No. 14606

BRAZIL
and
COLOMBIA

Agreement on air transport (with annex and protocol of signature). Signed at Bogotá on 28 May 1958

Authentic texts: Portuguese and Spanish.
Registered by Brazil on 27 February 1976.

BRÉSIL
et
COLOMBIE

Accord relatif aux transports aériens (avec annexe et protocole de signature). Signé à Bogotá le 28 mai 1958

Textes authentiques : portugais et espagnol.
Enregistré par le Brésil le 27 février 1976.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] ON AIR TRANSPORT BETWEEN THE REPUBLIC OF THE UNITED STATES OF BRAZIL AND THE REPUBLIC OF COLOMBIA

The President of the Republic of the United States of Brazil and the Governing Military Junta of the Republic of Colombia, considering that it is desirable to promote the development of air transport between the two countries in order to bring about closer relations and encourage exchanges between them,

Have for that purpose appointed as their Plenipotentiaries:

The President of the Republic of the United States of Brazil: Ambassador José Carlos de Macedo Soares, Minister for Foreign Affairs;

The Governing Military Junta of the Republic of Colombia: Dr. Carlos Sanz de Santamaría, Minister for Foreign Affairs;

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

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

Article II. 1. Any of the agreed services may begin to operate immediately or at a later date, at the discretion of the Contracting Party to which the rights in question are granted, but not until:

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

(*b*) the Contracting Party which grants the rights has granted the necessary operating licence to the designated airline or airlines, such licence to be granted without delay, subject to the provisions of paragraph 2 of this article and of article IV.

2. The designated airlines may be required to satisfy the aeronautical authorities of the Contracting Party which grants the rights that they are qualified to fulfil the conditions prescribed under the laws and regulations normally applied by those authorities to the operations 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 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 those which are paid for the use of such airports and facilities by its own aircraft engaged in similar international services.

[1] Came into force on 27 June 1975 by the exchange of the instruments of ratification, which took place at Brasília, in accordance with article XI.

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

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, while on board such aircraft, shall enjoy exemption from customs duties, inspection fees and similar duties or fees in the territory of the other Contracting Party, even if the supplies in question are used by the aircraft on flights over that territory.

Article IV. Each Contracting Party reserves the right to deny or revoke the exercise of rights granted to a designated airline of the other Contracting Party and specified in the annex to this Agreement in the event that:

1. it is not duly satisfied that substantial ownership or effective control of the airline in question is vested in the other Contracting Party or its nationals;
2. the airline fails to comply with the laws and regulations referred to in article 13 of the Convention on International Civil Aviation[1] or with the conditions under which the rights were granted in accordance with this Agreement and its annex;
3. the aircraft brought into service are not crewed by nationals of the other Contracting Party, except in cases where navigational staff are being trained.

Article V. 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 IV above, it may request consultation between the aeronautical authorities of the two Contracting Parties. Such consultation must commence within a period of sixty (60) 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 VI. Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement or its annex which cannot be settled through negotiations or consultation shall be submitted to arbitration by a tribunal whose composition and operation shall conform to the following rules:

1. The tribunal shall consist of three arbitrators. Each Contracting Party shall name one arbitrator, and the third shall be designated by agreement between the other two and may not be a national of either Party.

2. The first two arbitrators shall be named within two (2) months after the date on which one of the Parties receives the diplomatic note in which the other

[1] 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; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; and vol. 958, p. 217.

Party requests arbitration of the dispute. The third arbitrator shall be designated within thirty (30) days of the appointment of the first two.

3. If either Contracting Party fails to name its arbitrator within the period of two (2) months or if no agreement is reached as to the third arbitrator within the time-limit indicated, the Contracting Parties shall request the Council of the International Civil Aviation Organization to make the designation.

4. The arbitral tribunal thus appointed must make its award within a period of not more than sixty (60) days after the date on which it is established. This time-limit may be extended by agreement between the two Parties.

5. The Contracting Parties shall make every possible effort within the limits of their authority to accept the interim measures adopted by the tribunal in the course of arbitration and to comply with the arbitral awards which shall be final.

Article VII. Either of the Contracting Parties may at any time notify the other of its intention to denounce this Agreement. The notification must at the same time be communicated to the International Civil Aviation Organization. In the event that such notification is made, this Agreement shall be terminated six (6) months after the notification is received by the other Contracting Party unless the Contracting Parties agree to withdraw it prior to the expiry of that period. If the other Contracting Party fails to acknowledge receipt of the notification, the latter shall be deemed to have been received fourteen (14) days after its receipt by the International Civil Aviation Organization.

Article VIII. 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 resulting from the multilateral convention.

Article IX. Any authorizations, privileges or concessions existing at the time of the ratification of this Agreement, which have been granted for any reason by one of the Contracting Parties to one or more airlines of the other Contracting Party must be revoked or revised so as to comply with the provisions of this Agreement.

Article X. This Agreement and its annex as well as any amendments made to it in the future shall be registered with the International Civil Aviation Organization.

Article XI. For the purposes of this Agreement and its annex:

(*a*) The term "aeronautical authorities" shall mean, in the case of the Republic of Colombia, the Civil Aviation Department and, in the case of Brazil, the Ministry of Air or, in either case, any person or body authorized to fulfil the functions at present performed by them;

(*b*) The term "designated airline" shall mean any airline which one of the Contracting Parties, through written notification to the other Contracting Party, designates to operate the route or routes specified in the schedules annexed to this Agreement;

(*c*) The term "scheduled international air services" shall mean the international service operated by designated airlines, with uniform frequency and in

accordance with pre-established time-tables, routes and rates approved by the Contracting Parties;

(*d*) Other terms used in this Agreement and its annex but not defined therein shall be interpreted in accordance with the manner in which they are understood or defined in the Convention on International Civil Aviation and its annexes.

This Agreement shall be ratified in accordance with the constitutional provisions of each Contracting Party and shall enter into force as from the date of the exchange of ratifications, which shall take place as soon as possible.

Both Contracting Parties shall seek to give effect to the provisions of this Agreement, within the limits of their administrative powers, thirty (30) days after the date of its signature.

IN WITNESS WHEREOF the above-mentioned Plenipotentiaries have signed and sealed this Agreement in Bogotá on 28 May 1958 in duplicate in the Portuguese and Spanish languages, both texts being equally authentic.

JOSÉ CARLOS DE MACEDO SOARES
CARLOS SANZ DE SANTAMARÍA

ANNEX

I

The Government of the Republic of the United States of Brazil grants the Government of the Republic of Colombia the right to operate air transport services to be provided by one or more designated airlines on the routes specified in schedule II of this annex.

II

The Government of the Republic of Colombia grants the Government of the United States of Brazil the right to operate air transport services to be provided by one or more designated airlines on the routes specified in schedule I of this annex.

III

The airline or airlines designated by the Contracting Parties under the terms of the Agreement and of this annex shall enjoy in the territory of the other Contracting Party, on each of the routes specified in the attached schedules, the right of transit and of stops for non-traffic purposes at airports open to international traffic. They shall also enjoy the right to pick up and set down international traffic in passengers, cargo and mail at the points enumerated in the above-mentioned schedules, under the conditions set forth in section IV of this annex.

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 in the operation of the agreed services.

(*c*) The designated airlines 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 requirements of traffic between the territories of the Contracting Parties.

(*e*) The designated airlines shall have the right to pick up and set down in the territory of the other Contracting Party, at the specified points on the agreed routes, international traffic bound for or originating in other countries. This right shall be exercised in accordance with the general principles for the development of air transport accepted by the two Contracting Parties, with a view to adapting the capacity to:

1. the requirements of traffic between the country of origin and the countries of destination;
2. the requirements of the economic operation of the services in question; and
3. existing traffic requirements, provided that the interests of local and regional services are not affected.

V

The aeronautical authorities of the Contracting Parties shall consult one another at the request of any one of them for the purpose of ascertaining whether the principles enunciated in section IV are being observed by the designated airlines. They shall, in particular, endeavour to prevent any one of the designated airlines from obtaining more than its fair share of the traffic. It is understood that the consultations shall not have the effect of suspending measures which either Contracting Party has taken or may take for this purpose.

VI

The aeronautical authorities of each Contracting Party shall provide the aeronautical authorities of the other Contracting Party at their request, on a regular basis or at any time, with the statistical data reasonably required in order to determine how the capacity afforded by the airlines designated by the first-mentioned Contracting Party is being used. Such data shall include all the elements required in order to determine accurately the volume of traffic hauled by the said airlines in relation to the agreed services.

VII

1. The rates for the services provided pursuant to this Agreement shall be fixed in accordance with the rules laid down in this section, due regard being had to all relevant factors, particularly the cost of operation, reasonable profits, the characteristics of the services, such as speed and comfort, and the rates charged by other airlines on all the routes or portions thereof.

2. The designated airline or airlines of each Contracting Party shall submit for approval by the aeronautical authorities of the other Contracting Party the proposed rates for traffic hauled within the territory of that Party and shall comply with such instructions as those authorities may provide. The proposed rates shall be submitted at least thirty (30) days prior to the anticipated date of entry into force; this period may be reduced in special cases at the discretion of the above-mentioned authorities.

3. In fixing the said rates, the designated airlines shall, wherever possible, make the necessary arrangements through IATA (International Air Transport Association). Where this is not possible, the designated airlines shall reach agreement directly among themselves, complying in all cases with the principles set forth in this section.

4. Where the designated airlines are unable to reach agreement on rates or where the aeronautical authorities of either Contracting Party fail to approve the rates submitted to them in the manner prescribed in the preceding paragraphs, the said rates shall not enter into force until the aeronautical authorities of the two Contracting Parties are able to arrive at a satisfactory solution. In the last resort, the procedure to be followed shall comply with the provisions of article VI of the Agreement.

VIII

Any change in the stops in territories other than those of the Contracting Parties within the routes specified in the attached schedules, with the exception of changes resulting from the inclusion of new points, shall not be regarded as a modification of the annex. The aeronautical authorities of either Contracting Party may therefore proceed unilaterally to make such a change, provided that they notify the authorities of the other Contracting Party without delay.

If the latter authorities find that, on the basis of the principles set forth in section IV of this annex, the change affects the interests of their national airlines, they shall consult with the aeronautical authorities of the other Contracting Party with a view to arriving at a satisfactory agreement.

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 in particular copies of the authorizations granted, together with any amendments thereto, and the corresponding annexes.

JOSÉ CARLOS DE MACEDO SOARES
CARLOS SANZ DE SANTAMARÍA

SCHEDULE I

Brazilian routes

I. *To Colombia*

1. Rio de Janeiro – Manáus – Leticia – Bogotá, in both directions;
2. Manáus – Bogotá, via Mitú and other intermediate points, in both directions;
3. Porto Velho – Leticia – Bogotá, in both directions.

II. *Through Colombia*

1. From Rio de Janeiro to Bogotá and beyond via Panama City (technical stop), Mexico City, Los Angeles or San Francisco, and thence to other countries, in both directions;
2. Manáus – Leticia, to Peru and Ecuador, in both directions.

N.B. The intermediate points referred to in route I-2 shall be established through an exchange of notes.

SCHEDULE II

Colombian routes

I. *To Brazil*

1. Bogotá – Leticia – Manáus – Rio de Janeiro and/or São Paulo, in both directions;
2. Bogotá – Manáus and intermediate points, in both directions;
3. Bogotá – Leticia – Porto Velho, in both directions;
4. Leticia – Manáus and intermediate points, in both directions.

II. *Through Brazil*

1. From Bogotá to Rio de Janeiro and/or São Paulo and beyond via Montevideo to Buenos Aires, in both directions.

N.B. The intermediate points referred to in routes I-2 and I-4 shall be established through an exchange of notes.

PROTOCOL OF SIGNATURE

In the course of the negotiations which culminated in the signing on today's date of the Agreement on air transport between the Republic of the United States of Brazil and the Republic of Colombia, the Plenipotentiaries of the two High Contracting Parties reached agreement on the following additional points relating to the practical implementation of the Agreement:

1. The frequency of flights and the capacity afforded on the routes specified in the annex to the Agreement shall be determined by agreement between the civil aviation authorities of the Contracting Parties, regard being had to traffic potential and the quality of the flight equipment used by the companies concerned.

2. Since on route II-1 of the schedule of Brazilian routes the stop in Panama City is considered to be a "technical stop" for traffic to and from Colombia, it is understood that the designated Brazilian airlines or airlines shall not enjoy traffic rights between Colombia and Panama City in either direction.

3. When one or more Colombian airlines establish air services to Mexico City, Los Angeles or San Francisco, the aeronautical authorities of the Contracting Parties shall reach agreement on such limitations of frequency and/or capacity as are required in accordance with section IV (*e*) (3) of the annex. In the event that agreement is not reached within sixty (60) days of the date of the commencement of negotiations, the limitations suggested by the Colombian aeronautical authorities shall be applied.

4. The aeronautical authorities of the Contracting Parties shall proceed in the same manner when the designated Colombian airline or airlines establish scheduled air services between Rio de Janeiro and/or São Paulo and Buenos Aires via Montevideo.

5. If in future the Brazilian Government should wish to establish scheduled air transport service between Brazil and Colombia and countries beyond via La Paz, Lima or Quito, the Colombian Government shall, in the lofty spirit of co-operation and friendship between the two Governments, consider the

possibility of including this route in the schedule contained in the annex to the Agreement, provided that precedence is given to protection of the interests of all the services provided by Colombian airlines on the same route.

IN WITNESS WHEREOF the Plenipotentiaries designated by the Contracting Parties have signed this Protocol at Bogotá on 28 May 1958 in duplicate in the Portuguese and Spanish languages, both texts being equally authentic.

JOSÉ CARLOS DE MACEDO SOARES
CARLOS SANZ DE SANTAMARÍA