Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944² 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 in so far as those annexes and amendments have become effective for or been ratified by both Contracting Parties;

(b) The term “aeronautical authorities” means, in the case of Australia, the Secretary to the Department of Transport, and any person or body authorized to perform the functions exercised by the Secretary to the Department of Transport or similar functions and, 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 authorized to perform the functions exercised at present by the Ministry of Transport and Communications;

(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 III 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, means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State;

(e) The term “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;

(f) The term “capacity” in relation to an aircraft shall mean the available payload of that aircraft available on the route or section of a route;

(g) The term “capacity” in relation to “agreed service” shall mean the capacity of the aircraft used on such service for the carriage of passengers, cargo

¹ Came into force on 23 September 1976 by signature, in accordance with article XVI.

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; vol. 1008, p. 213, and vol. 1175, p. 297.

and mail multiplied by the frequency operated by such aircraft over a given period and route or section of a route;

(h) The term “agreed service” means any scheduled air service operated on a specified route; and

(i) The term “specified route” means a route specified in the annex to this Agreement.

2. The annex to this Agreement forms an integral part of the Agreement, and all references to the “Agreement” shall be deemed to include reference to the annex except where otherwise provided.

Article II. 1. Each Contracting Party grants to the other Contracting Party the rights specified in the present Agreement for the purpose of establishing scheduled international air services on the route specified in the annex hereto.

2. Subject to the provisions 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 and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

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

2. On receipt of 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 authorization.

3. The aeronautical authorities of one Contracting Party may require the 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 applied by them in conformity with the provisions of the Convention to the operation of international air services:

4. (a) Each Contracting Party shall have the right to refuse to accept the designation of the airline or revoke the operating authorization or to withhold or to suspend the exercise of the rights specified in article II of this Agreement by an airline designated by the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of these rights:

(i) In any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designated the airline or in the nationals of such Contracting Party; or

(ii) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or

(iii) In case the airline otherwise fails to comply with the provisions of this Agreement.

(b) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 4 (a) of this article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party. In such case consultations shall commence within a period of sixty days from the date of request made by either Contracting Party for consultations.

(c) In the event of action by one Contracting Party under this article, the rights of the other Contracting Party under article XIII shall not be prejudiced.

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

Article IV. 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 their respective territories.

2. In operating the agreed services, the 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 routes.

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 requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which had 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:

- (a) The requirements of traffic originating in or destined for the territory of the Contracting Party which has designated the airline;
- (b) Traffic requirements of the area through which the airline passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (c) The requirements and the economics of through airline operation.

4. The capacity to be provided at the outset shall be agreed between both Contracting Parties before the agreed services are inaugurated; thereafter any changes in capacity to be provided shall be discussed and agreed between the aeronautical authorities of both Contracting Parties.

Article V. 1. In this article “tariffs” means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency services, but excluding remuneration and conditions for the carriage of mail.

2. The tariffs on any of the agreed services 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 of whole of the specified route. These tariffs shall be fixed in accordance with the following provisions of this article.

3. The tariffs referred to in paragraph 2 of this article, together with the rates of agency commission used in conjunction with them, shall be agreed in respect of each of the specified routes between the designated airlines concerned who will take into consideration the tariffs of other airlines operating over the whole or part of the route and the International Air Transport Association fares and rates fixing formulae may be made use of. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

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

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

6. 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 XIII of the present Agreement.

7. 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 VI. Each Contracting Party shall grant to the designated airline of the other Contracting Party the right of transfer (in U.S. dollars if so desired) 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 VII. 1. Fuel, lubricants, spare parts, regular aircraft equipment and aircraft stores (including food, beverages and tobacco) introduced into the territory of one Contracting Party, or taken on board an aircraft of the designated airline in that territory, by or on behalf of the other Contracting Party or its designated airline, shall, if intended solely for use by or in the aircraft of that airline in the operation of the agreed services, be accorded by the first Contracting Party, in respect of all national or local duties and charges including customs duties and inspection fees, treatment not less favourable than that granted to its national airline in the operation of international air services.

2. Supplies of fuel, lubricants, spare parts, regular aircraft equipment and aircraft stores (including food, beverages and tobacco) on board on arrival and retained on board aircraft of the designated airline of one Contracting Party in the operation of the agreed services shall be exempt in the territory of the other

Contracting Party from all national and local duties and charges including customs duties and inspection fees, even though such supplies be used by such aircraft on flights in that territory. Goods and articles so exempted may only be unloaded with the approval of the customs authorities of the other Contracting Party. Those goods and articles which are to be re-exported shall be kept in bond, until re-exportation under customs supervision.

3. The charges which either of the Contracting Parties may impose, or permit to be imposed, on the designated airline of the other Contracting Party for the use of airports and other facilities under its control shall not be higher than would be paid for the use of such airports and facilities by the national airline of the Contracting Party engaged in similar international air services.

Article VIII. 1. 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 airline designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from or while within the territory of the first Contracting Party.

2. The laws and regulations of one Contracting Party as to the admission to or departure from its territory of passengers, crews and cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, currency, health and quarantine shall be applicable to such passengers, crews and cargo arriving in or departing from the territory of that Contracting Party in aircraft of the airline designated by the other Contracting Party.

Article IX. The aeronautical authorities of each Contracting Party shall cause its designated airline to supply to the aeronautical authorities of the other Contracting Party at their request:

- (i) Such traffic statistics as may be appropriate for the purpose of reviewing the frequency and capacity of the agreed services; and
- (ii) Such periodic statements as may be reasonably required, relating to the traffic carried by its designated airline on services to and from the territory of that other Contracting Party, including information concerning the origin and destination of such traffic.

Article X. 1. In order to ensure close collaboration in all matters affecting the performance of the present Agreement, the aeronautical authorities of the Contracting Parties shall consult on request of either of those authorities.

2. Such consultation, which may be through discussion or by correspondence shall begin within a period of sixty days from the date of receipt of a request from the other Contracting Party stating the subject or subjects on which consultation is desired.

Article XI. Either Contracting Party may at any time request consultation with the other Contracting Party for the purpose of amending the present Agreement. Such consultation shall begin within a period of sixty days from the date of receipt of such request. Any amendment so negotiated shall not come into force until it has been incorporated in an exchange of notes through the diplomatic channel between the two Contracting Parties.

Article XII. In the event of the conclusion of any general multilateral convention concerning air transport by which the two Contracting Parties become bound, action shall be taken to amend the present Agreement so as to conform with the provisions of such convention.

Article XIII. 1. If any dispute arises between the Contracting Parties relating to the interpretation or application of the present Agreement including its annex, 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 negotiation the dispute shall be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, 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 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, and each to pay a moiety of the expenses of the Arbitral Tribunal unless the Tribunal should decide otherwise.

4. If and so long as either Contracting Party or the 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 as the case may be.

Article XIV. Either of the Contracting Parties may at any time give to the other notice of its intention to terminate the present Agreement. Such notice shall be given in writing through the diplomatic channel and a copy of the notice shall be sent simultaneously to the International Civil Aviation Organization by the Contracting Party giving notice. In the event of such notice being given, the present Agreement shall terminate twelve months after the date of receipt of the notice to terminate by the other Contracting Party, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiry of that period. If the other Contracting Party fails to acknowledge receipt, the notice shall be deemed to have been received fourteen days after its receipt by the International Civil Aviation Organization.

Article XV. The present Agreement including its annex shall be registered with the International Civil Aviation Organization.

Article XVI. The present Agreement including its annex shall enter into force on the date of signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized by the Government of Australia and the Council of Ministers of the Socialist Republic of the Union of Burma respectively, have signed the present Agreement.

DONE in duplicate at Rangoon this day the 23rd September 1976 in the English language.

For the Government
of Australia:

[Signed]

ROBERT STEPHEN LAURIE
Ambassador Extraordinary
and Plenipotentiary

For the Council of Ministers
of the Socialist Republic
of the Union of Burma:

[Signed]

Colonel KHIN OHN
Deputy Minister
Ministry of Transport
and Communications

ANNEX

AUSTRALIAN ROUTE

Route to be operated in both directions by the designated airline of Australia

<i>Points of origin</i>	<i>Intermediate points</i>	<i>Point in Burma</i>	<i>Points beyond</i>
Points in Australia	Manila Hong Kong Jakarta Singapore Kuala Lumpur Penang Saigon Bangkok	Rangoon	Bombay Delhi Karachi Teheran Bahrain Abu Dhabi Dubai Doha Dhahran Kuwait Baghdad Damascus Beirut Cairo Nicosia Ankara Istanbul Athens Belgrade Vienna Rome Malta Frankfurt Madrid Lisbon Copenhagen Brussels Amsterdam Geneva Zurich Paris London

NOTE. The designated airline of Australia may omit calling at any one or more points on the specified route on any or all flights or to change the sequence of points at its option

on the above route. It shall also have the right to terminate its services in the territory of the Socialist Republic of the Union of Burma. These rights may be exercised provided the services of the designated airline of Australia commence or terminate in the territory of Australia.

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 Australia</i>	<i>Points beyond</i>
Rangoon	Chiengmai Bangkok Phnom Penh Saigon Penang Kuala Lumpur Singapore Jakarta Canton Hong Kong Manila	Sydney	To be agreed.

NOTE. The designated airline of the Socialist Republic of the Union of Burma may omit calling at any one or more points on the specified route on any or all flights or to change the sequence of points at its option on the above route. It shall also have the right to terminate its services in the territory of Australia. These rights may be exercised provided the services of the designated airline of the Socialist Republic of the Union of Burma commence or terminate in the territory of Burma.