

AIR TRANSPORT SERVICES

*Agreement with annex and exchanges of notes signed at Lima
December 27, 1946*

Entered into force December 27, 1946

Supplemented by agreement of May 6 and 8 and July 21, 1947¹

*Exchange of notes concerning 30 percent ownership clause canceled
May 26, 1950*

*Annex amended by agreements of April 24 and May 28, 1958,² and
March 2, 1966³*

61 Stat. 2586; Treaties and Other
International Acts Series 1587

AIR TRANSPORT AGREEMENT

The Governments of the United States of America and the Republic of Peru, desiring to stimulate and promote the development of Air Transportation between both countries, and having in mind the recommendations of Section VIII of the Final Act of the Conference on International Civil Aviation, signed in Chicago on the seventh of December, 1944, have resolved to sign an Air Transport Agreement and for that purpose have designated their respective Plenipotentiaries to wit:

His Excellency the President of the United States of America,
Their Excellencies

Mr. Prentice Cooper, Ambassador Extraordinary and Plenipotentiary
before the Government of Peru, and

Mr. William Mitchell, Special Representative and Minister Plenipotentiary specially accredited for this purpose,

His Excellency the President of the Republic of Peru,
Their Excellencies Señores

Enrique Garcia Sayán, Minister for Foreign Affairs, and
Enrique Góngora, Minister of Aeronautics.

who, after exchanging their full powers which they have found to be in good and proper form, have agreed that the establishment and development

¹ TIAS 1587, *post*, p. 1264.

² 9 UST 900; TIAS 4050.

³ 17 UST 1194; TIAS 6080.

of Air Transport Services between their respective territories shall be subject to the provisions of the present Agreement and of its Annex as follows:

ARTICLE 1

Each contracting party grants to the other contracting party the rights as specified in the Annex hereto necessary for establishing the international civil air routes and services therein described, whether such services be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.

ARTICLE 2

Each of the air services so described shall be placed in operation as soon as the contracting party to whom the rights have been granted by article 1 to designate an airline or airlines for the route concerned has authorized an airline for such route, and the contracting party granting the rights shall, subject to article 6 hereof, be bound to give the appropriate operating permission to the airline or airlines concerned; provided that the airlines so designated may be required to qualify before the competent aeronautical authorities of the contracting party granting the rights under the laws and regulations normally applied by these authorities before being permitted to engage in the operations contemplated by this agreement; and provided that in areas of hostilities or of military occupation, or in areas affected thereby, such operations shall be subject to the approval of the competent military authorities.

ARTICLE 3

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

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

b) Fuel, lubricating oils, and spare parts introduced into the territory of one contracting party by the other contracting party or its nationals, and intended solely for use by aircraft of the airlines of such contracting party shall, with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered, be accorded the same treatment as that applying to national airlines and to airlines of the most-favored nation.

c) The fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of one contracting party authorized to operate the routes and services described in the Annex

shall, upon arriving in or leaving the territory of the other contracting party, be exempt from customs, inspection fees or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

ARTICLE 4

Certificates of airworthiness, certificate of competency and licenses issued or rendered valid by one contracting party and still in force shall be recognized as valid by the other contracting party for the purpose of operating the routes and services described in the Annex. Each contracting party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another state.

ARTICLE 5

a) 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 airlines designated by the other contracting party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party.

b) The laws and regulations of one 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 such passengers, crew or cargo of the airlines designated by the other contracting party upon entrance into or departure from or while within the territory of the first party.

ARTICLE 6

Each contracting party reserves the right to withhold or revoke the certificate or permit of an airline designated by the other contracting party in the event substantial ownership and effective control of such airlines are not vested in nationals of the other contracting party, or in case of failure by the airline designated by the other contracting party to comply with the laws and regulations of the contracting party over whose territory it operates, as described in Article 5 hereof, or otherwise to fulfill the conditions under which the rights are granted in accordance with this agreement and its Annex.

ARTICLE 7

This agreement, its Annex, and all amendments thereof, shall be registered with the Provisional International Civil Aviation Organization or its successor.

ARTICLE 8

This agreement or any of the rights for air transport services granted thereunder may be terminated by either contracting party upon giving one year's notice to the other contracting party.

ARTICLE 9

In the event either of the contracting parties considers it desirable to modify the routes or conditions set forth in the attached Annex, it may request consultation between the competent authorities of both contracting parties, such consultation to begin within a period of sixty days from the date of the request.

When these authorities mutually agree on new or revised conditions affecting the Annex, their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

ARTICLE 10

Except as otherwise provided in this agreement, or its Annex, any controversy between the contracting parties relative to the interpretation or application of this agreement, or its Annex, which cannot be settled through consultation shall be submitted for an advisory report to the Interim Council of the Provisional International Civil Aviation Organization, in accordance with the provisions of Article III, Section six (8) of the Provisional Agreement on International Civil Aviation signed at Chicago on December 7, 1944⁴ or to its successor, unless the contracting parties agree to submit the controversy to some other person or body designated by mutual agreement between the same contracting parties. The executive authorities of the contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in such report.

ARTICLE 11

For the purpose of the present Agreement, and its Annex, except where the text provides otherwise:

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

b) The term "designated airlines" shall mean those airlines that the aeronautical authorities of one of the contracting parties have communicated in writing to the aeronautical authorities of the other contracting party that

⁴ EAS 469, *ante*, vol. 3, p. 934.

they are the airlines that it has designated in conformity with Article 1 and 2 of the present Agreement for the routes specified in such designation.

ARTICLE 12

This agreement, including the provisions of the Annex thereof, will come into force on the day it is signed.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed the present agreement.

Done at Lima this 27th. day of December, 1946, in duplicate in the English and Spanish languages, each of which shall be of equal authenticity.

For the Government of the United States of America:

PRENTICE COOPER

WILLIAM MITCHELL

For the Government of the Republic of Peru:

E. GARCÍA SAYÁN

E. GONGORA

Attachment:

Annex to Air Transport Agreement

ANNEX TO AIR TRANSPORT AGREEMENT⁵

It is agreed between the contracting parties:

A. That the airlines of the two contracting parties operating on the routes described in this Annex shall enjoy fair and equal opportunity for the operation of said routes.

B. That the air transport capacity offered by the airlines of both countries shall bear a close relationship to traffic requirements.

C. That in the operation of common sections of trunk routes the airlines of the contracting parties shall take into account their reciprocal interests so as not to affect unduly their respective services.

D. That the services provided by a designated airline under this agreement and its Annex shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country, or points under its jurisdiction, of which such airline is a national and the country of ultimate destination of the traffic.

E. That the right to embark and to disembark at points under the jurisdiction of the other country international traffic destined for or coming from third countries at a point or points hereinafter specified, shall be applied in accordance with the general principles of orderly development to which

⁵ For amendments to annex, see agreements of Apr. 24 and May 28, 1958 (9 UST 900; TIAS 4050), and Mar. 2, 1966 (17 UST 1194; TIAS 6080).

both Governments subscribe and shall be subject to the general principle that capacity shall be related:

1. To traffic requirements between the country of origin, or points under its jurisdiction, and the countries of destination.
2. To the requirements of through airline operation, and
3. To the traffic requirements of the area through which the airline passes after taking account of local and regional services.

F. That the determination of rates to be charged by the airlines of either contracting party between points under the jurisdiction of the United States of America and points in the territory of the Republic of Peru on the routes specified in this Annex shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service.

G. That the appropriate aeronautical authorities of each of the contracting parties will consult from time to time, or at the request of one of the parties, to determine the extent to which the principles set forth in paragraphs A to F inclusive of this Annex are being followed by the airlines designated by the contracting parties. When these authorities agree on further measures necessary to give these principles practical application, the executive authorities of each of the contracting parties will use their best efforts under the powers available to them to put such measures into effect.

H. Airlines of the United States of America, designated in conformity with the present agreement, are accorded rights of transit and of nontraffic stop in and through the territory of the Republic of Peru as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Lima, Talara, Chiclayo and Arequipa on the following route via intermediate points in both directions:

The United States and/or the Canal Zone to Talara, Chiclayo, Lima and Arequipa; and beyond Peru, to points in Chile and Bolivia or beyond.

On the above route the airline or airlines authorized to operate the route may operate nonstop flights between any of the points enumerated omitting stops at one or more of the other points so enumerated.

I. Airlines of the Republic of Peru, designated in conformity with the present agreement, are accorded rights of transit and of nontraffic stop in and through the territory of the United States of America and in and through the Canal Zone as well as the right to pick up and discharge international traffic in passengers, cargo, and mail at Washington D.C., New York, N.Y., and the Canal Zone on the following route via intermediate points in both directions:

From Peru via the Canal Zone and Havana, Cuba, to Washington, D.C., and New York, N.Y.; and beyond the United States to Montreal, Canada.

On the above route the airline or airlines authorized to operate the route may operate nonstop flights between any of the points enumerated omitting stops at one or more of the other points so enumerated.

PRENTICE COOPER
WILLIAM MITCHELL
E. GARCÍA SAYÁN
E. GONGORA

EXCHANGES OF NOTES

*The Minister of Foreign Affairs to the American Ambassador*⁶

[TRANSLATION]

No. (D)-6-Y/5

LIMA, December 27, 1946

MR. AMBASSADOR:

I have the honor to address Your Excellency, in compliance with a request of the Ministry of Aeronautics, to explain how the Peruvian Government understands and proposes to put into execution the Air Transport Agreement between Peru and the United States of America, signed today.

The Government of Peru desires to call attention to the fact that at least up to the present, it has not been possible to designate an air line or air lines which are substantially owned and effectively controlled by Peruvian nationals, so that they may enjoy the rights granted by the aforesaid Agreement. This is due to the fact that time is an indispensable factor in training technical and administrative personnel, as well as in attracting the necessary capital.

The experience of recent months leads to the conclusion that the Government of Peru will be able to promote the formation of one or more Peruvian aviation enterprises for the purpose of being designated, as regards the agreement, only if a reasonable period of time could be available for a company originally formed with a moderate percentage of effectively Peruvian capital, to increase gradually, under the control of the Government of Peru, the proportion of Peruvian capital until a minimum proportion of 51% is reached, which will permit securing for it the title of an effectively Peruvian company; and, as the investigations made have shown that capital of United States and Canadian origin would be the most probable and perhaps the only capital which would be in a position to facilitate the process

⁶ Exchange of notes concerning 30 percent ownership clause canceled May 26, 1950.

of gradual Peruvianization of the company or companies to be designated, it is to the said capital that ownership of the proportion not in the possession of nationals of Peru would have to be handed over.

For the reasons set forth above and notwithstanding the present difficult but transitory economic conditions, the Government of Peru will endeavor to have the Agreement signed produce results profitable for the two contracting parties; and, in that sense, the Government of Peru understands that it may designate, under the terms of the Agreement, an air line or air lines meeting the following conditions:

1. At all times, a minimum of 30% of the capital shall be held by Peruvian nationals or by the Government of Peru.
2. Before the expiration of a term of 10 (ten) years, counting from the date of the Agreement, a minimum of 51% of the capital, as well as the effective control of the Company, must be held by Peruvian nationals or by the Government of Peru.
3. Until the conditions of paragraph 2 are met, the portion of the capital which is not held by Peruvian nationals must have been subscribed by nationals of the United States of America and of the Dominion of Canada, in such manner that, among the respective groups of nationals of each of those two countries, there shall not at any time exist a difference of more than 20% in the amount of their respective shares in the capital of the Company.⁷

I shall greatly appreciate it if Your Excellency will be so good as to inform me whether the foregoing duly reflects the mutual understanding of our respective Governments, which served as a basis for the conclusion of the Air Transport Agreement.

I avail myself of the opportunity to renew to you, Mr. Ambassador, the assurances of my highest and most distinguished consideration.

E. GARCÍA SAYÁN

His Excellency

PRENTICE COOPER,

*Ambassador Extraordinary and Plenipotentiary of the
United States of America.*

City.

The American Ambassador to the Minister of Foreign Affairs

No. 306

The Ambassador of the United States of America presents his compliments to His Excellency the Minister for Foreign Affairs and with reference

⁷For an understanding regarding the three conditions, see agreement of May 6 and 8 and July 21, 1947 (TIAS 1587), *post*, p. 1264.

to the signing of the Air Transport Agreement between the Republic of Peru and the United States of America on this date has the honor to acknowledge the receipt of His Excellency's confidential note No. 6-Y/5, in which is expressed the understanding in connection with which the Government of Peru proposes to execute the Air Transport Agreement. The Ambassador is pleased to express hereby the acceptance by the Government of the United States of America of the terms of understanding contained in His Excellency's note.

Prentice Cooper avails himself of this occasion to extend to His Excellency Dr. Enrique García Sayán the renewed assurance of his highest and most distinguished consideration.

LIMA, *December 27, 1946*

The American Ambassador to the Minister of Foreign Affairs

No. 303

The Ambassador of the United States of America presents his compliments to His Excellency the Minister for Foreign Affairs, and has the honor to present herewith a statement of the understanding upon which the Government of the United States proposes to execute the Air Transport Agreement to be entered into with the Government of the Republic of Peru.

The Air Transport Agreement to be concluded on this date between the United States of America and the Republic of Peru contemplates the use of the military airport in the Canal Zone by the airlines designated in conformity with the aforementioned Agreement, but the United States military authorities reserve the right to restrict or prohibit the civil use of this airport as warranted by military requirements, although such restrictions on or prohibition of its use will be applied on a non-discriminatory basis, and no distinction in this respect will be made between airlines designated by the United States of America and airlines designated by the Republic of Peru. Also, an international civil airport is now being constructed in the Republic of Panama, and the United States military authorities contemplate that the further civil use of the military airport in the Canal Zone may be prohibited as soon as the international airport in the Republic of Panama becomes available. In such event, there will be no further opportunity for the use of the military airport in the Canal Zone by civil airlines, and presumably it will be necessary for appropriate arrangements to be made with the Republic of Panama for the use of its new international airport in substitution for the military airport in the Canal Zone presently used by civil air services.

With reference to the rights granted to designated Peruvian airlines to carry international traffic to and from the Canal Zone, the Government of the United States of America wishes to call attention to its Air Commerce

Act of 1926⁸ as amended by its Civil Aeronautics Act of 1938,⁹ which precludes the carriage by foreign aircraft of traffic between the Canal Zone and points in the United States, and the grant of rights to designated Peruvian airlines is accordingly subject to this limitation. This limitation will be applied without discrimination to the airlines of all countries, other than the United States.

It would be appreciated if His Excellency would inform the Embassy as to whether the foregoing correctly reflects the understanding of the Government of the Republic of Peru as the basis upon which the Air Transport Agreement is to be concluded.

Prentice Cooper avails himself of this occasion to extend to His Excellency Dr. Enríque Sayán the renewed assurance of his highest and most distinguished consideration.

LIMA, *December 27, 1946*

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY FOR FOREIGN AFFAIRS
AND WORSHIP

No. : (D)-6-Y/6

LIMA, *December 27, 1946*

MR. AMBASSADOR :

I have the honor to acknowledge receipt of Your Excellency's courteous note No. 303 of even date, in which you were good enough to set forth certain considerations in regard to the way in which the Government of the United States of America proposes to carry out the Air Transport Agreement signed today.

Your Excellency states that the military authorities of the United States of America reserve the right to restrict or prohibit the use, for civilian purposes, of the military airport of the Canal Zone, should military needs so require; and that, as soon as the international civil airport which is being constructed in Panama is completed, the United States military authorities intend to prohibit the use of the said military airport by civil and commercial aircraft.

Your Excellency adds that, under the Air Commerce Act of 1926, amended by the Civil Aeronautics Act of 1938, the granting of rights to the air lines designated by the Government of Peru is subject to the restrictions imposed by the said Acts, as regards transportation between the Canal Zone and the United States of America.

⁸ 44 Stat. 568.

⁹ 52 Stat. 973.

In reply, I thank Your Excellency for the above-mentioned information, which I have duly noted, and I am happy to inform you that it is in accordance with the thought which led the Government of Peru to conclude the said Air Transport Agreement between our two countries.

I avail myself of the opportunity to renew to you, Mr. Ambassador, the assurances of my highest and most distinguished consideration.

E. GARCÍA SAYÁN

His Excellency

PRENTICE COOPER

*Ambassador Extraordinary and Plenipotentiary of the
United States of America.
City.*

The American Ambassador to the Minister of Foreign Affairs

No. 301

The Ambassador of the United States of America presents his compliments to His Excellency the Minister for Foreign Affairs, and with reference to the negotiations leading up to the Air Transport Agreement between the Republic of Peru and the United States of America signed on this date, has the honor to convey on behalf of the representatives of the Government of the United States of America concerned certain information regarding possible future routes considered during the course of the negotiations.

At such time as the Government of the United States of America should consider that the surrounding circumstances have sufficiently developed, it contemplates requesting the Government of Peru for consultation pursuant to Article 9 of the Agreement referred to regarding modification of the Annex to include a proposed route from the United States and the Canal Zone via Colombia to Iquitos and other points in Southern Peru, and beyond to terminal points in Argentina, Brazil, and Uruguay, to be operated by an airline or airlines designed by the Government of the United States of America.

It would be appreciated if His Excellency would be kind enough to acknowledge the receipt of the information which is conveyed hereby on behalf of the United States Representatives.

Prentice Cooper avails himself of this occasion to extend to His Excellency Dr. Enrique García Sayán the renewed assurance of his highest and most distinguished consideration.

LIMA, December 27, 1946

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY FOR FOREIGN AFFAIRS
AND WORSHIP

Number: (L) 6-3-/259

LIMA, December 27, 1946

MR. AMBASSADOR:

I have the honor to acknowledge receipt of Your Excellency's courteous note No. 301 of even date, in which you were good enough to send me certain information relating to the possible future air routes which were considered during the negotiations which were carried out for the purpose of concluding the Air Transport Agreement signed today.

Your Excellency states that the Government of the United States of America intends to encourage consultations with the Government of Peru when the circumstances of the case permit in conformity with Article XI [9] of the above-mentioned Agreement, for the purpose of agreeing upon the amending of the Annex to the said instrument in order to include a route between the United States of America and the Canal Zone and terminal points in Argentina, Brazil and Uruguay, via Colombia, to Iquitos and other places in Peru, which would be operated by an air line or air lines designated by the Government of the United States of America.

It is my duty, in reply, to state to Your Excellency that I have taken due note of the information which you have transmitted to me in regard to the Agreement signed today.

I avail myself of the opportunity, Mr. Ambassador, to renew to you the assurances of my highest and most distinguished consideration.

E. GARCÍA SAYÁN

His Excellency

PRENTICE COOPER,

*Ambassador Extraordinary and Plenipotentiary of the
United States of America.
City.*

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY FOR FOREIGN AFFAIRS
AND WORSHIP

No. D-6-3/258

LIMA, December 27, 1946

MR. AMBASSADOR:

I have the honor to address Your Excellency in regard to the Air Transport Agreement between Peru and the United States of America, signed on this date, in order to transmit to Your Excellency, in compliance with a request

of the Ministry of Aeronautics, certain information relating to the possible future air routes which were considered during the negotiations.

The Government of Peru intends to encourage consultations with the Government of the United States of America when the circumstances of the case make it advisable, with a view to agreeing upon the amending of the Annex to the above-mentioned Air Transport Agreement, in conformity with Article 9 thereof, in order to include a route between Peru and Los Angeles and San Francisco, California, via the Canal Zone and Mexico City, which could extend to Vancouver, Canada, and as far as the Orient, and which would be operated by an air line or air lines designated by the Government of Peru.

I beg Your Excellency to be so good as to note the foregoing and to consider it as the expression of the thought which led the Government of Peru to conclude the above-mentioned Agreement. I shall therefore be very grateful to Your Excellency if you will be good enough to acknowledge receipt of this communication.

I avail myself of the opportunity to renew to you, Mr. Ambassador, the assurances of my highest and most distinguished consideration.

E. GARCÍA SAYÁN

His Excellency

PRENTICE COOPER,

*Ambassador Extraordinary and Plenipotentiary of the
United States of America.
City.*

The American Ambassador to the Minister of Foreign Affairs

No. 307

The Ambassador of the United States of America presents his compliments to His Excellency the Minister for Foreign Affairs, and with reference to the negotiations leading up to the Air Transport Agreement between the Republic of Perú and the United States of America signed on this date has the honor to acknowledge the receipt of His Excellency's note No. 6-3/258 in which certain information regarding possible future routes considered during the course of the negotiations is communicated on behalf of the representatives of the Peruvian Government.

Prentice Cooper avails himself of this occasion to extend to His Excellency Dr. Enrique García Sayán the renewed assurance of his highest and most distinguished consideration.

LIMA, December 27, 1946