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No. 5916

**SWITZERLAND
and
PERU**

**Agreement (with annex) relating to air services. Signed at
Lima, on 23 November 1956**

Official texts: French and Spanish.

Registered by the International Civil Aviation Organization on 25 October 1961.

**SUISSE
et
PÉROU**

**Accord (avec annexe) relatif aux services aériens. Signé à
Lima, le 23 novembre 1956**

Textes officiels français et espagnol.

Enregistré par l'Organisation de l'aviation civile internationale le 25 octobre 1961.

[TRANSLATION — TRADUCTION]

No. 5916. AGREEMENT¹ BETWEEN SWITZERLAND AND PERU RELATING TO AIR SERVICES. SIGNED AT LIMA, ON 23 NOVEMBER 1956

The Swiss Federal Council and the Government of Peru,

Having ratified the Convention on International Civil Aviation, concluded at Chicago on 7 December 1944,²

Desiring to conclude an agreement for the establishment of air services between and beyond the territories of Switzerland and Peru, have, to that end, appointed as their plenipotentiaries :

The Swiss Federal Council : His Excellency Mr. Jean-Adolphe Berger,

Envoy Extraordinary and Minister Plenipotentiary of Switzerland to Peru ;

The Government of Peru : His Excellency Mr. Manuel Cisneros Sánchez, Minister for Foreign Affairs ;

Who, having exchanged their full powers, found in good and due form, have agreed as follows :

Article I

For the purposes of this Agreement, the terms defined below shall have the meanings given in this article, unless the text of the Agreement provides otherwise :

- (a) The expression "the Convention" shall mean the Convention on International Civil Aviation, concluded at Chicago on 7 December 1944, and shall include any annex adopted in accordance with article 90 of that Convention and any amendment to the annexes or to the Convention adopted in accordance with articles 90 and 94 of the Convention ;
- (b) The expression "aeronautical authorities" shall mean, in the case of Switzerland, the Air Office of the Federal Department of Posts and Railways and any person or body authorized to assume the functions at present exercised by that Office or similar functions, and, in the case of Peru, the Ministry of Aviation and any person or body authorized to assume the functions at present exercised by that Ministry or similar functions ;

¹ Applied provisionally from 23 November 1956, the date of signature, and came definitively into force on 18 June 1959, the date of the exchange of the instruments of ratification which took place at Berne, in accordance with article XVI.

² See footnote 2, p. 27 of this volume.

- (c) The expression "designated airline" shall mean an airline which one of the Contracting Parties has notified in writing to the other Contracting Party, in accordance with article III below, as having been designated to operate the agreed services on the routes specified in such notification ;
- (d) The expressions "air services", "international air service", "airline" and "stop for non-traffic purposes" shall have the meanings assigned to them in article 96 of the Convention.

Article II

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing the international commercial air services described herein, which shall be operated on the routes specified in the relevant section of the route schedule¹ annexed to this Agreement (hereinafter referred to as "agreed services" and "established routes").

2. In operating an agreed service over an established route, the designated airline of each Contracting Party shall, subject to the provisions of this Agreement, enjoy the following rights :

- (a) To fly over the territory of the other Contracting Party without landing, only in cases where it is impossible to land or when there is no traffic to be set down or taken up ;
- (b) To make stops in the said territory at the points specified for the route in question in the route schedule annexed to this Agreement, for the purpose of setting down or taking up international traffic in passengers, mail and cargo coming from or destined for other points and countries specified in the route schedule ;
- (c) To convey into and out of the territory of the other Contracting Party, by the same or by any flight of the agreed service, international traffic coming from or destined for points in other countries, which are not on an established route ; and
- (d) To omit at its convenience, on all or some flights, intermediate points on any of the established routes.

3. Nothing in paragraph 2 above shall be interpreted as conferring on the designated airline of one Contracting Party the right to take up in the territory of the other Contracting Party, for payment or remuneration, passengers, mail or cargo destined for another point in the territory of the last-mentioned Contracting Party.

Article III

1. Each Contracting Party shall have the right, in respect of each established route, to designate in writing to the other Contracting Party an airline to operate the agreed services over the route in question.

¹ See p. 123 of this volume.

2. Each Contracting Party shall have the right, by notification in writing to the other Contracting Party, to revoke the designation of an airline and to designate another airline in its stead.

3. Immediately it has been informed of the designation of an airline by one of the Contracting Parties, the other Contracting Party shall, subject to the provisions of paragraphs 4 and 5 below, without delay issue the necessary operating permit to that airline.

4. The aeronautical authorities of either Contracting Party may require the airline designated by the other Contracting Party to show proof that it is qualified to fulfil the conditions prescribed by the laws and regulations normally applied by those authorities, in accordance with the provisions of the Convention, to the operation of international commercial air services.

5. Each Contracting Party shall have the right to refuse to accept the designation of an airline and to grant the rights specified in article II, paragraph 2, above, or to impose such conditions as it deems necessary on the exercise of such rights in any case where substantial ownership and effective control of that airline are not vested in the Contracting Party by which it was designated or in its nationals.

6. A permit having been issued, the designated airline may commence operation of the agreed services at any time, subject to the provisions of article X below and of paragraphs 1 and 3 of this article.

7. Each Contracting Party shall have the right to suspend the exercise by the designated airline of the other Contracting Party of the rights specified in article II, paragraph 2, above, or to impose such conditions as it deems necessary on the exercise of those rights by that airline in any case where the latter fails to comply with the laws and regulations of the Contracting Party granting those rights or otherwise to operate in conformity with the conditions prescribed in this Agreement; it is understood, however, that this right shall be exercised only after consultation with the other Contracting Party, unless immediate suspension of the imposition of conditions is necessary to prevent further infringements of laws and regulations.

Article IV

Each Contracting Party may impose or permit to be imposed fair and reasonable charges for the use of airports and other facilities. Both Contracting Parties agree, however, that such charges shall not be higher than would be paid for the use of such airports and facilities by their national aircraft engaged in similar international services.

Article V

Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one of the Contracting Parties shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services, subject to

payment of any registration fees which may be required for the recognition of such validity. Each Contracting Party, however, reserves the right to refuse to recognize, for the purpose of flight over its own territory, certificates of competency and licences granted to its own nationals by another State.

Article VI

1. 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 apply to aircraft operated by the designated airline of the other Contracting Party, without distinction as to nationality, and shall be observed and complied with by such aircraft upon entry into and departure from the territory of the first Contracting Party or while within that territory.

2. The laws and regulations of one Contracting Party relating to the admission to, stay in or departure from its territory of passengers, crew, mail or cargo carried on board aircraft, such as regulations concerning entry, clearance, immigration, passports, customs, quarantine and other formalities, shall be observed and complied with by or on behalf of the passengers, crew, mail and cargo carried by the aircraft operated by the designated airline of the other Contracting Party on entry into and departure from and while within the territory of the first Contracting Party.

Article VII

With respect to fuel, spare parts, regular equipment and aircraft stores introduced into the territory of one Contracting Party or taken on board in the said territory by or on behalf of the other Contracting Party or its designated airline and intended solely for use by or in the aircraft of that airline, the designated airlines shall, subject to reciprocity, receive in the matter of customs duties, inspection fees and other similar national and local duties or charges treatment not less favourable than would be accorded with respect to similar supplies introduced into or taken on board in the said territory and intended for use by or in aircraft of a national airline of the first Contracting Party or of the most favoured airline of any other State, operating an international air service.

Article VIII

1. There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the established routes.

2. The Contracting Parties agree that :

- (a) The transport capacity provided by the designated airlines shall be adapted to the traffic demand ;
- (b) In the operation of common routes, the designated airlines shall take into account their mutual interests so as not to affect unduly their respective services ;

- (c) The essential purpose of the agreed services shall be the provision of capacity adequate to meet the traffic demand between the country of the airline and the countries of destination ;
- (d) The right to take up or set down, at the points specified in the schedules hereunder, international traffic destined for or coming from third countries, shall be exercised in accordance with the general principles of orderly development to which the Swiss and Peruvian Governments subscribe and in such a manner that capacity shall be related to :
 - 1. The traffic demand between the country of origin and the countries of destination ;
 - 2. The requirements of economic operation of the agreed services ; and
 - 3. The traffic demand of the areas through which the airlines pass, local and regional services being taken into account.

Article IX

1. The tariffs to be applied on each of the agreed services shall be fixed at reasonable levels, regard being paid to all relevant factors, such as economy of operation, reasonable profit, the characteristics of the service (such as standards of speed and comfort) and the tariffs applied by other airlines on any part of the established routes. These tariffs shall be fixed in accordance with the following paragraphs :

2. The tariffs mentioned in paragraph 1 of this article shall, where possible, be fixed for each route by agreement between the designated airlines of the Contracting Parties, after consultation with other airlines operating on the whole or part of that route ; such agreement shall, as far as possible, be based on the tariff system of the International Air Transport Association (IATA) ; tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

3. In the event of disagreement between the designated airlines concerning the tariffs, the aeronautical authorities of the two Contracting Parties shall endeavour to fix the tariffs by agreement between themselves.

4. The designated airline of either Contracting Party shall communicate to the aeronautical authorities of both Contracting Parties, not less than thirty days before the date on which it is to come into effect, any tariff established in accordance with paragraph 2 of this article, which it proposes to put into effect ; in special cases, the aeronautical authorities of the two Contracting Parties may alter this period of thirty days.

5. If the aeronautical authorities of either Contracting Party do not approve the tariffs communicated in accordance with paragraph 4 of this article, they shall give notice in writing to that effect to the aeronautical authorities of the other Contracting Party and to the designated airline which proposed the tariff in question, within fifteen days following the date of registration of such communication or, in

special cases, within such other similar period as may be agreed upon by the two authorities.

6. The notice provided for in paragraph 5 having been given, the aeronautical authorities of the two Contracting Parties shall endeavour to reach agreement on the tariff to be established.

7. If the aeronautical authorities of the two Contracting Parties fail to reach agreement, the dispute shall be settled in accordance with the provisions of article XIII of this Agreement.

8. If agreement has not been reached by the expiry of the period of thirty days mentioned in paragraph 4 above, the tariff in question for the agreed services shall remain suspended until such time as the dispute has been settled.

9. Nothing in this article shall affect the right of either Contracting Party to reject a tariff applicable to a route between a third country and a point in the territory of that Contracting Party, which it deems disadvantageous.

10. Except where the notice provided for in paragraph 5 above is given, a tariff communicated under paragraph 4 shall take effect upon the expiry of the period specified in that paragraph and shall remain in force :

- (a) Until the expiry of any period for which the aeronautical authorities of both Contracting Parties may have declared it applicable ;
- (b) Until a new or amended tariff has been established in its stead in accordance with the provisions of this article.

11. A new or amended tariff designed to replace an established tariff may be registered at any time on behalf of a designated airline, and the provisions of this article shall apply thereto as though it were the original tariff ; it is understood that the aeronautical authorities of the Contracting Parties may, by agreement, adopt a procedure for the registration and establishment of amended tariffs in shorter periods than those specified in paragraphs 4 and 5 above.

12. The aeronautical authorities of either Contracting Party may, with the consent of the aeronautical authorities of the other Contracting Party, require the designated airline at any time to register a new or amended tariff, and the provisions of this article shall apply to that tariff as though it were the original tariff.

Article X

The aeronautical authorities of either of the Contracting Parties shall furnish to the aeronautical authorities of the other Contracting Party, at their request, such periodic or other statistics as may reasonably be requested for the purpose of verifying the capacity offered on the agreed services by the designated airline of the first-mentioned Contracting Party ; such information shall include all the particulars necessary to determine the amount of traffic carried by the airline in question on the agreed services and the origin and destination of such traffic.

Article XI

Regular and frequent consultations shall be held between the aeronautical authorities of the Contracting Parties for the purpose of ensuring close collaboration in all matters relating to the implementation of this Agreement.

Article XII

1. If any dispute arises between the Contracting Parties concerning the interpretation or application of this Agreement or its annex, they shall endeavour in the first place to settle it by negotiations between themselves.

2. If the Contracting Parties fail to reach agreement through negotiations between themselves :

- (a) They may agree to refer the dispute for arbitration to a tribunal designated by agreement between them or to any persons or body ; such agreement shall include the designation of the arbitrator or arbitral tribunal, the matter for arbitration and the appropriate arbitral procedure ;
- (b) If the Contracting Parties cannot so agree or if, having agreed to refer the matter to an arbitral tribunal, they cannot reach agreement as to its composition, either of them may refer the dispute for arbitration to any competent tribunal which may hereafter be established within the International Civil Aviation Organization, or, if there is no such tribunal, to the Council of that Organization.

3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this article.

4. If either Contracting Party or the designated airline of either Contracting Party fails to comply with a decision given under paragraph 2 of this article, the other Contracting Party may limit, suspend, or revoke any of the rights or privileges which it may have granted by virtue of this Agreement to the Contracting Party in default or to the designated airline in default.

Article XIII

1. If either Contracting Party considers it desirable to amend any provision of this Agreement, such amendment, when agreed between the Contracting Parties, shall enter into force after it has been confirmed by an exchange of diplomatic notes.

2. In the event of the conclusion of any multilateral convention relating to air transport which becomes binding on the two Contracting Parties, this Agreement shall be amended in such manner as will bring it into conformity with the provisions of such convention.

Article XIV

Either Contracting Party may at any time notify the other Contracting Party of its desire to terminate this Agreement. Such notification shall be communicated

simultaneously to the Council of the International Civil Aviation Organization. If such notification is given, this Agreement shall terminate twelve months after the date of receipt of the notification by the other Contracting Party unless the denunciation is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notification shall be deemed to have been received fourteen days after the date on which it was received by the Council of the International Civil Aviation Organization.

Article XV

This Agreement and any exchange of diplomatic notes effected in pursuance of article XIII shall be communicated for registration to the Council of the International Civil Aviation Organization by the Government of Switzerland and by the Government of Peru.

Article XVI

This Agreement shall be ratified in accordance with the constitutional provisions of each Contracting Party and shall enter into force on the date of the exchange of the instruments of ratification, which shall take place at Berne as soon as possible. Pending its entry into force, the provisions of this Agreement shall be applied provisionally by the Contracting Parties as from the date of its signature ; either Government may, however, before the date of the exchange of the instruments of ratification, terminate the provisional application of the Agreement by giving three months' notice to the other Government.

DONE at Lima, on 23 November 1956, in duplicate, in French and Spanish, both texts being equally authentic.

For the Swiss Federal Council :

Jean-Adolphe BERGER
Envoy Extraordinary and Minister
Plenipotentiary of Switzerland to Peru

For the Government of Peru :

Manuel CISNEROS SÁNCHEZ
Minister for Foreign Affairs

A N N E X

ROUTE SCHEDULE

Routes on which the Swiss designated airline may operate in both directions

I. Points in Switzerland – points in the United Kingdom of Great Britain and Northern Ireland or in the Federal Republic of Germany or in Portugal – Shannon – New York and points beyond via points in Ecuador, Colombia, Panama and/or Venezuela – Lima and/or beyond ;

II. Points in Switzerland – Rome or Madrid and/or Lisbon–Tunis or Algiers or Casablanca – Dakar or Ilha do Sal – Natal or Recife – Belem–Points in Venezuela, Panama, Colombia, Ecuador – Lima ;

III. Points in Switzerland – Rome or Madrid and/or Lisbon – Azores – Bermuda – Trinidad – points in Venezuela, Panama, Colombia, Ecuador – Lima – Santiago de Chile and beyond.

Routes on which the Peruvian designated airline may operate in both directions

I. Points in Peru – Sao Paulo – Rio de Janeiro – Recife – Dakar – Lisbon – Madrid – Geneva or Zurich or Basle/Mulhouse and beyond ;

II. Points in Peru, through points in Ecuador, Colombia, Panama and/or Venezuela and beyond :

- (a) Via the Azores and/or Lisbon – Madrid – Geneva or Zurich or Basle/Mulhouse ;
 - (b) Via New York – Montreal – Gander and/or London or Amsterdam – Geneva or Zurich or Basle/Mulhouse.
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