

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2016 Nr. 112

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Unie van Myanmar inzake luchtdiensten;
(met Bijlage)
Rangoon, 27 juni 2016*

B. TEKST

Air Services Agreement between the Kingdom of the Netherlands and the Republic of the Union of Myanmar

Preamble

The Kingdom of the Netherlands

and

the Republic of the Union of Myanmar,

hereinafter referred to as the "Contracting Parties";

Being parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;

Desiring to contribute to the progress of regional and international civil aviation;

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

Have agreed as follows:

CHAPTER I

INTRODUCTION

Article 1

Definitions

For the purposes of this Agreement, unless otherwise stated:

- a) the term "Aeronautical Authorities" means, in the case of the Republic of the Union of Myanmar, the Department of Civil Aviation of the Ministry of Transport and Communications; in the case of the Kingdom of the Netherlands, the Minister of Infrastructure and the Environment; or in both cases any other authority or person empowered to perform the functions now exercised by the said Authorities;
- b) the terms "Agreed Service" and "Specified Route" mean International Air Service pursuant to this Agreement and the route specified in the Annex to this Agreement respectively;
- c) the term "Agreement" means this Agreement, its Annex drawn up in application thereof, and any amendments to the Agreement or the Annex;
- d) the terms "Air Service", "International Air Service", and "Airline" shall have the meaning respectively assigned to them in Article 96 of the Convention;
- e) the term "Air Transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- f) the term "Capacity" (i) in relation to an aircraft, means the payload of that aircraft available on a route or section of a route; (ii) in relation to an Air Service, means the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or section of a route;
- g) the term "Change of Aircraft" means the operation of one of the Agreed Services by a Designated Airline in such a way that one or more sectors of the Specified Route are flown by different aircraft;

- h) the term "Contracting Party" means a State which has formally agreed to be bound by this Agreement;
- i) the term "the 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, insofar as such Annexes and amendments have become effective for both Contracting Parties;
- j) the term "Designated Airline" means an Airline which has been designated and authorized in accordance with Article 3 of this Agreement (Designation and Authorization);
- k) the term "EU Member State" means a State that is now or in the future a Contracting Party to the Treaty on the European Union and the Treaty on the functioning of the European Union;
- l) the term "ICAO" means the International Civil Aviation Organization;
- m) the term "International Air Transportation" means air transportation in which the passengers, baggage, cargo and mail which are taken on board in the Territory of one State are destined for another State;
- n) the term "Price" means any amount, excluding governmental levies, charged or to be charged by the Airline, directly or through its agents, to any person or entity for the carriage of passengers (and their baggage) and cargo (excluding mail) in Air Transportation, including:
 - i. the conditions governing the availability and applicability of a price;
 - ii. the charges and conditions for any services ancillary to such carriage which are offered by the Airline.
- o) the term "Stores" means articles of a readily consumable nature for use or sale on board an aircraft during flight including commissary supplies;
- p) the term "Territory" in relation to either Contracting Party shall be deemed to be the land areas and territorial waters adjacent thereto and airspace there above under the sovereignty, suzerainty, protection or mandate of the Contracting Party;
- q) the term "User Charge" means a charge made to Airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo.

CHAPTER II

OBJECTIVES

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating International Air Services on the routes specified in the Route Schedule. Such services and routes are hereinafter called "Agreed Services" and "Specified Routes" respectively.
2. Subject to the provisions of this Agreement, the Airline(s) designated by each Contracting Party shall enjoy the following rights, while operating an Agreed Service on a Specified Route,
 - a) the right to fly without landing across the Territory of the other Contracting Party;
 - b) the right to make stops in the Territory of the other Contracting Party for non-traffic purposes;
 - c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo or mail separately or in combination.
3. The Airlines of each Contracting Party, other than those designated under Article 3 (Designation and Authorization) of this Agreement, shall also enjoy the rights specified in paragraphs 2 (a) and (b) of this Article.
4. Nothing in paragraph 2 of this Article shall be deemed to confer on the Airline(s) of one Contracting Party the privilege of taking up, in the Territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the Territory of that other Contracting Party (cabotage).

Article 3

Designation and Authorization

1. Either Contracting Party shall have the right, by written notification through diplomatic channels to the other Contracting Party, to designate one or more Airline(s) to operate International Air Services on the routes specified in the Annex and to substitute another Airline for an Airline previously designated.
2. On receipt of such a notification, and of application from the Designated Airline, in the form and manner prescribed for operating authorization and technical permission, each Contracting Party shall, without delay,

grant to the Airline(s) so designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of this Article, unless it is not satisfied that:

- a) in the case of an Airline designated by the Kingdom of the Netherlands:
 - i. it is established in the Territory of the Kingdom of the Netherlands under the European Union Treaties and has a valid operating licence in accordance with European Union law; and
 - ii. effective regulatory control of the Airline is exercised and maintained by the EU Member State responsible for issuing its Air Operator's Certificate and the relevant Aeronautical Authority is clearly identified in the designation; and
 - iii. the Airline is owned, directly or through majority ownership, and is effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States;
- b) in the case of an Airline designated by the Republic of the Union of Myanmar:
 - i. it is established in the Territory of the Republic of the Union of Myanmar and has a valid Operating Licence in accordance with applicable law of the Republic of the Union of Myanmar; and
 - ii. effective regulatory control of the Airline is exercised and maintained by the Republic of the Union of Myanmar; and
 - iii. the Airline is owned, directly or through majority ownership, and it is effectively controlled by the Republic of the Union of Myanmar and/or by nationals of such State;and that:
- c) the standards set forth in Article 18 (Safety) and Article 19 (Aviation Security) are being maintained and administered;
- d) the Designated Airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operations of International Air Transportation by the Contracting Party considering the application or applications.

3. Upon receipt of the operating authorization of paragraph 2 of this Article, the Designated Airline may at any time begin to operate the Agreed Services, in part or in whole, provided that it complies with the provisions of this Agreement.

Article 4

Revocation and Suspension of Authorization

1. Each Contracting Party shall have the right to withhold, revoke, suspend or limit the operating authorizations of an Airline designated by the other Contracting Party, when:

- a) in the case of an Airline designated by the Kingdom of the Netherlands:
 - i. it is not established in the Territory of the Kingdom of the Netherlands under European Union Treaties or does not have a valid operating licence in accordance with European Union law; or
 - ii. effective regulatory control of the Airline is not exercised or not maintained by the EU Member State responsible for issuing its Air Operator's Certificate or the relevant Aeronautical Authority is not clearly identified in the designation; or
 - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States;
- b) in the case of an Airline designated by the Republic of the Union of Myanmar:
 - i. it is not established in the Territory of the Republic of the Union of Myanmar or has no valid operating licence in accordance with applicable law of the Republic of the Union of Myanmar; or
 - ii. effective regulatory control of the Airline is not exercised or not maintained by the Republic of the Union of Myanmar; or
 - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by the Republic of the Union of Myanmar and/or by nationals of such State;
- c) in case the Airline has failed to comply with the laws and regulations referred to in Article 16 (Application of Laws, Regulations and Procedures) of this Agreement;
- d) in any case the standards set forth in this Agreement, especially in Articles 18 (Safety) and 19 (Aviation Security) are not being maintained and administered;
- e) in the event of failure by such Airline to qualify before the Aeronautical Authorities of the Contracting Party assessing the authorization, under the laws and regulations normally and reasonably applied to the operation of International Air Services by these Authorities in conformity with the Convention;
- f) in case the Airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent further non-compliance with paragraph 1 of this Article, the rights established by this Article shall be exercised only after consultation with the other Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date of receipt of the request.

CHAPTER III
COMMERCIAL PROVISIONS

Article 5

Prices

1. Each Contracting Party shall allow Prices for Air Transportation to be established by each Designated Airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

- a) prevention of unreasonably discriminatory Prices or practices;
- b) protection of consumers from Prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c) protection of Airlines from Prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to or filing with its Aeronautical Authorities of Prices to be charged by the Designated Airline or Airlines of the other Contracting Party for carriage to or from its Territory. Prices may remain in effect unless subsequently disapproved under paragraph 3 below.

3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a Price charged or proposed to be charged by (a) an Airline of either Contracting Party for International Air Transportation between the territories of the Contracting Parties, or (b) an Airline of one Contracting Party for International Air Transportation between the Territory of the other Contracting Party and any other country.

If either Contracting Party considers any such Price inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a Price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the new Price shall not take effect nor continue to be in effect.

Article 6

Commercial Activities

1. The Designated Airline(s) of each Contracting Party shall be allowed:

- a) to establish in the Territory of the other Contracting Party offices for the promotion and sale of Air Services;
- b) in the Territory of the other Contracting Party to engage, directly or through its agents, in the sale of Air Services;
- c) to sell such services and any person shall be free to purchase Air Services in any currency.

2. The Designated Airline(s) of each Contracting Party shall be allowed, on the basis of reciprocity and in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the Territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of Air Services.

3. These staff requirements may, at the option of the Designated Airline, be satisfied by its own personnel or by using the services of any other organization, company or Airline operating in the Territory of the other Contracting Party, authorized to perform such services in the Territory of that Contracting Party.

Article 7

Ground Handling

Subject to the laws and regulations of each Contracting Party, each Designated Airline shall have in the Territory of the other Contracting Party the right to perform its own ground handling ("self-handling") or, at its option, the right to select among competing suppliers that provide ground handling services in whole or in part. Where such laws and regulations limit or preclude self-handling and where there is no effective competition between suppliers that provide ground handling services, each Designated Airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground handling services provided by a supplier or suppliers.

Article 8

Codeshare

1. In operating or holding out the Air Services on the Specified Routes, each Designated Airline of a Contracting Party may enter into codeshare arrangements with:
 - a) the Designated Airline of the same Contracting Party;
 - b) the Designated Airline(s) of the other Contracting Party;
 - c) the Designated Airline(s) of a third country;
 - d) a cargo surface transportation provider of any country.
2. The operating Airline(s) involved in the co-operative marketing arrangements shall hold the appropriate authority and the underlying traffic rights, including the route rights and the Capacity entitlements, and meet the requirements normally applied to such arrangements.
3. All marketing Airline(s) involved in the co-operating arrangements shall hold the appropriate authority and the underlying traffic rights, including the route rights, and meet the requirements normally applied to such arrangements.
4. The total Capacity operated by the Air Services performed under such arrangements shall be counted only against the Capacity entitlement of the Contracting Party designating the operating Airline(s). The Capacity offered by the marketing Airline(s) on such services shall not be counted against the Capacity entitlement of the Contracting Party designating that Airline.
5. In addition to the operating Airline(s), the Aeronautical Authorities of each Contracting Party may require the marketing Airline(s) to file schedules for approval.
6. When holding out services for sale under such arrangements, the Airline concerned or its agent shall make it clear to the purchaser at the point of sale as to which Airline shall be the operating Airline on each sector of the service and with which Airline(s) the purchaser is entering into a contractual relationship.
7. These provisions shall be applicable to passenger, combination and all-cargo services.

Article 9

Change of Aircraft

1. On any segment or segments of the Specified Routes, a Designated Airline may perform International Air Transportation without any limitation as to change at any point on the Specified Route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the Territory of the Contracting Party that has designated the Airline and, in the inbound direction, the transportation to the Territory of the Contracting Party that has designated the Airline is a continuation of the transportation from beyond such point.
2. For the purpose of Change of Aircraft operations, a Designated Airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial and/or cooperative marketing arrangements with other Airlines.
3. A Designated Airline may use different or identical flight numbers for the sectors of its Change of Aircraft operations.

Article 10

Fair Competition

1. Each Contracting Party shall allow a fair and equal opportunity for each Designated Airline to compete in providing the International Air Transportation governed by this Agreement.
2. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a Designated Airline of the other Contracting Party.
3. Each Contracting Party shall allow each Designated Airline to determine the frequency and Capacity of the International Air Transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regu-

larity of service, or the aircraft type(s) operated by the Designated Airline(s) of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

4. Neither Party shall impose on the other Party's Designated Airline(s) a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to Capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

Article 11

Safeguards

1. The Contracting Parties agree that the following Airline practices may be regarded as possible unfair competitive practices which may merit closer examination:

- a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;
- b) the addition of excessive Capacity or frequency of service;
- c) the practices in question are sustained rather than temporary;
- d) the practices in question have a serious economic effect on, or cause significant damage to, another Airline;
- e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another Airline from the market;
and
- f) behaviour indicating an abuse of dominant position on the route.

2. If the Aeronautical Authorities of one Contracting Party consider that an operation or operations intended or conducted by the Designated Airline of the other Contracting Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1 of this Article, they may request consultation in accordance with Article 23 (Consultations and Amendment) with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within fifteen (15) days of the request.

3. If the Contracting Parties fail to reach a resolution of the problem through consultations, either Contracting Party may invoke the dispute resolution mechanism under Article 24 (Settlement of Disputes) to resolve the dispute.

Article 12

Capacity

1. The Capacity to be provided by the Designated Airline(s) on the Agreed Services shall be agreed and reviewed between the Aeronautical Authorities of the Contracting Parties.

2. If, on review, the Aeronautical Authorities fail to agree on the Capacity to be provided on the Agreed Services, the Capacity that may be provided by the Designated Airline(s) of the Contracting Parties shall not exceed the total Capacity previously agreed to be provided in accordance with the provisions of paragraph 1 of this Article.

CHAPTER IV

FINANCIAL PROVISIONS

Article 13

Taxes, Customs Duties and Charges

1. Aircraft operating in International Air Services by the Designated Airlines of one Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft Stores (including but not limited to such items as food, beverages and tobacco) which are on board such aircraft shall be exempted by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, provided such regular equipment and such other items remain on board the aircraft up to such time as they are re-exported.

2. Regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft Stores (including but not limited to such items as food, beverages and tobacco), printed ticket stock, air way-bills, any printed material which bears insignia of a Designated Airline of one Contracting Party and usual publicity material distributed without charge by that Designated Airline, introduced into the area of the other

Contracting Party by or on behalf of that Designated Airline or taken on board the aircraft operated by that Designated Airline, shall be exempted by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, even when such regular equipment and such other items are to be used on any part of a journey performed over the area of the other Contracting Party.

3. The regular equipment and the other items referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the customs authorities of the other Contracting Party.

4. The regular equipment and the other items referred to in paragraph 1 of this Article may be unloaded in the area of the other Contracting Party with the approval of the customs authorities of that other Contracting Party. In these circumstances, such regular equipment and such items shall enjoy, on the basis of reciprocity, the exemptions provided for by paragraph 1 of this Article until they are re-exported or otherwise disposed of in accordance with customs regulations. The customs authorities of that other Contracting Party may however require that such regular equipment and such items be placed under their supervision up to such time.

5. The exemptions provided for by this Article shall also be available in situations where a Designated Airline of one Contracting Party has entered into arrangements with another Airline or Airlines for the loan or transfer in the area of the other Contracting Party of the regular equipment and the other items referred to in paragraphs 1 and 2 of this Article, provided that, that other Airline or Airlines similarly enjoy such exemptions from that other Contracting Party.

6. Baggage and cargo in direct transit across the area of a Contracting Party shall be exempt from customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival.

7. In conformity with European Union legislation, nothing in this Agreement shall prevent the Kingdom of the Netherlands from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in the Territory of the European part of the Netherlands for use in an aircraft of a Designated Airline of the Republic of the Union of Myanmar that operates between a point in the Territory of the European part of the Netherlands and the Territory of another European Union Member State.

Article 14

User Charges

1. User Charges that may be imposed and/or controlled by the competent charging authorities or bodies of each Contracting Party on the Airline(s) of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such Users Charges shall be assessed on the Airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other Airline at the time the charges are assessed.

2. User Charges imposed on the Airline(s) of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations on User Charges between its competent charging authorities or bodies and Airlines using the services and facilities provided by those charging authorities, where practicable through those Airlines' representative organisations. Reasonable notice of any proposals for changes in User Charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning User Charges.

Article 15

Transfer of Earnings

Each Designated Airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted at the effective rate of exchange prevailing on the date of remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance. Such transfers shall be in accordance with the provisions of the foreign exchange control regulations of that Contracting Party.

CHAPTER V
REGULATORY PROVISIONS

Article 16

Application of Laws, Regulations and Procedures

1. The laws, regulations and procedures of either Contracting Party relating to the entrance or entry into or departure from its Territory of aircraft engaged in International Air Services, or to the operation and navigation of such aircraft, shall be complied with by the Designated Airline(s) of the other Contracting Party upon their entrance into, and until and including their departure from, the said Territory.
2. The laws, regulations and procedures of either Contracting Party relating to immigration, passports, or other approved travel documents, entry, clearance, customs and quarantine shall be complied with, by crews or passengers and/or on behalf of cargo and mail carried by aircraft of the Designated Airline(s) of the other Contracting Party upon their entrance into, and until and including their departure from the Territory of the said Contracting Party.
3. Neither Contracting Party shall give preference to its own or any other Airline over a Designated Airline of the other Contracting Party engaged in similar International Air Transportation in the application of its immigration, customs, quarantine and similar regulations; or in the use of airports, airways and air traffic services and associated facilities under its control.
4. Passengers, baggage and cargo in direct transit through the Territory of any Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or prevention of illegal entry.
5. Each Contracting Party shall, upon request of the other Contracting Party, supply copies of the relevant laws, regulations and procedures referred to in this Agreement.

Article 17

Recognition of Certificates and Licenses

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid in reciprocity, by one Contracting Party, including, in the case of the Netherlands, in accordance with EU laws and regulations, and still valid, shall be recognised as valid by the other Contracting Party for the purpose of operating the Agreed Services on the Specified Routes, provided that the requirements under which such certificates and licenses were issued or rendered valid in reciprocity are equal to or above the minimum standards which may be established pursuant to the Convention.
2. Each Contracting Party reserves the right, however, to refuse to recognise for the purpose of flights above or landing within its own Territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

Article 18

Safety

1. Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement (Revocation and Suspension of Authorization).
3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any Aircraft operated by or, under a lease arrangement, on behalf of the Airline or Airlines of one Contracting Party on Services to or from the Territory of the other Contracting Party may, while within the Territory of the other Contracting Party, be made the subject of an examination by the authorized representatives of the other Con-

tracting Party, on board and around the aircraft, to check both the validity of the aircraft documents and those of its crew and the apparent conditions of the aircraft and its equipment (ramp inspections), provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections gives rise to:
 - a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention; or
 - b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the inspection shall, for the purpose of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licenses in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the Airline or Airlines of one Contracting Party in accordance with paragraph 3 above is denied by the representative of that Airline or Airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 4 above arise and to draw the conclusions referred to in that paragraph.

6. Each Contracting Party reserves the right to suspend or vary the operating authorization of an Airline or Airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultations or otherwise, that immediate action is essential to the safety of the Airline's operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for the taking of that action ceases to exist.

Article 19

Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 as well as with any other convention and protocol relating to the security of civil aviation which both Contracting Parties adhere to.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the standards of aviation security and, in so far as they are applied by them, the Recommended Practices established by ICAO and designated as Annexes to the Convention. They shall require that operators of aircraft of their registry, operators who have their main place of business or permanent residence in their Territory, and the operators of airports in their Territory, act in conformity with such aviation security provisions. In this paragraph, the reference to aviation security standards includes any difference notified by the Contracting Party concerned.

4. Each Contracting Party shall ensure that effective measures are taken within its Territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo (including hold baggage) and Stores prior to and during boarding or loading, and that those measures are adjusted to meet any increased threat. Each Contracting Party agrees that its Designated Airline(s) shall be required to observe the aviation security provisions referred to in paragraph 3 above, required by the other Contracting Party for entrance into, departure from, or while within the Territory of that other Contracting Party. Each Contracting Party shall also act favourably upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contract-

ing Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request immediate consultations with the other Contracting Party. Such consultations shall take place within thirty (30) days of that request. These consultations will be aimed at reaching an agreement upon the measures suitable to eliminate the more immediate reasons of concern and at adopting, within the framework of the ICAO security standards, the actions necessary to establish the appropriate conditions of security.

7. Each Contracting Party shall take such measures, as it may find practicable, to ensure that an aircraft subject to an act of unlawful seizure or other acts of unlawful interference which has landed in its Territory, is retained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

Article 20

Ban on Smoking

1. Each Contracting Party shall prohibit or cause their Airlines to prohibit smoking on all flights carrying passengers operated by its Airlines between the territories of the Contracting Parties. This prohibition shall apply to all locations within the aircraft and shall be in effect from the time an aircraft commences enplanement of passengers to the time deplanement of passengers is completed.

2. Each Contracting Party shall take all measures that it considers reasonable to secure compliance by its Airlines and by their passengers and crew members with the provisions of this Article, including the imposition of appropriate penalties for non-compliance.

Article 21

Statistics

The Aeronautical Authorities of each Contracting Party shall provide or cause its Designated Airline or Airlines to provide the Aeronautical Authorities of the other Contracting Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the Capacity provided on the Agreed Services operated by the Designated Airline(s) of the first Contracting Party.

Article 22

Timetable

1. The flight schedules of the Designated Airline or Airlines of one Contracting Party may be requested for approval by the Aeronautical Authorities of the other Contracting Party for operational purposes only.

2. In that case, the flight schedules shall be communicated at least thirty (30) days prior to the beginning of the operations and shall specify in particular the timetables, frequency of services, types of aircraft, configurations and numbers of seats to be made available to the public. In some cases, this period of thirty (30) days may be reduced subject to an agreement between the Aeronautical Authorities of both Contracting Parties. Both Contracting Parties shall minimize the administrative burdens of filing.

3. Any change to the approved flight schedules of a Designated Airline of one Contracting Party shall be submitted for approval to the Aeronautical Authorities of the other Contracting Party.

Article 23

Consultations and Amendment

1. Either Contracting Party may, at any time, request consultations on the interpretation, application, implementation, or amendment of this Agreement or compliance with this Agreement.

2. Such consultations, which may be between Aeronautical Authorities, and which may be through discussion or by correspondence shall begin within a period of sixty (60) days from the date the other Contracting Party receives a request, unless otherwise agreed by the Contracting Parties.

3. This Agreement shall be amended through an exchange of diplomatic notes and the amendments shall come into force on the date of the later written notification in which the Contracting Parties have informed each other of the completion of their respective constitutional requirements.

4. Notwithstanding the provisions of paragraph 3 above, any amendment of the Annex may be made by written agreement between the Aeronautical Authorities of the Contracting Parties and shall come into force when confirmed by an exchange of diplomatic notes.

Article 24

Settlement of Disputes

1. Any dispute arising 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 consultations and negotiation.

2. If the Contracting Parties fail to reach a settlement through consultations, the dispute may, at the request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth below.

3. If the Contracting Parties have agreed to their disputes by means of arbitration, arbitration shall be by 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 the third such arbitrator shall not be a national of either Contracting Party. Each Contracting Party shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute, and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed on within the period indicated, the President of the Council of ICAO may be requested by either Contracting Party to appoint an arbitrator or arbitrators. If the President is of the same nationality as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

4. The arbitration tribunal shall determine its own procedure.

5. Each Contracting Party shall give full effect to any decision or award of the tribunal.

6. Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 3 of this Article.

7. If and so long as either Contracting Party fails to comply with any decision given under paragraph 3, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default or to the Designated Airline or Airlines in default.

CHAPTER VI

FINAL PROVISIONS

Article 25

Duration and Termination

1. Either Contracting Party may, at any time, give notice in writing, through diplomatic channels, to the other Contracting Party of its intention to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO.

2. This Agreement shall terminate twelve months after the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.

Article 26

Registration with ICAO

This Agreement and any amendment thereto shall be registered with ICAO.

Article 27

Applicability of Multilateral Agreements and Conventions

1. The provisions of the Convention shall be applicable to this Agreement.

2. If a multilateral agreement, accepted by both Contracting Parties, concerning any matter covered by this Agreement, enters into force, the relevant provisions of that multilateral agreement shall supersede the relevant provisions of this Agreement.

3. The Contracting Parties may consult each other to determine the consequences for the Agreement of the supersession, as mentioned under paragraph 2 of this Article and to agree upon required amendments to the Agreement.

Article 28

Applicability of the Agreement

As regards the Kingdom of the Netherlands, this Agreement shall apply to the Territory of the European part of the Netherlands.

Article 29

Entry into Force

1. This Agreement shall come into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the formalities and constitutional requirements for its entry into force in their respective countries have been complied with.

2. On the date on which this Agreement comes into force, it replaces and abrogates the Agreement between the Council of Ministers of the Socialist Republic of the Union of Burma and the Government of the Kingdom of the Netherlands for Air Services, signed at Rangoon (now Yangon) on 25th May 1977.

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

DONE in Yangon on 27 June 2016, in two original copies, in the English language.

For the Kingdom of the Netherlands,

MR. K.J. HARTOGH

For the Republic of the Union of Myanmar,

U KYAW MYO

Annex

Route Schedule

1. For the Designated Airline(s) of the Kingdom of the Netherlands:
All Points in the Netherlands – All Intermediate Points – All Points in Myanmar – All Points Beyond
 2. For the Designated Airline(s) of the Republic of the Union of Myanmar:
All Points in Myanmar – All Intermediate Points – All Points in the Netherlands – All Points Beyond
- Note:
Each Airline may on any or all flights and at its option:
- a. operate flights in either or both directions;
 - b. terminate any or all of their services in the Territory of the other Contracting Party;
 - c. combine different flight numbers within one aircraft operation;
 - d. serve intermediate and beyond point and points in the territories of the Contracting Parties in any combination and in any order;
 - e. omit stops at any point or points;
 - f. transfer traffic from any of its aircraft to any of its other aircraft at any point;
 - g. serve points behind any point in its Territory with or without Change of Aircraft or flight number and hold out and advertise such services to the public as through services;
 - h. carry transit traffic through the Territory of the other Contracting Party without exercising co-terminalisation rights or own-stopover rights between points in that Territory;
 - i. combine traffic on the same aircraft regardless of where such traffic originate;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that any service either begins or terminates in the Territory of the country designating the Airline(s).

D. PARLEMENT

Het Verdrag, met Bijlage, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag, met Bijlage, kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag, met Bijlage, zullen ingevolge artikel 29, eerste lid, van het Verdrag in werking treden op de eerste dag van de tweede maand die volgt op de datum waarop de verdragsluitende partijen elkaar schriftelijk ervan in kennis hebben gesteld dat aan de formaliteiten en grondwettelijke vereisten voor de inwerkingtreding van het Verdrag in hun respectieve landen is voldaan.

J. VERWIJZINGEN

Verbanden

Het Verdrag, met Bijlage, vervangt:

Titel : Luchtvaartovereenkomst tussen de Regering van het Koninkrijk der Nederlanden en de Ministerraad van de Socialistische Republiek van de Unie van Birma;
Rangoon, 25 mei 1977
Tekst : *Trb.* 1977, 98 (Engels en vertaling)
Laatste *Trb.* : *Trb.* 1980, 52

Overige verwijzingen

Titel : Verdrag inzake de internationale burgerluchtvaart;
Chicago, 7 december 1944
Tekst : *Stb.* 1947, 165 (Engels)
Trb. 1973, 109 (vertaling, geconsolideerd)
Laatste *Trb.* : *Trb.* 2016, 13

Titel : Verdrag betreffende de werking van de Europese Unie;
Rome, 25 maart 1957
Tekst : *Trb.* 1957, 91 (Nederlands)
Laatste *Trb.* : *Trb.* 2013, 83

Titel : Verdrag inzake strafbare feiten en bepaalde andere handelingen begaan aan boord van
luchtvaartuigen;
Tokio, 14 september 1963
Tekst : *Trb.* 1964, 115 (Engels en Frans)
Trb. 1964, 186 (vertaling)
Laatste *Trb.* : *Trb.* 1995, 203

Titel : Verdrag tot bestrijding van het wederrechtelijk in zijn macht brengen van luchtvaartuigen;
's-Gravenhage, 16 december 1970
Tekst : *Trb.* 1971, 50 (Engels, Frans en vertaling)
Laatste *Trb.* : *Trb.* 2013, 209

Titel : Verdrag tot bestrijding van wederrechtelijke gedragingen gericht tegen de veiligheid van de
burgerluchtvaart;
Montreal, 23 september 1971
Tekst : *Trb.* 1971, 218 (Engels, Frans en vertaling)
Laatste *Trb.* : *Trb.* 2016, 55

Titel : Protocol tot bestrijding van wederrechtelijke daden van geweld op luchthavens voor de inter-
nationale burgerluchtvaart bij het Verdrag tot bestrijding van wederrechtelijk gedragingen
tegen de veiligheid van de burgerluchtvaart, gedaan te Montreal op 23 september 1971;
Montreal, 24 februari 1988

Tekst : *Trb.* 1988, 88 (Engels, Frans en vertaling)
Laatste *Trb.* : *Trb.* 2011, 41

Titel : Verdrag inzake het merken van kneedspringstoffen ten behoeve van de opsporing ervan;
Montreal, 1 maart 1991

Tekst : *Trb.* 1991, 127 (Engels en Frans)
Trb. 1992, 80 (vertaling)

Laatste *Trb.* : *Trb.* 2011, 34

Titel : Verdrag betreffende de Europese Unie;
Maastricht, 7 februari 1992

Tekst : *Trb.* 1992, 74 (Nederlands)

Laatste *Trb.* : *Trb.* 2012, 182

Uitgegeven de zesentwintigste juli 2016.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS