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B1987/7

Air Transport Agreement

between

New Zealand

and

the Federal Republic of Germany

New Zealand
and
the Federal Republic of Germany

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh 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,

Have agreed as follows:

Article 1

Definitions

(1) For the purposes of the present Agreement, unless the text otherwise requires:

- a) the term "aeronautical authorities" shall mean in the case of the Federal Republic of Germany, the Federal Minister of Transport; in the case of New Zealand, the Minister responsible for Civil Aviation; or in both cases any other person or agency authorized to perform the functions exercised by the said authorities;
- b) the term "designated airline" shall mean an airline that one Contracting Party has designated in writing to the other Contracting Party in accordance with Article 3 of the present Agreement as being an airline which is to operate international air services on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement.

(2) The terms "territory", "air service", "international air service" and "stop for non-traffic purposes" shall, for the purpose of the present Agreement, have the meaning laid down in Articles 2 and 96 of the Convention of December 7, 1944, on International Civil Aviation as amended at present or in future, provided that, in the case of New Zealand, the term "territory" shall exclude the Cook Islands, Niue and Tokelau.

Article 2

Grant of Rights

(1) Each Contracting Party shall grant to the other Contracting Party for the purpose of operating international air services by designated airlines over the routes specified in accordance with paragraph (2) of this Article,

- a) the right to fly across its territory without landing;
- b) the right to land in its territory for non-traffic purposes

and

- c) the right to land in its territory at the points named on the routes specified in accordance with paragraph (2) of this Article, in order to take on or discharge passengers, mail and/or cargo on a commercial basis.

(2) The routes over which the designated airlines of the Contracting Parties will be authorized to operate international air services shall be specified in a Route Schedule to be agreed upon in an exchange of notes between the Governments of the Contracting Parties.

(3) Nothing in paragraphs (1) and (2) of this Article shall be deemed to confer on a designated airline of one Contracting Party the right to take on board, in the territory of the other Contracting Party, passengers, cargo and mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

Article 3

Designation and Authorization of Airlines

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

- a) the Contracting Party to whom the rights specified in paragraph (1) of Article 2 are granted, has designated one or several airlines in writing, and

b) the Contracting Party granting these rights has authorized the designated airline or airlines to initiate the air services.

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

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

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

Article 4

Revocation or Suspension of Operating Authorizations

(1) Each Contracting Party may revoke, suspend, or limit by the imposition of conditions, the authorization granted in accordance with paragraph (2) of Article 3 of the present Agreement in the event of failure by a designated airline to comply with the laws and regulations of the Contracting Party granting the rights or to comply with the provisions of the present Agreement or to fulfil the obligations arising therefrom. This shall also apply if the proof referred to in paragraph (4) of Article 3 is not furnished. Each Contracting Party shall exercise this right only after consultation as provided for in Article 13 of the present Agreement, unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringements of laws or regulations.

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

Article 5

User Charges

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

Article 6

Customs Duties

(1) Aircraft operated by a designated airline of either Contracting Party and entering, departing again from, or flying across the territory of the other Contracting Party, as well as fuel, lubricants, consumable technical supplies, spare parts, regular equipment and aircraft stores on board such aircraft, shall be exempt from customs duties and other charges levied on the occasion of importation, exportation or transit of goods. This shall also apply to goods on board the aircraft consumed during the flight across the territory of the latter Contracting Party.

(2) Fuel, lubricants and consumable technical supplies, aircraft stores, spare parts and regular equipment, temporarily imported into the territory of either Contracting Party, there to be immediately or after storage installed in or otherwise taken on board the aircraft of a designated airline of the other Contracting Party, or to be otherwise exported again from the territory of the former Contracting Party, shall be exempt from the customs duties and other charges mentioned in paragraph (1) of this Article.

(3) Fuel, lubricants and consumable technical supplies taken on board the aircraft of a designated airline of either Contracting Party in the territory of the other Contracting Party and used in international air services, shall be exempt from the customs duties and other charges mentioned in paragraph (1) of this Article, as well as from any other special consumption charges.

(4) Each Contracting Party may keep the goods mentioned in paragraphs (1) to (3) of this Article under customs supervision.

(5) To the extent that no duties or other charges are imposed on goods mentioned in paragraphs (1) to (3) of this Article, such goods shall not be subject to any economic prohibitions or restrictions on importation, exportation or transit that may otherwise be applicable.

(6) Each Contracting Party shall grant to the airline designated by the other Contracting Party the same privileges which its own designated airline enjoys in the territory of the other Contracting Party with respect to turnover tax (value-added tax) or a similar indirect tax structured as a general excise tax.

Article 7

Transfer of Earnings

Subject only to any foreign currency regulations which may be imposed by either Contracting Party with general application to all other countries, 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 effected at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance. The transfer of funds shall not be subject to any charges except those normally collected by banks for such operations.

Article 8

Principles Governing Operation of Air Services

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

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

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

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

(4) In order that the designated airlines may be afforded fair and equal treatment, the frequency of the services, the types of aircraft to be used with regard to their capacity, as well as the flight schedules shall be subject to approval by the aeronautical authorities of the two Contracting Parties.

(5) The aeronautical authorities of the two Contracting Parties should, if necessary, endeavour to reach a satisfactory arrangement regarding transport capacity and frequencies.

Article 9

Provision of Statistics

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

Article 10

Tariffs

(1) The term "tariff" means the prices to be charged for the carriage of passengers, baggage 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 to be charged on the routes specified in accordance with paragraph (2) of Article 2 of the present Agreement, shall be subject to approval by the aeronautical authorities of the two Contracting Parties. The tariffs should take into account the costs of operation, the prevailing conditions of competition and of the market, as well as the interests of the transport users.

(3) Any tariff shall be submitted for approval to the aeronautical authorities of both Contracting Parties not later than 30 days prior to the proposed date of its introduction. This period may be reduced in special cases if the aeronautical authorities so agree.

(4) If one of the Contracting Parties does not consent to a tariff submitted for its approval in accordance with paragraph (3) above, the aeronautical authorities of the two Contracting Parties shall endeavour to determine the tariff by agreement between themselves. Consultations between the aeronautical authorities will be held in accordance with Article 13 of this Agreement.

(5) If no accord as envisaged in paragraph (4) above is reached between the aeronautical authorities of the two Contracting Parties, the provisions of Article 14 of the present Agreement shall apply. Until such time as a settlement has been reached through arbitration, the Contracting Party which has withheld its consent to a given tariff, shall be entitled to require the other Contracting Party to maintain the tariff previously in effect.

Article 11

Airline Representation

(1) Each Contracting Party grants to the designated airline of the other Contracting Party, on the basis of reciprocity, the right to maintain in its territory offices and administrative, commercial and technical personnel as may be necessary for the requirements of the designated airline concerned.

(2) The establishment of the offices and the employment of the personnel referred to in paragraph (1) of this Article shall be subject to the laws and regulations of the Contracting Party concerned, such as the laws and regulations relating to the admission of foreigners and their stay in the territory of the Contracting Party concerned. The personnel employed in the offices according to paragraph (1), shall be issued with the necessary work permit.

Article 12

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 and any other convention relating to the security of civil aviation to which both Contracting Parties are party.

(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 aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Contracting Parties; each Contracting Party shall require that operators of aircraft of its registry or operators who have their principal place of business or permanent residence in its territory and the operators of airports in its territory act in conformity with such aviation security provisions. Accordingly each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aforementioned aviation security provisions. Either Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss any such differences.

(4) Each Contracting Party agrees to observe the security provisions required by the other Contracting Party for entry into the territory of that other Contracting Party and to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items as well as cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for special security measures to meet a particular threat to civil aviation.

(5) When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and with minimum risk to life such incident or threat thereof.

Article 13

Consultation

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations, which may be between aeronautical authorities, shall begin within a period of 60 days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

Article 14

Settlement of Disputes

(1) To the extent that any disagreement concerning the interpretation or application of the present Agreement cannot be settled in accordance with Article 13 of the present Agreement, it shall be submitted to an arbitration tribunal at the request of either Contracting Party.

(2) That tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within 60 days, and such chairman within 90 days, from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the disagreement to a tribunal.

(3) If the periods specified in paragraph (2) above have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the Council of the International Civil Aviation Organization (ICAO) to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging this function, the Vice-president deputizing for him should make the necessary appointments.

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

Article 15

Multilateral Air Transport Conventions

In the event of a general multilateral air transport convention accepted by the Contracting Parties entering into force, the provisions of such convention shall prevail. Any discussions with a view to determining the extent to which the present Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention, shall take place in accordance with Article 13 of the present Agreement.

Article 16

Registration with ICAO

The present Agreement, any amendments to it and any exchange of notes under paragraph (2) of Article 2 of the present Agreement shall be communicated to the International Civil Aviation Organization (ICAO) for registration.

Article 17

Termination

Either Contracting Party 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.

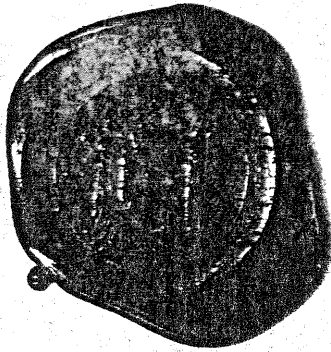
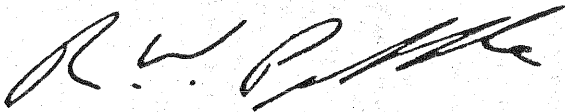
Article 18

Entry into Force

The present Agreement shall enter into force 30 days from the date on which the Governments of New Zealand and of the Federal Republic of Germany inform each other by an exchange of notes that their constitutional requirements for the entry into force of the present Agreement have been fulfilled.

Done at Bonn on 2 November 1987 in two originals, each in the English and German languages, both texts being equally authentic.

For New Zealand:



For the Federal Republic
of Germany:

