

**UNITED STATES OF AMERICA  
and  
PERU**

**Air Transport Agreement (with annex and accompanying notes). Signed at Lima, on 27 December 1946; and**

**Exchange of Notes constituting an agreement regarding the interpretation and application of certain words and terms employed in certain of the notes accompanying the above-mentioned agreement. Washington, 6 May, and 8 and 21 July 1947**

*English and Spanish official texts communicated by the Permanent Representative of the United States of America at the seat of the United Nations. The registration took place on 1 April 1949.*

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**ETATS-UNIS D'AMERIQUE  
et  
PEROU**

**Accord relatif aux transports aériens (avec annexe et notes jointes). Signé à Lima, le 27 décembre 1946; et**

**Echange de notes constituant un accord concernant l'interprétation et la portée de certains termes et de certaines expressions employés dans certaines notes qui accompagnent le susdit accord. Washington, 6 mai, et 8 et 21 juillet 1947**

*Textes officiels anglais et espagnol communiqués par le représentant permanent des Etats-Unis d'Amérique au siège de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 1er avril 1949.*

No. 390. AIR TRANSPORT AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND PERU (WITH ANNEX AND ACCOMPANYING NOTES). SIGNED AT LIMA, ON 27 DECEMBER 1946

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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,<sup>2</sup> 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 García 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 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

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<sup>1</sup> Came into force on 27 December 1946, as from the date of signature, in accordance with article 12.

<sup>2</sup> United States of America, Department of State publication 2282; *Conference Series*, 64.

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 ensure 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, certificates 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, 1944<sup>1</sup> 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

<sup>1</sup> United States of America, *Executive Agreement Series* 469.

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 they are the airlines that it has designated in conformity with Articles 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. GÓNGORA

Attachment:

Annex to Air Transport Agreement

## ANNEX TO AIR TRANSPORT AGREEMENT

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 the 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 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. GÓNGORA



## ACCOMPANYING NOTES

## I

*The Peruvian Minister for Foreign Affairs to the American Ambassador*

SPANISH TEXT — TEXTE ESPAGNOL

TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>MINISTERIO DE RELACIONES  
EXTERIORES Y CULTOMINISTRY FOR FOREIGN AFFAIRS  
AND WORSHIP

Nº: (D)-6-Y/5

No. (D)-6-Y/5

Lima, 27 de diciembre de 1946

Lima, December 27, 1946

Señor Embajador:

Mr. Ambassador:

Tengo a honra dirigirme a Vuestra Excelencia, de conformidad con una solicitud del Ministerio de Aeronáutica, para exponer la manera como el Gobierno peruano entiende y se propone poner en ejecución el Acuerdo sobre Transporte Aéreo entre el Perú y los Estados Unidos de América, suscrito en la fecha.

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.

El Gobierno del Perú desea llamar la atención sobre el hecho de que, cuando menos hasta hoy, no es posible designar una o varias líneas aéreas, que estén sustancialmente bajo propiedad y control efectivo de nacionales peruanos, para que ellas gocen de los derechos que se conceden por el indicado Acuerdo. Esto se debe a que el tiempo es un factor imprescindible para adiestrar personal técnico y administrativo, así como para atraer al capital necesario.

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.

Le experiencia de los últimos meses conduce a la conclusión de que el Gobierno del Perú podrá fomentar la constitución de una o varias empresas aéreas peruanas para ser designadas en

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

<sup>1</sup> Translation by the Government of the United States of America.

<sup>2</sup> Traduction du Gouvernement des Etats-Unis d'Amérique.

relación con el Acuerdo, solamente si se pudiera disponer de un plazo prudencial para que una compañía, constituida originalmente con un moderado porcentaje de capital efectivamente peruano pudiera ir aumentando paulatinamente, bajo el control del Gobierno del Perú, la proporción del capital peruano hasta llegar a obtener una proporción mínima de 51% que permita asegurar para ella el título de compañía efectivamente peruana; y como las investigaciones efectuadas han revelado que el capital de origen norteamericano y canadiense sería el más probable y quizás el único que estaría en aptitud de facilitar ese proceso de peruanización gradual de la compañía o de las compañías que serán designadas, es a dicho capital a quien habría que entregar la propiedad de la proporción de aquel que no estuviera en manos de nacionales del Perú.

Por las razones anteriormente expuestas y no obstante las difíciles pero transitorias condiciones económicas del momento actual, el Gobierno del Perú se esforzará porque el Acuerdo suscrito produzca resultados benéficos para las dos Partes Contratantes; y en tal sentido el Gobierno del Perú tiene entendido que podrá designar, dentro de los términos del Acuerdo, una línea o líneas aéreas que satisfagan las siguientes condiciones:

- 1.—En todo tiempo, estará en manos de nacionales peruanos o del Gobierno del Perú, un mínimo de 30% del capital.
- 2.—Antes del vencimiento de un plazo de 10 (diez) años, contados

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 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

a partir de la fecha del Acuerdo, deberá estar en manos de nacionales peruanos o del Gobierno del Perú un mínimo de 51% del capital, así como el control efectivo de la Compañía.

- 3.—Mientras no se satisfagan las condiciones del párrafo 2, la porción del capital que no se encuentre en manos de nacionales peruanos, deberá haber sido suscrita por nacionales de los Estados Unidos de América y del Dominio del Canadá, en forma tal que, entre los respectivos grupos de nacionales de cada uno de estos dos países, no exista en ningún momento una diferencia mayor del 20% en el monto de sus respectivas participaciones en el capital de la Compañía.

Mucho estimaré a Vuestra Excelencia se sirva informarme si lo arriba expuesto refleja debidamente el entendimiento mutuo de nuestros respectivos Gobiernos, que ha servido de base para la celebración del Acuerdo de Transporte Aéreo.

Aprovecho la oportunidad para reiterarle, Señor Embajador, las seguridades de mi más alta y distinguida consideración.

E. GARCÍA SAYÁN

Al Excelentísimo Señor  
Prentice Cooper  
Embajador Extraordinario  
y Plenipotenciario  
de los Estados Unidos de América  
Ciudad

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.

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

## II

*The American Ambassador to the Peruvian Minister for 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 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

## III

*The American Ambassador to the Peruvian Minister for 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 1926 as amended by its Civil Aeronautics Act of 1938, 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. Enrique Sayán the renewed assurance of his highest and most distinguished consideration.

Lima, December 27, 1946

#### IV

##### *The Peruvian Minister for Foreign Affairs to the American Ambassador*

SPANISH TEXT — TEXTE ESPAGNOL

TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>

MINISTERIO DE RELACIONES  
EXTERIORES Y CULTO

MINISTRY FOR FOREIGN AFFAIRS  
AND WORSHIP

Nº: (D)-6-Y/6

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

Lima, 27 de diciembre de 1946

Lima, December 27, 1946

Señor Embajador:

Mr. Ambassador:

Tengo a honra avisar recibo a Vuestra Excelencia de su atenta nota Nº 303, de la fecha, por la que se sirve

I have the honor to acknowledge receipt of Your Excellency's courteous note No. 303 of even date, in which

<sup>1</sup> Translation by the Government of the United States of America.

<sup>2</sup> Traduction du Gouvernement des Etats-Unis d'Amérique.

exponer algunas consideraciones respecto a la forma como el Gobierno de los Estados Unidos de América se propone llevar a efecto el Acuerdo sobre Transporte Aéreo suscrito el día de hoy.

Expresa Vuestra Excelencia que las autoridades militares de los Estados Unidos de América se reservan el derecho de restringir o prohibir el uso con fines civiles del aeropuerto militar de la Zona del Canal, si así lo exigieran las necesidades militares; y que, tan pronto como esté concluido el aeropuerto civil internacional que se construye en Panamá, las autoridades militares norteamericanas tienen el propósito de prohibir la utilización de dicho aeropuerto militar por las aeronaves civiles y comerciales.

Agrega Vuestra Excelencia que en virtud de la Ley de Comercio Aéreo de 1926, reformada por la Ley de Aeronáutica Civil de 1938, la concesión de derechos a las líneas aéreas designadas por el Gobierno del Perú está sujeta a las limitaciones impuestas por dichas leyes, en lo que se refiere al transporte entre la Zona del Canal y los Estados Unidos de América.

En respuesta, y al agradecer a Vuestra Excelencia las informaciones referidas, de las que he tomado debida nota, me es grato expresarle que ellas están de acuerdo con el pensamiento que ha guiado al Gobierno del Perú al celebrar dicho Acuerdo sobre Transporte Aéreo entre nuestros dos países.

Aprovecho la oportunidad para reiterarle, Señor Embajador, las seguri-

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.

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

dades de mi más alta y distinguida  
consideración.

assurances of my highest and most dis-  
tinguished consideration.

E. GARCÍA SAYÁN

E. GARCÍA SAYÁN

Al Excelentísimo Señor  
Prentice Cooper  
Embajador Extraordinario  
y Plenipotenciario  
de los Estados Unidos de América  
Ciudad

His Excellency Prentice Cooper  
  
Ambassador Extraordinary and Pleni-  
potentiary  
of the United States of America  
City

V

*The American Ambassador to the Peruvian Minister for 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 designated 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

No. 390

## VI

*The Peruvian Minister for Foreign Affairs to the American Ambassador*

SPANISH TEXT — TEXTE ESPAGNOL

MINISTERIO DE RELACIONES  
EXTERIORES Y CULTO

Número: (L) 6-3-/259

Lima, 27 de diciembre de 1946

Señor Embajador:

Tengo a honra avisar recibo a Vuestra Excelencia de su atenta nota N° 301, de la fecha, por la que se sirve transmitirme ciertas informaciones relativas a las posibles rutas aéreas futuras que han sido consideradas en el curso de las negociaciones que se han realizado para concluir el Acuerdo sobre Transporte Aéreo, suscrito el día de hoy.

Expresa Vuestra Excelencia, que el Gobierno de los Estados Unidos de América tiene el propósito de promover consultas con el Gobierno del Perú, cuando las circunstancias del caso lo permitan y de conformidad con el Artículo IX del mencionado Acuerdo, con el objeto de convenir en la modificación del Anexo a dicho instrumento, a fin de incluir una ruta entre los Estados Unidos de América y la Zona del Canal y puntos terminales en la Argentina, Brasil, y Uruguay, vía Colombia a Iquitos y otros lugares del Perú, la cual sería operada por una línea o líneas aéreas designadas por el Gobierno de los Estados Unidos de América.

TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>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 IX 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.

<sup>1</sup> Translation by the Government of the United States of America.

<sup>2</sup> Traduction du Gouvernement des Etats-Unis d'Amérique.



En respuesta, cúpleme manifestar a Vuestra Excelencia que he tomado debida nota de las informaciones que me transmite en relación con el Acuerdo suscrito en la fecha.

Aprovecho la oportunidad, señor Embajador, para reiterarle las seguridades de mi más alta y distinguida consideración.

E. GARCÍA SAYÁN

Al Excelentísimo Señor  
Prentice Cooper  
Embajador Extraordinario  
y Plenipotenciario  
de los Estados Unidos de América  
Ciudad

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

## VII

### *The Peruvian Minister for Foreign Affairs to the American Ambassador*

#### SPANISH TEXT — TEXTE ESPAGNOL

MINISTERIO DE RELACIONES  
EXTERIORES Y CULTO

Nº: D-6-3/258

Lima, 27 de diciembre de 1946

Señor Embajador:

Tengo a honra dirigirme a Vuestra Excelencia, con relación al Acuerdo sobre Transporte Aéreo entre el Perú y los Estados Unidos de América, suscrito en la fecha, para transmitir a Vuestra Excelencia, atendiendo a una solicitud del Ministerio de Aeronáutica, ciertas informaciones relativas a las posibles rutas aéreas futuras que han sido consideradas en el curso de las negociaciones.

#### TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>

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.

<sup>1</sup>Translation by the Government of the United States of America.

<sup>2</sup>Traduction du Gouvernement des Etats-Unis d'Amérique.

El Gobierno del Perú tiene el propósito de promover consultas con el Gobierno de los Estados Unidos de América, cuando las circunstancias del caso lo aconsejen, a fin de convenir la modificación del Anexo al citado Acuerdo sobre Transporte Aéreo, de conformidad con el Artículo 9 del mismo, para incluir una ruta entre el Perú y Los Angeles y San Francisco, California, vía Zona del Canal y Ciudad de México, que pudiese extenderse a Vancouver, Canadá, y hasta el Oriente, la cual sería operada por una línea o líneas aéreas designadas por el Gobierno del Perú.

Ruego a Vuestra Excelencia se sirva tomar nota de lo anteriormente expuesto y considerarlo como expresión del pensamiento que ha guiado al Gobierno del Perú al celebrar el mencionado Acuerdo, por todo lo cual mucho agradeceré a Vuestra Excelencia se sirva extenderme el correspondiente aviso de recibo.

Aprovecho la oportunidad para reiterarle, Señor Embajador, las seguridades de mi más alta y distinguida consideración.

E. GARCÍA SAYÁN

Al Excelentísimo Señor  
Prentice Cooper  
Embajador Extraordinario  
y Plenipotenciario  
de los Estados Unidos de América  
Ciudad

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

## VIII

*The American Ambassador to the Peruvian Minister for 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

EXCHANGE OF NOTES<sup>1</sup> CONSTITUTING AN AGREEMENT REGARDING THE INTERPRETATION AND APPLICATION OF CERTAIN WORDS AND TERMS EMPLOYED IN CERTAIN OF THE NOTES ACCOMPANYING THE ABOVE-MENTIONED AGREEMENT.  
WASHINGTON, 6 MAY, AND 8 AND 21 JULY 1947

## IX

*The Peruvian Ambassador to the Secretary of State*

PERUVIAN EMBASSY  
WASHINGTON 6, D.C.

M/109.—

May 6, 1947

Your Excellency:

I refer to the text of the notes of the Minister of Foreign Affairs of Peru and the Ambassador from the United States which were exchanged on December 27, 1946 and effected at the time of the conclusion of the bilateral Transport Agreement between the United States and Peru. This text was made public on April 29, 1947 by the State Department. As a consequence of this publication, the oral agreement on the application of the Peruvian International Airways for a permit to enter the United States was postponed until May 9, 1947.

<sup>1</sup> Came into force on 21 July 1947, by the exchange of the said notes.

I have been instructed by my Government to direct your attention to the English translation of the Foreign Office note of December 27, 1946 which had reference to participation by United States and Canadian capital in an airline to be designated by the Government of Peru (in this case the Peruvian International Airways) to enjoy the rights granted by the United States to a Peruvian airline.

In order that there may be no possible misinterpretation as to the mutual understanding, my Government desires to invite your attention to the following matters:

(1) The English word "held" employed in the translation of each of the three conditions does not have the meaning of the Spanish words "en manos de". A more accurate redaction would be the literal translation of the words, namely "in the hands of".

(2) It will be recalled that in the discussions held before the exchange of the above-mentioned notes with respect to the third condition, it was the agreement that the balance of the capital of the Company which was not in the hands of Peruvian nationals should be in the hands of nationals of the United States and of Canada; and that the relative participation in this balance by the nationals of these two countries should not exceed a limit of 40% for one and 60% for the other, either way, based on the total non-Peruvian capital. This would permit a maximum discrepancy of 50% in the relative participations of the national groups of the United States and Canada, as compared to each other, but at the same time achieves the intended effect of preventing either of these national groups from acquiring more than 42% of the total capital. I would like to call to your attention that the note just published states that "among the respective groups of nationals of each of those two countries (United States and Canada), 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". The effect of the wording of this note would be that, assuming 30% of the capital were in the hands of Peruvian nationals, the relative participations in the balance by nationals of the United States and Canada could not exceed a limit of 45.5 for one and 54.5 for the other, either way, if the percentage were computed upon the relative holdings of Americans and Canadians rather than on the total non-Peruvian capital. The Minister of Foreign Affairs believes that you will agree that this was not the intention of both the United States and the Peruvian Governments when the Agreement was drawn up. Therefore, with the provision that this is agreeable to you, I suggest that the third paragraph be expressed as follows: "Of the remaining total participation by Americans and Canadians, no more than 60% shall be in the hands of nationals of either country." Furthermore, my Government believes that the use of the word "shares" is subject to misinterpretation. As used in the translation, this could be interpreted to mean

“shares of stock”. The Spanish word for shares of stock is “acciones”. The word used in the Peruvian note of December 27th is “participaciones” and it should be translated as “participation in the capital of the Company.”

I will appreciate very much receiving your confirmation of this interpretation of our mutual understanding at the time of the conclusion of the bilateral Air Transport Agreement.

Please accept, Your Excellency, the renewed assurances of my highest consideration.

Jorge PRADO

His Excellency General George Marshall  
Secretary of State  
Washington, D.C.

X

*The Secretary of State to the Peruvian Ambassador*

DEPARTMENT OF STATE

WASHINGTON

May 8, 1947

Excellency:

I have the honor to acknowledge the receipt of your note No. M/109 of May 6, 1947, concerning the construction of the note of December 27, 1946, No. (D) 6Y/5 delivered to the Ambassador of the United States of America in Lima on that date by His Excellency the Minister for Foreign Affairs of the Republic of Peru, the terms of which latter note were accepted by note No. 306 dated December 27, 1946 from the Ambassador of the United States of America to His Excellency the Minister for Foreign Affairs of the Republic of Peru.

In paragraph (1) of your note you refer to the translation of the Spanish words “en manos de” by the English word “held”, and suggest that a more accurate translation would be “in the hands of”. The intent of the two notes exchanged in Lima, to which reference is made above, was to establish a standard of true, actual ownership of the shares of the Peruvian airline concerned. I believe that there is no doubt that such was the intention of all parties concerned. I therefore believe that whether the word “held” or the words “in the hands of” are used to translate the phrase “en manos de” is not a matter of substance, but would accept your phraseology, provided that the intention to establish a standard based on factual ownership is understood. It would be appreciated if Your Excellency would confirm this interpretation of the matter.

I accept the understandings expressed by Your Excellency in paragraph (2) of your note as representing a more precise expression of the intention of our

respective Governments than evidenced by the exchange of notes in Lima above referred to.

If Your Excellency will inform me that these understandings are acceptable to your Government, I would suggest that your note of May 6, this note, and your reply thereto be deemed to constitute the controlling expression of understanding between our Governments concerning these matters.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:  
Willard L. THORP

His Excellency Señor Don Jorge Prado  
Ambassador of Peru

## XI

### *The Peruvian Ambassador to the Secretary of State*

PERUVIAN EMBASSY  
WASHINGTON 6, D.C.

No. 5-3-M/160.

July 21, 1947

Your Excellency:

I have the honor to refer to the notes exchanged between the Department of State and this Embassy in relation to the interpretation of certain terms of the bilateral Transport Agreement signed by the United States and Peru. I also refer particularly to the note of the Department of May 8, 1947.

In reply, I am pleased to inform Your Excellency, following instructions from my Government, that since the Department in its above-mentioned note of May 8th agrees with my Government's translation of the Spanish words "en manos de" as "in the hands of", it may be understood that it was the intention of the parties in the exchange-of-notes to establish a standard based on factual ownership of the shares of stock in the hands of nationals of Peru, the United States and Canada.

Since my Government agrees with the Government of the United States in this interpretation, I have the honor to inform Your Excellency that the notes on this matter may be considered as the agreement of both Governments.

Please accept, Your Excellency, the renewed assurances of my highest consideration.

Jorge PRADO

His Excellency General George Marshall  
Secretary of State  
Department of State  
Washington, D.C.