

No. 31855

**NEW ZEALAND
and
NIUE**

**Agreement concerning air services (with annex). Signed at
Wellington on 12 July 1990**

Authentic text: English.

Registered by New Zealand on 1 June 1995.

**NOUVELLE-ZÉLANDE
et
NIOUÉ**

**Accord relatif aux services aériens (avec annexe). Signé à
Wellington le 12 juillet 1990**

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 1^{er} juin 1995.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF NIUE CONCERNING AIR SERVICES

PREAMBLE

The Government of New Zealand and the Government of Niue (hereinafter referred to as the “Contracting Parties”),

Being bound by the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944,²

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

Have agreed as follows:

Article 1

DEFINITIONS

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

(a) The term “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 Annex or Convention under Articles 90 and 94 thereof insofar as these have become effective for both Contracting Parties;

(b) The term “aeronautical authorities” means, in the case of Niue, the Minister responsible for Civil Aviation or that Minister’s authorised representative and in the case of New Zealand, the Minister responsible for Civil Aviation or that Minister’s authorised representative;

(c) The term “Agreement” means the present Agreement, the Annex attached hereto, and any amendments to the Annex or Agreement;

(d) The term “designated airline” means an airline or airlines designated and authorised in accordance with Article 4 of this Agreement;

(e) The term “agreed services” means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;

(f) The terms “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 provided that, in the case of New Zealand, the term “territory” shall exclude Tokelau;

¹ Came into force on 12 July 1990 by signature, in accordance with article 22.

² 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; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213 and vol. 1175, p. 297.

(g) The term “tariffs” means the prices which the designated airlines charge for the carriage of passengers and cargo and the conditions under which those prices apply, but excluding remuneration and conditions for the carriage of mail.

Article 2

APPLICABILITY OF CHICAGO CONVENTION

The provisions of this Agreement shall be subject to the provisions of the Convention 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 rights specified in this Agreement for the purpose of operating air services on the routes specified in the Schedules of the Annex to this Agreement (hereinafter called “the agreed services” and “the specific routes”).

2. Subject to the provisions of this Agreement, an airline designated by each Contracting Party shall enjoy the following privileges;

(a) To fly without landing across the territory of the other Contracting Party;

(b) To make stops in the said territory for non-traffic purposes; and

(c) While operating an agreed service on a specified route, to make stops in the said territory at the points or points specified for that route in the Schedule of the Annex to this Agreement for the purpose of putting down and taking on international traffic in passengers, cargo and mail.

3. Nothing in paragraph 2 of this Article shall be deemed to confer on the designated airline 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

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations.

2. On receipt of such designation, the aeronautical authorities of the other Contracting Party shall without delay, subject to the provisions of paragraphs 3 and 4 of this Article, grant to the airline or airlines designated in accordance with paragraph 1 of this Article, the appropriate operating authorisation.

3. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and the regulations normally applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse the designation referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by the designated airline of the rights specified in Article 3 of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or:

(a) In the case of the Government of New Zealand, in its citizens; and

(b) In the case of the Government of Niue, ethnic Niueans or permanent residents of Niue.

5. When an airline has been so designated and authorised, it may begin to operate the agreed services for which it is designated in accordance with the provisions of Article 12 of this Agreement.

Article 5

CHARTER OR LEASE

In operating any agreed service on any specified route the designated airline of each Contracting Party shall give the other Contracting Party sixty (60) days notice in writing of any intention to lease, charter, hire or otherwise use or operate on a continuing basis any aircraft not owned by it or the designated airlines of the Contracting Parties.

Article 6

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 or airlines designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these 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

(i) In the case of the Government of New Zealand, in its citizens; and

(ii) In the case of the Government of Niue, ethnic Niueans or permanent residents of Niue; or

(b) In the case of failure by that airline to comply with the laws or the regulations in force in the territory of the Contracting Party granting these rights; or

(c) In the case of that airline otherwise failing 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 the laws or regulations of a Contracting Party or the provisions of this Agreement, such right shall be exercised only after consultation between the Contracting Parties.

Article 7

CONFORMITY WITH LAWS, REGULATIONS AND PROCEDURES

1. The laws, regulations and procedures of a Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation or relating to the operation and navigation of such aircraft shall apply to aircraft of the designated airline of the other Contracting Party and shall be complied with by such aircraft upon entering into or departing from or while within the territory of that Contracting Party.

2. The laws and regulations of one Contracting Party relating to entry, clearance, transit, immigration, customs and quarantine shall be applicable to passengers, crews, cargo and mail of the aircraft of the designated airline of the other Contracting Party while in the territory of the first Contracting Party.

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

4. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline or airlines designated by the other Contracting Party in the application of its regulations dealing with customs, immigration, quarantine and other similar services or in the use of airways, air traffic services and associated facilities under its control.

Article 8

RECOGNITION OF CERTIFICATES AND LICENCES

1. Certificates of airworthiness, certificates of competency and licences issued or validated by one of the Contracting Parties, and not expired, shall be recognized as valid by the other Contracting Party for the operation of air services as specified in the attached Annex.

2. Either Contracting Party however reserves the right not to recognise as valid, for flights either overflying or landing within its own territory, certificates of competency and licences granted by another state, in the case of New Zealand, to its own citizens, and in the case of Niue, to ethnic Niueans or permanent residents of Niue.

Article 9

PRINCIPLES GOVERNING THE 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 routes specified in the Annex.

2. In the operation of the agreed services, the designated airlines of both Contracting Parties shall consider the interests of the designated airline of the other Contracting Party so as not to affect unduly the agreed services of the latter on the whole or part of the same route.

3. The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes. They shall have as their primary objective the provision at a reasonable load factor of capacity adequate for the current and reasonably anticipated requirements of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline or airlines.

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 third countries 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 areas through which the airline passes, local and regional air services being taken into account; and

(c) The requirements of through airline operations.

5. Additional capacity may from time to time be provided by the designated airline of a Contracting Party, in addition to that provided under paragraph 4 of this Article, whenever the traffic requirements between the countries serviced by the airlines on the specified routes so justify, subject to the approval of the aeronautical authorities of the other Contracting Party.

6. The aeronautical authorities of the Contracting Parties shall from time to time jointly determine the practical application of the principles contained in the foregoing paragraphs of this Article for the operation of the agreed services by the designated airlines.

Article 10

PROVISION OF STATISTICS

The aeronautical authorities of both Contracting Parties shall exchange, on request and in a manner agreed upon by them, statistical summaries including all the information required to determine the volume of traffic of the routes specified in the Annex and the origins and destinations of such traffic.

Article 11

EXEMPTION FROM CHARGES ON EQUIPMENT, FUEL, LUBRICANTS, STORES ETC.

1. Aircraft operated on international air services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuel and lubricants, consumable technical supplies and aircraft stores (including foods, 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. There shall also be exempt from the same duties, fees and charges, with the exception of charges corresponding to the service performed;

(a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the Customs authorities of the said territory for use on board out-bound aircraft engaged on an international air service of the other Contracting Party;

(b) Spare parts, including engines, introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the designated airline of the other Contracting Party; and

(c) Fuels, lubricants and consumable technical supplies supplied to an aircraft of the 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 a through-transiting flight, notwithstanding that on all such flights, aircraft may make intermediate landings in that territory.

3. Materials referred to in paragraph 2 above may be required to be kept under Customs supervision or control.

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

5. The reliefs provided by this Article shall also be available in situations where the designated airline of one Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

Article 12

TARIFFS

1. The tariffs for carriage on agreed services to and from the territory of the other Contracting Party shall be subject to approval by the aeronautical authorities of both Contracting Parties and have regard to the costs of operation, the interests of users, reasonable profit, characteristics of service (such as standards of speed and accommodation) and, when it is deemed suitable, the tariffs of other airlines for any part of the specified route.

2. The tariffs referred to in paragraph 1 of this Article may be agreed upon between the designated airlines of the Contracting Parties; however, a designated airline shall not be precluded from filing any proposed tariff unilaterally. Unless otherwise determined in the application of paragraph 4 of this Article, or where a proposed tariff has been unilaterally filed, each designated airline shall be responsible only to its aeronautical authorities for the justification of the tariffs so proposed.

3. Any tariffs for an agreed service shall be filed with the aeronautical authorities of both Contracting Parties at least thirty (30) days prior to the proposed effective date. This period may be reduced in special cases if the aeronautical authorities so agree. Any proposed tariff shall be filed by a designated airline with the aeronau-

tical authorities of both Contracting Parties in such form as the aeronautical authorities of each Contracting Party may require. Unless the aeronautical authorities of either Contracting Party give notification of dissatisfaction with a proposed tariff prior to the effective date of such tariff, the tariff shall be deemed to be approved and shall become effective on the proposed date.

4. If one of the Contracting Parties does not consent to a tariff submitted for its approval in accordance with paragraph 3 of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves. Consultations between the aeronautical authorities will be held in accordance with Article 16 of this Agreement.

5. If the aeronautical authorities cannot reach an accord as envisaged in paragraph 4 above, the dispute shall be settled in accordance with the provisions of Article 18 of this Agreement.

6. 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.

7. The tariffs charged by the designated airline of one Contracting Party for carriage between the territory of the other Contracting Party and the territory of a third state (involving also points other than on agreed services) shall be subject to the approval of the aeronautical authorities of the other Contracting Party and such third state. The designated airline of each Contracting Party shall file such tariffs with the aeronautical authorities of the other Contracting Party in accordance with their requirements. Approval of such tariffs may be withdrawn on not less than fifteen (15) days notice.

8. In no circumstances shall a Contracting Party require a different tariff from the tariff of its own designated airline for comparable services between the same points, whether they be those points specified in the Route Schedule or points between the territory of that Contracting Party and a third state.

Article 13

SALE OF AIR TRANSPORTATION AND TRANSFER OF EARNINGS

1. The designated airline of each Contracting Party shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly or through its agents.

2. Each Contracting Party, on a reciprocal basis, grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by that designated airline in the territory of the other Contracting Party.

Article 14

AIRLINE REPRESENTATION

1. Each Contracting Party shall grant on a basis of reciprocity to the designated airline of the other Contracting Party the right to maintain in its own territory the technical, administrative and commercial services indispensable for its operations.

2. For the operation of its services, the designated airline of each Contracting Party shall have the right to employ technical, administrative and commercial personnel according to the laws and regulations in force in the country in which the personnel are to be employed.

Article 15

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 act 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 1963,¹ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970² and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971,³ and any other conventions relating to the security of civil aviation which are binding on both Contracting Parties.

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 crews, airport 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 on International Civil Aviation to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. 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 shall observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

¹ United Nations, *Treaty Series*, vol. 704, p. 219.

² *Ibid.*, vol. 860, p. 105.

³ *Ibid.*, vol. 914, p. 177 and vol. 1217, p. 404 (corrigendum to vol. 974).

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

Article 16

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 sixty (60) days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

Article 17

AMENDMENT

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an exchange of Notes.

Article 18

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.

3. Each Contracting Party shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by diplomatic or appropriate channels of a request for 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 specified period, 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.

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

5. If and for so long as either Contracting Party fails to comply with a decision given under paragraph 2 of this Article, the other Contracting Party may limit, sus-

pend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.

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. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization by the Contracting Party giving notice. In such case this Agreement shall terminate twelve (12) months after the date when the notice has been received by the other Contracting Party unless the said notice of termination is withdrawn by mutual agreement before the expiry of this period. If the other Contracting Party fails to acknowledge receipt of the notice, the notice shall be deemed to have been received fourteen (14) days after the International Civil Aviation Organization has received its copy.

Article 20

CONFORMITY WITH MULTILATERAL CONVENTIONS

The present Agreement shall be amended so as to be compatible with any multilateral convention which may become binding on both Contracting Parties.

Article 21

REGISTRATION OF AGREEMENT WITH I.C.A.O.

The present Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization by the Government of New Zealand.

Article 22

ENTRY INTO FORCE

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

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

DONE, in duplicate, at Wellington this 12th day of July 1990.

For the Government
of New Zealand:

FRAN WILDE

For the Government
of Niue:

T. KINGI

ANNEX

ROUTE SCHEDULE

Section I

Route to be served by the designated airline of Niue in both directions:

<i>Points of Origin</i>	<i>Intermediate Points</i>	<i>Points of Destination</i>
Niue	Tonga	Auckland

Section II

Route to be served by the designated airline of New Zealand in both directions:

<i>Points of Origin</i>	<i>Intermediate Points</i>	<i>Points of Destination</i>
Points in New Zealand	Tonga	Niue

Note

The designated airline of either Contracting Party may, on any or all flights, omit calling at any of the above points, provided that the agreed services on this route begin in the territory of that Contracting Party.