



Treaty Series No. 19 (1974)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Fiji
for Air Services between and beyond
their respective Territories

London, 10 January 1974

[The Agreement entered into force on 10 January 1974]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 1974*

LONDON

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND
THE GOVERNMENT OF FIJI FOR AIR SERVICES BETWEEN
AND BEYOND THEIR RESPECTIVE TERRITORIES**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Fiji;

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944;⁽¹⁾

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories;

Have agreed as follows :

ARTICLE 1

Definitions

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

- (a) the term " the Convention " means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 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 so far as those Annexes and amendments have become effective for or been ratified by both Contracting Parties;⁽²⁾
- (b) the term " aeronautical authorities " means, in the case of the United Kingdom, the Secretary of State for Trade and Industry or any person or body authorised to perform a particular function to which this Agreement relates; and, in the case of Fiji, the Minister for the time being responsible for civil aviation and any person or body authorised to perform any functions at present exercisable by him or similar functions;
- (c) the term " designated airline " means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (d) the term " territory " in relation to a state has the meaning assigned to it in Article 2 of the Convention;
- (e) the terms " air service ", " international air service ", " airline " and " stop for non-traffic purposes " have the meanings respectively assigned to them in Article 96 of the Convention.

(1) Treaty Series No. 8 (1953), Cmd. 8742.

(2) Treaty Series No. 63 (1961), Cmnd. 1448.
Treaty Series No. 26 (1957), Cmnd. 107.
Treaty Series No. 24 (1958), Cmnd. 482.
Treaty Series No. 59 (1962), Cmnd. 1826.
Treaty Series No. 115 (1969), Cmnd. 4198.

ARTICLE 2

Chicago Convention and other Conventions

The provisions of this Agreement shall be subject to the provisions of the Convention and to the provisions of any other multilateral convention which is binding on both Contracting Parties insofar as those provisions are applicable to international air services.

ARTICLE 3

Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes.

(2) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route the airlines designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail, separately or in combination.

(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

ARTICLE 4

Designation of Airlines

(1) Each Contracting Party shall have the right to designate in writing through the diplomatic channel to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes.

(2) On receipt of such designations the other Contracting Party shall, without delay, subject to the provisions of paragraph (3) of this Article, grant to the airline or airlines designated in accordance with paragraph (1) of this Article the appropriate operating authorisations.

(3) Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement, in any case where it is not satisfied :

- (a) that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals; or
- (b) that that airline is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

(4) When an airline has been so designated and authorised it may operate the agreed services, provided that tariffs established in accordance with the provisions of Article 10 of this Agreement are in force in respect of these services.

ARTICLE 5

Revocation or Suspension of Operating Authorisations

(1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3 of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of those rights :

- (a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party; or
- (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting those rights; or
- (c) in any case where the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

ARTICLE 6

Customs Regulations

(1) Aircraft operated on international air services by the designated airlines of either Contracting Party, as well as the regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft, shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the

other Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

(2) The regular airborne equipment, as well as the materials, stores and supplies retained on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. In such case, they may be placed under the supervision or control of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

(3) There shall also be exempt from the same duties, fees and charges, with the exception of charges corresponding to the service performed, whether or not they have been imported:

- (a) aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board outbound aircraft engaged on an international air service of the other Contracting Party;
- (b) spare parts introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the designated airlines of the other Contracting Party;
- (c) fuels and lubricants supplied to an aircraft of a designated airline of a Contracting Party engaged on an international air service in the territory of the other Contracting Party and used on an inward flight until that flight is completed, or on an outward flight from the time that flight commences or on a through-transitting flight, notwithstanding that on all such flights aircraft may make intermediate landings in that territory;
- (d) other equipment intended for incorporation in or use on aircraft of a designated airline of a Contracting Party engaged on an international air service.

The items referred to in this paragraph may be required to be kept under customs supervision or control.

ARTICLE 7

Transfer of Earnings

Each Contracting Party grants to the designated airlines of the other Contracting Party the right of free transfer of the excess of their receipts in its territory over their expenditure therein. Such transfers shall be effected on the basis of the prevailing foreign exchange market rates for current payments.

ARTICLE 8

Principles Governing Operation of Agreed Services

(1) There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate for the current and reasonably anticipated requirements for the carriage of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;
- (b) traffic requirements of the area through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the area; and
- (c) the requirements of through airline operation.

ARTICLE 9

Change of Gauge

In operating any agreed service on any specified route a designated airline of one Contracting Party may substitute one aircraft for another at a point in the territory of the other Contracting Party on the following conditions only:

- (a) that it is justified by reason of economy of operation;
- (b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is not larger in capacity than that used on the nearer section;
- (c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- (d) that there is an adequate volume of through traffic;
- (e) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at a point where the change of aircraft is made;
- (f) that the provisions of Article 8 of this Agreement shall govern all arrangements made with regard to change of aircraft;

- (g) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

ARTICLE 10

Tariffs

(1) For the purpose of the following paragraphs the term "tariff" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration and conditions for the carriage of mail.

(2) Tariffs to be charged by the designated airlines of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, and the tariffs of other airlines.

(3) Where appropriate, the tariffs referred to in paragraph (2) of this Article shall, if possible, be agreed by the designated airlines concerned of both Contracting Parties, after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by the use of the procedures of the International Air Transport Association for the working out of tariffs.

(4) The tariffs referred to in paragraph (2) of this Article shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least ninety (90) days before the proposed date of their introduction. In special cases this period may be reduced, subject to the agreement of the said authorities. This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission of a tariff in accordance with this paragraph, the tariff shall be considered as approved. In the event of the period for submission being reduced, as provided for in this paragraph, the aeronautical authorities may agree that the period within which any disapproval may be notified shall be less than thirty (30) days.

(5) If a tariff cannot be agreed in accordance with paragraph (3) of this Article, or if, during the period applicable in accordance with paragraph (4) of this Article, one aeronautical authority gives the other aeronautical authority notice of its disapproval of a tariff agreed in accordance with the provisions of paragraph (3) of this Article, the aeronautical authorities of the two Contracting Parties shall, after consultation with the aeronautical authorities of any other State whose advice they consider useful, endeavour to determine the tariff by mutual agreement.

(6) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph (4) of this Article, or on the determination of any tariff under paragraph (5) of this Article, the dispute shall be settled in accordance with the provisions of Article 13 of this Agreement.

(7) A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which it would otherwise have expired or on which the aeronautical authorities of one Contracting Party shall have given notice in writing to those of the other Contracting Party of the withdrawal of their approval.

ARTICLE 11

Provision of Statistics

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

ARTICLE 12

Consultation

(1) In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and the annexed Schedule and shall consult when necessary to provide for modifications thereof.

(2) Either Contracting Party may request consultation, which may be either oral or in writing and shall begin within a period of sixty (60) days of the date of receipt of the request, unless both Contracting Parties agree to an extension of this period.

ARTICLE 13

Settlement of Disputes

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic

channels requesting arbitration of the dispute by such a tribunal, and the third arbitrator shall be appointed within a period of sixty (60) days from the nomination of the second arbitrator. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

(3) The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.

(4) The expenses of the national arbitrators shall be borne by the respective Contracting Parties. All other reasonable expenses of the arbitral tribunal, including the fees and expenses of the third arbitrator, shall be shared equally by the Contracting Parties.

ARTICLE 14

Amendment

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement including the annexed Schedule, such modification, if agreed between the Contracting Parties and if necessary after consultation in accordance with Article 12 of this Agreement, shall come into effect when confirmed by an Exchange of Notes, through the diplomatic channel.

ARTICLE 15

Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 16

Entry into Force

This Agreement shall enter into force on the date of signature.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

Done in duplicate at London this 10th day of January, 1974.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

CRANLEY ONSLOW

For the Government of Fiji :

PENAIA K. GANILAU

SCHEDULE

SECTION 1

Routes to be operated in both directions by the designated airline or airlines of the United Kingdom:

<i>Points of Departure</i>	<i>Intermediate Points</i>	<i>Points in Fiji</i>	<i>Points beyond</i>
London	New York Los Angeles Honolulu	Nadi	Australia New Zealand

SECTION 2

Routes to be operated in both directions by the designated airline or airlines of Fiji:

<i>Points of Departure</i>	<i>Intermediate Points</i>	<i>Points in UK Territory</i>	<i>Points beyond</i>
Fiji	Wallis Western Samoa New Hebrides New Caledonia Majuro Nauru	Funafuti Tarawa Honiara	Nauru Papua New Guinea (including Bougainville and the Bismark Archipelago) Majuro Australia

Note: The designated airlines may omit any of the points on the specified routes, provided that the agreed services begin at a point in the territory of the Contracting Party designating the airline.