

**No. 13468**

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**CANADA  
and  
FIJI**

**Air Transport Agreement (with schedule). Signed at Suva on  
30 April 1974**

*Authentic texts: English and French.*

*Registered by the International Civil Aviation Organization on 5 August  
1974.*

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**CANADA  
et  
FIDJI**

**Accord relatif aux transports aériens (avec tableau de routes).  
Signé à Suva le 30 avril 1974**

*Textes authentiques: anglais et français.*

*Enregistré par l'Organisation de l'aviation civile internationale le 5 août  
1974.*

## AIR TRANSPORT AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF FIJI

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The Government of Canada and the Government of Fiji hereinafter referred to as the Contracting Parties, both having ratified the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December, 1944,<sup>2</sup> and desiring to conclude an agreement, supplementary to the said Convention, on air transport between and beyond their respective territories, have agreed on the following:

### *Article 1. DEFINITIONS*

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

(a) "aeronautical authorities" means, in the case of Canada, the Minister of Transport and the Canadian Transport Commission and, in the case of Fiji, the Minister for the time being responsible for Civil Aviation or, in both cases, any other authority or person empowered to perform the functions exercisable by the said authorities;

(b) "agreed service" means an air service operated on the specified routes herein;

(c) "the Agreement" means this Agreement, the schedule attached thereto and any amendments thereto;

(d) "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;

(e) "designated airline" means an airline which has been designated and authorised in accordance with articles 4 and 5 of this Agreement;

(f) "specified route" means a route specified in the schedule to the Agreement;

(g) "tariffs" shall be deemed to include all rates, tolls, fares, charges for transportation, conditions of carriage, classifications, rules, regulations, and practices and services related thereto, but excluding remuneration and conditions for the carriage of mail;

(h) "territory", "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in articles 2 and 96 of the Convention.

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<sup>1</sup> Came into force on 30 April 1974 by signature, in accordance with article 20.

<sup>2</sup> United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; and vol. 893, p. 117.

*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 that is binding on both Contracting Parties in so far 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 the Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate section of the schedule to the Agreement. While operating an agreed service the airline or 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 named on the specified routes for the purpose of taking up and discharging international traffic in passengers, cargo and 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 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.

*Article 4. DESIGNATION OF AIRLINES*

Each Contracting Party shall have the right to designate through the diplomatic channel to the other Contracting Party an airline or airlines to operate the agreed services and to substitute another airline for one previously designated.

*Article 5. AUTHORISATION OF AIRLINES*

(1) Following receipt of a notice of designation pursuant to article 4, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of article 6, grant with a minimum of delay to an airline so designated the appropriate authorizations to operate the agreed services for which the airline has been designated.

(2) Upon receipt of such authorizations the airline may begin at any time to operate the agreed services provided that both an agreement between the aeronautical authorities under article 11 (5) and tariffs established in accordance with the provisions of article 13 of the Agreement are in force in respect of such services.

*Article 6. WITHHOLDING, REVOCATION OR LIMITATION OF AUTHORISATIONS*

(1) The aeronautical authorities of each Contracting Party shall have the right to withhold the authorizations referred to in article 5 from an airline designated by the other Contracting Party, to revoke such authorisations, or to impose on them conditions, temporarily or permanently:

- (a) in any case where they are not satisfied that a designated airline is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied by them to the operation of international air services in conformity with the provisions of the Convention;
- (b) in the event of failure by such airline to comply with the laws and regulations of that Contracting Party;
- (c) in the event that they are not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or its nationals; and
- (d) 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 infringement of the laws and regulations referred to above, the rights enumerated in paragraph (1) of this article respecting revocation or imposition of conditions shall be exercised only after consultations with the other Contracting Party in accordance with article 16.

#### *Article 7. LAWS AND REGULATIONS*

(1) Subject to the provisions of the Convention, 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 designated airlines of the other Contracting Party no less favourably than to aircraft of airlines of the first Contracting Party or to aircraft of airlines of other parties to the convention, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first Contracting Party.

(2) The laws and regulations of a Contracting Party as 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 the passengers, crew, or cargo of the designated airlines of the other Contracting Party upon entrance into or departure from, or while within the territory of the first Contracting Party.

(3) Neither of the Contracting Parties shall give a preference to its own or any other airline over the designated airline or airlines of the other Contracting Party engaged in operating an agreed service in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways and air traffic services and associated facilities under its control.

(4) The provisions of this article are without prejudice to the obligation of the airlines of one Contracting Party and of their aircraft, passengers, crew and cargo to comply with all the laws and regulations of the other Contracting Party.

#### *Article 8. AIRWORTHINESS AND PERSONNEL LICENSING*

(1) Certificates of airworthiness and 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 agreed services, 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 from time to time pursuant to the Convention. 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 any of its own nationals by the other Contracting Party.

(2) If one Contracting Party has notified the International Civil Aviation Organization of a difference between the requirements under which it issues such certificates or licences or renders them valid and the minimum standards that may be established under the Convention, the aeronautical authorities of the other Contracting Party may request consultations with those of the first Contracting Party with a view to satisfying themselves that the difference in question is acceptable to them. If following the consultations they are not so satisfied, they may take action against a designated airline of the first Contracting Party under article 6 of the Agreement, without prejudice to the right of the first Contracting Party to refer the dispute for settlement under article 17 of the Agreement.

#### *Article 9.* AIRPORT AND OTHER CHARGES

Any charges that may be imposed or permitted to be imposed by one Contracting Party for the use, by the aircraft of a designated airline of the other Contracting Party engaged in operating an agreed service, both of airports which are open to public use by its national aircraft and of other aviation facilities provided for public use shall not be higher than those that would be paid by its national aircraft engaged in similar international air services.

#### *Article 10.* CUSTOMS REGULATIONS

(1) Aircraft operated on international air services by a designated airline of either Contracting Party, as well as the regular equipment, supplies of fuel and lubricants, consumable technical supplies, and aircraft stores (including food, liquor and tobacco) on board such aircraft, and other items intended for use solely in connection with the operation or servicing of such aircraft, shall be exempt from all customs duties, excise taxes, inspection fees, and similar duties and charges on arriving in the territory of the other Contracting Party, on the following conditions:

- (i) that 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; or
- (ii) that such equipment and supplies may be unloaded, subject to compliance with the customs regulations of that territory, in which case they may be placed under the control of the customs authorities up to such time as they are re-exported or otherwise disposed of in accordance with those regulations.

(2) Each Contracting Party shall also exempt from the same duties, fees and charges, with the exception of charges corresponding to the service performed, the following items, whether or not they have been imported into its territory:

- (a) aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft, taken on board in its territory, within limits fixed by its authorities, and for use on board an aircraft of a designated airline of the other Contracting Party engaged in an international air service;
- (b) fuel and lubricants supplied in its territory to an aircraft of a designated airline of the other Contracting Party engaged in an international air service, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board;

- (c) spare parts, including engines, intended for the maintenance or repair of aircraft of a designated airline of the other Contracting Party engaged in an international air service; and
- (d) equipment (including specialised ground equipment), intended for incorporation in or use on aircraft of a designated airline of the other Contracting Party engaged on an international air service, or for use solely in connection with the operation or servicing of such aircraft.

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

*Article 11.* 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.

(2) In operating the agreed services, the designated airline or 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 provides on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of each Contracting Party shall bear reasonable 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 to carry the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline.

(4) Provision for the carriage of passengers, cargo and mail both taken up 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 principle 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.

(5) The capacity that may be provided in accordance with this article by the designated airlines of each Contracting Party on an agreed service shall be such as may from time to time be agreed between the aeronautical authorities of the Contracting Parties. Subject to paragraph (6) of this article, and unless otherwise agreed between the aeronautical authorities, in operating the agreed capacity the designated airlines will be free to use their commercial judgement with respect to frequency and type of aircraft.

(6) In the event that one of the Contracting Parties believes that the operation proposed or conducted by an airline of the other Contracting Party is inconsistent with the principles set out in this article it may without prejudice to the provisions of article 17 request consultations pursuant to article 16 of the Agreement.

*Article 12. 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 11 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 13. TARIFFS*

(1) Tariffs to be charged by a designated airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at a reasonable level, due regard being paid to all relevant factors, including cost of operations, reasonable profit, characteristics of service (such as standard of speed and accommodation), and the tariffs of other airlines.

(2) At such time as the agreed services are operated by designated airlines of both Contracting Parties, the tariffs referred to in paragraph (1) of this article shall be agreed upon between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the rate-fixing procedures of the International Air Transport Association.

(3) Such tariffs shall be submitted to the aeronautical authorities of the Contracting Parties at least forty-five (45) days before the proposed date of their introduction; in special cases, a shorter period may be accepted by the aeronautical authorities. If within thirty (30) days from the date of submission the aeronautical authorities of one Contracting Party have not notified the aeronautical authorities of the other Contracting Party that they are dissatisfied with the tariff submitted to them, such tariff shall be considered to be acceptable and shall come into effect on the expiration of the forty-five (45) days period mentioned above. In the event that a shorter period for the submission of a tariff is accepted by the aeronautical authorities, they may also agree that the period for giving notice of dissatisfaction be less than thirty (30) days.

(4) If a tariff cannot be established in accordance with the provisions of paragraph (2) above, or, if during the period applicable in accordance with paragraph (3) above a

notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves.

(5) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph (3) of this article or on the determination of any tariff under paragraph (4), the dispute shall be settled in accordance with the provisions of article 17 of the Agreement.

(6) (a) No tariff shall come into force if the aeronautical authorities of the Contracting Parties have been unable to reach agreement on it in accordance with this article except under the provisions of paragraph (3) of article 17 of the Agreement.

(b) When tariffs have been established in accordance with the provisions of this article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this article. The aeronautical authorities of either Contracting Party, however, may give notice of the withdrawal of approval of an existing tariff and request consultation with the aeronautical authorities of the other Contracting Party for the purpose of reaching agreement on a new tariff. Pending agreement the existing tariff shall remain in effect. If agreement cannot be reached, however, the tariff shall be determined in accordance with the provisions of article 17 of the Agreement.

#### *Article 14. 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 a designated airline 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 the airline on the agreed services and the origins and destinations of such traffic.

#### *Article 15. 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 made on the basis of prevailing foreign exchange market rates for current payments and shall be subject only to the respective foreign currency regulations applicable to all countries in like circumstances, for the purpose of safeguarding the external financial position and balance of payments. The transfer of funds shall not be subject to any charges except those normally collected by banks for such operations.

#### *Article 16. 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 promoting satisfactory air services and 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 consultations, 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 17.* SETTLEMENT OF DISPUTES

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of the 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 further period of sixty (60) days. 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 at the request of either Contracting Party 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 expenses of the arbitral tribunal, including the fees and expenses of the third arbitrator, shall be shared equally by the Contracting Parties.

*Article 18.* 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 16 of this Agreement, shall come into effect when confirmed by an exchange of notes, through the diplomatic channel.

*Article 19.* TERMINATION

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate one (1) year 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, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

*Article 20.* ENTRY INTO FORCE

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

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

DONE in two copies at Suva this thirtieth day of April of the year one thousand nine hundred and seventy-four, in the English and French languages, each version being equally authentic.

For the Government  
of Canada:  
[Signed]  
J. J. McCARDLE

Canadian High Commissioner  
to Fiji

For the Government  
of Fiji:  
[Signed]  
PENAIKA K. GANILAU

Deputy Prime Minister and  
Minister for Communications,  
Works and Tourism

## SCHEDULE

### *Section 1*

Routes to be operated in both directions by the designated airlines of Canada:

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Points in Fiji</i>	<i>Points beyond</i>
Canada	Mainland USA and Hawaii Mexico A point in the Society Islands	Nadi	New Zealand Australia (excluding Queensland) Indonesia Singapore Malaysia Thailand and beyond to:
		(a) Cambodia Laos Vietnam (North and South) Philippines Hong Kong China Korean Peninsula Japan Hawaii Canada	(b) Burma India Points beyond to be named by Canada, and beyond to Canada

## Section 2

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

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Points in Canada</i>	<i>Points beyond</i>
Fiji	American Samoa Cook Islands Society Islands Hawaii Los Angeles or San Francisco	Vancouver	To be agreed

## NOTES:

1. Points on any of the specified routes may, at the option of the designated airline or airlines, be served in any order or be omitted on any or all flights, provided that in all cases flights serve at least one point in the territory of the Contracting Party designating the airline or airlines.

2. Each of the designated airlines will operate the agreed services under distinct published flight numbers which shall be different from those used by that airline on services outside the schedule.

3. No stop over or other traffic rights shall be exercised by the designated airline or airlines of Canada between the Society Islands and Fiji.