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No. 5915

**PERU
and
CANADA**

Agreement (with schedule) for air services between and beyond their respective territories. Signed at Lima, on 18 February 1954

Exchange of notes constituting an agreement amending the above-mentioned Agreement. Lima, 25 April and 5 June 1957

Official texts of the Agreement : English and Spanish.

Official text of the notes : English.

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

**PÉROU
et
CANADA**

Accord (avec annexe) relatif aux services aériens entre leurs territoires respectifs et au-delà de ces territoires. Signé à Lima, le 18 février 1954

Échange de notes constituant un accord modifiant l'Accord susmentionné. Lima, 25 avril et 5 juin 1957

Textes officiels de l'Accord : anglais et espagnol.

Texte officiel des notes : anglais.

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

No. 5915. AGREEMENT¹ BETWEEN THE GOVERNMENT OF PERU AND THE GOVERNMENT OF CANADA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES. SIGNED AT LIMA, ON 18 FEBRUARY 1954

The Government of Peru and the Government of Canada, hereinafter called the Contracting Parties, having ratified the Convention on International Civil Aviation opened for signature at Chicago on the seventh of December, Nineteen Hundred and Forty-four,² and desiring to conclude an Agreement for the purpose of establishing air services between and beyond Canadian and Peruvian territories, have appointed for this purpose as their plenipotentiaries,

The Government of Peru,

Dr. Ricardo Rivera Schreiber, Minister of State in charge of Foreign Affairs, and

The Government of Canada,

Mr. Émile Vaillancourt, Ambassador of Canada in Peru,

who having communicated to each other their full powers have agreed on the following Articles :

Article I

For the purpose of this Agreement, the terms described below will have the meaning given in this Article, unless the context of the Agreement otherwise requires.

(a) the term "The Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, Nineteen Hundred and Forty-four, and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof ;

(b) the term "aeronautical authorities" means, in the case of Peru, the Ministry of Aviation, and any person or body authorized to perform any functions presently exercised by the said Ministry of Aviation, or similar functions, and in the case of Canada, the Minister of Transport, the Air Transport Board and any person or body

¹ Applied provisionally from 18 February 1954, the date of signature, and came definitively into force on 18 February 1955, the date following the exchange of the instruments of ratification which took place at Lima, in accordance with article XIV.

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

authorized to perform any functions presently exercised by the said Minister or Board or similar functions ;

(c) the term "designated airline" means an airline which one Contracting Party shall have designated, by written notification to the other Contracting Party, in accordance with Article III of this Agreement, for the operation of agreed services on the routes specified in such notification ;

(d) the term "change of gauge" means the operation of one of the agreed services by a designated airline in such a way that one section of the route is flown by aircraft different in capacity from those used on another section ;

(e) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State ; and

(f) the terms "air services", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively 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 commercial international air services to be operated by virtue of the said Agreement on the routes specified in the appropriate section of the Schedule¹ hereto (hereinafter called the "agreed services" and the "specified routes").

(2) Subject to the provisions of this Agreement, the airlines designated by each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following privileges :

- (a) to fly without landing across the territory of the other Contracting Party only in cases where, while making a flight to the said territory, landing is not possible or where there is no traffic to be set down or picked up ;
- (b) to make stops in the said territory at the point or points specified for that route in the Schedule to this Agreement for the purpose of putting down and picking up international traffic in persons, goods and mails coming from or destined for other points so specified ;
- (c) on any flight in an agreed service, the privilege to carry into and out of the territory of the other Contracting Party on the same flight, international traffic originating in or destined for points in third countries not included on a specified route ; and
- (d) at the option of the designated airline or airlines intermediate points on any of the specified routes may be omitted on any or all flights.

¹ See p. 80 of this volume.

(3) Nothing in paragraph (2) of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of picking up, in the territory of the other Contracting Party, persons, goods, or mails carried for hire or reward and destined for another point in the territory of that other Contracting Party.

Article III

(1) Each Contracting Party, with respect to each route established in this Agreement which is specified in the Schedule hereto for operation by an airline of such Contracting Party, shall have the right to designate in writing to the other Contracting Party, one airline for the purpose of operating the agreed service on the said route.

(2) Each Contracting Party shall have the right by written notification to the other Contracting Party to withdraw the designation of an airline and to substitute the designation of another airline.

(3) On receipt of the designation of an airline of one Contracting Party the other Contracting Party shall, subject to the provisions of paragraphs (4) and (5) of this Article, without delay, grant to the airline designated the appropriate operating authorization.

(4) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied by them in conformity 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 withhold or revoke the grant to an airline of the privileges specified in paragraph (2) of Article II of this Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of the Contracting Party designating the airline.

(6) Subject to the provisions of Article VII of this Agreement, at any time after the provisions of paragraphs (1) and (3) of this Article have been complied with, an airline so designated and authorized may begin to operate the agreed services.

(7) Each Contracting Party shall have the right to suspend the exercise by an airline of the privileges specified in paragraph (2) of Article II of this Agreement or to impose such conditions as it may deem necessary on the exercise by an airline of those privileges in any case where the airline fails to comply with the laws and regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions prescribed in this Agreement ; provided that, unless

immediate suspension or imposition of conditions is essential to prevent further infringements of laws or regulations, this right shall be exercised only after consultation with the other Contracting Party.

Article IV

Fuel, lubricating oils, spare parts, regular aircraft equipment and aircraft stores introduced into the territory of one Contracting Party, or taken on board aircraft in that territory, by or on behalf of the other Contracting Party or its designated airline or airlines and intended solely for use by or in the aircraft of those airlines, shall be accorded by the first Contracting Party, in respect of customs duties, inspection fees and other similar national or local duties and charges, treatment not less favourable than that accorded to similar supplies introduced into the said territory, or taken on board aircraft in that territory, and intended for use by or in the aircraft of a national airline of the first Contracting Party, or of the most favoured airline of any other State, engaged in international air services.

Article V

(1) There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services, the airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) On any specified route the capacity provided by the designated airlines of one Contracting Party together with the capacity provided by the designated airlines of the other Contracting Party shall be maintained in reasonable relationship to the requirements of the public for air transport on that route.

(4) In the application of the principles stated in the preceding paragraph of this Article the following shall be taken into consideration :

- (a) The agreed services provided by a designated airline shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to the current and reasonably expected requirements of that airline for the carriage of traffic originating in or destined for the territory of the Contracting Party which has designated the airline.
- (b) The capacity provided under sub-paragraph (a) above may be augmented by supplementary capacity adequate for the carriage of international air traffic both originating at and destined for points on the specified routes in the territories of states other than that designating the airline. Such additional capacity shall be

related to traffic demands of the areas through which the airline operates, after taking account of the air services so established by airlines of the other Contracting Party and of the States referred to above insofar as they are carrying international air traffic originating in or destined for their territories.

(5) Nothing in this Article shall prevent unfilled space in any aircraft operated in accordance with this Article from being used for the carriage of any international air traffic offered.

Article VI

A designated airline of one Contracting Party may make a change of gauge at a point in the territory of the other Contracting Party only on the following conditions :

- (a) that it is justified by reason of economy of operation ;
- (b) that the aircraft used on the section on which less traffic is carried by the airline to and from the territory of the first Contracting Party are smaller in capacity than those used on the other section ;
- (c) that the aircraft of smaller capacity shall operate only in connection with the aircraft of larger capacity and shall be scheduled so to do ; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity ; and their capacity shall be determined with primary reference to this purpose ;
- (d) that there is an adequate volume of through traffic ; and
- (e) that the provisions of Article V of this Agreement shall govern all arrangements made with regard to change of gauge.

Article VII

(1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, characteristics of service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be determined in accordance with the following provisions of this Article.

(2) The tariffs referred to in paragraph (1) of this Article shall, if possible, be agreed in respect of each route between the designated airlines of the Contracting Parties, in accordance with other airlines operating over the whole or part of that route, and such agreement shall, where possible, be reached through the rate-fixing machinery of the International Air Transport Association. The 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 Contracting Parties shall endeavour to determine them by agreement between themselves.

(4) A designated airline of either Contracting Party shall file with the aeronautical authorities of both Contracting Parties any tariff determined under paragraph (2) of this Article which it proposes to establish, at least thirty days before the date on which it proposes that the tariff shall come into effect ; provided that the aeronautical authorities of the Contracting Parties may in particular cases vary the period of thirty days.

(5) If the aeronautical authorities of one of the Contracting Parties are dissatisfied with a tariff filed in accordance with paragraph (4) of this Article they shall so notify in writing the aeronautical authorities of the other Contracting Party and any designated airline filing the tariff in dispute, within fifteen days of the date of filing, or in particular cases within such other period as may be agreed upon by both authorities.

(6) After notification under paragraph (5) of this Article, the aeronautical authorities of both Contracting Parties shall endeavour to secure agreement on the tariff to be established.

(7) If the aeronautical authorities of the Contracting Parties cannot secure agreement, the dispute shall be settled in accordance with the provisions of Article X of this Agreement.

(8) If agreement has not been reached at the end of the thirty (30) day period referred to in paragraph (4) above, a disputed tariff on the agreed services shall remain in suspension until the dispute shall have been settled.

(9) Nothing in this Article shall affect the right of either Contracting Party to disallow an offending tariff between a third country and point in the territory of the dissatisfied Contracting Party.

(10) If no notification is given under paragraph (5) of this Article a tariff filed under paragraph (4) of this Article shall come into effect after the expiry of the period specified in paragraph (4) and shall remain in effect until :

- (a) the expiry of any period for which the aeronautical authorities of either Contracting Party may have approved its effectiveness ; or
- (b) a new or amended tariff shall have been established, in substitution therefor, in accordance with the provisions of this Article.

(11) (a) A new or amended tariff in substitution for an established tariff may be filed by a designated airline at any time, and the provisions of this Article shall apply thereto as if it were a first tariff ; provided that the aeronautical authorities of the Contracting Parties may by agreement between them adopt procedures for the filing and establishment of amended tariffs within shorter periods than those specified in paragraphs (4) and (5) of this Article.

(b) The aeronautical authorities of one Contracting Party may, with the consent of the aeronautical authorities of the other Contracting Party, at any time require a designated airline to file a new or amended tariff, and the provisions of this Article shall apply thereto as if it were a first tariff.

Article VIII

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the first Contracting Party. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

Article IX

There shall be regular and frequent consultations between the aeronautical authorities of the Contracting Parties to ensure close collaboration in all matters affecting the fulfilment of this Agreement.

Article X

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation between themselves.

(2) If the Contracting Parties fail to reach a settlement by negotiation ;

- (a) they may agree to refer the dispute for arbitration to a tribunal appointed by agreement between them or to some other person or body. The agreement to arbitrate shall include the designation of the arbitrator or arbitral tribunal, the matter to be arbitrated and the pertinent arbitration procedure ;
- (b) if they do not so agree or if, having agreed to refer the dispute to an arbitral tribunal, they cannot reach agreement as to its composition, either Contracting Party may submit the dispute for arbitration to any tribunal competent to decide it which may here after be established within the International Civil Aviation Organization or, if there is no such tribunal, to the Council of the said Organization.

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

(4) If and so long as either Contracting Party or a 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, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default or

to the designated airline or airlines of that Contracting Party or to the designated airline in default.

Article XI

(1) If either of the Contracting Parties considers it desirable to modify any provision of this Agreement such modification, if agreed between the Contracting Parties, shall come into effect when confirmed by an Exchange of Diplomatic Notes.

(2) In the event of the conclusion of any general multilateral convention concerning air transport by which both Contracting Parties become bound, this Agreement shall be amended so as to conform with the provisions of such convention.

Article XII

Either Contracting Party may at any time give notice to the other if it desires to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. If such notice is given, this Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article XIII

This Agreement and any Exchange of Diplomatic Notes in accordance with Article XI shall be registered by either the Government of Canada or the Government of Peru with the International Civil Aviation Organization.

Article XIV

The present Agreement shall be ratified in conformity with the constitutional requirements of each Contracting Party and shall come into force on the date following the exchange of the instruments of ratification which shall take place in Lima as soon as possible.

Pending the definitive coming into force of this Agreement its provisions shall be applied provisionally by the two Governments as from the date on which it is signed. The Government of either country, however, may prior to the exchange of ratifications terminate the provisional application of the Agreement by giving three months' notice to the other Government.

DONE in Duplicate, at Lima, on this eighteenth day of February of the year of one thousand nine hundred and fifty-four, in the English and Spanish languages, both texts being equally authentic.

For the Government of Canada :

(Signed) Émile VAILLANCOURT

SCHEDULE

SECTION I

Route to be operated in both directions by the designated airline of the Government of Canada

From Vancouver via points in Mexico, Cuba and Panama to Lima and/or Talara and beyond to Rio de Janeiro — Sao Paulo (Brazil) and such other points as may be agreed by the two Contracting Parties.

SECTION II

Route to be operated in both directions by the designated airline of the Government of the Republic of Peru

From Lima via points in Ecuador, Panama, Cuba and Mexico to Vancouver and points beyond to be agreed by the two Contracting Parties.

SECTION III

Route to be operated in both directions by the designated airline of the Government of Canada

From Montreal and/or such other point or points in Eastern Canada as may be designated by the Government of Canada, via such intermediate points outside Canada, as may be agreed by the two Contracting Parties, to Lima and/or Talara. Additional traffic stops within Canada may be designated by the Government of Canada, provided that such stops be between the specified terminals and in reasonable proximity to the direct route connecting them.

SECTION IV

Route to be operated in both directions by the designated airline of the Government of the Republic of Peru

From Lima and/or such other point or points in Peru as may be designated by the Government of Peru, via such intermediate points outside Peru as may be agreed by the two Contracting Parties to Montreal. Additional traffic stops within Peru may be designated by the Government of Peru, provided that such stops be between the specified terminals and in reasonable proximity to the direct route connecting them.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹
BETWEEN PERU AND CANADA AMENDING THE AGREE-
MENT OF 18 FEBRUARY 1954² FOR AIR SERVICES
BETWEEN AND BEYOND THEIR RESPECTIVE TERRI-
TORIES. LIMA, 25 APRIL AND 5 JUNE 1957

I

*The First Secretary of the Canadian Embassy in Peru to the Minister of Foreign Affairs
of Peru*

CANADIAN EMBASSY

No. 48

Lima, April 25, 1957

Excellency :

I have the honour to refer to my Note Verbale of March 20, 1957, and to inform Your Excellency that my Government has asked me to request the amendment of the Agreement between the Government of Canada and the Government of Peru for Air Services Between and Beyond their Respective Territories, signed at Lima on February 18, 1954.²

My Government has requested me to inform Your Excellency that its designated airline, Canadian Pacific Airlines, proposes to extend its service from Lima to Santiago de Chile, and that accordingly my Government wishes me to request the amendment of Section I of the Route Schedule of the above-mentioned Agreement by the insertion of the words "Santiago (Chile)" immediately after the words "Buenos Aires (Argentina)" added by Supreme Resolution No. 254 of August 22, 1955. This amendment would permit Canadian Pacific Airlines to extend its route from Lima to Santiago.

I take this occasion to present to Your Excellency the assurances of my high and distinguished consideration.

for the Ambassador :

(Signed) D. H. CHENEY

His Excellency the Minister of Foreign Affairs
Doctor Manuel Cisneros Sanchez
Ministry of Foreign Affairs
Lima

¹ Came into force on 5 June 1957 by the exchange of the said notes.

² See p. 64 of this volume.

II

The Minister of Foreign Affairs of Peru to the Ambassador Extraordinary and Plenipotentiary of Canada

MINISTRY OF FOREIGN AFFAIRS

Nº (D) : 6-41/4

Lima, June 5, 1957

Mr. Ambassador :

I have the honour to refer to your Embassy's note No. 48 of last April 25, in which it was stated that Canadian Pacific Airlines, the designated airline of the Government of Canada, proposed to extend its services from Lima to Santiago de Chile, and consequently requested through your Mission the amendment of Section I of the Route Schedule of the Agreement for Air Services made by Peru and Canada on February 18, 1954, by the insertion of the words "Santiago (Chile)" immediately after the words "Buenos Aires (Argentina)" added by Supreme Resolution No. 254 of August 22, 1955.

In reply, I have the pleasure to inform Your Excellency that this request having been transmitted to the Minister of Aviation, he, by a communication of the first of this month, has expressed his concurrence. Therefore, by the present note and under Article XI of the above Agreement, the amendment under discussion is agreed.

I take this opportunity to renew, Mr. Ambassador, the assurances of my highest and most distinguished consideration.

(Signed) Manuel CISNEROSPresident of the Council of Ministers
and Minister of Foreign RelationsTo H. E. Benjamin Rogers
Ambassador Extraordinary and Plenipotentiary of Canada
Lima