

No. 12319

**AUSTRALIA
and
PHILIPPINES**

**Air transport Agreement (with annex). Signed at Manila on
15 November 1971**

Authentic text: English.

Registered by Australia on 27 February 1973.

**AUSTRALIE
et
PHILIPPINES**

**Accord relatif au transport aérien (avec annexe). Signé à
Manille le 15 novembre 1971**

Texte authentique: anglais.

Enregistré par l'Australie le 27 février 1973.

AIR TRANSPORT AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

The Government of the Commonwealth of Australia and the Government of the Republic of the Philippines, hereinafter described as the Contracting Parties,

Being parties to the Convention on International Civil Aviation² and the International Air Services Transit Agreement³ both opened for signature at Chicago on the 7th day of December, 1944, and

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

Hereby agree as follows:

Article 1. DEFINITIONS

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

(a) The term "aeronautical authorities" means, in the case of the Commonwealth of Australia, the Director-General of Civil Aviation and/or any person or body authorized to perform the functions exercised by the said Director-General of Civil Aviation or similar functions, and, in the case of the Republic of the Philippines, the Civil Aeronautics Board and/or any person or body authorized to perform any function exercised at present by the said Civil Aeronautics Board or similar functions;

(b) 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 4 of this Agreement, for the operation of the air services on the routes specified in the annex hereto;

(c) 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;

(d) The term "territory" in relation to a State has the meaning assigned to it in article 2 of the Convention except that for the word "mandate" therein is substituted the word "trusteeship";

(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;

(f) The term "agreed service" means any scheduled air service operated on the routes specified in the annex to this Agreement.

¹ Came into force on 27 June 1972, the date of the exchange of diplomatic notes indicating that the formalities required by each Contracting Party had been complied with, in accordance with article 17.

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 vol. 740, p. 21.

³ *Ibid.*, vol. 84, p. 389.

(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 2. CHICAGO CONVENTION

To the extent to which they are applicable to the air services established under this Agreement, the provisions of the Convention shall remain in force in their present form as between the Contracting Parties for the duration of this Agreement as if they were incorporated herein, unless both Contracting Parties ratify any amendment to the Convention which shall have come into force, in which case the Convention as amended shall remain in force as aforesaid.

Article 3. GRANT OF RIGHTS

(1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate the agreed services.

(2) Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights:

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

Article 4. NECESSARY AUTHORIZATIONS, SUSPENSION AND REVOCATION

(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.

(2) On receipt of such designation, the other Contracting Party, through its aeronautical authorities, shall, subject to the provisions of paragraphs (3), (4) and (5) 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) Each Contracting Party shall have the right to withhold the rights granted under paragraph (1) of article 3, or to impose such conditions as it may deem necessary on the exercise by the airline of those rights in any case where:

- (a) 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 that Contracting Party; or
- (b) the designated airline fails to comply with the national laws and regulations referred to in paragraph (3) of this article.

(5) The exercise by the designated airline of the rights granted in the appropriate operating authorization as mentioned in paragraph (2) of this article, shall be subject to the statutory powers of the aeronautical authorities of the Contracting Parties in order to ensure the implementation by the said authorities of the provisions of article 9 of this Agreement.

(6) At any time after 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.

(7) Each Contracting Party reserves the right to suspend or revoke the rights granted under paragraph (1) of article 3 in respect of an airline designated by the other Contracting Party, or to impose conditions on the exercise of those rights in any case where:

- (a) it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party; or
- (b) the airline fails to operate in accordance with the conditions specified in this Agreement or fails to comply with the national laws and regulations of the Contracting Party granting the rights.

(8) The rights reserved in paragraph (7) of this article shall be exercised by a Contracting Party only after consultation with the other Contracting Party unless the immediate suspension of the rights or the immediate imposition of conditions is necessary to prevent further infringements of the national laws and regulations of the first mentioned Contracting Party.

Article 5. EXEMPTION FROM CUSTOMS DUTIES, TAXES, AND OTHER CHARGES

Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board aircraft of the designated airline of one Contracting Party on arrival in the territory of the other Contracting Party or taken on board those aircraft in that territory, and not unloaded from the aircraft without the consent of the customs authorities, if intended solely for use by or in aircraft of that airline in the operation of the agreed services shall, subject to compliance in other respects with the customs requirements of the latter Contracting Party, be exempted from all national or local duties, taxes and charges including customs duties and inspection fees imposed in the territory of the latter Contracting Party, even though the supplies are used in or consumed by the aircraft in flights in that territory.

Article 6. MAINTENANCE OF TECHNICAL AND ADMINISTRATIVE PERSONNEL

The designated airline of either Contracting Party is authorized to maintain in the territory of the other Contracting Party its own technical and administrative personnel for the purpose of operating the agreed services, without prejudice to the national regulations of the respective Contracting Parties.

Article 7. REMITTANCE OF CURRENCY

Either Contracting Party undertakes to grant to the other Party free transfer, in United States dollars at the rate of exchange in the official market at the time of remittance, of the excess of receipts over expenditure achieved in its territory in connection with the carriage of passengers, baggage, mail shipments and freight

by the designated airline of the other Party. Wherever the payments system between the Contracting Parties is governed by a special agreement, said agreement shall apply.

Article 8. APPLICABILITY OF AIR AND ENTRY AND CLEARANCE REGULATIONS

(1) The laws and regulations of the Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air services, 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 entering or departing from or while within the territory of the first Party.

(2) The laws and regulations of one Contracting Party as to the entrance into, stay within or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with upon entrance into or departure from, or while within the territory of the first Party.

Article 9. CAPACITY REGULATION

(1) There shall be a 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 of each Contracting Party shall take into consideration the interest of the designated 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 a close relationship to the requirements of the public for transportation on the specified routes. The agreed services provided by the designated airline shall have as their primary objective the provision of capacity adequate for the requirements of traffic originating in or destined for the territory of the Contracting Party which has designated that airline. Provision for the carriage on the agreed services of traffic both originating in and destined for 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) the traffic requirements of the area through which the airline passes, after taking account of local and regional services; and
- (c) the requirements of through airline operations.

(4) The capacity which may be provided in accordance with this article by the designated airline of each of the Contracting Parties on the agreed services shall be such as is agreed between the aeronautical authorities of the Contracting Parties before the commencement by the designated airline concerned of an agreed service and from time to time thereafter.

Article 10. TARIFFS

(1) In this article "tariff" 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 and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.

(2) 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 the whole or any part of the specified route. These tariffs shall be fixed in accordance with the provisions of this article.

(3) Agreement on the tariffs shall, whenever possible, be reached by the designated airlines concerned through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed upon between the designated airlines concerned. In any case, the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

(4) If the designated airlines concerned cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them in accordance with the provisions of paragraph (3) of this article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on those tariffs.

(5) If agreement under paragraph (4) of this article cannot be reached, the dispute shall be settled in accordance with the provisions of article 14 of this Agreement.

(6) No new or amended tariff shall come into effect unless it is approved by the aeronautical authorities of both Contracting Parties or is determined by a tribunal of arbitrators under article 14 of this Agreement. Pending determination of the tariffs in accordance with the provisions of this article, the tariffs already in force shall apply.

Article 11. STATISTICS

The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, upon 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 airlines. These statements shall include information relating to the amount of traffic carried by those airlines on the agreed services to and from the territory of the other Contracting Party.

Article 12. RECOGNITION OF CERTIFICATES AND LICENSES

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 agreed services. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals or rendered valid by another State.

Article 13. CONSULTATIONS AND MODIFICATIONS

(1) In order to ensure close collaboration in the performance of this Agreement the aeronautical authorities of the Contracting Parties shall consult on request of either of those authorities.

(2) If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may request consultation with the other Contracting Party. Such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty days from the date of receipt of the request. Any modifications so negotiated shall come into force when they have been incorporated in an exchange of notes through the diplomatic channel.

Modifications to the annex to this Agreement may be negotiated between the aeronautical authorities of the Contracting Parties and shall come into force when they have been incorporated in an exchange of notes through the diplomatic channel.

(3) If a general multilateral convention concerning air transport comes into force in respect of both Contracting Parties, action shall be taken to amend this Agreement so as to conform with the provisions of that convention.

Article 14. 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 between themselves. This negotiation shall begin within sixty days after receipt of the request by one Party from the other.

(2) If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third who shall act as President, 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 its arbitrator within two months from the date of delivery by either Party to the other Party of a note through the diplomatic channel requesting arbitration of the dispute and the third arbitrator shall be agreed upon within one month after such period of two months. If either Contracting Party fails to designate its arbitrator within the period specified, or if the third arbitrator is not agreed, 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 such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral body.

(3) Unless otherwise provided by the Contracting Parties, the arbitral body shall determine its seat and prescribe its own rules of procedure.

(4) The arbitral body shall endeavour to resolve the dispute by unanimous vote. However, if this is not possible, the dispute shall be resolved by majority vote.

(5) The Contracting Parties undertake to comply with any decision given under paragraphs (2), (3) and (4) of this article.

Article 15. TERMINATION

Either of the Contracting Parties may at any time give to the other notice of its intention to terminate this 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. This Agreement shall terminate one year after the date of receipt by the other Contracting Party of the said notice, unless, by agreement between the Contracting Parties, the notice is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt of the notice, the notice shall be deemed to have been received fourteen days after the International Civil Aviation Organization has received its copy.

Article 16. REGISTRATION

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

Article 17. ENTRY INTO FORCE

This Agreement shall enter into force and effect on the date of the exchange of diplomatic notes indicating that the formalities required by each Contracting Party have been complied with.

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

DONE at Manila this 15th day of November in the year one thousand nine hundred and seventy-one in two originals in the English language.

For the Government
of the Commonwealth of Australia:
[Signed]
ROBERT C. COTTON
Minister of State
for Civil Aviation

For the Government
of the Republic of the Philippines:
[Signed]
CARLOS P. ROMULO
Secretary of Foreign Affairs

ANNEX

(1) The route to be operated in both directions by the designated airline of the Philippines:

The Philippines to Port Moresby, Sydney and Melbourne.

(2) The routes to be operated in both directions by the designated airline of Australia:

Route 1. Australia including the Territory of Papua and the Trust Territory of New Guinea to Manila and beyond to Hong Kong and Japan.

Route 2. Australia including the Territory of Papua and the Trust Territory of New Guinea to Manila and beyond to Hong Kong, India, Bahrain, Iran, Greece, Austria, France and the United Kingdom.

Points on any of the above routes may at the option of the designated airline concerned be omitted on any or all flights, provided that an agreed service shall have its starting point or terminal in the territory of the Contracting Party designating the airline.

The designated airline of either Contracting Party may call at one or more points not indicated on the routes specified in the Annex, but shall not have the right to uplift or discharge at any such point or points traffic to be discharged, or which has been uplifted, at any point in the territory of the other Contracting Party.