No. 9515

ARGENTINA
and
BRAZIL

Agreement concerning regular air transport (with annex and protocol of signature). Signed at Rio de Janeiro on 2 June 1948

Authentic texts : Spanish and Portuguese.

Registered by Argentina on 28 April 1969.

ARGENTINE
et
BRÉSIL

Accord relatif aux transports aériens réguliers (avec annexe et protocole de signature). Signé à Rio de Janeiro le 2 juin 1948

Textes authentiques : espagnol et portugais.

Enregistré par l'Argentine le 28 avril 1969.

[TRANSLATION — TRADUCTION]

AGREEMENT [1] BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE UNITED STATES OF BRAZIL CONCERNING REGULAR AIR TRANSPORT

The Government of the Argentine Republic and the Government of the United States of Brazil, considering :

— That the steadily growing possibilities of commercial aviation are becoming increasingly important ;

— That this means of transport, because of its essential characteristics, affording rapid communication, brings nations closer together ;

— That it is desirable to organize regular international air services in a safe and orderly manner, without prejudice to national and regional interests, taking into account the development of international co-operation in the field of air transport ;

— That it is their hope that a general multilateral agreement applying to all nations in the matter of international air transport will be concluded ;

— That pending the conclusion of such a general multilateral agreement, to which both Governments would be parties, it is essential to draw up an Agreement for the purpose of ensuring regular air communications between the two countries, under the terms of the Convention on International Civil Aviation, concluded at Chicago on 7 December 1944. [2]

Have appointed for this purpose plenipotentiaries, who, after exchanging their full powers, which were found to be in good and proper form, and having been mindful of the agreements concluded by each party previously, have agreed upon the following provisions :

Article I

The Contracting Parties grant each other the rights specified in this Agreement and its annex in order that the regular international air services

[1] Came into force provisionally on 2 June 1948 by signature and definitively on 29 November 1966 by the exchange of the instruments of ratification which took place at Buenos Aires, in accordance with article XVI.

[2] United Nations, *Treaty Series*, Vol. 15, p. 295 ; for the texts of the Protocols amending this Convention, see Vol. 320, pp. 209 and 217 ; Vol. 418, p. 161 and Vol. 514, p. 209.

which are described therein and which are hereinafter referred to as " agreed services " may be established.

Article II

1. Each of the agreed services may be inaugurated immediately or at a later date, at the option of the Contracting Party to which the rights are granted, but not before :

(*a*) The Contracting Party to which they are granted has designated one or more airlines of its own nationality for all or each of the specified routes ;

(*b*) The Contracting Party granting the rights has issued the necessary operating licence to the airline or airlines concerned, which, subject to the provisions of paragraph 2 of this article and those of article VI, it shall do without delay.

2. The designated airlines may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that they are qualified to fulfil the conditions prescribed under the laws and regulations normally applied by those authorities with respect to the operation of commercial airlines.

Article III

In order to prevent discriminatory practices and to ensure that the principle of equality of treatment is observed :

1. The charges and other fiscal duties which one of the Contracting Parties may impose or permit to be imposed on the designated airline or airlines of the other Contracting Party for the use of airports and other facilities shall not be higher than would be paid for the use of such airports and facilities by aircraft of its flag engaged in similar international services.

2. Fuel, lubricating oils and spare parts introduced into the territory of one Contracting Party or taken on board aircraft of the other Contracting Party in that territory, whether directly by an airline designated by the latter or on behalf of such airline, intended solely for use by its aircraft, shall enjoy the same treatment as that granted to national airlines or airlines of the most favoured nation with respect to customs duties, inspection fees or other national duties or charges.

3. Aircraft of one of the Contracting Parties used in operating the agreed services and fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board for use in such aircraft shall enjoy exemption from customs duties, inspection fees and similar duties or fees in the territory of the other Contracting Party, even though they are used by the aircraft on flights in that territory.

4. The items listed in the foregoing paragraph, enjoying the exemption established therein, may not be unloaded without the approval of the customs authorities of the other Contracting Party. These items, until such time as they are re-exported or used, shall be kept under customs supervision, but the right to dispose of them shall not be affected thereby.

Article IV

Certificates of airworthiness, certificates of competency and licences issued or validated by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services. Each Contracting Party reserves the right to refuse to recognize, for the purpose of flight over its territory, certificates and licences granted to its nationals by the other Contracting Party or by a third State.

Article V

1. The laws and regulations of one Contracting Party relating to the admission to, stops in 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 the designated airline or airlines of the other Contracting Party.

2. The laws and regulations of each Contracting Party relating to the admission to, stops in and departure from its territory of passengers, crews or cargo of aircraft, such as those relating to entry, clearance, immigration, passports, customs and quarantine, shall be applied to the passengers, crew and cargo of aircraft operating the agreed services.

Article VI

Each Contracting Party reserves the right to withhold an operating licence from an airline designated by the other Contracting Party or to revoke such licence if it is not duly satisfied that substantial ownership and

effective control of the airline in question are vested in nationals of the other Contracting Party, or in the case of failure by that airline to comply with the laws and regulations referred to in article XIII of the above-mentioned Convention on International Civil Aviation or with the conditions under which the rights have been granted in accordance with this Agreement and its annex.

Article VII

Breaches of legal provisions or regulations which do not constitute an offence and which have been committed in the territory or superjacent air space of one of the Contracting Parties shall be reported to the aeronautical authorities of the other Contracting Party, in order that those authorities may take steps to ensure that the obligations deriving from such breaches are complied with. If the person concerned fails to comply with those obligations, he shall be barred from serving as a member of a crew travelling in its territory, without prejudice to any pecuniary penalties that may be imposed.

In investigations conducted to determine the existence of such breaches, the aeronautical authorities concerned shall endeavour to ensure that the regularity of the agreed services is not affected.

Article VIII

The Contracting Parties reserve the right to replace the designated airline or airlines by other national airlines, giving prior notice to the other Contracting Party. All the provisions of this Agreement and its annex shall apply to the newly designated airlines.

Article IX

If either of the Contracting Parties wishes to modify the terms of the annex to this Agreement or to exercise the right referred to in article VI hereof, it shall request consultation between the aeronautical authorities of both Contracting Parties, such consultation to commence within a period of sixty days from the date of the request.

When the said authorities agree to modify the annex, such modifications shall enter into force after they have been confirmed by an exchange of notes through the diplomatic channel.

Article X

1. The aeronautical authorities of the two Contracting Parties shall, by mutual agreement and on the basis of reciprocity, resolve any matters relating to the execution of this Agreement, its annex and route plans and

shall consult each other from time to time in order to ensure satisfactory application and execution of its principles and aims.

2. Any disputes between the Contracting Parties relative to the interpretation or application of this Agreement and its annex which cannot be settled through consultation shall be referred to arbitration, at the option of the Contracting Parties.

Article XI

Either of the Contracting Parties may at any time notify the other of its decision to terminate this Agreement, requesting prior consultation with the other Contracting Party. If no agreement has been reached within sixty days of the date of the notice, the Contracting Party shall confirm its notice to terminate by a communication to that effect, which shall be sent to the International Civil Aviation Organization at the same time.

This Agreement shall cease to have effect six months after receipt of notice by the other Contracting Party unless it has been withdrawn by agreement prior to the expiry of that period. If no acknowledgement of receipt is made by the Contracting Party to which the notice was sent, it shall be deemed to have been received fourteen days after its receipt by the International Civil Aviation Organization.

Article XII

In the event of the entry into force of a multilateral air transport convention which is ratified by the two Contracting Parties, this Agreement and its annex shall be subject to any modification it entails.

Article XIII

This Agreement replaces any licence, privilege or concession existing at the time of its signature and granted for any reason by one of the Contracting Parties to airlines of the other Contracting Party.

Article XIV

This Agreement and all contracts relating to it which supplement or amend it shall be registered with the International Civil Aviation Organization.

Article XV

For the purpose of implementation of this Agreement and its annex :

1. The term " aeronautical authorities " shall mean, in the case of the Argentine Republic, the Secretary of Aeronautics, and, in the case of the United States of Brazil, the Minister of Air, or, in either case, any person or body authorized to fulfil their functions.

2. The term " designated airline " shall mean any airline selected by one of the Contracting Parties to operate the agreed services on one or more of the specified routes and in respect of which a written communication has been transmitted to the competent aeronautical authorities of the other Contracting Party, in accordance with the provisions of article II of this Agreement ;

3. The term " traffic requirements " shall mean the demand for passenger, cargo and/or mail traffic, expressed in metric ton kilometres, between the terminal points of the agreed services ;

4. The term " aircraft capacity " shall mean the pay-load intended for commercial purposes ;

5. The term " transport capacity provided " shall mean the total capacity of the aircraft used on each of the agreed services, at a reasonable load factor, multiplied by the frequency with which they operate during a specified period ;

6. The term " air route " shall mean the established itinerary followed by an aircraft operating a scheduled service for the public transport of passengers, cargo and/or mail ;

7. Brazilian-Argentine traffic shall be taken to mean traffic originating in Brazilian territory and actually bound for Argentine territory and traffic originating in Argentine territory and actually bound for Brazilian territory, whether transported by national airlines of either country or by other foreign airlines ;

8. The term " scheduled international air services " shall mean the international service operated by designated airlines, with uniform frequency, in accordance with pre-established routes and time-tables approved by the Governments concerned.

Article XVI

This Agreement shall be ratified or approved, as appropriate, in accordance with the constitutional provisions of each Contracting Party and shall enter into force on the date of the exchange of instruments of ratification,

which shall take place as soon as possible. Until such time and with effect from the date of signature it shall enter into force provisionally, within the limits of the administrative powers of each Contracting Party.

IN WITNESS WHEREOF, the Plenipotentiaries designated by the two Contracting Parties have, on 2 June 1948, signed this Agreement, done in duplicate in the Spanish and Portuguese languages, both tests being equally authentic, and have thereto affixed their seals.

Juan I. COOKE
Enrique FERREIRA
Raúl FERNÁNDEZ
Armando TROMPOWSKY DE ALMEIDA

ANNEX

I

The Government of the United States of Brazil grants the Government of the Argentine Republic the right to operate air transport services to be provided by one or more airlines designated by the latter Government between the territories of Argentina and Brazil or across their territories on the routes specified in Schedule I of this annex, without engaging in cabotage in Brazilian territory.

II

The Government of the Argentine Republic grants the Government of the United States of Brazil the right to operate air transport services to be provided by one or more airlines designated by the latter Government between the territories of Brazil and Argentina or across their territories on the routes specified in schedule II of this annex, without engaging in cabotage in Argentine territory.

III

(*a*) The airlines or airlines designated by the Contracting Parties in accordance with the terms of the Agreement and this annex shall enjoy in the territory of the other Contracting Party on each of the specified routes the right of transit and of stops for non-traffic purposes at airports open to international traffic, as well as the right to pick up and set down international traffic in passengers, cargo and mail at the points enumerated on the specified routes.

(*b*) The Contracting Parties shall, as an exceptional measure, in view of the geographical situation of the two countries, be authorized to exercise the rights set forth in this clause on the extensions of their routes to points beyond their respective territories.

(*c*) The implementations of the foregoing provisions shall be subject to the regulative conditions laid down in section IV.

IV

(*a*) The transport capacity afforded by the airlines of the two Contracting Parties shall be closely related to traffic requirements.

(*b*) The airlines designated by the two Contracting Parties shall be ensured fair and equitable treatment so that they may enjoy equal opportunity to provide the agreed services.

(*c*) The airlines designated by the Contracting Parties shall take into consideration their mutual interests when operating common routes or portions of routes, so as not to affect unduly the services in question.

(*d*) The agreed services shall have as their primary objective the provision of capacity adequate to the traffic requirements between the country to which the airline belongs and the territory of the other Contracting Party, without prejudice to the exceptional right laid down in paragraph (*b*) of section III and subject to the provisions of paragraph (*e*) below.

(*e*) The exercise of the right of a designated airline to pick up and set down, at the specified points and on the specified routes, international traffic bound for or originating in third countries shall be regarded as a supplementary means of satisfying the requirements of traffic between each of the third countries in question and one of the Contracting Parties. In the event of an objection by any such third country, consultations shall be held with a view to applying these principles to the case in question.

(*f*) The transport capacity provided shall be related to the requirements of the area through which the airline passes, allowing for the interests of local and regional services.

V

The aeronautical authorities of the Contracting Parties shall consult each other at the request of one of them in order to ascertain whether the principles enunciated in section IV hereof are being observed by the airlines designated by the Contracting Parties, and, in particular, to prevent any one of the designated airlines from obtaining more than its fair share of the traffic. Due account shall be taken of the traffic statistics, which they undertake to keep and exchange periodically.

VI

(*a*) The rates shall be fixed at reasonable levels, due regard being paid to all important factors, particularly the cost of operation, reasonable profit, the rates charged by other airlines and the characteristics of each service, such as speed and comfort.

(*b*) The rates to be charged by the airlines designated by each of the Contracting Parties between points in Argentine territory and points in Brazilian territory mentioned in the attached schedules shall be subject to prior approval by the aeronautical authorities before they become applicable. The proposed rate must be submitted at least thirty days prior to the anticipated date of entry into force ; this period may be reduced in special cases, if so agreed by the aeronautical authorities.

(*c*) The rates to be charged by the airlines designated by one of the Contracting Parties serving points on common routes between the territory of the other Contracting Party and third countries shall not be less than those charged on those portions of the route by the other Contracting Party and such third countries.

In respect of portions of the routes specified in the schedules set forth in this annex which include points located within the territory of either of the Contracting Parties and third countries but which are not located on common routes, the rates to be charged shall be subject to prior approval by the aeronautical authorities of the Contracting Party in whose territory those points are located ; the same procedure as that laid down in the preceding paragraph shall be followed.

(*d*) The airlines designated by the Contracting Parties shall, with the knowledge of the respective aeronautical authorities, endeavour to come to an agreement on the rates for passengers and cargo to be charged on the common portions of their routes, after consultation, if necessary, with airlines in third countries operating all or part of the same routes.

(*e*) The recommendations of the International Air Transport Association (IATA) shall be taken into account in fixing rates.

(*f*) Should the airlines fail to arrive at an agreement on the rates to be charged, the competent aeronautical authorities of the two Contracting Parties shall endeavour to arrive at a satisfactory solution. In the last resort, the procedure to be followed shall comply with the provisions of article X of this Agreement.

(*g*) The rates of other international services serving points between the two Contracting Parties may not be lower than those charged by the airlines of the Contracting Parties over the same routes and between their respective territories.

VII

Changes in points on the air routes specified in the attached schedules, except those which change the points served in the territory of the other Contracting Party, shall not be considered as modifications of the annex. The aeronautical authorities of either Contracting Party may therefore proceed unilaterally to make such changes provided the aeronautical authorities of the other Contracting Party are given notice thereof without delay.

If these authorities find that, having regard to the principles set forth in section IV of this annex, the interests of their national airlines are prejudiced by the airlines of the other Contracting Party, in that traffic between their own territory and the new stop in a third country has already been established, the aeronautical authorities of the two Contracting Parties shall consult with a view to arriving at a satisfactory agreement.

VIII

(*a*) For the purposes of this section, the term "change of aircraft" at a specified stop means that, beyond that point, traffic is served on the route in question by the same airline but with an aircraft different from that which was used on the same route prior to the said stop.

(*b*) Any change of aircraft that is justified for reasons of economy of operation shall be permitted at any point in the territory of the two Contracting Parties referred to in the attached schedules.

(*c*) However, a change of aircraft shall not be permitted in the territory of either of the Contracting Parties if it modifies the characteristics of the operation of the agreed services, or if it is incompatible with the principles enunciated in this Agreement and its annex, in particular section IV of this annex.

(*d*) In principle, on services originating in the country of registration of the aircraft, the departure of the aircraft used after the change of aircraft shall connect with the arrival of the aircraft used as far as the point at which the change is effected ; similarly, the capacity of the aircraft used after such change shall be determined in accordance with traffic arriving at the change-over point and bound for a destination beyond that point.

(*e*) When there is a certain capacity available in the aircraft used after any change of aircraft effected in accordance with the provisions of paragraph (*d*) above, such capacity may be used, in both directions, for international traffic originating in or bound for the territory in which the change was made, having regard to the authorization set forth in paragraph (*e*) of section IV of this annex.

IX

After the entry into force of this Agreement, the aeronautical authorities of the two Contracting Parties shall, as soon as possible, transmit to each other information on the authorizations granted to their respective airlines designated to operate all or part of the agreed services. This exchange of information shall include copies of the authorizations granted, together with any amendments thereto and the corresponding annexes.

X

For an initial period of six months from the date of the signature of this Agreement and its annex, the airlines designated by the two Contracting

Parties shall operate with the frequency established by exchange of diplomatic notes.

After the expiry of the aforesaid period, the aeronautical authorities of the two Contracting Parties shall submit to each other for approval, not less than fifteen days prior to effective introduction of new services, the following information : time tables, frequency and types of aircraft to be used. For the same purpose, they shall also submit any later modifications.

Increases in frequency may not be refused if the statistics indicate that, over the six-month period prior to a proposed increase, use of the capacity afforded by the aircraft of the designated airline is being made at an average load factor of fifty per cent (50 %).

If any doubt should arise as to whether this condition has been fulfilled, the aeronautical authorities of the two Contracting Parties shall begin consultations, as provided for in section V of this annex. During such consultations, and for a maximum period of 120 days, the new frequency may be operated ; however, should this period expire without agreement being reached, the new frequency shall be suspended immediately pending settlement of the question.

XI

Each designated airline, except where otherwise laid down by the competent aeronautical authority, may maintain its own technical and administrative personnel at the airports of the other Contracting Party. At least eighty (80) per cent of the personnel in each category (technical, administrative and service) must be of the nationality of the country in whose territory the airports are located. Any doubt or dispute in connexion with this point shall be settled by the aeronautical authorities of the country to which the airports belong.

SCHEDULE I

ARGENTINE ROUTES TO BRAZIL AND CROSSING BRAZILIAN TERRITORY

(A) Argentine routes to Brazilian territory :

1. From Buenos Aires to Rio de Janeiro, via Montevideo, Porto Alegre and São Paulo, in both directions.
2. From Buenos Aires to Rio de Janeiro, via Asunción and Guaíra, in both directions.

(B) Routes crossing Brazilian territory :

1. Buenos Aires, Rio de Janeiro, Recife or Natal and beyond to third countries in Africa (Dakar, Bathurst or other point on the Atlantic) and in Europe to Madrid, Paris and London, with possible extension to Copenhagen, Oslo and Stockholm, in both directions.

2. Buenos Aires, Rio de Janeiro, Recife or Natal and beyond to third countries in Africa (Dakar, Bathurst or other point on the Atlantic) and in Europe to Madrid and Rome, with possible extension to Geneva, Frankfurt or Berlin, in both directions.
3. Buenos Aires, Rio de Janeiro (via Porto Alegre and São Paulo), Belem (via Barreiras) to third countries beyond in the Caribbean and North America, over reasonably direct routes, in both directions.

SCHEDULE II

BRAZILIAN ROUTES TO ARGENTINA AND CROSSING ARGENTINE TERRITORY

(A) Brazialian routes to Argentine territory :
1. From Rio de Janeiro to Buenos Aires, via São Paulo, Porto Alegre and Montevideo, in both directions.
2. From Rio de Janeiro to Buenos Aires, via Guaíra and Asunción, in both directions.

(B) Routes crossing Argentine territory :
1. Rio de Janeiro to Santiago de Chile, via Guaíra and Asunción, with possible technical stop at Córdoba, in both directions.
2. Alternative emergency route : Rio de Janeiro, via Guaíra, Asunción, Salta and Antofagasta, to Lima and Santiago, with possible technical stop at Salta, in both directions.

PROTOCOL OF SIGNATURE

In the course of the negotiations which culminated in the signing of the Agreement between the Argentine Republic and the United States of Brazil concerning Regular Air Transport, concluded at Rio de Janeiro on this date, the representatives of the two Contracting Parties expressed their agreement on the following points :

1. The customs, police, immigration and health authorities of the two Contracting Parties shall apply the provisions laid down in articles III and V of the Agreement in the simplest and speediest manner possible with a view to preventing any delay in the movement of the aircraft operating the agreed services. This consideration shall be taken into account in the application and formulation of the relevant regulations.

2. The right recognized in article VI of the Agreement to withhold or revoke the authorization of an airline designated by one of the Contracting

Parties may be exercised by the other Contracting Party in the event that the crews of the aircraft of the first Contracting Party include flight personnel who are not of its nationality.

The inclusion in crews of personnel who are nationals of third countries shall be permitted provided their inclusion is for the purpose of instruction and training of flight personnel.

3. The stops to be made by the airline or airlines designated by the Argentine Republic on their routes to countries in the Caribbean and North America shall be made known as soon as agreement on route plans has been reached with the United States of America.

IN WITNESS WHEREOF, the Plenipotentiaries designated by the two Contracting Parties have signed this Protocol, done in duplicate in the Spanish and Portuguese languages, both texts being equally authentic, and have thereto affixed their seals, in the city of Rio de Janeiro on 2 June 1948.

Juan I. COOKE
Enrique FERREIRA
Raúl FERNÁNDEZ
Armando TROMPOWSKY DE ALMEIDA