No. 7568

NEW ZEALAND
and
UNITED STATES OF AMERICA

Air Transport Agreement (with schedule). Signed at Wellington, on 24 June 1964

Official text: English.

Registered by the International Civil Aviation Organization on 3 February 1965.

NOUVELLE-ZÉLANDE
et
ÉTATS-UNIS D'AMÉRIQUE

Accord relatif aux transports aériens (avec tableau). Signé à Wellington, le 24 juin 1964

Texte officiel anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 3 février 1965.

No. 7568. AIR TRANSPORT AGREEMENT[1] BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA. SIGNED AT WELLINGTON, ON 24 JUNE 1964

The Government of New Zealand and the Government of the United States of America,

Desiring to conclude an Agreement for the purpose of promoting air communications between their respective territories,

Have agreed as follows :

Article 1

For the purposes of the present Agreement :

(*a*) The term " aeronautical authorities " shall mean, in the case of New Zealand, the Minister of Civil Aviation and any person or agency authorized to perform the functions exercised at present by the Minister of Civil Aviation and, in the case of the United States of America, the Civil Aeronautics Board and any person or agency authorized to perform the functions exercised at the present time by the Civil Aeronautics Board.

(*b*) The term " designated airline " shall mean an airline that one Contracting Party has notified the other Contracting Party, in writing, to be the airline which will operate a specific route or routes listed in the Schedule[2] of this Agreement.

(*c*) The term " territory " in relation to a State shall mean the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, jurisdiction or trusteeship of that State.

(*d*) The term " air service " shall mean any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo.

(*e*) The term " international air service " shall mean an air service which passes through the air space over the territory of more than one State.

(*f*) The term " stop for non-traffic purposes " shall mean a landing for any purpose other than taking on or discharging passengers, cargo or mail.

[1] Came into force on 24 June 1964, upon signature, in accordance with article 18.
[2] See p. 116 of this volume.

Article 2

Each Contracting Party grants to the other Contracting Party rights necessary for the conduct of air services by the designated airlines, as follows : the rights of transit, of stops for non-traffic purposes, and of commercial entry and departure for international traffic in passengers, cargo, and mail at the points in its territory named on each of the routes specified in the appropriate paragraph of the Schedule which is annexed to and forms part of this Agreement.

Article 3

Air service on a specified route may be inaugurated by an airline or airlines of one Contracting Party at any time after that Contracting Party has designated such airline or airlines for that route and the other Contracting Party has given the appropriate operating permission. Such other Party shall, subject to Article 4 of this Agreement, be bound to give this permission provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that Party, under the laws and regulations normally applied by these authorities, before being permitted to engage in the operations contemplated by this Agreement.

Article 4

Each Contracting Party reserves the right to withhold or revoke the operating permission provided for in Article 3 of this Agreement from an airline designated by the other Contracting Party in the event that it is not satisfied that substantial ownership and effective control of such airline are vested in the other Contracting Party or its nationals, or in case of failure by such airline to comply with the laws and regulations referred to in Article 5 hereof, or in case of the failure of the airline or the government designating it otherwise to perform its obligations hereunder, or to fulfil the conditions under which the rights are granted in accordance with this Agreement.

Article 5

(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 or airlines designated by the other Contracting Party, and shall be complied with by such aircraft upon entrance into or departure from, and while within the territory of the first Contracting Party.

(2) The laws and regulations of one Contracting Party relating to the admission to 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 by or on behalf of such passengers, crew or cargo of the other Contracting Party upon entrance into or departure from, and while within the territory of the first Contracting Party.

Article 6

Certificates of airworthiness, certificates of competency and licences 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 routes and services provided for in this Agreement, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licences granted to its own nationals by another State.

Article 7

In order to prevent discriminatory practices and to assure equality of treatment, both Contracting Parties agree that :

(*a*) Each of the Contracting Parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control. Each of the Contracting Parties agrees, however, that these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(*b*) Fuel, lubricating oils, consumable technical supplies, spare parts, regular equipment, and stores introduced into the territory of one Contracting Party by the other Contracting Party or its nationals, and intended solely for use by aircraft of such Contracting Party shall be exempt on a basis of reciprocity from customs duties, inspection fees and other national duties or charges.

(*c*) Fuel, lubricating oils, other consumable technical supplies, spare parts, regular equipment, and stores retained on board aircraft of the airlines of one Contracting Party authorized to operate the routes and services provided for in this Agreement shall, upon arriving in or leaving the territory of the other Contracting Party, be exempt on a basis of reciprocity from customs

duties, inspection fees and other national duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

(*d*) Fuel, lubricating oils, other consumable technical supplies, spare parts, regular equipment, and stores taken on board aircraft of the airlines of one Contracting Party in the territory of the other and used in international services shall be exempt on a basis of reciprocity from customs duties, excise taxes, inspection fees and other national duties or charges.

Article 8

There shall be a fair and equal opportunity for the airlines of each Contracting Party to operate on any route covered by this Agreement.

Article 9

In the operation by the airlines of either Contracting Party of the trunk services described in this Agreement, the interest of the airlines of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same routes.

Article 10

(1) The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

(2) It is the understanding of both Contracting Parties that services provided by a designated airline under the present Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the countries of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be applied in accordance with the general principles of orderly development to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related :

(*a*) to traffic requirements between the country of origin and the countries of ultimate destination of the traffic;

(*b*) to the requirements of through airline operation; and,

(*c*) to the traffic requirements of the area through which the airline passes after taking account of local and regional services.

Article 11

(1) All rates to be charged by an airline of one Contracting Party to or from points in the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, such as costs of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service. Such rates shall be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal powers.

(2) Any rate proposed to be charged by an airline of either Contracting Party for carriage to or from the territory of the other Contracting Party, shall, if so required, be filed by such airline with the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of introduction unless the Contracting Party with whom the filing is to be made permits filing on shorter notice. The aeronautical authorities of each Contracting Party shall use their best efforts to ensure that the rates charged and collected conform to the rates filed with either Contracting Party, and that no carrier rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents or the use of unrealistic currency conversion rates.

(3) It is recognized by both Contracting Parties that during any period for which either Contracting Party has approved the traffic conference procedures of the International Air Transport Association, or other associations of international air carriers, any rate agreements concluded through these procedures and involving airlines of that Contracting Party will be subject to the approval of that Contracting Party.

(4) If a Contracting Party, on receipt of the notification referred to in paragraph (2) of this Article, is dissatisfied with the rate proposed, it shall so inform the other Contracting Party at least fifteen (15) days prior to the date that such rate would otherwise become effective, and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.

(5) If a Contracting Party upon review of an existing rate charged for carriage to or from its territory by an airline of the other Contracting Party is dissatisfied with that rate, it shall so notify the other Contracting Party and the Contracting Parties shall endeavour to reach agreement on the appropriate rate.

(6) In the event that an agreement is reached pursuant to the provisions of paragraph (4) or (5) of this Article, each Contracting Party will exercise its best efforts to put such rate into effect.

(7) (*a*) If under the circumstances set forth in paragraph (4) no agreement can be reached prior to the date that such rate would otherwise become effective, or

(*b*) If under the circumstances set forth in paragraph (5) no agreement can be reached prior to the expiry of sixty (60) days from the date of notification :

then the Contracting Party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or the continuation of the service in question at the rate complained of, *provided, however*, that the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable service between the same pair of points.

(8) When in any case under paragraphs (4) and (5) of this Article the aeronautical authorities of the two Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one Contracting Party concerning the proposed rate or an existing rate of the airline or airlines of the other Contracting Party, upon the request of either, the terms of Article 13 of this Agreement shall apply. In rendering its advisory opinion, the arbitral tribunal shall be guided by the principles laid down in this Article.

(9) Unless otherwise agreed between the parties, each Contracting Party undertakes to use its best efforts to ensure that any rate specified in terms of the national currency of one of the Parties will be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Party.

Article 12

Consultation between the competent authorities of both Contracting Parties may be requested at any time by either Contracting Party for the purpose of discussing the interpretation, application, or amendment of the Agreement. Such consultation shall begin within a period of sixty (60) days from the date of the receipt of the request by the Ministry of External Affairs of New Zealand or the Department of State of the United States of America as the case may be. Should agreement be reached on amendment of the Agreement, such amendment will come into effect upon confirmation by an exchange of diplomatic notes.

Article 13

(1) Except as otherwise provided in this Agreement, any dispute between the Contracting Parties relative to the interpretation or application of this

Agreement which cannot be settled through consultation shall be submitted for an advisory report 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 two months of the date of delivery by either Contracting Party to the other Contracting Party of a diplomatic note requesting arbitration of a dispute; and the third arbitrator shall be agreed upon within one month after such period of two months.

(2) If either of the Contracting Parties fails to designate its own arbitrator within two months, or if the third arbitrator is not agreed upon within the time limit indicated, either Contracting Party may request the President of the International Court of Justice to make the necessary appointment or appointments by choosing the arbitrator or arbitrators.

(3) The Contracting Parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such advisory report. A moiety of the expenses of the arbitral tribunal shall be borne by each Contracting Party.

Article 14

This Agreement, all amendments thereto, and contracts connected therewith shall be registered with the International Civil Aviation Organization.

Article 15

If a general multilateral air transport convention accepted by both Contracting Parties enters into force, the present Agreement shall be amended so as to conform with the provisions of such convention.

Article 16

Either of the Contracting Parties may at any time notify the other of its intention to terminate the present Agreement. Such a notice shall be sent simultaneously to the International Civil Aviation Organization. In the event such communication is made, this Agreement shall terminate one year after the date of its receipt, unless by agreement between the Contracting Parties the notice of intention to terminate is withdrawn before the expiration of that time. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed as having been received fourteen (14) days after its receipt by the International Civil Aviation Organization.

Article 17

On its entry into force, this Agreement shall supersede the Agreement between New Zealand and the United States of America signed at Washington on the third day of December, 1946, as amended and supplemented;[1] provided that in any case in which an air service authorized under the aforesaid Agreement is also provided for in this Agreement, an airline authorized by the aeronautical authorities of both Contracting Parties to operate such service shall be deemed to have been authorized to operate the service under this Agreement.

Article 18

This Agreement will come into force on the day it is signed.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE in duplicate at Wellington this twenty-fourth day of June 1964.

For the Government of New Zealand :

Keith HOLYOAKE
Minister of External Affairs of New Zealand

For the Government of the United States of America :

Herbert B. POWELL
Ambassador of the United States of America in New Zealand

SCHEDULE

1. An airline or airlines designated by the Government of New Zealand shall be entitled to operate air services on each of the air routes specified and to make scheduled landings in the United States at the points specified in this paragraph :

(*a*) From New Zealand via the Cook Islands and the Society Islands to Los Angeles, in both directions.

(*b*) From New Zealand via New Caledonia, the Fiji Islands, American Samoa and the Cook Islands to Honolulu and beyond to Los Angeles, in both directions.

(*c*) From New Zealand via the Fiji Islands and the Cook Islands to American Samoa and (optional) beyond to the Society Islands, in both directions.

(*d*) From New Zealand via the Fiji Islands, American Samoa, and the Cook Islands to the Society Islands, in both directions.

[1] See United Nations, *Treaty Series*, Vol. 7, p. 175; Vol. 401, p. 204; Vol. 410, p. 280; Vol. 458, p. 270 and Vol. 479, p. 350.

2. An airline or airlines designated by the Government of the United States shall be entitled to operate air services on each of the air routes specified and to make scheduled landings in New Zealand at the points specified in this paragraph:

(*a*) From the United States (including island territory in the South Pacific under United States authority) via the Fiji Islands and New Caledonia to Auckland and Christchurch (but not both points on the same flight), and beyond to Australia and beyond, in both directions.

(*b*) From the United States via the Society Islands, Cook Islands, American Samoa, the Fiji Islands and New Caledonia to Auckland and Christchurch (but not both points on the same flight), and beyond to Australia and beyond, in both directions.

3. Points on any of the specified routes may at the option of the designated airline be omitted on any or all flights, provided that no air service shall be operated unless the starting point or the point at which the service ends is a terminal rather than an intermediate point in the territory of the Contracting Party designating the airline, within the meaning of the relevant route description. Additional (technical) stops may be made anywhere on the specified routes.