

AIR TRANSPORT SERVICES

*Agreement, with annex and exchange of notes, signed at Nanking
December 20, 1946*

Entered into force December 20, 1946

Amended and extended by agreement of December 1 and 19, 1950¹

Annex amended by agreement of February 7 and April 15, 1955²

61 Stat. 2799; Treaties and Other
International Acts Series 1609

AGREEMENT

Having in mind the resolution signed under date of December 7, 1944, at the International Civil Aviation Conference in Chicago, Illinois, for the adoption of a standard form of agreement for provisional air routes and services, and the desirability of mutually stimulating and promoting the sound economic development of air transportation between the United States of America and the Republic of China, the two Governments parties to this Agreement agree that the establishment and development of air transport services between their respective territories shall be governed by the following provisions:

ARTICLE 1

The contracting parties grant the rights specified in the Annex hereto necessary for establishing the international civil air routes and services therein described, whether such services be inaugurated immediately or at a later date at the option of the contracting party to whom the rights are granted.

ARTICLE 2

(a) Each of the air services so described shall be placed in operation as soon as the contracting party to whom the right has been granted by Article 1 to designate an airline or airlines for the route concerned has authorized an airline for such route, and the contracting party granting the right shall, subject to Article 7 hereof, be bound to give the appropriate operating permission to the airline or airlines concerned; provided that the airline so designated may be required to qualify before the competent aero-

¹ 2 UST 421; TIAS 2184.

² 6 UST 2979; TIAS 3347.

nautical authorities of the contracting party granting the rights under the laws and regulations normally applied by these authorities before being permitted to engage in the operations contemplated by this Agreement; and provided that in areas of hostilities or of military occupation, or in areas affected thereby, such inauguration shall be subject to the approval of the competent military authorities.

(b) It is understood that the contracting parties should undertake to exercise the commercial rights granted under this Agreement at the earliest practicable date except in the case of temporary inability to do so.

ARTICLE 3

Operating rights which may have been granted previously by either of the contracting parties to any State not a party to this Agreement or to an airline shall continue in force according to their terms.

ARTICLE 4

In order to prevent discriminatory practices and to assure equality of treatment, it is agreed that:

(a) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of airports and other facilities. Each of the contracting parties agrees, however, that these charges shall not be higher than those which would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(b) Fuel, lubricating oils and spare parts introduced into the territory of one contracting party by the other contracting party or its nationals and intended solely for use by aircraft of such other contracting party shall be accorded national and most-favored-nation treatment with respect to the imposition of customs duties, inspection fees or other national duties or charges by the contracting party whose territory is entered.

(c) The fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board civil aircraft of the airlines of one contracting party authorized to operate the routes and services described in the Annex shall, upon arriving in or leaving the territory of the other contracting party, be exempt from customs, inspection fees or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

ARTICLE 5

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one contracting party shall be recognized as valid by the other contracting party for the purpose of operating the routes and services described in the Annex. Each contracting party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory,

certificates of competency and licenses granted to its own nationals by another State.

ARTICLE 6

(a) The laws and regulations of one contracting party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the other contracting party without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that contracting party.

(b) The laws and regulations of one contracting party as to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew, or cargo of the aircraft of the other contracting party upon entrance into or departure from or while within the territory of that contracting party.

ARTICLE 7

Substantial ownership and effective control of airlines of each contracting party authorized under this Agreement shall be vested in nationals of that contracting party. Each contracting party reserves the right to withhold or revoke the certificate or permit of any airline of the other contracting party in case of failure of such airline to comply with the laws of the State over which it operates, as described in Article 6 hereof, or otherwise to fulfill the conditions under which the rights are granted in accordance with this Agreement and its Annex.

ARTICLE 8

This Agreement and all contracts connected therewith shall be registered with the Provisional International Civil Aviation Organization, or its successor.

ARTICLE 9

Except as otherwise provided in this Agreement or in its Annex, any dispute between the contracting parties relating to the interpretation or application of this Agreement or its Annex which cannot be settled through consultation shall be referred, for an advisory report, to the Interim Council of the Provisional International Civil Aviation Organization (in accordance with the provisions of Article III, Section 6(8) of the Interim Agreement on International Civil Aviation signed at Chicago on December 7, 1944³ or its successor.

³ EAS 469, *ante*, vol. 3, p. 929.

ARTICLE 10

For the purposes of this Agreement and its Annex, unless the context otherwise requires:

(a) The term "aeronautical authorities" shall mean, in the case of the United States of America, the Civil Aeronautics Board and any person or body authorized to perform the functions presently exercised by the Board or similar functions, and, in the case of the Republic of China, the Minister of Communications for the time being, and any person or body authorized to perform any functions presently exercised by the said Minister or similar functions.

(b) The term "designated airline" shall mean the air transport enterprises which the aeronautical authorities of one of the contracting parties have notified in writing to the aeronautical authorities of the other contracting party as the airlines designated by it in accordance with paragraph (a) of Article 2 of this Agreement for the routes specified in such notification.

(c) The term "territory" shall have the meaning assigned to it by Article 2 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944.⁴

(d) The definitions contained in paragraphs (a), (b) and (d) of Article 96 of the Convention on International Civil Aviation signed at Chicago on December 7, 1944 shall apply.

ARTICLE 11

In the event either of the contracting parties considers it desirable to modify the routes or conditions set forth in the attached Annex, it may request consultation between the competent aeronautical authorities of both contracting parties, such consultation to begin within a period of 60 days from the date of the request. When these authorities mutually agree on new or revised conditions affecting the Annex, their recommendations on the matter will come into effect after they have been confirmed by an exchange of diplomatic notes.

ARTICLE 12

This Agreement shall continue in force for a period of four years or until it may be superseded in order to conform with a general multilateral air transport convention which may enter into force in relation to both contracting parties. Upon the expiration of this Agreement its renewal for additional periods of time to be agreed upon may be effected by an exchange of diplomatic notes. It is understood and agreed, however, that this Agreement may be terminated by either contracting party upon giving one year's notice to the other contracting party. Such notice may be given at any time

⁴ TIAS 1591, *ante*, vol. 3, p. 944.

after a period of two months to allow for consultation between the contracting parties.

ARTICLE 13

This Agreement, including the provisions of the Annex hereto, will come into force on the day it is signed.

Done in duplicate, in the English and Chinese languages, both equally authentic, at Nanking, this twentieth day of December, one thousand nine hundred forty-six, corresponding to the twentieth day of the twelfth month of the thirty-fifth year of the Republic of China.

For the Government of the United States of America:

J. LEIGHTON STUART

For the Government of the Republic of China:

WANG SHIH-CHIEH

ANNEX

A. Airlines of the United States authorized under the present Agreement are accorded rights of transit and nontraffic stop in Chinese territory, as well as the right to pick up and discharge international traffic in passengers, cargo and mail at Shanghai, Tientsin, and Canton, as well as at such additional points as may be agreed upon from time to time, on the following routes, via intermediate points in both directions:

1. The United States over a Pacific route to Tientsin and Shanghai and thence to the Philippine Islands and beyond, as well as beyond Shanghai via Route No. 3 described below.

2. The United States over a Pacific route to Shanghai and Canton and beyond.

3. The United States over an Atlantic route via intermediate points in Europe, Africa, the Near East, India, Burma and Indo-China to Canton and Shanghai and beyond.

On each of the above routes the airline authorized to operate such route may operate nonstop flights between any of the points on such route omitting stops at one or more of the other points on such route.

B. Airlines of China authorized under the present Agreement are accorded rights of transit and nontraffic stop in the territory of the United States, as well as the right to pick up and discharge international traffic in passengers, cargo and mail at San Francisco, New York, and Honolulu, as well as at such additional points as may be agreed upon from time to time, on the following routes, via intermediate points in both directions:

1. China over a Pacific route via Tokyo, Kurile Islands, the Aleutian Islands and Alaska to San Francisco and beyond.

2. China over a Pacific route via the intermediate points of Manila, Guam, Wake, and Honolulu to San Francisco and beyond.

3. China over an Atlantic route via intermediate points in Indo-China, Burma, India, the Near East, Africa and Europe to New York and beyond.⁵

On each of the above routes the airline authorized to operate such route may operate nonstop flights between any of the points on such route omitting stops at one or more of the other points on such route.

C. In the operation of the air services authorized under this Agreement, both contracting parties agree to the following principles and objectives:

1. Fair and equal opportunity for the airlines of each contracting party to operate air services on international routes, and the creation of machinery to obviate unfair competition by unjustifiable increases of frequencies or capacity;

2. The elimination of formulae for the predetermination of frequencies or capacity or of any arbitrary division of air traffic between countries and their national airlines;

3. The adjustment of fifth freedom traffic with regard to:

(a) Traffic requirements between the country of origin and the countries of destination;

(b) The requirements of through airline operation;

(c) The traffic requirements of the area through which the airline passes after taking account of local and regional services.

D. 1. Rates to be charged by the air carriers of either contracting party between points in the territory of the United States and points in the territory of China referred to in this Annex shall be subject to the approval of the contracting parties within their respective constitutional powers and obligations. In the event of disagreement the matter in dispute shall be handled as provided below.

2. The Civil Aeronautics Board of the United States having announced its intention to approve the rate conference machinery of the International Air Transport Association (hereinafter called "IATA"), as submitted, for a period of one year beginning in February, 1946, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval by the Board.

3. Any new rate proposed by the air carrier or carriers of either contracting party shall be filed with the aeronautical authorities of both contracting parties at least thirty days before the proposed date of introduction; provided that this period of thirty days may be reduced in particular cases if so agreed by the aeronautical authorities of both contracting parties.

⁵ For an amendment to sec. B, see agreement of Feb. 7 and Apr. 15, 1955 (6 UST 2979; TIAS 3347).

4. The contracting parties hereby agree that where:

(a) during the period of the Board's approval of the IATA rate conference machinery, either any specific rate agreement is not approved within a reasonable time by either contracting party or a conference of IATA is unable to agree on a rate, or

(b) at any time no IATA machinery is applicable, or

(c) either contracting party at any time withdraws or fails to renew its approval of that part of the IATA rate conference machinery relevant to this provision,

the procedure described in paragraphs 5, 6 and 7 hereof shall apply.

5. In the event that power is conferred by law upon the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States, each of the contracting parties shall thereafter exercise its authority in such manner as to prevent any rate or rates proposed by one of its carriers for services from the territory of one contracting party to a point or points in the territory of the other contracting party from becoming effective, if in the judgment of the aeronautical authorities of the contracting party whose air carrier or carriers is or are proposing such rate, that rate is unfair or uneconomic. If one of the contracting parties on receipt of the notification referred to in paragraph 3 above is dissatisfied with the new rate proposed by the air carrier or carriers of the other contracting party, it shall so notify the other contracting party prior to the expiry of the first fifteen of the thirty days referred to, and the contracting parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement is reached each contracting party will exercise its statutory powers to give effect to such agreement. If agreement has not been reached at the end of the thirty day period referred to in paragraph 3 above, the proposed rate may, unless the aeronautical authorities of the country of the air carrier concerned see fit to suspend its operation, go into effect provisionally pending the settlement of any dispute in accordance with the procedure outlined in paragraph 7 below.

6. Prior to the time when such power may be conferred by law upon the aeronautical authorities of the United States, if one of the contracting parties is dissatisfied with any new rate proposed by the air carrier or carriers of either contracting party for services from the territory of one contracting party to a point or points in the territory of the other contracting party, it shall so notify the other prior to the expiry of the first fifteen of the thirty day period referred to in paragraph 3 above, and the contracting parties shall endeavour to reach agreement on the appropriate rate. In the event that such agreement

is reached each contracting party will use its best efforts to cause such agreed rate to be put into effect by its air carrier or carriers. It is recognized that if no such agreement can be reached prior to the expiry of such thirty days, the contracting party raising the objection to the rate may take such steps as it may consider necessary to prevent the inauguration or continuation of the service in question at the rate complained of.

7. When in any case under paragraphs 5 and 6 above the aeronautical authorities of the two contracting parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one contracting party concerning the proposed rate or an existing rate of the air carrier or carriers of the other contracting party, upon the request of either, both contracting parties shall submit the question to the Provisional International Civil Aviation Organization or to its successor for an advisory report, and each party will use its best efforts under the powers available to it to put into effect the opinion expressed in such report.

8. The rates to be agreed in accordance with the above paragraphs shall be fixed at reasonable levels, due regard being paid to all relevant factors, such as cost of operations, reasonable profit and the rates charged by any other air carriers.

9. The Executive Branch of the Government of the United States agrees to use its best efforts to secure legislation empowering the aeronautical authorities of the United States to fix fair and economic rates for the transport of persons and property by air on international services and to suspend proposed rates in a manner comparable to that in which the Civil Aeronautics Board at present is empowered to act with respect to such rates for the transport of persons and property by air within the United States.

J. LEIGHTON STUART
WANG SHIH-CHIEH

EXCHANGE OF NOTES

The American Ambassador to the Minister of Foreign Affairs

AMERICAN EMBASSY, NANKING
December 20, 1946

EXCELLENCY:

I have the honor to refer to the Air Transport Agreement signed today between the Government of the United States of America and the Government of the Republic of China, and to state that, in connection with this Agreement, it is the understanding of my Government that the following points have been collaterally agreed to:

(a) Until such time as the airport facilities at Tientsin are enlarged and improved to the extent necessary to accommodate aircraft flying on the inter-

national route serving the traffic point of Tientsin as designated in the aforesaid Agreement, aircraft serving this route will be permitted by the Government of China to land for international traffic purposes at Peiping.

(b) There will be no objection if United States carriers designated to serve Routes 2 and 3 described in paragraph "A" of the Annex, serve Hongkong instead of Canton at the option of the United States Government; provided, however, no shuttle service will be operated by the designated United States carriers between Hongkong and any one of the points in Chinese territory mentioned in the Annex attached to the Agreement. Furthermore, the United States carrier designated to serve Route No. 2, described in paragraph "A" of the Annex, will have the right to connect with its mid-Pacific service at Canton, in event the option to serve Canton instead of Hongkong is exercised by the United States Government. Likewise, the Chinese carriers designated to serve Routes numbered 1 and 2, described in paragraph "B" of the Annex will have the right to connect at San Francisco.

(c) The Government of the United States is desirous of obtaining the right for United States carriers to serve other international traffic points in China beyond those mentioned in the present Agreement. The Government of China does not wish to extend these points at present but will be ready to give prompt consideration thereto when conditions justify.

(d) United States carriers will be authorized to serve additional traffic points in Chinese territory as soon as the carriers of any third country are so authorized, and on a basis of reciprocity Chinese carriers will also then be authorized to serve additional points in United States territory.

(e) The term "and beyond" as used in the Annex to the Agreement means that the route so described may be extended beyond the territorial limits of the contracting party to one or more other countries. This term shall not be interpreted to commit either contracting party to the granting of additional traffic points in its respective territories.

(f) The Government of the United States agrees that if at any time it should enter into an agreement with any other nation adopting formulae for the predetermination of frequencies or capacity, it will enter into a similar agreement with the Government of China.

I shall be much obliged if Your Excellency will confirm the foregoing.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

J. LEIGHTON STUART

His Excellency
Dr. WANG SHIH-CHIEH,
Minister for Foreign Affairs,
Nanking.

The Minister of Foreign Affairs to the American Ambassador

MINISTRY OF FOREIGN AFFAIRS

NANKING, *December 20, 1964*

EXCELLENCY:

I have the honor to acknowledge the receipt of your Note of December 20, 1946 which reads as follows:

[For text of U.S. note, see above.]

I take pleasure in stating that the contents of your Note, as quoted above, are acceptable to the Government of the Republic of China.

I avail myself of the occasion to renew to you, Sir, the assurances of my highest consideration.

WANG SHIH-CHIEH

To the Honorable

J. LEIGHTON STUART,

Ambassador of the United States of America,

Nanking.