

**No. 25294**

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**FRANCE  
and  
MALAWI**

**Agreement for air services between and beyond their respective territories (with annex). Signed at Lilongwe on 20 January 1982**

*Authentic texts: French and English.*

*Registered by France on 30 September 1987.*

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**FRANCE  
et  
MALAWI**

**Accord relatif aux services aériens entre leurs territoires respectifs et au-delà de ceux-ci (avec annexe). Signé à Lilongwe le 20 janvier 1982**

*Textes authentiques : français et anglais.*

*Enregistré par la France le 30 septembre 1987.*

## AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF [THE] REPUBLIC OF MALAWI AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of the French Republic and the Government of the Republic of Malawi (hereinafter referred to as the “Contracting Parties”)

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944<sup>2</sup> and

Desiring to conclude an agreement for the purpose of establishing air services between and beyond their respective territories

Have agreed as follows:

### *Article 1. DEFINITIONS*

1. For the purpose of this Agreement, unless the context otherwise requires:

(a) The term “aeronautical authorities” means, in relation to each of the Contracting Parties, the Minister responsible for Civil Aviation or any person or body authorised to perform Civil Aviation functions or similar functions;

(b) The term “agreed services” means the air services established on the specified routes pursuant to Article 3(2) of this Agreement;

(c) The terms “air services”, “international air services”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the Convention;

(d) The term “aircraft equipment” means articles, other than stores and spare parts of a removable nature, for use on board an aircraft during flight, including first aid and survival equipment;

(e) The term “Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of the Convention and any amendment of the Convention so far as those Annexes and amendments have been ratified or adopted by both Contracting Parties;

(f) The term “designated airlines” means an airline which has been designated by a Contracting Party and authorised by the other Contracting Party in accordance with Article 4 of this Agreement;

(g) The term “spare parts” means articles of a repair or replacement nature for incorporation in an aircraft, including engines and propellers;

(h) The term “specified routes” means the routes specified in the Schedule to this Agreement;

<sup>1</sup> Came into force on 12 May 1982, the date agreed upon by the Contracting Parties in an exchange of diplomatic notes (effected on 2 March and 12 May 1982), in accordance with article 21 (1).

<sup>2</sup> United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, p. 209 et 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213, et vol. 1175, p. 297.

(i) The term “stores” means articles of a readily consumable nature for use or sale on board an aircraft during flight, including commissary supplies;

(j) The term “tariffs” means the prices to be paid for and carriage of passengers and cargo and the conditions under which these prices apply, including prices, commissions and conditions of agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail; and

(k) The term “territory” means in relation to a State the land areas, internal waters, and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

2. The Schedule to this Agreement shall form an integral part of this Agreement and all references to this Agreement, unless otherwise expressly provided, shall apply to the said Schedule.

### *Article 2. APPLICABILITY OF THE CONVENTION*

The provisions of this Agreement shall be subject to those provisions of the Convention which are applicable to international air services.

### *Article 3. GRANT OF RIGHTS*

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

(a) The right to fly across its territory without landing;

(b) The right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the right to establish air services on the routes specified in the appropriate section of the Schedule.

3. While the designated airline of each Contracting Party is operating an agreed service on a specified route it shall enjoy, in addition to the rights specified in paragraph 1 of this Article, the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail.

4. Nothing in this Article shall be deemed to confer on the designated airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail destined for another point in the territory of the other Contracting Party.

5. The provisions of the International Air Service Transit Agreement opened for signature at Chicago on the seventh day of December, 1944<sup>1</sup> shall apply between the Contracting Parties as if both Contracting Parties had accepted that Agreement.

6. The provisions of paragraphs 1, 2 and 3 of this Article shall apply to all types of subsonic and supersonic aircraft.

7. For the purpose of the application of this Article each Contracting Party may specify the airports in its territory which may be used.

<sup>1</sup> United Nations, *Treaty Series*, vol. 84, p. 389.

#### Article 4. DESIGNATION OF AIRLINES

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline as the airline which shall operate the agreed services on the specified routes.

2. On receipt of notice of such designation, the aeronautical authorities of the other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, without delay grant to the airline designated in accordance with paragraph 1 of this Article the appropriate operating authorisation.

3. For the purpose of granting the appropriate operating authorisation under paragraph 2 of this Article, the aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and the regulations normally applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Where a Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals, it shall have the right to:

- (a) Refuse to grant the operating authorisation referred to in paragraph 2 of this Article; or
- (b) To impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement.

5. When an airline has been designated and authorised in accordance with this Article, it may operate the agreed services for which it is designated provided that a tariff established in accordance with the provisions of Articles 7 and 11 of this Agreement is in force in respect of that service and shall at all times be adhered to by that designated airline.

#### Article 5. REVOCATION OR SUSPENSION OF OPERATING AUTHORISATION

1. A Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights, granted under this Agreement to a designated airline of the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of such rights:

(a) In any case where it is satisfied that substantial ownership and effective control of that airline are not vested in the Contracting Party designating the airline or in the nationals of such Contracting Party; or

(b) In the case of failure by that designated airline to comply with the laws or regulations in force in the territory [of] the Contracting Party granting such rights; or

(c) In any case where the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate exercise of the right to revoke, suspend or impose conditions conferred by paragraph 1 of this Article is essential to prevent further infringements of the laws or regulations or the provisions of this Agreement, such right shall be exercised only after consultation with the aeronautical authorities of the other Contracting Party.

### *Article 6. APPLICATION OF LAWS AND REGULATIONS*

1. The laws and regulations of one Contracting Party relating to admission, flight within or departure from its territory of an aircraft of its designated airline engaged in international air navigation, or to the operation or navigation of such aircraft while within its territory shall likewise apply to the aircraft of the designated airline of the other Contracting Party and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.

2. The laws and regulations of one Contracting Party relating to admission to, stay in, or departure from its territory of passengers, crew or cargo including mail, such as laws and regulations relating to entry, exit, emigration, immigration, passports as well as customs and health or sanitary measures, shall apply to passengers, crew and cargo including mail carried by the aircraft of the designated airline of the other Contracting Party upon entrance into or departure from or while within the territory of the said Contracting Party. Such laws and regulations shall equally apply to the designated airline of one Contracting Party as they apply to the designated airline of the other Contracting Party.

3. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes provided that these will be under Customs surveillance or control.

4. When utilizing the airports and other facilities offered by one Contracting Party, the aircraft of the designated airline of the other Contracting Party shall pay the same level of fees as those which have to be paid by national aircraft on scheduled international services.

5. As regards certificates of airworthiness, certificates of competency and licences issued or validated by one of the Contracting Parties and not expired, the other Contracting Party shall observe the provisions of article 33 of the Convention.

### *Article 7. APPROVAL OF TIMETABLES*

1. The designated airline of either Contracting Party shall, not later than 30 days prior to the date of the operation of any agreed service, submit its proposed timetables to the aeronautical authorities of the other Contracting Party for their approval. Such timetables shall include the type of service, aircraft to be used, the flight schedule, tariffs, conditions of carriage and all relevant information.

2. If either designated airline wishes to operate supplementary or additional flights besides those covered in the approved timetables, it shall first obtain the permission of the aeronautical authorities of the Contracting Party concerned.

3. Any subsequent changes to the approved timetable of either designated airline shall be submitted for approval to the aeronautical authorities of the other Contracting Party.

### *Article 8. PRINCIPLES GOVERNING OPERATION OF AGREED SERVICES*

1. The designated airlines of the two Contracting Parties shall be afforded fair and equitable treatment in order that they may enjoy equal opportunity in the operation of the agreed services. However, in operating the agreed services the

designated airlines shall take into account their mutual interests so as not to affect unduly their respective services.

2. The operation of the third and fourth freedom traffic rights between the territories of the Contracting Parties in both directions along the specified routes constitutes a basic and primary right of each Contracting Party.

3. For the operation of the agreed services:

(a) The total capacity provided on each of the specified routes shall be determined having regard to the actual and reasonably anticipated traffic requirements;

(b) The designated airlines of the two Contracting Parties shall share in equal proportion the capacity referred to in sub-paragraph (a) of this paragraph;

(c) Provision may also be made by the Contracting Parties for the carriage of passengers and cargo including mail, taken on board or discharged at points of States other than the States of the Contracting Parties. In doing so, the following factors shall be taken into account:

- (i) Traffic requirements between such points and the territory of the Contracting Party whose designated airline desires to operate a service on that route;
- (ii) Traffic requirements of the area through which the agreed services pass, after taking account of other transport services established by airlines of the States comprising the area;
- (iii) The requirements of through airline operation.

4. In order to meet seasonal fluctuations of traffic or unexpected traffic demands of a temporary character, the designated airlines of the two Contracting Parties shall consult between themselves on suitable measures to be adopted in such situations. Any arrangements concluded in this regard between the airlines and any amendment thereto shall be submitted for approval to the aeronautical authorities of the two Contracting Parties.

5. If the designated airline of one Contracting Party does not wish to use on one or more specified routes part or all of the capacity allocated to it for reasons other than scale of tariffs, it may consult the designated airline of the other Contracting Party with a view to transferring to the latter, for a fixed period and on terms to be mutually agreed, the whole or part of the capacity at its disposal within the agreed limits. The designated airline which has transferred all or part of its capacity may recover the same at the end of the agreed period. Any agreement concluded between the airlines and any amendments thereto shall be submitted for approval to the aeronautical authorities of the Contracting Parties.

6. Each Contracting Party shall grant, on a basis of reciprocity to the designated airline of the other Contracting Party, the right to maintain in its own territory the technical, administrative and commercial services indispensable for its operations.

7. For the operation of its services, the designated airline shall have the right to employ technical, administrative and commercial personnel of its own nationality subject to the laws and regulations in force in the country in which this personnel is to be employed.

*Article 9. EXEMPTION FROM CUSTOMS DUTIES, INSPECTION FEES AND OTHER SIMILAR CHARGES*

1. Aircraft operated on the agreed services by the designated airlines of either Contracting Party, as well as any aircraft equipment, supplies of fuels and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided that such equipment, supplies and stores remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory.

2. Subject to paragraph 3 of this Article, there shall also be exempt from customs duties, inspection fees and similar charges, with the exception of charges corresponding to the services performed:

(a) Aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the aeronautical authorities of that Contracting Party, and for use on board outbound aircraft engaged on an agreed service of the other Contracting Party;

(b) Spare parts introduced into the territory of either Contracting Party for the maintenance or repair of an aircraft used on the agreed services by the designated airline of the other Contracting Party;

(c) Fuel and lubricants to be supplied to an inbound/transiting/outbound aircraft operated on agreed services by the designated airline of the other Contracting Party, even when such supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

3. Materials and supplies referred to in paragraph 2 (a), (b) and (c) of this Article may be required to be kept under Customs surveillance or control.

*Article 10. UNLOADING OF EQUIPMENT, MATERIAL AND SUPPLIES*

The regular airborne equipment, as well as the materials and supplies retained on board an aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that other Contracting Party and such Customs authorities may require that such equipment, materials and supplies be placed under their surveillance up to such time as they are re-imported or otherwise disposed of in accordance with Customs laws and regulations.

*Article 11. TARIFFS*

1. The tariffs to be charged by the airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels due regard being paid to all relevant factors, including cost of operation, reasonable profit, and the tariffs of other airlines.

2. The tariffs referred to in paragraph 1 of this Article shall, wherever possible, be agreed by the designated airlines of both Contracting Parties after consultation with the other airlines operating over the whole or part of the route, and such agreement shall, wherever possible, be reached by following the procedures of the International Air Transport Association for the working out of tariffs.

3. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Contracting Parties, at least forty-five days before the proposed date of their introduction (hereinafter referred to as the "period of notice"). In special cases, the period of notice may be reduced, subject to the agreement of the said authorities.

4. The approval referred to in paragraph 3 of this Article may be given expressly. If neither of the aeronautical authorities has expressed disapproval of the tariffs within thirty days from the date of submission in accordance with paragraph 3, the tariffs shall be considered as approved. In the event of the period of notice being reduced as provided for in paragraph 3, the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty days.

5. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 3 of this Article or on the determination of any tariff under paragraph 4, the dispute shall be settled in accordance with the provisions of Article 15 of this Agreement.

6. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph:

(a) Where such tariff has a terminal date for more than 12 months after that date;

(b) Where such tariff has no terminal date, for more than 12 months after the date on which the designated airline of one Contracting Party in writing to the aeronautical authorities of the Contracting Parties proposes a new tariff in accordance with the provisions of this Agreement.

7. The aeronautical authorities of the Contracting Parties shall ensure that the designated airlines conform to the tariffs approved by the aeronautical authorities of the Contracting Parties and that no airline reduces any portion of such tariffs by any means directly or indirectly.

#### *Article 12. TRANSFER OF EARNINGS*

Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of receipts over expenditure earned by such designated airline in the territory of such Contracting Party in connection with the carriage of passengers and cargo including mail as well as from any other activities related to air transport which may be permitted under national regulations. Such transfers shall be effected at rate of exchange in accordance with the respective applicable national laws and regulations governing current payments, but where there is no official exchange rate such transfers shall be effected at the prevailing foreign exchange market rate for current payments.

#### *Article 13. PROVISION OF INFORMATION*

The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, on request by the latter, information relating to the tariff carried on the agreed services by the respective designated airline. Such information shall include statistics and all other information required in determining the amount of tariff carried by those airlines on the agreed services.



#### Article 14. CONSULTATIONS

1. In a spirit of close co-operation the aeronautical authorities of the Contracting Parties shall consult from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and the Schedule annexed hereto and shall consult whenever necessary to provide for modification to this Agreement or the Schedule.

2. Either Contracting Party may request consultations which may be through discussion or by correspondence. In case of discussion, they shall begin within a period of sixty (60) days of the date of the request unless both Contracting Parties agree to an extension of this period.

#### Article 15. SETTLEMENT OF DISPUTES

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 direct negotiation.

2. If the Contracting Parties fail to reach a settlement by direct negotiations, they may refer the dispute for decision to some person or competent body from a third State.

3. If a settlement cannot be reached by the aforesaid methods, the dispute shall, at the request of either Contracting Party, be submitted for decision to a tribunal (hereinafter called the "Arbitral Tribunal") consisting of three arbitrators, one to be appointed by each Contracting Party and the third to be appointed by the two so appointed.

4. Each of the Contracting Parties shall appoint an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by the Arbitral Tribunal and the third arbitrator shall be appointed within a further sixty (60) days. If either of the Contracting Parties fails to appoint an arbitrator within the specified period or if the third arbitrator is not appointed within the specified period the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires.

5. The third arbitrator appointed under paragraph 3 and the arbitrator or, if more than one are so appointed, at least one arbitrator appointed under paragraph 4, shall be a national of a third State and shall act as President of the Arbitral Tribunal.

6. The Arbitral Tribunal shall determine its own procedure.

7. Subject to the final decision of the Arbitral Tribunal, the Contracting Parties shall bear in equal proportion the initial costs of arbitration.

8. The Contracting Parties shall comply with any provisional ruling or the final decision of the Arbitral Tribunal.

9. If, and so long as either Contracting Party fails to comply with a decision of the Arbitral Tribunal given under this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of the present Agreement to the Contracting Party in default.

*Article 16.* AMENDMENTS

Any amendment of this Agreement or of the Schedule hereto agreed to by the Contracting Parties shall come into force on a date to be agreed by an exchange of diplomatic notes.

*Article 17.* AMENDMENT OF AGREEMENT TO CONFORM  
TO MULTILATERAL TREATIES

This Agreement shall be amended so as to conform to any multilateral agreement which may become binding on both Contracting Parties.

*Article 18.* REGISTRATION OF AGREEMENT AND AMENDMENTS

This Agreement and any subsequent amendments thereto shall be registered with the International Civil Aviation Organisation by the Contracting Parties.

*Article 19.* TERMINATION OF AGREEMENT

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

*Article 20.* POWER TO SUPERSEDE

This Agreement shall supersede any previous Agreements applicable between the Contracting Parties on international air services.

*Article 21.* ENTRY INTO FORCE

1. Subject to paragraph 2 of this Article, this Agreement shall enter into force after signature and on such date as may be agreed between the Contracting Parties by an exchange of diplomatic notes.

2. This Agreement shall be applied on a provisional basis after it has been initialled and from such date as may be agreed between the Parties by an exchange of diplomatic notes.

IN WITNESS WHEREOF the undersigned, duly authorised by their respective Governments, have signed this Agreement in duplicate in French and English each text being equally authentic at Lilongwe this 20th day of January 1982.

[Signed — Signé]<sup>1</sup>

For the Government  
of the French Republic

[Signed — Signé]<sup>2</sup>

For the Government  
of the Republic of Malawi

<sup>1</sup> Signed by Jean Grossin — Signé par Jean Grossin.

<sup>2</sup> Signed by Elson Bakili Muluzi — Signé par Elson Bakili Muluzi.

ANNEX  
ROUTE SCHEDULE

SECTION I

Route to be operated by the designated airline of the French Republic:

Points in France/Brazzaville or Kinshaha or Luanda or Libreville or Bangui/  
Lusaka/Lilongwe/Maputo or Salisbury or Johannesburg and vice versa.

SECTION II

Route to be operated by the designated airline of Malawi:

Points in Malawi/intermediate points to be agreed later/Paris/points beyond to be  
agreed later and vice versa.

NOTES. 1. In operating an agreed service on the specified routes the designated  
airline of either Contracting Party may, on any or all flights, omit calling at any point  
provided that the services originate and/or terminate at a point in the territory of that  
Contracting Party.

2. The designated airline of either Contracting Party shall have the right to terminate  
its services in the territory of the other Contracting Party or at any one of the agreed  
beyond points.

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